[James Lawrence Fly, Chairman. (May 2, 1941). Investigation of Chain Broadcasting, 163 pgs., p. 11, PDF . 20. Commission Order No. 37, Docket No. 5060. FCC. Source: https://earlyradiohistory.us/1941cb.htm]

REPORT ON CHAIN BROADCASTING

FEDERAL
COMMUNICATIONS
COMMISSION

COMMISSION ORDER No. 37 • DOCKET No. 5060

MAY 1941

REPORT

ON

CHAIN BROADCASTING

FEDERAL
COMMUNICATIONS
COMMISSION

COMMISSION ORDER No. 37 • DOCKET No. 5060

MAY 1941

FEDERAL COMMUNICATIONS COMMISSION

JAMES LAWRENCE FLY, *Chairman*
PAUL A. WALKER
NORMAN S. CASE
T. A. M. CRAVEN
GEORGE HENRY PAYNE
FREDERICK I. THOMPSON
RAY C. WAKEFIELD

For sale by the Superintendent of Documents, Washington, D. C.

TABLE OF CONTENTS

FEDERAL COMMUNICATIONS COMMISSION

REPORT ON CHAIN BROADCASTING

[Pursuant to Commission Order No. 37]

Docket No. 5060

By the Commission (Chairman Fly, Commissioners Walker, Payne, Thompson, and Wakefield; Commissioners Case and Craven dissenting).

INTRODUCTION

A. HISTORY OF PROCEEDINGS

The Federal Communications Commission on March 18, 1938, by Order No. 37,[1] authorized an investigation "to determine what special regulations applicable to radio stations engaged in chain or other broadcasting are required in the public interest, convenience, or necessity." On April 6, 1938, a committee of three Commissioners[2] was appointed by the Commission to supervise the investigation, to hold hearings in connection therewith, and "to make reports to the Commission with recommendations for action by the Commission."[3]

The Commission's order authorizing the investigation covered the following matters, among others: The contractual rights and obligations of stations engaged in chain broadcasting under network agreements; the extent of control over programs and advertising contracts exercised in practice by stations engaged in chain broadcasting; duplication of network programs in the same areas; exclusive contracts restricting stations to one chain service and chain services to one station in a given area; the extent to which single chains have exclusive coverage in particular areas; the policies of networks with respect to character of programs, diversification, and accommodation to the requirements of areas served; the number of stations licensed to or affiliated with each network and the amount of station time controlled and used by networks; rights and obligations of stations in relation to advertisers having network contracts; the nature of the service rendered by stations licensed to networks; competitive practices of stations engaged in chain broadcasting; the effect of chain broadcasting upon stations not engaged in chain broadcasting; practices or agreements in restraint of trade or in furtherance of monopoly in connection with chain broadcasting; and the extent and effect of concentration of control of stations locally, regionally, or nationally, through contracts, common ownership, or by other means.

Between November 14, 1938, and May 19, 1939, the committee held hearings pursuant to public notice that the Commission would hear any person or organization desiring to present evidence on the matters included for investigation in Commission Order No. 37. The committee requested the national networks, regional networks, station licensees, and transcription and recording companies to present evidence. It also requested information by questionnaire from licensees of stations and from holders of stock in licensee corporations. In addition, persons and organizations requesting an opportunity to present evidence material to the investigation were given an opportunity to be heard. On June 12, 1940, the committee issued its report[4]

[1] Order No. 37 is attached to this report as Appendix A.

[2] The then chairman, Mr. McNinch, was made an ex-officio member of the committee. Chairman Fly did not take his place as an ex-officio member.

[3] See F. C. C. Release No. 26434, April 6, 1938.

[4] Hereinafter referred to as the committee report. The committee's memorandum of submittal and chapter VI of the committee report containing its conclusions and recommendations, are attached hereto as Appendix B.

based upon the evidence adduced at the hearings and the official records of the Commission.

In November 1940 briefs in this proceeding were filed on behalf of the national networks and other interested parties. On December 2 and 3, 1940, oral arguments before the full Commission were presented by the parties. These arguments were directed to the committee report and to certain draft regulations issued solely for the purpose of giving scope and direction to the oral arguments.[5] On January 2, 1941, supplementary briefs were filed on behalf of the three national network organizations in which were discussed the jurisdiction of this Commission with respect to matters covered by the committee report and the draft regulations, and in which attention was given to the actual and feasible limits of competition in the broadcasting field, with particular reference to network broadcasting.

B. SCOPE OF THIS REPORT

While the investigation as prescribed by Order No. 37 was not limited to chain broadcasting,[6] network operations were the principal subject of inquiry.[7] The great bulk of the testimony at the hearings dealt with network matters, and the committee report deals largely with these matters. The committee's memorandum submitting its report, however, directed our attention to two other problems.

The first of these is the ownership of more than one station by a single individual or corporation.[8] The Commission has had and still has frequent occasion to deal with this question in its administration of the station licensing provisions of the Communications Act. In the rules recently promulgated for frequency modulation (FM) and for television, we have established rules restricting multiple ownership of stations furnishing these new broadcast services.[9] Although the rules covering standard broadcast service do not contain comparable provisions, the Commission is working out a policy in its day-to-day decisions.[10]

The other nonnetwork matter to which the committee directed our attention is the problem created by the fact that the stock of some corporate licensees is listed on stock exchanges. This problem relates not only to the administration of section 310 (b) of the Communications Act governing the transfer or assignment of radio stations, but also to the enforcement of section 310 (a), prohibiting alien ownership or control of radio stations beyond certain limits. A number of stations are owned or controlled by large corporations whose stock is listed on stock exchanges and is widely held. The Commission is giving careful consideration to the problem in order to insure observance of section 310.

The committee did not make specific recommendations with respect to either of these two matters, but indicated that the Commission

---

[5] A copy of the release of the Commission containing the draft regulations is attached to this report as Appendix C.

[6] The investigation was ordered "to determine what special regulations applicable to radio stations engaged in chain *or other* broadcasting are required in the public interest, convenience, or necessity * * *."

[7] Of the 13 specific matters for investigation listed in the order, all but one (No. 13) relate directly to chain broadcasting.

[8] The general question of multiple ownership of radio stations should not be confused with network ownership of stations which is treated at length in chs. VI and VII.

[9] See rule 3.230 (multiple ownership of high-frequency stations) and rule 4.226 (multiple ownership of television stations).

[10] See, *e. g., In the Matter of South Bend Tribune,* March 1, 1941, File No. B4-P-900.

should give consideration to them in the light of administrative experience and should suggest to Congress the enactment of amendatory legislation, if later found to be necessary. In this report we do not attempt to solve these difficult questions. They are receiving continuing attention in our administration of the provisions of the Communications Act and may, indeed, warrant further special study.[11]

Accordingly, this report is devoted largely to the chain broadcasting matters with which the committee report is primarily concerned. The views expressed and the regulations adopted herein are, we believe, fully supported by the evidence adduced at the hearings by the networks and other interested parties. With respect to such matters as the present allocation and ownership of particular broadcasting facilities, we have utilized our current official records. The historical data in the early chapters includes matters of common knowledge or of public record. In a proceeding of this character, there is no reason to exclude such matters or records from consideration.

C. NATURE AND SIGNIFICANCE OF CHAIN BROADCASTING

Chain broadcasting is defined in section 3(p) of the Communications Act of 1934 as the "simultaneous broadcasting of an identical program by two or more connected stations." It is technically accomplished at present by transmitting the program by wire, usually leased telephone lines, from its point of origination to each of the outlet stations of the chain or network for simultaneous broadcasting. The outlets are in certain highly important cases owned by the networks themselves, but more commonly they are independently owned and are affiliated with the networks by means of a network affiliation contract.

There are at present three organizations operating four network systems of national scope, and a number of organizations operating network systems of a regional character. The largest and oldest national organization is the National Broadcasting Company, Inc.,[12] founded in 1926, a subsidiary of the Radio Corporation of America.[13] NBC operates two network systems, known as the "Red" and "Blue" networks. Second in size, and established a year after NBC, is the Columbia Broadcasting System, Inc.,[14] controlled by William S. Paley and associates. The third nation-wide system is the Mutual Broadcasting System, Inc.,[15] which was established in 1934 and which is largely controlled by the Chicago Tribune and R. H. Macy & Co.

The broadcast business handled by the three national network organizations (excluding the nonnetwork business of the stations owned by them) constitutes almost half of the total business of all commercial broadcast stations in the United States. In 1938[16] the network net time sales[17] of NBC, CBS, and Mutual totaled over $46,000,000, as com-

---

[11] Similarly, the appearance of network broadcasting in the frequency modulation (FM) field will merit careful study by the Commission. Early in April 1941 a proposed FM chain, The American Network, Inc., was organized at a meeting of some 45 broadcast groups. The board included John Shepard III, of the Yankee Network, Boston, chairman; Walter J. Damm, WTMJ; Herbert L. Petty, WHN; Gordon Gray, WSJS; Harry Stone; WSM; and Jack Latham, manager, a former advertising and cigar company executive. See *FM Bulletin*, April 9, 1941, pp. 1–2.

[12] Hereinafter referred to as NBC.

[13] Hereinafter referred to as RCA.

[14] Hereinafter referred to as CBS.

[15] Hereinafter referred to as Mutual.

[16] The most recent financial and other data put in evidence at the committee hearings was, for most part, for the year 1938.

[17] The term "network net time sales" means the amount received by the networks from the sale of time for network programs. The word "net" is used to indicate that discounts and agency commissions have been deducted.

pared with the net time sales of the entire industry in that year, amounting to about $101,000,000.

Network broadcasting has been an important factor in the development of the broadcasting industry. Many improvements which have taken place in engineering, in program quality, and in the broadcasting of special events of national interest to ever increasing audiences have been due, in considerable measure, to the advertising revenues brought to the radio broadcasting industry by the network method of broadcasting to Nation-wide audiences.

If radio broadcasting is to serve its full function in disseminating information, opinion, and entertainment, it must bring to the people of the nation a diversified program service. There must be, on the one hand, programs of local self-expression, whereby matters of local interest and benefit are brought to the communities served by broadcast stations. There must be, on the other hand, access to events of national and regional interest and to programs of a type which cannot be originated by local communities. Neither type of program service should be subordinated to the other.

The growth and development of chain broadcasting found its impetus in the desire to give widespread coverage to programs which otherwise would not be heard beyond the reception area of a single station. Chain broadcasting makes possible a wider reception for expensive entertainment and cultural programs and also for programs of national or regional significance which would otherwise have coverage only in the locality of origin. Furthermore, the access to greatly enlarged audiences made possible by chain broadcasting has been a strong incentive to advertisers to finance the production of expensive programs.

From an economic standpoint, the stations themselves are in a position to benefit greatly from their participation in chain broadcasting; such broadcasting can bring them a larger share of the money expended by advertisers for national or regional coverage. It is apparent that chain broadcasting plays an essential part in the development of the broadcast industry.

But the fact that the chain broadcasting method brings benefits and advantages to both the listening public and to broadcast station licensees does not mean that the prevailing practices and policies of the networks and their outlets are sound in all respects, or that they should not be altered. The Commission's duty under the Communications Act of 1934 is not only to see that the public receives the advantages and benefits of chain broadcasting, but also, so far as its powers enable it, to see that practices which adversely affect the ability of licensees to operate in the public interest are eliminated.

I. EARLY HISTORY OF NETWORK BROADCASTING (1923–26)

Network broadcasting is almost as old as broadcasting itself. The first network broadcast occurred in January 1923,[1] less than 3 years after the establishment of the first broadcasting stations.[2]

When broadcasting began, the stations were faced with the problem of deriving sufficient revenue from operations. There was considerable difference of opinion in the industry as to how this problem could be solved. Some believed that the manufacturers and distributors of radio receiving sets and parts should contribute to the cost of operating broadcasting stations as a service to the purchasers of sets and in order to stimulate sales. Others were of the opinion that broadcasting stations should be operated by the Government, or supported by endowment funds contributed by public-spirited citizens.[3] The genesis of the sponsored program occurred on August 28, 1922, when the first sale of radio station time for commercial purposes was made by the American Telephone & Telegraph Co.'s station WEAF at New York City.[4] The eventual success of the practice of selling radio time to advertisers, and the development of network broadcasting, are the foundation stones of the commercial structure of radio broadcasting today.

A. THE A. T. & T. NETWORK

Station WEAF was constructed in New York by the American Telephone & Telegraph Co. and was licensed on June 1, 1922. It was operated as a "toll" station, available for hire by those wishing to reach the public by radiotelephony.

At that time the Telephone Co. claimed the exclusive right, under certain patents and patent-licensing agreements, to sell radio time and operate "toll" stations.[5] This right was asserted under a cross-licensing agreement dated July 1, 1920, between the General Electric Co. and the Telephone Co. and an extension agreement of the same date under which RCA and Western Electric were added as parties. The Westinghouse Electric & Manufacturing Co. was brought within the purview of these agreements on June 30, 1921.[6] They gave the

---

[1] On January 4, 1923, a special circuit was set up between stations WEAF, New York City, and WNAC, Boston. A program originating at WEAF was then broadcast simultaneously by the two stations. See testimony of O. B. Hanson, NBC vice president and chief engineer, Transcript, p. 694: "Network Broadcasting," by Barrett and others, in *Bell Telephone Quarterly,* vol. 13, pp. 81–82 (April 1934).

[2] The first broadcast stations licensed for regular operation were WWJ at Detroit on October 13, 1921, and KDKA at Pittsburgh on November 7, 1921. On November 2, 1920, however, station KDKA broadcast, under a special license, the returns of the Harding-Cox election. See statement of M. H. Aylesworth in *Hearings on Confirmation of Federal Radio Commissioners,* before Senate Committee on Interstate Commerce, 70th Cong., 1st sess., February 4, 1928, p. 233.

[3] See *New York Times,* May 18, 1924, sec. VIII, p. 3, for collection of opinions.

[4] Hanson, Tr., p. 682.

[5] Hanson, Tr., 688; *Radio Broadcast,* June 1924, pp. 130–132.

[6] *Report of Federal Communications Commission on Investigation of the Telephone Industry in the United States,* 76th Cong., 1st sess., H. Doc. No. 340 (1939) (hereinafter cited as F. C. C. *Telephone Report*), pp. 225–226; *Report of Federal Trade Commission on the Radio Industry,* 67th Cong., 4th sess. (1923) (hereinafter cited as F. T. C. *Radio Report*), pp. 47–48.

Telephone Co. and its manufacturing subsidiary, the Western Electric Co., the sole rights to make, lease, and sell commercial radiotelephone transmitting equipment. This provision, the Telephone Co. insisted, gave it the exclusive right to sell time over a "toll" station. The assertion of these rights was a substantial factor in giving it a position of leadership during the early days of broadcasting.[7]

The Telephone Co. inaugurated network broadcasting on January 4, 1923, with a program broadcast simultaneous over station WEAF and a Boston station, WNAC, owned by John Shepard III.[8] The second network broadcast occurred on June 7, 1923, and involved, in addition to WEAF, stations WGY in Schenectady, KDKA in Pittsburgh, and KYW in Chicago.[9] The first continuous network broadcasting occurred during the summer of 1923, when for a period of 3 months station WEAF in New York programmed Col. Edward H. R. Green's station WMAF at South Dartmouth, Mass.[10] During the summer of 1923 the Telephone Co., through one of its subsidiary companies, constructed station WCAP in Washington, and thereafter WEAF and WCAP were frequently connected for network broadcasting.[11] These two stations became the nucleus of the network built up by the Telephone Co.

From 1924 to 1926, the Telephone Co.'s network expanded its operations rapidly. Early in 1924, the company produced the first transcontinental network broadcast, utilizing station KPO in San Francisco.[12] By the fall of 1924, the Telephone Co. was able to furnish a coast-to-coast network of 23 stations to broadcast a speech by President Coolidge.[13] At the end of 1925 there was a total of 26 stations on the regular Telephone Co. network, extending as far west as Kansas City (station KSD).[14] The company was selling time to advertisers over a basic network of 13 stations at $2,600 per hour,[15] and was deriving gross revenues at the rate of about $750,000 per year from the sale of time.[16]

B. THE RCA NETWORK

Meanwhile, RCA was making a start in network broadcasting. In the spring of 1923, RCA acquired sole control of station WJZ in New York City,[17] and later that year it constructed and started to operate station WRC at Washington. The first network broadcast by RCA occurred in December 1923, and involved only WJZ and the General Electric Co.'s station WGY at Schenectady, N. Y. The connection was made with Western Union telegraph wires.[18]

---

[7] The standard contract whereby the Telephone Co. sold transmitting equipment expressly provided that the purchaser was not to use the station for profit. *Radio Broadcast,* June 1924, pp. 130–132. It should be noted, however, that some independent stations operated in spite of the Telephone Co.'s claims. *Radio Broadcast,* June 1924, pp. 130–132. After April 18, 1924, some independent stations were licensed by the Telephone Co. to engage in "toll" broadcasting. Hanson, Tr. pp. 678 *et seq.;* F. C. C. *Telephone Report,* pp. 387–399.

[8] *Supra,* n. 1.

[9] Hanson, Tr., p. 698. Station WGY was owned by General Electric Co. and stations KDKA and KYW by the Westinghouse Electric & Manufacturing Co.

[10] *Id.,* p. 699.

[11] F. C. C. *Telephone Report,* p. 388. WCAP discontinued operations in 1926. *Infra,* n. 24.

[12] Hanson, Tr. p. 711.

[13] *New York Times,* October 24, 1924, p. 1.

[14] Hanson, Tr., p. 717.

[15] Archer, *History of Radio to 1926,* p. 361.

[16] Archer, *Big Business in Radio,* p. 246.

[17] Station WJZ had originally been jointly controlled by Westinghouse and RCA. *RCA Annual Report for 1922,* p. 20. Its studios were originally located in Newark, but were moved to New York in 1922.

[18] Hanson, Tr., p. 704.

Although there was keen rivalry between stations WEAF and WJZ during this period, the vigorous network competition which RCA might otherwise have offered was hampered because of two factors. In the first place, RCA was prevented from reaching numerous outlets and developing its network because of the Telephone Co.'s policy with respect to the use of its telephone lines by others for network purposes.[19] The telegraph wires which RCA was thus compelled to use were quite inferior for this purpose. Secondly, RCA was prevented from developing the business aspects of broadcasting and network broadcasting by its inability to sell time to advertisers; for the Telephone Co. claimed, under the cross-licensing agreement of July 1, 1920, the exclusive right to sell time for broadcasting purposes.[20] Hence RCA stations made no charge for the use of time.[21]

Largely because of these obstacles, the RCA network did not grow as rapidly as the Telephone Co.'s network. Thus, while the Telephone Co. was able, in March 1925, to broadcast President Coolidge's inauguration over a transcontinental network of 22 stations, the RCA network carried it only over WJZ, WBZ, WGY, and WRC.[22]

C. SALE OF WEAF AND THE TELEPHONE COMPANY NETWORK TO RCA

In 1926, the Telephone Co.'s direct participation in the broadcasting business, in which it had pioneered and attained a dominant position, came to an abrupt end. As part of a general readjustment of relations between the Telephone Co. and the so-called "Radio Group" (RCA, Westinghouse, and General Electric), the Telephone Co. withdrew from the broadcasting field, and transferred its properties and interests to the "Radio Group."

In May, 1926, the Telephone Co. had incorporated a subsidiary corporation, the Broadcasting Co. of America, to which were transferred WEAF and the network operations. On July 1, 1926, a contract was entered into, which became effective November 1, 1926, under which RCA purchased the assets of the Broadcasting Co. of America.[23] The purchase price was $1,000,000, and the transaction included WEAF and the entire broadcasting business of the Telephone Co. except the Washington station, WCAP, which was closed.[24] As a result of this sale, the way was cleared for the sale of broadcasting time by the "Radio Group." The Telephone Co. also agreed to withdraw from the broadcasting business and covenanted not to compete with RCA in this field for a period of 7 years, under penalty of repaying $800,000 of the $1,000,000 purchase price. The Telephone

[19] F. C. C. *Telephone Report*, pp. 389–392; Hanson, Tr., p. 687. The policy which the Telephone Co. In general, this policy was to decline to furnish this service to broadcast-stations for network broadcasting and to pick up programs originating outside station studios was designed to protect the broadcasting activities and the patent position of the Telephone Co. In general, this policy was to decline to furnish this service to broadcasting stations which were not licensed under the Telephone Co.'s patents and to limit in various ways wire service supplied to licensed stations. For a discussion of the broadcasting activities of the Telephone Co., see F. C. C. *Telephone Report*, pp. 387–399.

[20] *Supra*, p. 5.

[21] Archer, *op. cit. supra*, n. 15, p. 304.

[22] *New York Times*, March 5, 1925, p. 5.

[23] F. C. C. *Telephone Report*, pp. 392–395; *Report on Communication Companies*, 73d Cong., 2d sess., H. Rept. 1273 (1934) (hereinafter cited as *Report on Communication Companies*), pt. 3, p. 4074.

[24] WCAP, the Telephone Co.'s station in Washington, had been sharing time with WRC, the RCA station in Washington. Following consummation of the agreement, WCAP discontinued operation and WRC took over its operating time and programs. *New York Times*, July 28, 1926, p. 33.

Co. also agreed to make available its telephone lines to RCA for network purposes, and an understanding was reached that RCA would use only Telephone Co. lines, unless they were not available.[25]

D. FORMATION OF THE NATIONAL BROADCASTING COMPANY

On September 9, 1926, RCA formed a corporation, the National Broadcasting Co., to take over its network broadcasting business, including the properties being purchased from the Telephone Co.[26] In October 1926, RCA assigned to NBC its rights to purchase the Broadcasting Co. of America, and in November NBC paid the purchase price of $1,000,000, and took over the operation of WEAF and the old Telephone Co. network.[27]

The outstanding capital stock of NBC was owned by RCA, General Electric, and Westinghouse in the ratio of 50, 30, and 20 percent, respectively, from the date of incorporation to May 23, 1930. On that date RCA acquired the NBC stock previously owned by General Electric and Westinghouse.[28] Thus NBC became a wholly owned subsidiary of RCA.

The sale of station WEAF to NBC and the withdrawal of the Telephone Co. from the broadcasting business marked the end of an era. The pioneer stage of network broadcasting was drawing to a close. The Telephone Co. had been well on its way toward financial success in the operation of WEAF as a "toll" station. The technical and social practicability of network broadcasting had been clearly shown as early as March 4, 1925, when the Telephone Co.'s 22-station network carried the inaugural address of President Coolidge to an audience estimated at 18,000,000 listeners.[29]

RCA could not fail to assume a dominant position in the field of network broadcasting as a result of its purchase of WEAF and the Telephone Co. network. Following the purchase, the only two networks in the country were under the control of RCA. The purchase has had a lasting effect on the structure of network broadcasting; for NBC's present operation of two networks—the "Red" and the "Blue"—stems from its ownership of both WEAF and WJZ in New York City, and from its acquisition of the Telephone Co.'s network organization in addition to RCA's original network system based on WJZ. For some time after the purchase, RCA had a practical monopoly of network broadcasting, and NBC is still by far the largest network organization.

---

[25] F. C. C. *Telephone Report*, p. 394; Hanson, Tr., p. 855.
[26] *Report on Communication Companies*, pt. 3, p. 1048.
[27] F. C. C. *Telephone Report*, p. 393.
[28] *Report on Communication Companies*, pt. 3, p. 4080.
[29] *New York Times*, March 5, 1925, p. 5. It was also estimated that about 4,800,000 persons heard the broadcast over the RCA network of four stations, WJZ, WBZ, WRC, and WGY.

II. THE RADIO CORPORATION OF AMERICA AND THE NATIONAL BROADCASTING COMPANY

In examining the history and structure of the largest national network organization—NBC—it is essential to bear in mind that it is a wholly owned subsidiary of the Radio Corporation of America. NBC is but a branch—though an important branch—of a vast corporate enterprise which straddles the fields of communications, radio-equipment manufacturing, and entertainment. The position of NBC in the field of broadcasting cannot be fully understood nor properly evaluated without some grasp of the history and activities of RCA.

A. HISTORY AND ACTIVITIES OF RCA

The Radio Corporation of America was incorporated in Delaware on October 17, 1919,[1] a full year before the dawn of radio broadcasting. At that time the business of wireless was primarily point-to-point and ship-to-shore communication for the transmission of messages, and the determination of location and direction by means of the radio compass. Substantially all commercial wireless communication in the United States was then carried on by the Marconi Wireless Telegraph Co. of America (American Marconi Co.) which was controlled by Marconi's Wireless Telegraph Co., Ltd. (British Marconi Co.).[2] A number of American-controlled companies, however, were carrying on research in the radio field, manufacturing radio apparatus, and holding important radio patents. Among these were the General Electric Co., the Westinghouse Electric and Manufacturing Co., and the Western Electric Co., the manufacturing subsidiary of the American Telephone & Telegraph Co.[3]

The patent situation had become an obstacle to the development of radio, for each manufacturer needed patented devices controlled by others. Since there was no general cross-licensing of patents among the manufacturers, each company was vulnerable to patent infringement suits. The taking over of all wireless stations by the Government after the declaration of war in April 1917 radically altered the patent situation. Under its war-time control the Government was able to combine the patents and scientific resources of all electrical manufacturers. Thus manufacturers producing apparatus for the Government could use the patents and inventions of others indiscriminately without remuneration to the owners of patents, whose only redress was the filing of claims for damages against the United States in the Court of Claims. As a result of combining various patented inventions, new devices were developed out of which came practical radiotelephone transmitters satisfactory for war-time

---

[1] *Report on Communication Companies*, pt. 3, p. 4114.
[2] *Id.*, pp. 990–991; F. T. C. *Radio Report*, p. 12.
[3] F. T. C. *Radio Report*, pp. 2, 13–18.

purposes.[4] This intermingling of patents worked well as long as the industry was on a war-time basis under Government control, and while claims for patent infringement were being subordinated to the urgent necessity of developing and maintaining an efficient communications system. But it was anticipated that much confusion in the patent field would result upon the return of the wireless stations to their owners.[5]

The creation of RCA was related both to the patent tangle, and to a desire that American radio-communications should not be under foreign control. In the spring of 1919, the General Electric Co. had been negotiating for the sale to the British Marconi interests of exclusive rights in the Alexanderson alternator, a patented device which at that time was considered of critical importance in long-distance radio transmission. Rear Admiral W. H. G. Bullard, then Director of Naval Communications, opposed the transfer of this device to foreign control. Instead of selling these rights, General Electric evolved a comprehensive plan under which the British stock interest in the American Marconi Co. would be purchased, and a new corporation formed which would take over the business of the American Marconi Co., and use and license others to use the patents held by General Electric, the American Marconi Co., and other companies. In pursuance of this plan, RCA was formed; in November 1919 it absorbed the American Marconi Co. and entered into a cross-licensing agreement with the General Electric Co., which acquired a large block of RCA stock.[6] When Federal operation of radio stations terminated, RCA embarked upon the activities which were to make it the leading American radio-communications company.

In 1920 and 1921 additional cross-licensing agreements were concluded which involved, in addition to General Electric and RCA, the Telephone Co. (including its manufacturing subsidiary, the Western Electric Co.) and Westinghouse.[7] As a result of these agreements: (1) General Electric and Westinghouse obtained the exclusive right to manufacture radio receiving sets; (2) RCA obtained the exclusive right to *sell* radio receiving sets, which were to be purchased by RCA from General Electric and Westinghouse in the proportion of 60 and 40 percent; (3) the Telephone Co. was granted the exclusive right to make, lease, and sell broadcasting transmitters.[8]

---

[4] As early as 1915, the Government, in conjunction with the Telephone Co., had carried on experiments in the field of radiotelephony. During that year, messages were sent from the naval station at Arlington, Va., and from Washington to such distant points as San Francisco, Honolulu, and Paris. In 1916, radiotelephony was used in transmitting messages to a naval destroyer 550 miles at sea, to airplanes in flight, and to submarine chasers. A climactic event in the history of radiotelephony occurred in 1919 when the Secretary of the Navy in Washington conversed by this method with the President of the United States, 1,000 miles at sea. "Rise of the Wireless Telephone," *Current History*, May 1920, pp. 265–269; "Wireless Telephony," by N. H. Slaughter, *Annual Report of Smithsonian Institution*, 1919, pp. 180–182; "Radio Telephony," by E. H. Colpitts, in *Journal of the Society of Automotive Engineers*, September 1919, pp. 215, 216; Report of Director of Naval Communications in Report of the Secretary of the Navy, Miscellaneous Reports (1916), pp 146–147; see also *New York Times*, October 23, 1914, p. 9; January 27, 1915, p. 1; September 30, 1915, p. 1; October 1, 1915, pp. 1, 3; November 6, 1915, p. 4; May 7, 1916, sec. I, p. 6; May 8, 1916, p. 11.

[5] *Ibid.*; see also Archer, *History of Radio to 1926*, pp. 137–141, 188.

[6] F. T. C. *Radio Report*, pp. 15–22, 39–43; statement of O. F. Schuette in *Hearings on H. R. 8825*, 70th Cong., 1st sess., before House Committee on Merchant Marine and Fisheries (1928), pp. 277–278.

[7] *Supra*, pp. 5–6; F. T. C. *Radio Report*, pp. 44–49.

[8] These agreements were revised in 1926. It should be noted, however, that although these agreements purported to confer exclusive rights, they were binding only on the parties. With respect to persons not parties to the agreements, the exclusive nature of the rights exchanged depended upon the validity and scope of the patents upon which they were based. And, in fact, some manufacturers made and sold broadcast transmitters and receivers without regard to those patents.

In connection with all these agreements, General Electric, Westinghouse, and the Telephone Co. obtained substantial stock interests in RCA.[9] The Telephone Co. had disposed of its RCA stock by January 18, 1923, but Westinghouse and the General Electric Co. did not divest themselves of their interest in R. C. A. until after 1932, when a consent decree was entered as a result of an antitrust action brought by the Department of Justice.[10]

1. Communications activities of RCA

As may be seen from the foregoing account, RCA was formed before the days of broadcasting, primarily for the purpose of carrying on communications activities. Its operations during the first 2 years of its existence may be summarized as follows: Supplying radio apparatus to ships; maintaining radio communication between ships and from ship to shore; furnishing transoceanic point-to-point radio communication service; and selling the parts used by amateurs and experimenters in assembling radio sets.[11]

During 1921, RCA's gross income from its transoceanic communications activity amounted to $2,138,626.[12] The volume of this business thereafter increased, but rather conservatively. In 1929 RCA formed a subsidiary corporation—R. C. A. Communications, Inc.—to carry on its international and domestic point-to-point radio communications business. From 1929 to 1932 the revenues of this subsidiary averaged about $4,250,000 per year.[13]

At the end of 1927, RCA's marine radio business was also turned over to a new wholly owned subsidiary, the Radiomarine Corporation of America. Radiomarine took over ship-to-shore and ship-to-ship communication, the installation of radio apparatus on shipboard, and the operation of coastal stations that communicate with ships.[14]

2. RCA's radio manufacturing and selling activities

As set forth above, under the 1920 cross-licensing agreements RCA became the sole sales agent for radio receiving sets manufactured by General Electric and Westinghouse.[15] The development

---

[9] The following table, based upon data in the F. T. C. *Radio Report*, p. 20, indicates the distribution of RCA stock outstanding in 1922:

Name of stockholder	Common stock	Preferred stock	Percent of total voting stock [1]
General Electric	1,876,000	620,800	25.8
Westinghouse	1,000,000	1,000,000	20.6
American Telephone & Telegraph Co		400,000	4.1
United Fruit Co	160,000	200,000	3.7
Others [2]	2,698,194	1,735,174	45.8
Total	5,734,194	3,955,974	100.0

[1] Both common and preferred shares had equal voting power, share for share. *Moody's Manual of Railroads and Corporation Securities—Public Utilities* (1920), p. 2246.

[2] Most of these were former stockholders of the Marconi Co. of America. *Report on Communication Companies*, pt. 3, p. 1003.

[10] *Report on Communication Companies*, pt. 3, pp. 1003–1004. For terms of consent decree, see *Hearings on H. R. 4523, Before House Committee on Patents*, 74th Cong., 1st sess. (1935), pp. 229–233.

[11] F. T. C. *Radio Report*, p. 33.

[12] *Id.*, p. 37.

[13] *Report on Communication Companies*, pt. 3, pp. 4186, 4194.

[14] *Id.*, pt. 1, p. 115, and pt. 3, p. 4173.

[15] *Supra*, p. 10.

of broadcasting caused the demand for these sets to grow by leaps and bounds. During 1921, RCA's gross sales were only $1,468,920, or about two-thirds as much as its total revenues from transoceanic communication. The next year the gross sales had increased to $11,286,489, or nearly four times that year's total revenues from transoceanic communication.[16] By 1924, gross sales totaled about $50,000,000.[17] In September 1926, RCA announced that it was the largest distributor of radio receiving sets in the world.[18] Thereafter RCA granted licenses to a number of radio set manufacturers,[19] but continued as one of the outstanding sellers of receiving sets.

In 1930 RCA spread into the manufacturing of receiving sets. In that year RCA acquired the right to manufacture as well as sell radio receivers, by virtue of an agreement between RCA, General Electric, and Westinghouse.[20] It occupies a leading position in that field today.

In connection with the sale of station WEAF and the Telephone Co. network to RCA in 1926, a new cross-licensing agreement was executed whereby the Telephone Co. granted to the Radio Group the nonexclusive right to manufacture, lease, and sell broadcast transmitting equipment, thus relinquishing its claim to the exclusive right with respect to such equipment which it had asserted under the 1920 agreement.[21] Within the Radio Group, RCA's early role with respect to broadcast transmitting equipment was that of sales agent. Under the new agreements entered into pursuant to the 1932 consent decree, RCA acquired the right to manufacture as well as sell such apparatus.[22] Since that time RCA has been a leading manufacturer in this field.

RCA is also prominent in other phases of radio manufacturing and selling. Until the expiration of an important patent in November 1922, RCA controlled the manufacture, sale, and use of all forms of radio tubes, and it has retained a substantial portion of the business since that time.[23]

For about the first decade of its corporate existence RCA carried on substantially all its manufacturing and selling activities under its own name. On December 26, 1929, RCA Radiotron Co., Inc. was incorporated by RCA to engage in the manufacture and sale of radio tubes.[24]

At the same time RCA Victor Co., Inc. was incorporated by RCA to take over the assets and business of the Victor Talking Machine Co. with respect to phonographs and records, and the manufacturing and sales rights of RCA with respect to radio apparatus.[25] On

---

[16] F. T. C. *Radio Report,* p. 37.
[17] *RCA Annual Report for 1924,* p. 14.
[18] See the statement of David Sarnoff, chairman of the board of directors of NBC and president of RCA. Tr., p. 29.
[19] *Radio Broadcast,* June 1929, p. 78.
[20] *Moody's Manual of Investments—Industrials* (1931), p. 2277.
[21] F. C. C. *Telephone Report,* p. 399.
[22] *Report on Communication Companies,* pt. 1, pp. 118, 224.
[23] F. T. C. *Radio Report,* p. 76. Even after the expiration of this patent, RCA was able to retain at least half of the total radio tube business for almost 10 years. *Radio Broadcast,* April 1929, p. 379. One of the methods through which RCA was able to maintain its position was a standard clause in its contracts with radio set manufacturers licensed under RCA patents, the effect of which was to require RCA licensees to use RCA tubes in their receivers. This clause was held to be in violation of sec. 3 of the Clayton Act (*Lord* v. *Radio Corporation of America,* 24 F. (2d) 565 (D. Del. 1928), *aff'd.* 28 F. (2d) 257 (C. C. A. 3, 1928), *cert. den.,* 278 U. S. 648 (1928); 35 F. (2d) 962 (D. Del., 1929), *aff'd.* 47 F. (2d) 606 (C. C. A. 3, 1931), *cert. den.,* 283 U. S. 847 (1931), and the percentage of the radio tube business controlled by RCA has since declined.
[24] *Report on Communication Companies,* pt. 1, p. 115.
[25] *Ibid.,* and *infra,* p. 14.

January 1, 1932, RCA transferred its investment in RCA Photophone, Inc., to RCA Victor Co., Inc.[26] In January 1935 RCA Radiotron Co., Inc., and RCA Victor Co., Inc., were merged into a new company called RCA Manufacturing Co., Inc.,[27] which has become the manufacturing subsidiary of the RCA system. In addition to radio receiving sets, transmitters, and tubes, phonographs and records, RCA Manufacturing Co. now makes transcriptions, sound equipment for both motion-picture studios and theaters, and public-address systems, as well as motion picture and radio equipment for amateurs, electron microscopes, electronic pianos, television transmitters and receivers, radio compasses, communications equipment, and a variety of other products.

3. RCA's interest in the motion-picture industry

In the fall of 1927, RCA acquired a foothold in the motion-picture industry by the purchase of blocks of stock in Film Booking Office (FBO), which operated studios for the production of motion pictures.[28] In April 1928 RCA Photophone, Inc., was organized by the Radio Group to develop apparatus for synchronizing motion pictures with sound,[29] and it entered into competition with Electrical Research Products, Inc., a subsidiary of Western Electric, which had already occupied a large segment of this field.[30]

On October 25, 1928, Radio-Keith-Orpheum Corporation (RKO) was formed by a merger of FBO and Keith-Albee-Orpheum Corporation (KAO), a company operating vaudeville and motion-picture theaters, and stock in RKO was issued in exchange for outstanding shares of KAO and FBO.[31] There were two classes of RKO stock, having equal voting rights: Class A with 3,500,000 shares authorized and 1,212,992 issued, and class B with 500,000 shares authorized and issued. All of the class B stock was issued to RCA. RCA Photophone, Inc., then granted to RKO and its subsidiaries engaged in the production of motion pictures a non-exclusive license for the use of its sound-recording equipment.[32]

RKO also obtained direct and indirect interests in approximately 150 companies engaged primarily in operating theaters in cities through the United States and Canada and in producing motion pictures and distributing them throughout the world.[33] The theaters in which RKO had an interest also furnished a market for the sound-reproducing equipment manufactured by RCA Photophone, Inc.[34]

In 1930 RCA held approximately 25 percent, and in 1932 approximately 64 percent, of the outstanding stock of RKO.[35] In 1935 RCA sold one-half of its holdings in RKO to the Atlas Corporation for $5,000,000 cash and gave an option on the remainder at $6,000,000, which was to remain in effect until December 31, 1937.[36] In 1936 this

[26] *Id.*, pt. 3, p. 4233.
[27] *RCA Annual Report for 1934*, p. 6.
[28] *Poor's Industrials* (1929), p. 2902; *New York Times*, January 5, 1928, p. 33.
[29] *Moody's Manual of Investments—Industrials* (1930), p. 582; RCA Photophone, Inc., was originally owned by RCA, General Electric, and Westinghouse in the ratios of 60, 24, and 16 percent, respectively. In 1930, however, RCA acquired the entire stock interest in RCA Photophone, Inc. Archer, *Big Business and Radio*, p. 331.
[30] F. C. C. *Telephone Report*, pp. 401–415.
[31] *RCA Annual Report for 1928*, p. 7; *Poor's Industrials* (1929), p. 2906.
[32] *Poor's Industrials* (1929), pp. 2906–2907.
[33] *Report on Communication Companies*, pt. 1, p. 116, and pt. 3, p. 4142.
[34] *Moody's Manual of Investments—Industrials* (1931), p. 2278.
[35] *RCA Annual Report for 1930*, p. 23; *for 1932*, p. 4; *Poor's Industrials* (1931), pp. 2849–2851.
[36] *RCA Annual Report for 1935*, p. 2.

option was extended to June 30, 1938, because of the reorganization of RKO.[37] In 1939 the president of RCA testified that the option had not been exercised and had lapsed, and that at that time RCA held between 12 and 15 percent of the stock of RKO.[38]

4. RCA's phonograph and recording business

The interrelation of the phonograph and the radio was early recognized by RCA. In 1924 RCA entered into a contract with Brunswick-Balke-Collender Co. for the sale of radio apparatus for use in connection with combination radio-phonograph instruments,[39] and the following year a similar contract was made by RCA with Victor Talking Machine Co.[40] Both contracts provided that the recording artists of the phonograph companies were to broadcast over the facilities of the RCA stations.

On March 15, 1929, RCA acquired a majority, and within about 2 months 96 percent, of the capital stock of Victor Talking Machine Co. In 1928 Victor's assets had been $68,312,482; its gross sales, $52,064,419; and its net income $7,324,019.[41] RCA Victor Co., Inc., was incorporated by RCA on December 26, 1929, and took over the assets and the manufacturing and sales activities of the Victor Talking Machine Co., as well as the manufacturing and sales rights of RCA with respect to radio apparatus.[42]

As part of the transaction whereby RCA acquired stock in Victor Talking Machine Co., it also acquired the 50-percent stock interest in Gramophone Co., Ltd., of Great Britain, previously held by Victor. Gramophone Co., Ltd., had exclusive rights to manufacture and distribute Victor products in Great Britain and other foreign markets.[43] During 1931 Gramophone Co., Ltd., merged with Columbia Graphaphone Co., Ltd., to form Electric & Musical Industries, Ltd.[44] RCA's interest in this newly formed company was 29.2 percent of the "ordinary" stock and 0.02 percent of the preferred stock.[45] In 1935 RCA sold its holdings in Electric & Musical Industries, Ltd., to British interests for $10,225,917.[46]

B. THE NATIONAL BROADCASTING CO.

The early history of RCA's broadcasting activities has been set forth in the preceding chapter. These activities were, after 1926, concentrated by RCA in its subsidiary, NBC, which took over WEAF and the

---

[37] *RCA Annual Report for 1937,* p. 6.

[38] Sarnoff, Tr., pp. 8495–8496.

[39] *RCA Annual Report for 1924,* p. 9. The consummation of this contract was announced by David Sarnoff on behalf of RCA as follows:

"Under the contract recently concluded, the phonograph company gains the right to install Radiola receiving sets in combination with Brunswick phonographs. In turn, the phonograph company will add its share to the public service now rendered by the principal broadcasting stations and aid the development of free broadcasting to the public by permitting the stations of the Radio Corporation of America and those of its manufacturing associates to broadcast from the laboratories of the Brunswick Co. when its artists are recording for phonograph reproduction and to encourage these artists to aid the programs at other times as well." *New York Times,* March 13, 1924, p. 15.

[40] *RCA Annual Report for 1925,* pp. 7–8. The contract with the Victor Talking Machine Co., signed May 16, 1925, provided that RCA would manufacture receiving sets to be put into Victrolas and that Victor artists would broadcast over the facilities of station WJZ. *New York Times,* May 21, 1925, p. 16.

[41] *Report on Communication Companies,* pt. 3, pp. 4242–4244.

[42] *Id.,* pp. 4229–4230.

[43] *Moody's Manual of Investments—Industrials* (1929), pp. 790–791; *Poor's Industrials* (1929), pp. 2902–2903.

[44] *RCA Annual Report for 1931,* p. 4.

[45] *RCA Annual Report for 1933,* p. 12.

[46] *RCA Annual Report for 1935,* p. 2.

old Telephone Co. network. Thereafter, NBC, pursuant to its understanding with the Telephone Co., discontinued the use of telegraph lines and used Telephone Co. long lines exclusively for connections between stations.[47] On the business side, NBC continued to sell time to advertisers, a policy which had been inaugurated by the Telephone Co. at station WEAF, and since that time about 90 percent of its total revenues has come from that source.

1. Increase in number of NBC outlets

On November 1, 1926, there were 19 stations regularly on the NBC network. The number has steadily increased since that time. By January 1, 1928, there were 48 outlets. On December 23, 1928, the first permanent transcontinental network was instituted by NBC, composed of 56 permanent network stations. There were 154 outlet stations as of September 1, 1938, and as of December 31, 1940, the number had increased to 214. The following chart shows the increase in the number of NBC outlets:[48]

[Figures prior to Nov. 1, 1926, are for the Telephone Co. network]

Date (end of year)	Number of NBC outlets	Approximate percentage of NBC outlets to total number of licensed stations	Date (end of year)	Number of NBC outlets	Approximate percentage of NBC outlets to total number of licensed stations
1923	2	0.3	1933	85	14.6
1924	7	1.3	1934	86	14.7
1925	15	2.6	1935	87	14.1
1926 [1]	19	2.6	1936	103	15.9
1927	48	6.9	1937	138	20.0
1928	56	8.3	1938 [2]	161	22.3
1929	69	11.2	1940 [3]	178	23.3
1930	72	11.9	1940	214	25.8
1931	83	13.8	1941 [3]	221	26.4
1932	85	14.2			

[1] Nov. 1.
[2] Nov. 30.
[3] Feb. 1.

Since the time of its organization, NBC has operated two networks, the Red and the Blue. In many cases they use the same facilities and stations. As of September 1, 1938, when there were 154 NBC outlets, 23 composed the basic Red network and 24 composed the basic Blue network. Supplementing these basic networks were 107 stations, of which one was available only to the basic Red network, six were available only to the basic Blue network, and the remainder available to either.

2. Stations owned or controlled by NBC

NBC acquired station WEAF by purchase from the Telephone Co. in 1926, and WEAF became the key station of NBC's Red network. Prior to 1926, RCA had constructed and was operating station WJZ in New York and WRC in Washington. NBC's other network, the Blue, was based on WJZ, although title to WJZ and WRC was not

[47] See *supra*, p. 8, n. 25.
[48] This table, as well as the corresponding tables on CBS and Mutual, is based upon the record and upon reports to the Commission filed since the committee hearings. All three tables include stations not only in continental United States but also stations in the possessions and Territories.

formally transferred from RCA to NBC until 1930. Since 1926 NBC has purchased or leased, and has become the licensee of, 7 other stations located in important radio markets. The 10 stations of which NBC is now the licensee, all but one of which (WENR) operate with unlimited time, are shown in the following table:

Station	Location	Power	Date of acquisition
		Watts	
WEAF	New York	50,000	1926
WJZ	New York	50,000	[1] 1922
WRC	Washington	5,000	[1] 1923
WMAL	Washington	5,000	1933
WTAM	Cleveland	50,000	1930
WMAQ	Chicago	50,000	1931
WENR	Chicago	50,000	1931
KOA	Denver	50,000	1930
KPO	San Francisco	50,000	1932
KGO	San Francisco	7,500	1930

[1] Date of acquisition by RCA; title transferred to NBC in 1930.

At the time of the committee hearings five other stations were "programmed" by NBC under management contracts with the licensees. These stations were WGY, licensed to the General Electric Co. at Schenectady, N. Y., and four Westinghouse stations—KDKA at Pittsburgh, KYW at Philadelphia, WBZ at Boston, and WBZA at Springfield, Mass. All of these stations except WBZA [49] were licensed to operate with 50,000 watts.

The contracts under which NBC obtained the right to program these stations were made in November 1932, at the time of the consent decree [50] under which the General Electric Co. and Westinghouse agreed to dispose of their stock holdings in RCA. The contracts transferred to NBC control over the operations of the stations, insofar as the listening public was concerned, and raised serious questions under section 12 of the Radio Act of 1927 (sec. 310 (b) of the Communications Act of 1934), since the Commission's consent to a transfer of the licenses was not applied for nor obtained. Accordingly, in January 1940, the applications for renewal of the licenses of these stations were designated for hearing.[51] Shortly thereafter the management contracts were rescinded, and the five stations entered into contracts of affiliation with NBC.[52]

3. Increase in business and income of NBC

Except for the first 14 months of its existence, NBC has earned substantial profits every year. Both the volume of business and the profit have increased materially and with great regularity since that 14-month period. The following table, based upon exhibits at the

[49] Station WBZA, with a power of 1,000 watts, operates synchronously with WBZ.
[50] *Supra*. p. 11.
[51] After these arrangements had been voluntarily abandoned, the renewals were granted for reasons set forth in the orders and decision of the Commission. *In re Applications of Westinghouse Electric and Manufacturing Company for Renewals of Licenses* (stations WBZ, WBZA, KYW, and KDKA), Docket Nos. 5823–5826, September 4, 1940; *In re General Electric Company (WGY), Application for Renewal of License and Auxiliary*, October 22, 1940, Docket No. 5822.
[52] The effective date of these contracts for the four Westinghouse stations was July 1, 1940, and for the General Electric station, October 1, 1940.

committee hearings and the records of the Commission, presents a summary of the annual time sales and profit of NBC through 1940:

Year	Time sales (after discounts; before agency commissions)	Net income for the year (before Federal income tax)	Year	Time sales (after discounts; before agency commissions)	Net income for the year (before Federal income tax)
November 1926–December 1927	$3,384,519	[1] *$464,385*	1934	$23,535,130	$2,436,302
1928	7,256,179	427,239	1935	26,679,834	3,656,907
1929	11,353,120	798,160	1936	30,148,753	4,266,669
1930	15,701,331	2,167,471	1937	33,690,246	4,429,386
1931	20,455,210	2,663,220	1938	35,611,145	4,137,503
1932	20,915,979	1,163,310	1939	37,747,543	4,103,909
1933	18,005,369	594,151	1940	41,683,341	5,834,772

[1] Deficit.

4. NBC artists' bureau and concert service

Within a few months after it commenced operations in 1926, NBC organized an artists' service as a department of the company for the purpose of managing concert artists, actors, announcers, writers, and other talent. In 1931 NBC acquired a 50-percent interest in Civic Concert Service, Inc., which was engaged in the business of organizing and managing concert courses throughout the country, and in 1935 NBC acquired the remaining 50 percent. In 1928 the business of the NBC artists' service amounted to slightly over $1,000,000, while in 1937 the gross talent bookings came to $6,032,274, which included the gross receipts of the Civic Concert Service Inc., amounting to $306,099. On November 1, 1938, the NBC artists' service had more than 350 artists under management contract. Civic Concert Service, Inc., had membership concert courses in 57 cities when NBC acquired an interest in the company in 1931; by 1938 the list of cities served by Civic Concert had grown to 77.

As agent for artists, NBC is under a fiduciary duty to procure the best terms possible for the artists. As employer of artists, NBC is interested in securing the best terms possible from the artists. NBC's dual role necessarily prevents arm's-length bargaining and constitutes a serious conflict of interest. Moreover, this dual capacity gives NBC an unfair advantage over independent artists' representatives who do not themselves control employment opportunities or have direct access to the radio audience. Many of these independent artists' representatives have complained to the Commission of NBC's unfair control over the supply of talent and have filed briefs in this proceeding. This problem will receive the continuing attention of the Commission and may warrant further inquiry.

5. Transcription business of NBC

NBC entered the transcription business in 1934, but did not get under way commercially in this field until about a year later. It has since engaged in the three principal phases of that business. The first is a library service, called the Thesaurus, a collection of transcribed musical selections leased or licensed to individual stations. This enables the station to produce programs by merely adding its own announcements. The second is the so-called custom-built transcription service, consisting of full programs produced by NBC or by sponsors or advertising agencies. Such transcriptions are delivered as a complete package at a unit price to radio stations and to commercial sponsors. The third is the "simultaneous wire line recording," or recording of a program while it is being broadcast, usually for the purpose of a later rebroadcast.

In its transcription business, NBC cooperates with RCA Manufacturing Co., its affiliate, also owned by RCA. NBC arranges the programming and sells the transcriptions, while RCA Manufacturing makes the recordings. It is estimated that the total transcription business carried on in the United States in 1938 amounted to something less than $5,000,000, of which NBC-RCA accounted for $1,300,000.

Prior to April 1, 1941, NBC refused to permit any transcription company other than its associate, RCA Manufacturing Co., to make a "simultaneous wire line recording" of an NBC network commercial program. Even when the sponsor who was paying the entire expense, the agency in charge of producing the program, and an independent transcription company had come to an agreement for the transcription of an NBC network program, NBC refused to permit the independent company to come upon the premises for the purpose of making the transcription in accordance with the agreement. Independent transcription companies appeared in this proceeding and complained of this unfair competition. However, in March 1941, following the committee report and the oral argument, NBC publicly announced a change in its policy;[53] after April 1 the prohibition against the transcription of NBC network programs by independent companies would be removed and the advertiser allowed the transcription company of its choice.

C. SUMMARY OF RCA'S SCOPE OF OPERATIONS

RCA was originally founded to utilize wireless techniques for the transmission of messages; today it bestrides whole industries, dwarfing its competitors in each. Every new step has not only increased RCA's power in fields already occupied, but has enhanced its competitive advantage in occupying fields more and more remote from its beginnings.

Thus, for example, RCA's control of thousands of patents, and its experience with and ownership of prebroadcasting wireless transmitters, as well as its support from General Electric and Westinghouse, gave it a running start in the infant radio-broadcasting industry. Later, RCA's position as the leading distributor of radio receivers enabled it to enter the business of selling radio-phonograph combinations in cooperation first with Brunswick and then with Victor, and subsequently to acquire Victor, the leading phonograph and phonograph record manufacturer. This step-by-step invasion of the phonograph business, in turn, gave RCA entering wedges into the transcription and talent supply businesses; RCA-Victor artists broadcast over NBC and made RCA transcriptions, while NBC artists recorded for RCA-Victor. The result was to give RCA and its subsidiaries a marked competitive advantage over other broadcasting companies, other radio manufacturers, and other phonograph and phonograph-record companies.

[53] *Radio Daily*, March 24, 1941, p. 1.

RCA's entry into the motion-picture field, first through RCA Photophone and then through RKO, was also a step-by-step process, and similarly buttressed RCA's competitive position in other spheres. Today, with its patents, managed artists, manufacturing plants, distribution facilities, personnel, experience, and financial strength, RCA has a tremendous competitive advantage in occupying such newly opening fields as frequency modulation (FM) broadcasting and television—an advantage which may, indeed, discourage newcomers in fields where RCA has become or seeks to become dominant.

A glance at RCA's last annual report [54] is convincing of the multifarious and pervasive character of its operations:

RCA's international radio-communication service is now "worldwide" and "globe circling," with direct circuits to 43 countries. Despite the suspension of service to half a dozen German-occupied countries, the volume of traffic handled in 1940 was "the greatest in RCA history." In addition, RCA's domestic radio-telegraph service "links 12 key cities in the United States."

The use of the international radio circuits is not restricted to message traffic. Newspapers receive many of their radiophotos from abroad through RCA. Foreign programs, particularly news, are transmitted over RCA circuits for broadcasting on domestic networks.

In the field of marine communication, RCA has "maintained its leadership," furnishing some 2,200 ships with radio equipment, and operating coastal and lake port stations.

RCA's manufacturing subsidiaries operate factories in New Jersey, Indiana, and California, and also in Canada and South America. The products include many types of radio and phonograph sets, radio tubes, broadcasting transmitters and studio equipment, Victor and Bluebird phonograph records, transcriptions for broadcasting, sound equipment for motion picture studios and theaters, and public address systems, to say nothing of motion picture and radio equipment for amateurs, electron microscopes, electronic pianos, television equipment, communications equipment, and so on. Manufacturing is now the largest single phase of RCA's business.

RCA is active in technical education, and through RCA Institutes, Inc., conducts schools in New York and Chicago which offer "training in all branches of radio." Its laboratories and research organizations are extensive.

NBC's position in broadcasting is comparable to the situation of the parent company in the broader field. There are four national networks; NBC owns two of them. Approximately one-quarter of all stations in the country, utilizing nearly half of the total nighttime power, are NBC affiliates. In the newer fields of international broadcasting, frequency modulation, television, and facsimile, NBC may be expected to play a major part.

The larger enterprises carried on by RCA do not blind its management to the smaller ventures which offer profitable opportunities. If broadcasters need transcriptions, NBC makes them. If broadcasters need talent, NBC will not only hire them, but is also glad to manage the artists and act as their agent in the concert as well as the radio field. Lately, with other members of the industry, it has

[54] *RCA Annual Report for 1940, passim.*

embarked upon a venture in musical copyrights (through Broadcast Music, Inc.—BMI.).

It is significant that these numerous and, for the most part, critically important activities require a capital investment which, in other fields of enterprise, would not be regarded as staggering. The assets of RCA barely exceed $100,000,000; many a railroad, utility, bank, insurance company, or industrial establishment of relatively secondary importance has assets double or treble this amount. This tends to make RCA comparatively independent of the money market.

RCA, like many other giant enterprises today, is a "management corporation." It has nearly 250,000 stockholders. No one owns as much as half of 1 percent of its stock. In such circumstances, stockholder control is practically nonexistent. RCA's funded debt is small, so there is no substantial creditor influence on the management. As a result, the management is essentially self-perpetuating, and the responsibility of the executives and directors is largely intramural.

In short, RCA occupies a premier position in fields which are profoundly determinative of our way of life. Its diverse activities give it a peculiarly advantageous position in competition with enterprises less widely based. Its policies are determined by a management subject to little restraint other than self-imposed. Whether this ramified and powerful enterprise with its consistent tendency to grow and to expand into new fields at the expense of smaller independent concerns is desirable, is not to be decided here. We have thought it proper, however, to call the attention of Congress and the public to the broader problems raised by this concentration of power in the hands of a single group.

III. THE COLUMBIA BROADCASTING SYSTEM

A. FORMATION AND EARLY HISTORY

The organization which later became the Columbia Broadcasting System was incorporated in New York on January 27, 1927, under the name of United Independent Broadcasters, Inc. Its purpose was to contract for radio station time, to sell time to advertisers, and to furnish programs for broadcasting. Of its original four stockholders, two, Arthur Judson and an associate, were managers of concert artists primarily interested in creating a new market for their managed talent; a third, Edward Ervin, was assistant manager of the New York Philharmonic Symphony Society; and the fourth, George A. Coats, was a promoter.

In April 1927, before United began actual operations, the Columbia Phonograph Co., Inc., became interested in the project through the Columbia Phonograph Broadcasting System, Inc., which was organized on April 5, 1927, to function as the sales unit of the network. The outstanding stock of Columbia Phonograph Broadcasting System, Inc., was originally issued to Columbia Phonograph Co., Inc., which was active in its financing, and to four individuals.[1]

The effective date of United's contracts with its original network, some of which were signed as early as March 1927, was September 5, 1927, but United experienced some delay in getting under way and the first program was broadcast over the network on September 25, 1927. United contracted to pay each of the 16 stations on its original network $500 per week for 10 specified hours of time. The sales company was unable to sell enough time to sponsors to carry the network under this arrangement, and heavy losses were incurred because of the definite and heavy commitments entered into with the stations.

Because of these losses, the Columbia Phonograph Co. and the four individual stockholders withdrew from the venture in the fall of 1927 and all the outstanding capital stock of Columbia Phonograph Broadcasting System, Inc., was thereupon acquired by United.[2] The name of the sales company was changed to Columbia Broadcasting System, Inc., and on January 3, 1929, when the sales company was dissolved, United took over its activities and its name. Columbia Broadcasting System, Inc., has been the name of the network since that time.

In November 1927 Jerome H. Louchheim, Isaac D. Levy, and Leon Levy acquired a controlling stock interest in United and controlled the network until September 1928, when William S. Paley and his family purchased 50.3 percent of the stock. In December 1927 the

---

[1] *Report on Communication Companies*, pt. 3, p. 4009.

[2] *Ibid.* Eleven years later the Columbia Phonograph Co. was acquired by the erstwhile subsidiary. On December 17, 1938, CBS acquired the Columbia Phonograph Co., together with three other phonograph record companies, from Consolidated Film Industries, Inc., for $700,000 cash. *Poor's Industrial Manual* (1938), p. 1276; (1940), pp. 790, 3023; *infra*, p. 25.

original affiliation contracts of March of that year were superseded by contracts which eliminated the commitment of United to pay for the station time under contract whether it was used or not. Under the new contract the station was required to pay United $50 per hour for sustaining programs and United to pay the station $50 per hour for broadcasting commercial programs.

In 1929 the Paramount-Publix Corporation, traded 58,823 shares of its own stock to CBS stockholders for all of the CBS class A stock (50,000 shares), constituting 50 percent of the outstanding stock of CBS.[3] It was agreed that if, during the ensuing 2 years, CBS should earn an average of 1 million dollars a year, Paramount would give the CBS stockholders who had taken Paramount stock the right to "put" the stock back to Paramount at $85 per share. CBS earnings during the 2-year period were in excess of the stipulated amount, but at the end of the period, Paramount was not in a position to pay the agreed repurchase price in cash. Accordingly, the 1929 agreement was modified in the following manner: Paramount sold to CBS 14,156 shares of CBS stock at $82.21 per share, which thereafter became "treasury" stock. It also surrendered the remaining 49,094 shares,[4] *pro rata* to the individual stockholders of CBS, and received from them in return the Paramount stock. This transaction released Paramount from its obligation to pay for the stock at $85 per share.[5]

Out of the 49,094 CBS class A shares returned by Paramount to the individual CBS stockholders, William S. Paley, acting on behalf of himself and other stockholders, sold 24,328 to a banking syndicate headed by Brown Brothers, Harriman & Co. at the same price per share as that used in the sale from Paramount to CBS of the "treasury" stock. The syndicate did not make a public offering of these shares, but placed most of them privately with a few individuals.[6]

The reason given for the sale of this stock by Paley and his associates to the syndicate was that they held about 10 or 11 million dollars worth of stock in CBS and they wanted to diversify their investments.[7] Their voting power, however, was not diminished correspondingly; for, on March 10, 1932, at the conclusion of the Paramount transaction, the holders of the CBS class A stock were granted the privilege of cumulative voting in electing one-half of the company's directors, while the holders of the class B stock continued to vote noncumulatively. As of the time of the committee hearings, William S. Paley and his family held about 16 percent of the class A

[3] At that time there were 17 CBS stockholders. To accomplish the sale to Paramount, the stock of CBS, which theretofore had been of 1 class, was divided into 2 classes, A and B, with equal number of shares. Each of the 17 stockholders received an equal number of A shares and B shares; and each stockholder then sold all his A shares to Paramount.

[4] Between 1929 and 1932 the number of shares of class A stock in CBS held by Paramount had increased from 50,000 to 63,250. There had been an additional stock issue of 5,000 shares in each class, A and B, and Paramount had purchased 5,000 shares of class A stock to keep its equity in CBS at 50 percent, and thereafter there had been declared a stock dividend of 15 percent, which amounted to 8,250 shares and brought Paramount's total stock interest to 63,250.

[5] The CBS stockholders did not hold the entire 58,823 shares of Paramount stock at that time; for 2 of the 17 stockholders had sold all of their Paramount stock on the market. The other 15 held in the aggregate 47,484 shares which they "put" to Paramount.

[6] Testimony of Ralph F. Colin, General Counsel of CBS, *Hearings on the Nomination of Thad H. Brown*, Senate Committee on Interstate Commerce, 76th Cong., 3d sess., June 12–August 23, 1940, p. 164. As of December 1, 1938, Brown Brothers, Harriman & Co. were the record holders of only 2.33 percent of the outstanding class A stock.

[7] *Ibid.*

stock and about 54 percent of the class B, or a total of about 33 percent of all the stock of CBS. Since there are 7 directors elected by each class of stock, the cumulative voting of the class A stock together with the noncumulative voting of the class B stock gives the Paley family the power to elect a majority of the entire board of directors of 14 even against the holders of the other 67 percent of the CBS stock.[8]

B. GROWTH OF CBS NETWORK

The original CBS network (then United) consisted of 16 stations. At the end of 1938, CBS had 113 outlets. The following chart shows the growth of the network:

Date (end of year)	Number of CBS outlets	Approximate percentage of CBS outlets to total number of licensed stations	Date (end of year)	Number of CBS outlets	Approximate percentage of CBS outlets to total number of licensed stations
1927	15	2.2	1934	97	16.6
1928	28	4.1	1935	97	15.7
1929	47	7.6	1936	93	14.4
1930	69	11.4	1937	110	16.0
1931	82	13.6	1938	113	15.7
1932	92	15.4	1940 [1]	117	15.3
1933	92	15.8	1940	121	14.6

[1] Feb. 1.

The first station purchased by CBS was station WABC, its basic New York outlet, which was acquired in 1928. As of the time of the committee hearings, CBS was the licensee of nine stations, all of which were owned by it except WEEI in Boston, which it leased. In 1939 CBS sold one station,[9] so that it is now the licensee of the following eight stations, all of which operate with unlimited time:

Station	Location	Power	Date of acquisition
		Watts	
WABC	New York	50,000	1928
WJSV	Washington	50,000	1932
WBT	Charlotte, N. C	50,000	1929
WEEI	Boston	5,000	1936
WBBM	Chicago	50,000	1929
WCCO	Minneapolis	50,000	1931
KMOX	St. Louis	50,000	1931
KNX	Los Angeles	50,000	1936

[8] On August 7, 1929, at the start of the Paramount transaction, the class A and class B stock carried identical rights and voting powers, except that each class of stock voting separately and noncumulatively elected one-half of the directors of CBS. After the Paramount transaction, the privilege of cumulative voting granted to the class A stockholders was the only difference between the rights and powers of the 2 classes of stock. At that time the board of directors of CBS consisted of 10 members; the class B stockholders, voting noncumulatively, elected 5 out of 10 directors and the holders of a majority of the class B shares were able to elect all 5 of these directors; while the class A stockholders, voting cumulatively, elected the remaining 5 directors, and holders of the class A stock had the right to elect 1 director for each one-fifth of the class A stock held. On March 24, 1937 (*New York Times*, March 25, 1937, p. 37), the board of directors was increased to 14, of which the holders of each class of stock had the right to elect 7. The holders of the majority of the class B stock had the power to elect 7 directors, while the holders of each one-seventh of the class A stock had the power to elect 1 director.

[9] Station WKRC in Cincinnati, which had been acquired by CBS in 1931.

In addition, CBS now holds 45 percent of the stock of Voice of Alabama, Inc., the licensee of station WAPI in Birmingham, Ala., and it has a commitment to accept, by purchase of a new issue, 40 percent of the capital stock of Pacific Agricultural Foundation, Ltd., licensee of station KQW, San Jose, Calif.

In every year since and including 1929, CBS has operated at a profit. Both gross and net income have, with few exceptions, increased year by year as is shown by the following table:

Year	Time sales (after discounts; before agency commissions)	Net income (before provision for Federal income tax)	Year	Time sales (after discounts; before agency commissions)	Net income (before provision for Federal income tax)
Apr. 5, 1927, to Dec. 31, 1927	[1] $176,557	[2] *$220,066*	1934	$13,699,649	$2,631,407
1928	[3] 1,409,975	[2] *179,425*	1935	16,391,565	3,228,194
1929	4,453,181	474,203	1936	21,449,676	4,498,983
1930	6,957,190	985,402	1937	25,737,627	5,194,588
1931	10,442,305	2,674,158	1938	25,450,351	4,329,510
1932	11,518,082	1,888,140	1939	30,961,499	6,128,686
1933	9,437,100	1,083,964	1940	35,630,063	7,431,634

[1] Agency commissions have also been deducted from the figure for this short period.
[2] Deficit.
[3] Includes sale of talent and other services.

C. MANAGEMENT OF ARTISTS BY CBS

In December 1930, CBS acquired 55 percent of the stock of Columbia Concerts Corporation, which had been organized that year by the merger of a number of concert artist managements. Columbia Concerts Corporation has been engaged in the business of managing concert artists in all fields of entertainment. Most of its business with respect to radio relates to the appearance of its managed artists on commercial programs over national networks. Practically all negotiations for the sale of its talent are carried on, and the contracts are made, with advertising agencies. The artists managed by Columbia Concerts Corporation have appeared frequently on commercial programs over NBC as well as CBS. Indeed, the total bookings of Columbia Concerts artists for appearances over NBC, from and including the 1931–32 season to January 1939, were greater than their bookings for appearances over CBS. For the fiscal year from June 6, 1937, to June 4, 1938, the total revenue of Columbia Concerts Corporation was $426,413, and the profit for that period was $94,038. For the 1938–39 season Columbia Concerts Corporation had under management contract approximately 120 artists and in addition about 17 dancing groups, special attractions, and ensembles.

Columbia Concerts Corporation, through a division of its business known as Community Concerts Service, engages in the business of organizing and managing concerts in various communities in the United States. As of the time of the committee hearings Community Concerts had concert courses in about 375 cities and towns. Its revenue from bookings for the fiscal year from June 6, 1937, to June 4, 1938, was $165,454, and the profit for this period was $20,418.

In addition to the concert artists managed by its subsidiary Columbia Concerts Corporation, CBS through another wholly owned subsidiary, Columbia Artists, Inc., also manages radio artists in all fields of entertainment. The income of Columbia Artists, Inc., comes from three sources: the booking of performances by managed artists, the sale of wires to hotels and night clubs from which dance bands are picked up, and income from the use of time by dance bands. At the time of the committee hearings, Columbia Artists, Inc., managed approximately 110 radio artists. For the 52 weeks ending January 1, 1938, the total revenue of Columbia Artists, Inc., was $194,757 and its profit $82,671.[10]

CBS' role as both employer of, and agent for, artists was the subject of complaint by independent artists' representatives just as in the case of NBC.[11]

D. PHONOGRAPH AND TRANSCRIPTION BUSINESS OF CBS

On December 17, 1938, CBS purchased from Consolidated Film Industries, Inc., the capital stock [12] of the American Record Corporation which had the following subsidiaries: Brunswick Record Corporation, American Record Corporation of California, Columbia Phonograph Company, and Master Records, Incorporated. Upon acquiring the American Record Corporation, CBS changed the name of that company to Columbia Record Corporation and that company has carried on the manufacture of phonograph records for home use.[13] In August 1940 it entered the transcription field.[14]

---

[10] In California, the management activities of CBS with respect to both concert artists and radio artists are carried on through still another company, Columbia Management Corporation of California, Inc., which is owned jointly by CBS and Columbia Concerts Corporation. Columbia Management Corp. of California, Inc., performs a function in California similar to that carried on by Columbia Concerts Corporation and Columbia Artists, Inc., in other parts of the country.

[11] *Supra*, p. 17.

[12] In a suit by a minority stockholder in the Supreme Court of the State of New York it was alleged that a CBS director had purchased 20 percent of the stock and subsequently sold it to CBS at a profit. The Court found for the minority stockholder and ordered the director to make restitution to CBS of $85,000. *Mason et al.* v. *Richardson et al.*, New York Law Journal, March 5, 1941, p. 992, column 2. CBS attorneys have announced they would probably appeal the decision. *Broadcasting,* March 10, 1941, p. 58.

[13] *Poor's Industrials* (1940), p. 3023.

[14] *Broadcasting,* August 1, 1940, p. 21.

IV. THE MUTUAL BROADCASTING SYSTEM

The Mutual Broadcasting System is organized along lines radically different from those of CBS and NBC. It does not own any stations, but it is owned by several stations. Mutual has no studios, maintains neither an engineering department nor an artists' bureau, and does not itself produce any programs except European news broadcasts. The commercial programs are produced by the originating station or by the sponsor who buys time, and the sustaining programs are selected from among those put on by the stations associated with the network.

A. FORMATION OF MUTUAL

On September 29, 1934, WGN Inc., Bamberger Broadcasting Service, Inc., Kunsky-Trendle Broadcasting Corporation, and Crosley Radio Corporation, the respective licensees of stations WGN at Chicago, WOR at Newark, N. J., WXYZ at Detroit, and WLW at Cincinnati, entered into an agreement for the purpose of securing contracts with advertisers for network broadcasting of commercial programs over their stations and making arrangements with the Telephone Co. for wire connections between the stations. WGN and WOR were to contract with the Telephone Co. for wire connections between the stations and all four stations agreed to share the expenses thus incurred.

In a supplementary contract of the same date, WGN and WOR agreed to organize a new corporation for the purpose of contracting with the Telephone Co. for the wire facilities required under the contract between the four stations. Stations WOR and WGN guaranteed the payment of any indebtedness of the new corporation to the Telephone Co. The new corporation provided for in the supplementary contract was the Mutual Broadcasting System, Inc., which was incorporated in Illinois on October 29, 1934, and which entered upon the business of selling time to advertisers over the four-station network and of making arrangements with the Telephone Co. for lines between the stations.

The capital stock of Mutual consisted of only 10 shares, of which WGN, Inc., and Bamberger Broadcasting Service, Inc., each held 5. WGN, Inc., is a subsidiary of the Tribune Co., which publishes the Chicago Tribune, and the Bamberger Broadcasting Service is a subsidiary of L. Bamberger & Co., which in turn is a subsidiary of R. H. Macy & Co. Ultimate control of the new network, accordingly, lay with the Chicago newspaper and the New York department store.[1]

The arrangement among the four stations comprising the Mutual network was carried forward by a new agreement on January 31, 1935, but the network did not expand during that year. Under the

[1] On January 20, 1936, pursuant to an amendment of Mutual's corporate charter, the Crosley Radio Corporation, licensee of WLW, acquired five newly issued shares of Mutual stock. This ownership continued only until September 26, 1936, when Crosley returned the stock to Mutual.

new contract, Mutual agreed to pay the four stations their regular card rates for network programs broadcast over their facilities, deducting for itself a commission of 5 percent and such expenses as agency commissions and wire-line charges. Station WXYZ in Detroit left Mutual in September 1935 in order to join NBC, and was replaced by station CKLW, located in Windsor, Ontario, but serving Detroit as well, and owned by the Western Ontario Broadcasting Co., Ltd. On January 31, 1936, the four-station agreement was extended for another year, and Mutual's commission was reduced to 3½ percent.

B. DEVELOPMENT OF THE MUTUAL NETWORK

Prior to 1936, WOR, WGN, WLW, and WXYZ (replaced by CKLW in 1935) were the only stations which regularly carried Mutual programs. During 1936, however, a number of stations were added to the network, including 13 in New England and 10 in California associated with regional networks (Colonial and Don Lee).

Mutual continued to increase the number of its associated stations throughout 1938, adding a Texas regional network of 23 stations during this period. As of January 17, 1939, shortly prior to the date on which Mutual presented its testimony at the committee hearings, the Mutual network included a total of 107 stations, of which 25 were also associated with NBC and 5 were also associated with CBS, and at the end of 1940 there were 160 outlets.

The following table shows the growth of Mutual:

Date (end of year)	Number of Mutual outlets [1]	Approximate percentage of Mutual outlets to total number of licensed stations
1934	4	0.7
1935	3	0.5
1936	39	6.0
1937	80	11.6
1939 [2]	107	14.8
1940 [3]	116	15.2
1940	160	19.3

[1] Station CKLW, Windsor, Ontario, Canada, is not included. See p. 15, n. 48.
[2] Jan. 17.
[3] Feb. 1.

As the number of stations on the Mutual network increased, the structure of the network grew more complex. During the period in which only four stations were regularly associated with the network each contributed one-fourth of Mutual's expenses and wire-line charges. As more stations were added, three classifications were set up: member stations, participating members, and affiliates. At the time of the committee hearings in February 1939, there were two member stations, WGN and WOR, which held stock control of Mutual. The four participating member organizations were the Colonial Network, the United Broadcasting Co. (licensee of WHKC at Columbus and WCLE and WHK at Cleveland), the Don Lee Network, and the Western Ontario Broadcasting Co., Ltd. The remaining stations associated with Mutual were affiliates.

313425—41——3

All network commercial time sold by Mutual is sold at the card rates of the stations. The two members and four participating members pay Mutual a commission of 3½ percent, and share any network deficit, while the affiliated stations pay a commission of 15 percent. Stations associated with Mutual receive a 2-percent commission from Mutual on the proceeds of network time sold by them. The member stations underwrite all operating deficits and wire-line charges; and the participating members contribute in varying degrees toward the expenses of Mutual and their wire-line connections to Mutual's main line. The affiliated stations do not contribute toward the operating expenses or wire-line charges of Mutual as such, but, in addition to the commission of 15 percent they pay Mutual, in most cases they also pay the cost of the wire-line connection from their station to the Mutual main line.

Since the presentation of testimony by Mutual at the committee hearings during February 1939, several changes have taken place in its organization, as set forth in its brief of November 11, 1940. In January 1940 Mutual, which at that time was entirely owned by WGN and WOR, issued stock to five additional companies: the Don Lee Broadcasting Co., the Colonial Network, Inc., the Cincinnati Times-Star Co. (licensee of WKRC at Cincinnati), the United Broadcasting Co. and the Western Ontario Broadcasting Co., Ltd.[2] Mutual's board of directors was enlarged and an operating board was created for the purpose of giving representation to the nonshareholding affiliates.

The volume of Mutual's business has increased substantially since its formation, but is still not comparable to that of either NBC or CBS. The following table shows the network time sales (after discounts; before commissions) for each complete year through 1940:

1935	$1,108,827
1936	1,884,615
1937	1,650,525
1938	2,272,662
1939	2,610,969
1940	3,600,161

[2] After this change the total issued capital stock of Mutual consisted of 100 shares which were held as follows: 25, WOR; 25, WGN; 25, Don Lee; 6, Colonial Network; 6, United Broadcasting Co.; 6, Cincinnati Times-Star Co.; 6, Western Ontario Broadcasting Co., Ltd.; 1, Fred Weber (qualifying share).

V. REGIONAL NETWORKS

In addition to the three national network organizations, there are a number of networks serving particular States or areas. These regional networks operate in much the same manner as the national networks but with much smaller coverage and revenues. Evidence concerning the following 13 regional networks was introduced at the hearings in this proceeding:

Name of network	Year established	Area served
California Radio System	1936	California.
Yankee Network, Inc	1930	New England.
Colonial Network, Inc	1936	Do.
Don Lee Broadcasting System	1932	California, Oregon, and Washington.
Pacific Broadcasting Co	1937	Oregon and Washington.
Michigan Radio Network	1933	Michigan.
Texas State Network	1938	Texas.
Arrowhead Network		Northern Minnesota.
Empire State Network, Inc	1938	New York State.
Inter-City Broadcasting System	1935	Cities in Northeastern States
Pennsylvania Network	1938	Pennsylvania.
Texas Quality Network	1934	Texas.
Virginia Broadcasting System, Inc	1936	Virginia.

The first seven regional networks listed above are permanent organizations, have contractual relationships with their outlet stations resembling those of the national networks, and do a substantial amount of business. The following table gives a bird's-eye view of the relative importance in 1938 of these seven regional networks:

Name	Number of stations	Other network affiliations	Network net time sales (after agency commissions)
California Radio	9	None as network, but 6 stations individually affiliated with NBC.	$109,848
Yankee	17	None as network, but 9 stations individually affiliated with NBC.	564,225
Colonial	14	Mutual	190,758
Don Lee	28	do	547,077
Pacific	14	Don Lee and Mutual	[1] 125,825
Michigan Radio	9	Basic Blue network of NBC	133,314
Texas State	23	Network affiliated with Mutual; 4 stations also outlets for NBC and 1 for CBS.	[2] 79,468

[1] Fiscal year ending Sept. 30, 1938.
[2] Sept. 15, 1938, to Jan. 31, 1939.

As the above table indicates, most of the stations on these major regional networks also carry the programs of a national network. Indeed, most of these regionals are affiliated with a national organization on a network basis.

The other six regional networks are of relatively minor significance. Several of them were temporary, their relations with their affiliates are rather loose, and the business accounted for by them is small.

The history, operations, station relations, and finances of all 13 regional networks are described in detail in Appendix D to this report.

VI. SCOPE AND MANNER OF OPERATION OF THE NATION-WIDE NETWORKS

In determining how best to cope with the problem of stations engaged in chain broadcasting, two matters are of especial importance.

One is the position of dominance in the broadcast field occupied by the two largest chain organizations, NBC and CBS. Because of the basic nature of the network broadcasting system, the ability to transmit high quality programs and the volume of commercial programs which flow through these companies, affiliation is a desirable factor for the individual broadcast stations. NBC and CBS were the first and second to enter the field (after the Telephone Co. abandoned broadcasting), and through the years they have taken steps to perpetuate their leadership and dominance.

The second set of circumstances is the nature of the contractual arrangements between networks and stations. These have a pronounced effect upon the service rendered by the affiliated stations.

In what follows, we shall occasionally contrast Mutual with NBC and CBS in respect to size, contractual structure, and mode of operation. It should be made clear that in making these contrasts we do not seek to approve Mutual practices or to set them up as ideals or models. On the contrary, we find a tendency in Mutual to follow the paths toward restrictive practices blazed by CBS and NBC. Mutual is chosen for contrast with the two larger chains merely because it is their only national competitor, and because in some respects the obstacles which it has faced clearly exhibit the restrictive effects of NBC and CBS practices.

A. PREDOMINANCE OF NBC AND CBS IN THE BROADCASTING FIELD

Of the three national network organizations, NBC and CBS are by far the largest and most powerful. Mutual was not organized until 1934, after the other two networks were already successfully established and had secured affiliations with a great number of the more desirable broadcast stations in the country.

1. Stations affiliated with NBC and CBS

At the time of the committee hearings in 1938, approximately 161 stations in the United States and the Territories and possessions were affiliated with the Red and Blue networks of NBC, 113 with CBS, and 107 with Mutual. At the end of 1940 the figures were, respectively, 214, 121, and 160. These figures, however, do not give an accurate picture of the relative predominance of NBC and CBS, for, by and large, the stations associated with Mutual are less desirable in frequency, power, and coverage.

The networks operated by CBS and NBC at the end of 1938 were composed of 267 stations in the United States. The 267 stations were classified, as to power and time designation, as follows:

Item	Class and time designation	Number commercial stations in networks of CBS and NBC			In United States	Ratio of number in networks to total number
		CBS	NBC	Total		
						Percent
1	Clear channel (50 kw. or more) unlimited time	11	17	28	30	93.3
2	Clear channel (50 kw. or more) part time		4	4	4	100.0
3	Clear channel (5 kw. to 25 kw.) unlimited time	5	9	14	14	100.0
4	Clear channel (5 kw. to 25 kw.) part time	2	2	4	4	100.0
5	Total clear channel	18	32	50	52	96.2
6	Regional (high power) unlimited time	4	4	8	8	100.0
7	Regional (1 kw. to 5 kw.) unlimited time	58	80	138	196	70.4
8	Regional (250 w. to 5 kw.) limited and daytime	2	3	5	68	7.4
9	Regional (250 w. to 5 kw.) part time	4	8	12	33	36.4
10	Total regional	68	95	163	305	53.4
11	Local (50 w. to 250 w.) unlimited time	20	33	53	227	23.3
12	Local (50 w. to 250 w.) day and part time	1		1	76	1.3
13	Total local	21	33	54	303	17.8
14	Total	107	160	267	660	40.5

It may be seen from the foregoing table that CBS and NBC together had in their networks all but two of the clear channel stations (WGN and WOR, which own Mutual), and most of the full-time regional stations. Excluding low-powered local stations, more than half of all the stations in the country were affiliated with CBS and NBC, and even including the full-time local stations, more than half of all stations were so affiliated.

Another index of network predominance is found in the proportion of the Nation's broadcasting power utilized. The 475 unlimited-time commercial stations in the United States at the end of 1938 accounted for 86.3 percent of the total time sales of all 660 commercial stations and had a total nighttime power of 1,869,400 watts [1] or 97.9 percent of the total. This total was distributed as follows: [2]

Total number of commercial stations		Number of unlimited-time stations	Total night watts of unlimited-time stations	Percentage of watts of unlimited time-stations
135	Affiliated with NBC only	119	959,950	51.4
102	Affiliated with CBS only	93	658,050	35.2
74	Affiliated with Mutual only	55	117,350	6.3
25	Affiliated with NBC and Mutual	25	[1] 82,800	4.4
5	Affiliated with CBS and Mutual	5	11,200	.6
341	Total affiliated with national networks	297	[1] 1,829,350	97.9
319	Total unaffiliated with national networks	178	40,050	2.1
660	Totals	475	[1] 1,869,400	100.0

[1] This figure includes WLW as a 50,000-watt station, its normal power, although it operated experimentally on 500,000 watts until March 1, 1939.
[2] The inclusion of part-time stations or use of daytime power ratings, would not markedly alter the above ratios.

Stations on the NBC and CBS networks alone thus had over 85 percent of the Nation's nighttime wattage.

2. Ownership of stations by NBC and CBS

Apart from contractual affiliation, NBC and CBS have cemented their position as the leading radio networks by the acquisition of stations having excellent power and coverage. NBC is now the licensee of 10 stations,[3] of which 7 are clear-channel stations operating with the maximum power (50,000 watts) permissible under our regulations. CBS is the licensee of 8 stations,[4] of which 7 are clear-channel stations, operating with 50,000 watts. Almost half of the Nation's highest power clear-channel stations, accordingly, are licensed to CBS and NBC. Four other important stations in three leading markets (Washington, San Francisco, and Boston) are also licensed to NBC or CBS.

3. Proportion of broadcasting business handled by NBC and CBS

The predominance of NBC and CBS within the broadcast industry is further indicated by the distribution of proceeds from net time sales among the various units in the industry. The net time sales for the entire industry (all networks and 660 stations throughout the country) in 1938 amounted to $100,892,259, of which $44,313,778, or 44 percent, represented NBC and CBS network net time sales. The 23 stations owned or operated by NBC and CBS,[5] most of which were located in well-populated and lucrative markets, had net time sales for nonnetwork programs of $6,734,772, or 7 percent of the total net time sales of the entire industry. Accordingly, the CBS and NBC networks and the stations owned or operated by them accounted for more than one-half the total business of the entire industry. In sharp contrast, the 1938 net time sales of Mutual were only $2,015,786, or about 2 percent of the net time sales of the industry.

4. Payments to stations affiliated with NBC and CBS

Of their total network net time sales in 1938 ($44,313,778), CBS and NBC retained 73 percent ($32,046,218) and paid only 27 percent ($12,267,560) to the 253 affiliated stations on their networks during the year. Thus CBS and NBC retained over two and a half times as much of the proceeds from the sale of network time as they paid to all the 253 affiliated stations. This is accounted for in part by the usual contractual arrangements under which sustaining programs and wire-line connections are furnished to the affiliates without a separate charge.

Of the amount retained by CBS and NBC ($32,046,218), the 23 stations owned or controlled by them were credited with $5,347,388 as compensation for the broadcasting of network programs. This amount is more than one-third of the amount which was paid by NBC and CBS to the 253 affiliated stations. The large amount "paid" by

---

[3] *Supra*, p. 16.

[4] At the time of the committee hearings CBS was the licensee of nine stations. See *supra*, p. 23, n. 9.

[5] These 23 stations include 19 licensed to CBS and NBC and 4 (treating WBZ and WBZA as 1) operated by NBC under management contracts. *Supra*, p. 16.

the networks to their own stations is accounted for, in part, by the power and favorable market location of these stations.

5. Proportion of industry income received by NBC and CBS

The predominance of network organizations and their owned and controlled stations in relation to the industry as a whole, is further demonstrated by reference to net operating income.[6] The consolidated net operating income of the entire industry for 1938 was $18,854,784, of which $4,349,446 was operating income of the three national network organizations from network operations, and $14,505,338 [7] was that of the 660 stations, including payments to them by networks for the broadcast of network programs. This latter amount in turn was composed of $9,696,156, in the aggregate, for the 327 stations affiliated with but not owned or operated by the three major networks; [8] $4,958,289, in the aggregate, for the 23 stations owned or operated by CBS and NBC; [9] and a loss of $149,107. in the aggregate, for the 310 unaffiliated [10] stations. The consolidated net operating income of NBC and CBS from network programs ($4,319,062) plus the consolidated net operating income of the 23 stations which they owned or operated ($4,958,289) equalled about one-half of the consolidated net operating income for the entire industry.

Mutual's net operating income for 1938 totaled only $30,384. This is accounted for by the fact that Mutual is in effect a cooperative enterprise, rendering service to its associated stations substantially at cost.

6. Income and investment [11] of NBS and CBS

The broadcasting industry does not require large capital investments. The NBC and CBS investment in tangible property devoted to broadcasting at the end of 1938 totaled $9,276,019. In that year their net operating income ($9,277,352) was actually in excess of this investment in tangible property. Their entire broadcasting investment, including intangible as well as tangible items, was $13,411,102; their net operating income was equal to 69 percent of this amount.

NBC's investment in tangible property at the end of 1938 totaled $4,284,032. Its earnings for that year ($3,434,301) equaled 80 percent of this investment.

CBS had an investment in tangible property at the end of 1938 amounting to $4,991,988 and during that year its net earnings [12] ($3,541,741) equaled 71 percent of its investment in tangible property.

7. Disposition of NBC and CBS profits

NBC and CBS profits have been large, and for the most part have been distributed to stockholders. In the case of NBC, total earnings

---

[6] Broadcast revenue less broadcast expenses—referred to in the published tabulations of the Federal Communications Commission as broadcast income.

[7] Four hundred and twenty stations showed net incomes totaling $16,728,533; 240 showed net losses totaling $2,223,195.

[8] Of these, 238 showed net incomes totaling $10,753,650; and 89 showed net losses totaling $1,057,494.

[9] Of these, 20 showed net incomes totaling $5,086,390 and 3 showed net losses totaling $128,101.

[10] Of these, 162 showed net incomes totaling $888,493, and 148 showed net losses totaling $1,037,600.

[11] Investment in tangible property is based on cost less depreciation. Investment in intangible property is based on cost less amortization.

[12] Broadcast and nonbroadcast income less broadcast and nonbroadcast expenses.

from November 1, 1926, the date of its formation, through 1938, totaled $22,319,833. NBC began to pay dividends in 1935, and from 1935 through 1938 paid to RCA, its only stockholder, $18,100,000 (cash dividends of $14,900,000, lease negotiation fees of $2,200,000, and research and development fees of $1,000,000). Of the remaining $4,219,833, losses on financial investments unrelated to broadcasting have consumed $1,171,763; and $673,333 appropriated for goodwill and other intangibles has been charged off. At the end of 1938 $2,374,738 remained on the company's books as earned surplus.

CBS net earnings during the 12-year period of its existence through 1938 totaled $22,522,471. Of this amount, $13,329,688 has been paid to its shareholders in cash dividends, and $3,543,175 in stock dividends; the remainder was largely current assets at the end of 1938.

B. CONTRACTUAL ARRANGEMENTS BETWEEN NATIONAL NETWORKS AND AFFILIATES

At the present time, the relations between a network organization and its affiliates are customarily governed by a detailed written contract. These relationships, however, have not always been on such a formalized basis. Before NBC took over the Telephone Co.'s network in 1926,[13] the relations between the network and its affiliates were embodied in correspondence only. The arrangements generally called merely for the furnishing of programs by the company on a few specified evenings. The company would pay the affiliated station a certain amount per hour for broadcasting network commercial programs, and the affiliate would pay the company a certain amount for sustaining programs.

When NBC took over station WEAF and the Telephone Co. network, it assumed these informal contractual arrangements. The amount of network service, however, increased rapidly after NBC took control. The network service supplied by the Telephone Co. had been quite sporadic; network programs were not available to affiliated stations at all hours throughout the broadcast day. But as early as 1927, NBC was on a 16-hour-per-day broadcasting schedule, and at the time of the committee hearings in 1938 NBC's broadcast day was 17 hours.

Despite this great increase in the volume of its network operations, NBC maintained its relations with its affiliates on the informal basis described above for a number of years. Unlike NBC, however, CBS adopted a formal contractual relationship with its affiliates from the very start of its network operations in 1927. As both networks grew, and competition between the two approached an equal footing, NBC also introduced formal contracts. Today NBC and CBS uniformly embody their arrangements with affiliates in detailed contracts. Since its inception in 1934, Mutual has defined its relationships with its outlet stations in detailed and standardized contracts.

The committee report states that "the heart of the abuses of chain broadcasting is the network-outlet contract." It is important to scrutinize these contracts and to determine whether station licensees have entered into arrangements which adversely affect the public interest.

---

[13] *Supra*, p. 7.

The discussion which follows concerns the standard or typical contract provisions of the three national networks; no attempt has been made to deal exhaustively with detailed exceptions to such provisions found in some individual contracts.

1. Length of affiliation contracts

Prior to 1936, NBC standard affiliation contracts were for 1 year only. Since 1936, standard contracts have been drawn to bind affiliated stations for 5-year periods but NBC for only 1, since NBC has the right to cancel on 12 months' notice.

The early CBS[14] affiliation contracts were for 1 year only. In August 1929, however, CBS entered into new contracts for 2-year periods, with options granted to CBS to extend for two successive terms of 1 year each. Since 1936, CBS, like NBC, has entered into contracts binding affiliated stations for 5 years, but binding upon itself for only 1.[15] The termination dates of both CBS and NBC contracts are staggered so that some contracts expire each year.

As of the time of the committee hearings, Mutual's affiliation contracts bound both parties for the same length of time, 1 year.[16]

2. Exclusivity

The original CBS affiliation contract, effective September 1927, enjoined CBS affiliates from making their facilities available to any other chain broadcasting company; a similar "exclusivity" provision has appeared in subsequent contracts. It was not until 1937, however, that a provision was incorporated which enjoined CBS from furnishing programs to other stations in territories served by its affiliates. The present clause, from the standard affiliation contract introduced in 1937, reads:

> Columbia will continue the station as the exclusive Columbia outlet in the city in which the station is located and will so publicize the station, and will not furnish its exclusive network programs to any other station in that city, except in case of public emergency. The station will operate as the exclusive Columbia outlet in such city and will so publicize itself, and will not join for broadcasting purposes any other formally organized or regularly constituted group of broadcasting stations. The station shall be free to join occasional local, State-wide or regional hook-ups to broadcast special events of public importance.

NBC did not introduce exclusivity provisions until 1936. Since then its standard contract has contained a clause prohibiting a station from supplying its facilities to any other major network. The clause reads:

> For the purpose of eliminating confusion on the part of the radio audience as to the affiliation and identity of the various individual stations comprising radio networks, you agree not to permit the use of the station's facilities by any radio network, other than ours, with which is permanently or occasionally associated any station serving wholly or partially a city or county of 1 million or more inhabitants.

---

[14] "CBS" refers here and sometimes hereafter not merely to "Columbia Broadcasting System, Inc." but also to its predecessor "United Independent Broadcasters, Inc." The change of name occurred on January 3, 1929.

[15] The standard contract of 1936 was for 1 year but gave CBS four successive options to extend for 1 year each. The present standard contract, introduced in 1937, is for a term of 5 years with the right granted to CBS to terminate upon 12 months' notice.

[16] In January 1940, however, Mutual entered into contracts with its seven stockholders, binding on Mutual for 5 years, but cancellable by the stockholders on 1 year's notice at any time after the first 2 years.

The NBC vice president in charge of station relations testified that this clause was designed to prevent NBC outlets from affiliating with "any network which would seek to establish itself as a national advertising medium," and thus compete with NBC. NBC affiliates, he stated, are permitted to affiliate with such regional networks as the Yankee; but—

> * * * if it [Yankee] seeks to extend itself beyond the confines of New England * * * then we will raise objection * * * to the continuance of its affiliation with the National Broadcasting Co. If the Yankee network, for example, should make up its mind * * * to become a national network, it would be perfectly within their right to do so, but they should not expect to be supported by NBC programs (Hedges, Tr. 1868).

The same NBC representative further testified that, although all NBC affiliates are not as yet bound by exclusivity clauses, NBC's policy is to attempt to procure such clauses in all contracts. There was also testimony that NBC recognized its affiliates as its exclusive outlets in their areas.

At first, Mutual did not demand exclusivity provisions from its affiliates. The only exception was its contract with the Don Lee network. The parties to this contract state that when it was made, they had to assume a long-term commitment to the Telephone Co. for a wireline connection between Chicago and Los Angeles; and that to protect this commitment, Don Lee agreed not to accept programs from any other national network and Mutual agreed not to send its programs to any other stations on the Pacific coast. There was testimony on behalf of Mutual that, since this long-term wire commitment is no longer necessary, it is willing to negotiate a new contract with Don Lee without exclusivity provisions.

Since February 1, 1940, Mutual's contracts with its 7 stockholders prohibit the 50 or more stations owned by these stockholders or affiliated with their regional networks from broadcasting programs of any other national network, or any other network having outlets in New York, Philadelphia, and Chicago. Mutual states that these clauses were designed to prevent its dismemberment by Transcontinental Broadcasting System, Inc., a proposed new network planned during the winter of 1939. The stockholders' contracts provide that the exclusivity clauses shall lapse if the Federal Communications Commission prohibits them, or if the other national networks voluntarily abandon exclusivity.

Clauses prohibiting Mutual from supplying programs to other stations in territories served by its affiliates were contained in some Mutual affiliation contracts as of the time of the committee hearings, and a Mutual official testified that as a matter of practice Mutual does not send its programs to any station in the area of an existing outlet.

3. Time options

By the terms of its first standard affiliation contract, effective September 5, 1927, United Independent Broadcasters, predecessor of CBS, purchased 10 specified hours per week outright from its 16 affiliates at $50 per hour. United lost so heavily on this contract that, although it was for a period of 53 weeks from September 5, it was superseded in December 1927 by a new type of contract.

This second contract bound United to furnish 10 hours of programs a week, at least half of them commercial, and gave United conditional options [17] on an additional 20 specified hours.[18] This was the first introduction of the time-option arrangement which has since become standard for both NBC and CBS.

The third standard contract, dated November 1928, committed CBS to supply network programs for twenty specified hours per week, and gave it an option to take up, on 30 days' notice, 10 additional specified hours per week. The periods covered by contract and option were the same as in the preceding contract.

The next CBS standard affiliation contract, dated August 1929, granted to CBS an option [19] on all the time of the station for network commercial programs. This option on all station time has been continued and is the rule today, subject to two limitations introduced at the end of 1937. One provides that a station may require CBS to give not less than 28 days' prior notice before preempting time for programs sponsored by new accounts. The other provides that a station need not broadcast network commercial programs for more than 50 "converted hours" [20] in any one week. Since CBS, at least prior to the time of the committee hearings, had never used 50 "converted hours" over any station in any week, the latter provision has never actually functioned to limit the all-inclusive option.

NBC inaugurated a system of network optional time in 1933. The NBC standard contract clause provides that upon 28 days' notice to a station, NBC can preempt time for commercial network programs during specified hours known as "network optional time." [21] From its 29 affiliates on the West coast, however, NBC has options covering all time; the reason is stated to be the time differential between New York and the Far West.

Prior to February 1, 1940, Mutual had no time-option provisions in its affiliation contracts. It entered into definite commitments with advertisers only after it had communicated with associated stations to determine whether or not the time was available. If the particular period had already been sold by any associated station, that station was under no obligation to make it available for network commercial programs.

On February 1, 1940, however, Mutual entered into time-option contracts with its 7 stockholders covering the 50-odd stations owned by them or affiliated with their regional networks. The options covered from 3¼ to 4¼ specified hours on week days and 6 hours on Sundays. The contracts expressly provide that the time-option provisions shall lapse if the Federal Communications Commission prohibits the practice or the other national networks voluntarily abandon it.

---

[17] United was given the privilege of using 6 additional specified hours as soon as permanent telephone wires were installed at each station; and, upon 30 days' notice, it was given the option and right to increase the hours to include any of 14 specified hours should additional advertising warrant.

[18] The 30 hours specified in the contract included the period from 7 to 11 p. m. 7 days per week and from 3 to 5 p. m. on Sundays.

[19] This contract was silent concerning the amount of notice necessary prior to exercise of options.

[20] One evening hour or 2 daytime hours are generally equivalent to 1 "converted hour"; a Sunday afternoon hour equals two-thirds a "converted hour," 50 "converted hours" on the average require 79 clock hours.

[21] NBC "network optional time" includes the following hours: week days, 10 a. m. to 12 noon; 3 to 6 p. m.; 7 to 7:30 p. m.; and 8 to 11 p. m.; and Sundays, 1 to 4 p. m.; 5 to 6 p. m.; and 7 to 11 p. m.

4. Rejection of network commercial programs

All three national networks have standard contract clauses defining the right of stations to reject network commercial programs.

The NBC standard clause, introduced in 1933, reads:

> Upon 28 days' notice, your station will broadcast network commercial programs for NBC during any periods requested by NBC within the hours designated * * * as network optional time, provided, that because of your public responsibility your station may reject a network program the broadcasting of which would not be in the public interest, convenience, and necessity.

Since the Communications Act of 1934 imposes upon broadcasting stations the duty to operate in the public interest, this clause in effect does little more than permit affiliated stations to reject network commercial programs when to broadcast them would violate the law. The provision is interpreted by NBC to mean that a station may reject a network commercial program if the program or the product advertised is objectionable to the community, or if the station wants to substitute a local sustaining program of public interest. The NBC vice president in charge of the station relations testified:

> * * * If the station believes that the substitution of a local program would be more in the public interest than the program which was offered to him by the network he makes that substitution, but we insist that he must be on firm ground, that he must be able to support his contention that what he has done has been more in the public interest than had he carried on the network program (Hedges, Tr. 1795).

While an affiliated station may substitute a local sustaining program for a network commercial program under such circumstances, it may not similarly substitute a local commercial program. Indeed, the NBC standard affiliation contract has a special provision for liquidated damages which compels the affiliate to pay over to NBC whatever increased revenue it receives from such substitution:

> *Provisions for liquidated damages.*—In the event you substitute a program for a network program which you are obligated to broadcast hereunder you agree to pay us as liquidated damages a sum equal to the amount by which the total moneys you receive for broadcasting the substituted program during the scheduled period of said network program exceeds the moneys you would have received from us had you broadcast said network program. This provision is without prejudice to any other rights which we may have under this agreement arising from your failure to broadcast any of our network programs, and shall not be deemed to give you the option to refuse to accept such a network program by making the payments specified in the foregoing sentence.

This clause effectively removes all monetary incentive to substitute local commercial for network commercial programs.

The CBS clause covering rejection of programs, first introduced in 1937, reads:

> The station will broadcast all network sponsored programs furnished to it by Columbia during the time when the station is licensed to operate * * *. Either the station or Columbia may on special occasions substitute for one or more of such sponsored programs sustaining programs devoted to education, public service or events of public interest without any obligation to make any payment on account thereof, and in the event of such substitution by either party it will notify the other by wire as soon as practicable after deciding to make such substitution. In case the station has reasonable objection to any sponsored program or the product advertised thereon as not being in the public interest the station may, on 3 weeks' prior notice thereof to Columbia, refuse to broadcast such program, unless during such notice period such reasonable objection of the station shall be satisfied. * * *

This clause, like the similar clause in NBC contracts, provides in effect merely that stations may reject programs if to carry them would violate the public-interest provision of the Communications Act of 1934.

As has been noted, Mutual held no options on station time at the time of the committee hearings. No Mutual station was required to accept a network commercial program unless it had the time available, and even then it could reject for any of several reasons. A typical Mutual contract reads:

> * * * It is agreed that each station shall have the right to refuse to accept any contract tendered to it hereunder;
>
> (*a*) If in the opinion of the station management the programs which the advertiser purposes to broadcast under such contract are for any reason unsatisfactory in character, quality, or content; or
>
> (*b*) If in the opinion of the station management the products to be advertised are undesirable or objectionable; or
>
> (*c*) If the station management determines in its sole discretion that the advertiser is not a good credit risk.

It should be noted that the Mutual clause explicitly places the right to determine whether a program is objectionable in the hands of the individual station, where the legal responsibility also lies. Moreover, even after a station commits itself to broadcast a network commercial program, it reserves the right to appropriate any or all of the time for broadcasting a local sustaining program of unusual interest.

The basic problem with respect to rejection of network programs, however, does not rest merely in the precise wording of legal contracts. There is also involved the practical problem of supplying stations with enough information about network programs sufficiently in advance to enable them to make intelligent decisions.

At present, networks send their affiliates notices stating the length of the program series, the length of each program, the time of broadcasting, the name of the sponsor, the product to be advertised, and the general type of program; that is, whether it is to be variety, drama, dance music, etc. In some cases the names of the persons appearing on the program may also be given. It is obvious that from such skeletal information the station cannot determine in advance whether the program is in the public interest, nor can it ascertain whether or not parts of the program are in one way or another offensive. In practice, if not in theory, stations affiliated with networks have delegated to the networks a large part of their programming functions.

In many instances, moreover, the network further delegates the actual production of programs to advertising agencies. These agencies are far more than mere brokers or intermediaries between the network and the advertiser. To an ever-increasing extent, these agencies actually exercise the function of program production. Thus it is frequently neither the station nor the network, but rather the advertising agency, which determines what broadcast programs shall contain. Under such circumstances, it is especially important that individual stations, if they are to operate in the public interest, should have the practical opportunity as well as the contractual right to reject network programs.

5. Sustaining programs

NBC and CBS actually produce a great many of their sustaining programs. They spend large sums of money for such production, as well as for the broadcasting of sustaining programs which they do not themselves produce, such as concerts and special events. Mutual, on the other hand, does not produce sustaining programs itself; it selects programs which it considers suitable for its network from among the sustaining programs produced by its outlets, and distributes such programs to the other stations on the network.

All three national network companies make sustaining programs available to their respective affiliates at no separate charge; but the cost of producing and distributing them is reflected in the plan of station compensation.

NBC guarantees most of its outlets 200 "unit hours" [22] of network commercial and sustaining programs during each 28-day accounting period; CBS guarantees 60 clock hours a week; and Mutual makes no guarantees. In practice, however, all three networks make programs available throughout the broadcast day—generally 16 or 17 hours.

Unlike network commercial programs, sustaining programs may be accepted or rejected at will by stations affiliated with (but not licensed to) any of the 3 network organizations. The stations licensed to NBC and CBS, however, are required to broadcast certain so-called "immovable" sustaining programs. NBC Red network immovables numbered 22 at the time of the committee hearings, including the Radio Pulpit, the University of Chicago Round Table, The World Is Yours, and the Metropolitan Opera. The 24 Blue network immovables included the NBC Symphony Orchestra, Dr. Walter Damrosch's Music Appreciation Hour, the Farm and Home Hour, and America's Town Meeting of the Air. CBS "must" sustaining programs for the stations licensed to it totaled 6½ hours per week, and included the New York Philharmonic Symphony Orchestra, the CBS School of the Air, and certain educational programs. Mutual owned no stations, and hence had no immovable sustaining programs.

6. Station compensation

The early NBC arrangements for compensation to and from its affiliates were modelled on previous arrangements between the Telephone Co. and its affiliates.[23] One of the last Telephone Co. network contracts,[24] for example, provided that the station would pay $45 per hour for sustaining programs, and would receive $40 per hour for commercial programs. Similar arrangements were continued after NBC took over the network, and hourly rates were in general standardized. From 1927 to 1930, NBC paid most of its stations $50 per evening hour and $30 per daytime hour for commercial programs, and charged most of them $45 per evening hour and $25 per daytime hour for sustaining programs. The exceptions were the few stations so necessary to NBC that they could insist upon increased rates from NBC for commercial programs or lower charges for sustaining programs.

NBC maintained the same commercial rates from 1930 to 1932, but sustaining-program charges were reduced to $25 per evening hour and $15 per daytime hour. In 1932, hourly charges for sustaining programs were abolished, and a flat charge of $1,500 per month sub-

---

[22] A "unit hour" is equivalent to 1 evening hour. A Sunday afternoon hour counts as three-fourths of a unit hour and a daytime hour counts as one-half.
[23] *Supra*, p. 34.
[24] Contract between the Telephone Co. and the owners of station WLIT in Philadelphia, dated September 10, 1926.

stituted, regardless of the number of sustaining programs the station used.

In 1935, NBC introduced a new system of payments to stations in connection with a readjustment of station rates to advertisers which rates, with minor changes, have remained in effect. NBC has stated that, in establishing these rates, it gave primary consideration to the "potential circulation" or number of potential listeners in the area served by each station; and that it did not take into account such factors as the number of stations serving the area or the purchasing power of its inhabitants.

Advertisers were charged from $120 per evening hour for the smallest stations to $680 per evening hour for larger stations, $720 for WMAQ and WENR in Chicago, and $1,200 for WEAF and WJZ in New York and WLW in Cincinnati.

Stations were remunerated according to a complex formula based upon these rates to advertisers. For the first 16 "unit hours" of network commercial programs during each 28-day accounting period, a station received no compensation; for the next 25 unit hours it received 20 percent of the average unit rate;[25] for the next 25 unit hours it received 30 percent; and thereafter 37½ percent. Under this schedule, stations were not required to pay separately for sustaining programs.

The following table shows NBC network time sales, its receipts from sustaining program charges, its payments to affiliated stations, and other relevant figures:

Year	Time sales for network programs (after discounts; before commissions)		Compensation to stations[1] for broadcasting network programs	
	Commercial programs	Sustaining programs sold to stations	Amount	Ratio to network time sales (percent)
Nov. 1926–Dec. 1927	[2] $3, 384, 519	$500, 507	$577, 522	17.06
1928	[2] 7, 256, 179	770, 702	1, 486, 146	20.48
1929	[2] 11, 353, 120	726, 335	2, 372, 740	20.90
1930	[2] 15, 701, 331	698, 001	3, 038, 112	19.35
1931	[2] 20, 455, 210	903, 615	3, 962, 047	19.37
1932	[2] 20, 915, 979	980, 818	3, 911, 346	18.70
1933	[2] 18, 005, 369	987, 587	3, 383, 995	18.79
1934	[2] 23, 535, 130	1, 021, 247	5, 000, 650	21.25
1935	[2] 26, 679, 834	941, 428	5, 875, 188	22.02
1936	[2] 30, 148, 753	(3)	6, 123, 749	20.31
1937	31, 436, 874	60, 384	7, 166, 363	22.80
1938	31, 783, 277	20, 470	7, 809, 014	24.57
1939	33, 540, 841	19, 368	9, 021, 872	26.90
1940	37, 118, 130	19, 693	10, 562, 212	28.45

[1] "Stations" in this table refers to stations affiliated with but not owned or operated by NBC.
[2] Total time sales; network time sales not available.
[3] Charges for sustaining programs were abolished by NBC as a part of its network relationship with stations after the revision of its rate structure and system of compensation in 1935.

CBS's arrangements for station compensation have been somewhat different. In its first standard affiliation contract, in effect from September to December 1927, the network agreed to pay each station $50 per hour for 10 specified hours per week whether or not the hours were actually used by the network. This arrangement was modified in the second contract, dated December 1927, which provided that CBS was to pay the station $50 per hour for all hours

[25] The "unit rate" is the gross card rate per hour, before deducting discounts or agency commissions.

used commercially and to supply sustaining programs for the remainder of the time covered by the contract, charging the station $50 per hour for them. The contract provided that at least 50 percent of the hours used by CBS must be devoted to sponsored programs.

The third CBS contract, dated November 1928, eliminated payments by the station for sustaining programs and provided that the station waive compensation for the first 5 hours of commercial network programs per week. For all network commercial hours in excess of the free time, CBS agreed to pay each station a specified hourly rate. CBS agreed also to furnish sustaining programs for all hours not used for commercial programs, which were either under contract or under an option exercised by CBS.

The next standard affiliation contract, that of August 1929, established the method of compensation which has remained in effect since. A distinction was made for the first time between an evening and a daytime hour. The term "commercial hour" was defined to include only an evening hour, and it was provided that the compensation to the station for a daytime hour was to be one-half its evening compensation and that the 5 hours of commercial programs per week on which the station waived compensation were to be "commercial hours" as defined in the contract. A "commercial hour" was referred to in later affiliation contracts of CBS as a "converted hour."

Charges to advertisers for the use of CBS network facilities are determined by the CBS rate card, which lists the stations available, the groups in which they must be purchased, and station rates ranging from $125 to $1,250 per converted hour. The rate applicable to each station is determined by CBS after a consideration of the station's market, its relative popularity, its power and physical coverage, and the price at which it sells time to national advertisers for national spot business.

The following table shows the increase in annual sales of network time by CBS from 1927 through 1940, the increase in payments to affiliated stations, and the ratio of those payments to the network time sales of CBS:

Year	Time sales for network programs (after discounts; before commissions)	Compensation to stations [1] for broadcasting network programs	
		Amount	Ratio to network time sales (percent)
1927 (Apr.-Dec.)	[2] $176, 558	(3)	
1928	[2] 1, 409, 975	(3)	
1929	[2] 4, 720, 074	$734, 163	15. 55
1930	[2] 8, 082, 664	1, 003, 749	12. 41
1931	9, 480, 282	1, 478, 307	15. 59
1932	10, 218, 800	1, 805, 211	17. 67
1933	8, 008, 088	1, 446, 827	18. 07
1934	11, 888, 741	2, 604, 854	21. 91
1935	14, 087, 695	3, 394, 428	24. 09
1936	18, 550, 621	4, 806, 699	25. 91
1937	21, 969, 089	5, 556, 623	25. 29
1938	21, 254, 686	4, 969, 688	23. 38
1939	26, 450, 511	6, 933, 887	26. 21
1940	31, 181, 444	8, 722, 303	27. 97

[1] "Stations" in this table refers to stations affiliated with but not owned or operated by CBS.
[2] Total sales; network time sales not available.
[3] Not available.

Mutual has no network rate card similar to that of NBC or CBS; it charges advertisers at the card rates of the stations associated with it. Mutual does not set these rates and has no control over them.

Mutual receives a 3½ percent commission on all proceeds, after agency commissions, from network programs broadcast over the facilities of its "members" and "participating members"; and 15 percent in the case of its "affiliated stations." All stations on the network, regardless of category, receive a 2 percent commission on the proceeds of programs which they sell on behalf of the network.

Mutual "affiliates" pay for the telephone circuits from their facilities to the nearest connecting point on the Mutual line. WOR and WGN, the two "member stations," each pay a share of Mutual's budgeted operating expenses; each was paying $3,775 per month at the time of the committee hearings. They also guarantee Mutual's telephone circuit expenses, and underwrite equally any operating deficit which Mutual may incur. Mutual's "participating members" have various arrangements. Colonial pays for its telephone circuit to the Mutual main line in New York; Don Lee contributes five-eighths of the telephone circuit expense from Chicago to the coast. Each contributes to Mutual's budgeted operating expenses equally with WGN and WOR. United Broadcasting Co. pays the cost of the telephone line connecting it with the Mutual system, plus $2,775 per month toward operating expenses. CKLW guarantees to Mutual all the proceeds up to $30,000 of annual net time sales of Mutual programs over its facilities. It pays Mutual 85 percent of the proceeds from the next $25,000 of such sales and 50 percent of sales in excess of $55,000.

Mutual contends that their associated stations receive a greater share of the proceeds from Mutual network business than do the stations associated with the other two national networks. This is true, since Mutual is a cooperative enterprise. It should be noted, however, that many of the expenses borne by NBC and CBS are, in the case of Mutual, borne by the stations. Whether or not, if computations on a basis comparable to those made in the case of NBC and CBS were possible, Mutual stations would be shown to receive a larger proportion of the network intake cannot be determined.

7. Network control over station rates

The rate at which NBC bills advertisers for the use of each outlet is specified in the NBC rate card, and also in the NBC affiliation contract with that outlet. The rate usually referred to as the "station rate" is the rate for an evening hour. The rate for other periods is derived by multiplying the evening hour rate by the appropriate fraction; one-half for a daytime hour, three-quarters for a Sunday afternoon hour and one-third for an hour after midnight.

NBC retains for itself effective control over network station rates. It may increase the network station rate of any affiliate, and it may decrease the network station rate of any affiliate upon 90 days' notice, if at the same time it reduces the rates of a majority of its affiliates. Moreover, it may decrease a single station's rate on 1 year's notice; but if it does so, the station has the option of terminating the affiliation contract. An outlet station does not have the power either to

313425—41——4

raise or lower its network rate during the period it is bound to NBC by an affiliation contract, the standard term of which is for 5 years.

Some time after 1935, a clause was incorporated in the standard NBC affiliation contract, which provides that NBC may reduce a station's network rate and compensation from network commercial programs to the extent that the station accepts from national advertisers "net payments less than those which NBC receives from the sale of your station to network advertisers for corresponding periods of time." This provision is intended to prevent outlet stations from securing such revenues as they might otherwise derive from the sale of time to advertisers for national spot business at rates lower than those set forth in the NBC rate card for national network business.

The network station rates of the outlets of CBS are set forth in the CBS rate card; but as a general rule they are not set out in the individual standard affiliation contracts. The rate for an evening hour is usually referred to as the "station rate." The rate for a daytime hour is derived by multiplying the evening hour rate by one-half, that for an hour after midnight by multiplying the station rate by one-third, and that for a Sunday afternoon hour by multiplying the station rate by two-thirds. A station does not have the power to change its network rate during the term of its affiliation contract. Although the standard affiliation contract is silent on the point, in certain of its contracts with its affiliates CBS has retained the power to change a station's network rates.

Mutual bills its advertisers for network programs at the rates established by the outlet stations themselves. Each outlet is free to change its rate at any time, and Mutual has no power to alter it.

C. NBC'S TWO NETWORKS—RED AND BLUE

The NBC "Red" and "Blue" networks are not separate and distinct entities with respect to the stations comprising them, the programs broadcast over them, their organization and personnel, or their property and equipment. Indeed, in certain respects there is not even the semblance of a distinction between the two networks.

As of September 1, 1938, 154 stations were licensed to or affiliated with NBC. Of these, 23 constituted the basic Red network and 24 the basic Blue network. Both these basic networks are located in the area from New England to Omaha north of the Mason and Dixon Line, which, although comprising only about one-third of the area of the United States, holds about two-thirds of its population.

Of the 107 affiliated stations not on either basic network, one was available only to the Red network and six were available only to the Blue network. Thus 23 basic and 1 supplementary station were associated only with the Red network; 24 basic and 6 supplementary stations were associated only with the Blue network. The remaining 100 NBC affiliates were supplementary to either the basic Red or the basic Blue network, at the option of advertisers. Individual stations within this group are often referred to as belonging to that network with which they are most frequently connected; but such designations may be erroneous for specific broadcasts.

NBC affiliation contracts do not specify with which network a station is to be associated, even in the case of stations actually on the basic Red and the basic Blue networks. Since the contracts omit all reference to the matter, NBC has the power to shift a station from the far more remunerative Red network to the less remunerative Blue network or vice versa at any time, regardless of the station's wishes.

With respect to programs as well as stations, the Red and Blue networks overlap. Where a program is carried over either the Red or the Blue basic network a distinction can be made. But those NBC sustaining programs which are broadcast over supplementary stations only are neither Red nor Blue.[26] NBC does not identify such programs, and there is in fact no way to label them.

The Red and Blue networks are not separate business enterprises, nor are they even two distinct operating divisions or departments within NBC. All its property, including studios, offices, and equipment, is equally and interchangeably available to both the Red and Blue networks. NBC announcers, musicians, talent, and engineers are used interchangeably; and, with two exceptions, no distinction is made in the duties of NBC personnel either in New York or in the field.

One exception is the sales department. A special division to promote Blue network sales was established in this department in 1938, and in December 1940, after the close of the committee hearings in this proceeding, the department itself was split into two sections, one for each network. At the same time, the program department was similarly split.

NBC does not allocate income or expenses between the Red and Blue networks; indeed, its treasurer testified that in view of the many ways in which operations intertwine, it would be practically impossible to allocate between them.

Additional evidence that the Red and Blue networks do not compete, and that NBC itself considers them integral parts of a single enterprise, is found in the company's discount policy. Discounts range from 2½ percent for advertisers who broadcast 13 weeks or more and whose gross billings total $1,000 a week or more, to 25 percent for advertisers whose gross billings total $1,200,000 a year or more. These discounts are based on combined billings of the two networks, and are granted regardless of whether one network is used or both.

---

[26] At the time of the committee hearings, NBC generally required that the basic Red network of 23 stations or the basic Blue network of 24 stations be purchased as a unit. There was the additional requirement in connection with the Red network facilities that in the evening between 8 p. m. and 10:30 p. m., an advertiser use a minimum of 50 stations. In the daytime, an advertiser was permitted to use less than all the basic Blue, but not less than the basic Red network. NBC supplementary stations were divided into 15 geographical groups largely for selling purposes, and an advertiser could add these stations to the basic networks in groups, and in some cases individually, to meet his merchandising problem.

CBS generally required an advertiser to purchase a minimum of 24 out of its basic network of 26 stations, but there were some exceptions to this rule during the daytime. The remaining stations affiliated with CBS, known as optional stations, were individually available to advertisers, with the exception of three groups which, because of the long wire haul from the basic network, were available only in units consisting of all or a majority of the stations in each group.

Mutual generally required advertisers to use a minimum of only three stations, WOR, WGN, and WLW, but an advertiser could use only two of them if he assumed the expense of the wire connection between them. The remaining stations associated with Mutual were for the most part available at the option of advertisers.

VII. THE EFFECT OF NETWORK-AFFILIATE RELATIONS ON COMPETITION IN THE RADIOBROADCAST INDUSTRY

The Communications Act "recognizes that the field of broadcasting is one of free competition."[1] In certain other industries, such as railroads, telephones, and bituminous coal, where competition has not been effective in protecting the public interest, Congress has substituted detailed governmental control of rates, prices, finances, or other matters for the principle of free competition. But in regulating radio, "Congress intended to leave competition in the business of broadcasting where it found it."[2]

It has long been a basic hypothesis of the American system that competition in a free market best protects the public interest. This hypothesis, moreover, has been given the force of law throughout the entire field of interstate commerce. For more than half a century contracts and combinations in restraint of trade, and monopolization or attempted monopolization of interstate commerce, have been outlawed.[3] The fundamental purpose of this legislation is "to secure equality of opportunity and to protect the public against evils commonly incident to destruction of competition through monopolies and combinations in restraint of trade."[4] The Sherman Act was enacted "to preserve the right of freedom to trade"[5] and it is "based upon the assumption that the public interest is best protected from the evils of monoply and price control by the maintenance of competition."[6]

The prohibitions of the Sherman Act apply to broadcasting.[7] This Commission, although not charged with the duty of enforcing that law, should administer its regulatory powers with respect to broadcasting in the light of the purposes which the Sherman Act was designed to achieve. In the absence of Congressional action exempting the industry from the antitrust laws, we are not at liberty to condone practices which tend to monopoly and contractual restrictions destructive

---

1 *Federal Communications Commission* v. *Sanders Bros. Radio Station,* 309 U. S. 470, 474.

2 *Id.*, p. 475.

3 Secs. 1 and 2 of the act of July 2, 1890 (26 Stat. 209), commonly known as the Sherman Act. Of particular pertinence here is sec. 1 reading in part as follows:

"Every contract * * * in restraint of trade or commerce * * * is hereby declared to be illegal. Every person who shall make any such contract * * * shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by fine not exceeding $5,000, or by imprisonment not exceeding one year, or by both said punishments, in the discretion of the court."

4 *Ramsay Co.* v. *Associated Bill Posters*, 260 U. S. 501, 512.

5 *United States* v. *Colgate & Co.*, 250 U. S. 300, 307.

6 *United States* v. *Trenton Potteries Co.*, 273 U. S. 392, 397.

7 This conclusion would be required even if the Communications Act were silent on the question. Sec. 313, however, expressly declares that the Federal antitrust laws are applicable to broadcasting: Sec. 313. "All laws of the United States relating to unlawful restraints and monopolies and to combinations, contracts, or agreements in restraint of trade are hereby declared to be applicable to the manufacture and sale of * * * radio apparatus and * * * to interstate or foreign radio communications." Sec. 3 (b). "'Radio communication' * * * means the transmission by radio of * * * sounds of all kinds * * *" Sec. 3 (o) "'Broadcasting' means the dissemination of radio communications intended to be received by the public * * *"

of freedom of trade and competitive opportunity. Had we liberty in this regard we should require a very clear showing that such practices or restraints, because of conditions peculiar to the industry, promote the best interests of the listening public. In any event, preservation of the fullest possible measure of competitive opportunity consistent with furnishing the public adequate broadcasting service is one of the elements to be considered in applying the statutory standard of "public interest, convenience, or necessity."

The nature of the radio spectrum is such that the number of broadcasting stations which can operate, and the power which they can utilize, is limited. The limitations imposed by physical factors thus largely bar the door to new enterprise and almost close this customary avenue of competition. NBC's brief, taking cognizance of this situation, states: "Free competition in any enterprise exists only when the field is open to everyone." The conclusion which NBC draws is that, because one of the usual concomitants of free competition is barred by physical factors, the members of the industry should be permitted to erect contractual barriers against any competition.

Precisely the opposite conclusion is required. An inherent restriction on competitive opportunity does not justify the superimposition of artificial restraints, but rather makes such restraints peculiarly onerous. Restrictive affiliation contracts might be tolerated if there were a dozen potential stations of comparable character in every city; they are intolerable when there are few cities which have (or can have) more than four stations of all kinds.

The very fact that in the broadcasting industry competition is restricted renders it all the more imperative that competition be not throttled by restrictive agreements. The words of Mr. Chief Justice Hughes, speaking for a unanimous Court in an important case, are applicable: [8]

> The fact that, because sugar is a standardized commodity, there is a strong tendency to uniformity of price, makes it the more important that such opportunities as may exist for fair competition should not be impaired.

The Commission has recently had occasion to emphasize the public benefits of competition among radio stations: [9]

> Competition between stations in the same community inures to the public good because only by attracting and holding listeners can a broadcast station successfully compete for advertisers. Competition for advertisers which means competition for listeners necessarily results in rivalry between stations to broadcast programs calculated to attract and hold listeners, which necessarily results in the improvement of the quality of their program service. This is the essence of the American system of broadcasting.

The benefits of competition are equally clear in the field of network broadcasting. If national networks compete for station outlets on the basis of performance, there will be a direct incentive to improve and expand the programs, both sustaining and commercial, which they offer to the public. Likewise, if stations are not tied exclusively to a single national network over a long period of time and if stations compete for access to one or another national network—a matter often essential to profitable operation—each will be stimulated to improve the quality of the programs which it offers and hence its value as an outlet of a national network. This two-way competition—among net-

---

[8] *Sugar Institute, Inc.* v. *United States*, 297 U. S. 553, 600. See also *United States* v. *Terminal Railroad Assn. of St. Louis*, 224 U. S. 383.

[9] *In re Spartanburg Advertising Co.*, Docket No. 5451, Jan. 9, 1940.

work organizations for station outlets and among stations for network affiliation—will insure the listening public a well-diversified, high quality program service.

Competition among stations will, however, necessarily remain a thing of shadow rather than of substance as long as conditions now prevailing are permitted to continue. As the facts set forth in this report demonstrate, profitable operation is often contingent upon a station's participation in national network broadcasting.[10] NBC and CBS now dominate this field; their ownership and operation of important radio stations and their restrictive long-term contracts with other stations enable them to maintain indefinitely their present monopolistic position.[11] These conditions prevent their one existing competitor (Mutual) from seriously encroaching on their domain and practically foreclose the possibility of new competition; affiliated stations are treated as, and constitute, mere adjuncts of NBC and CBS.

NBC and CBS contend that the networks compete, and compete vigorously. Certainly there is a considerable degree of competition among networks for advertisers and for listening audiences; but this does not mitigate the restraints found with respect to network-station relationships. In the radiobroadcasting field, three different markets must be distinguished—the market in which networks and stations meet advertisers, the market in which networks and stations meet listeners, and the intermediate or internal market where stations meet networks. It is in this intermediate network-station market that current practices have most directly restrained competition; no considerations of the extent to which the networks may compete for advertisers or listeners can conceal the extent to which they do not compete in the network-station market.

The restraints which we here consider have not been achieved in either of the two more common ways—through coalescence of the networks or through coalescence of the stations. Rather, they have been achieved through coalescence of some stations with one network and other stations with another. But the result is nonetheless to destroy the free market and to substitute for interplay of competitive forces a sort of monolithic rigidity. Stations bound by the usual 5-year exclusive contracts are not free to bargain with other networks for programs; networks are not free to bargain with those stations for time; and the door is closed against new networks. The result is to restrict the flow of programs from producers to listeners.

The present stratification in the field of network broadcasting is largely the result of the efforts of NBC and CBS to maintain their dominant position. The way in which the restraints in this field have

---

[10] It has been shown that in 1938 the 310 stations not affiliated with any national network had a consolidated loss of about $149,000, whereas the 350 remaining stations affiliated with some national network had a consolidated net operating income of about $15,000,000 (*supra*, p. 33). Moreover, the consolidated net operating income of NBC and CBS and the 23 stations which they owned or operated equalled nearly half the consolidated net operating income of the entire industry (*supra*, p. 33).

[11] On the question of the dominant position of NBC and CBS, it has been shown that stations affiliated only with either NBC or CBS represent over 85 percent of the total nighttime power of unlimited-time stations in this country (*supra*, p. 32). The ratio would not be materially altered by the inclusion of part-time stations or the use of daytime power ratings (*ibid*). As to the effect of long-term contracts, restrictive contract provisions, and network ownership and operation of stations in stratifying the present setup in the industry see *infra*, pp. 51–79.

grown up is significant both in understanding their actual effect, and the intent with which they were adopted:

(1) CBS, almost from the first, tied up its stations with contracts which had the obvious and calculated effect of removing them from competition for 4- and 5-year periods.

(2) NBC did not adopt the restrictions during the early years. Indeed, in 1931, NBC's president asserted with justifiable pride that NBC "holds its network stations together only by the superiority of its network program service and by the demand of listeners for NBC network programs." [12] But when a new network, Mutual, entered the market, NBC abandoned its reliance upon program superiority and listener demand and removed its stations from competition through 5-year exclusive contracts modelled on the CBS pattern. Mutual thus remained the only adherent to the theory of a free station-network market until 1940.

(3) Thereupon a fourth network organization was projected: Transcontinental Broadcasting System. The stations on the NBC and CBS networks were inaccessible. Mutual stations, however, were open to advances from the new network, but there were few desirable stations with which Mutual could offset such losses. Mutual, like NBC earlier, promptly introduced restraints into its more important affiliation contracts.

(4) The upshot of the whole business is that today only a negligible proportion of the Nation's total nighttime broadcasting wattage is free to bargain in the network-station market.

NBC and CBS oppose the opening of the network-station market to competition. Although requested at the oral argument to present proposals for the furtherance of competition in the industry, no such proposals have been forthcoming. Instead, both urge that they deserve a kind of protected status because of their pioneering and their "first comer" position. NBC says that regulations of the type we propose would make it "easier to reap where NBC has sown." CBS says that "the fruits of enterprise must be preserved."

Clearly the Communications Act neither grants, nor authorizes the Commission to recognize, the claim to a vested right which is asserted. The grant of a station license confers upon the licensee no vested right to continuous operation.[13] A network organization, which is superimposed upon station licensees, cannot give rise to rights superior to those upon which it itself rests.

A contention similar to that urged by NBC and CBS was squarely rejected in *Federal Communications Commission* v. *Sanders Bros. Radio Station*, 309 U. S. 470. It was there urged that the Commission, before authorizing construction of a new station, was required

---

[12] *In re National Broadcasting Co., Inc.* Testimony of Merlin Hall Aylesworth, Docket No. 1221, June 15, 1931, p. 43.

[13] Sec. 304 requires every applicant for a station license to waive "any claim to the use of any particular frequency or of the ether." Sec. 309 (b) (1) provides that the grant of a station license "shall not vest in the licensee any right to operate the station nor any right in the use of the frequencies designated in the license beyond the term thereof." That the grant of a station license confers no vested right is further conclusively shown by the authority given the Commission to refuse to renew a station license (sec. 309 (a)) and by the limitation of all station licenses to a maximum period of 3 years (sec. 307 (d)).

See also *American Bond & Mortgage Co.* v. *United States*, 52 F. (2d) 318 (C. C. A. 7, 1931), *cert. den.*, 285 U. S. 538.

to determine whether such action would cause economic loss to an existing licensed station. The Court, in holding that the Commission was not required to give such loss "separate and independent" consideration, said (p. 476):

If such economic loss were a valid reason for refusing a license *this would mean that the Commission's function is to grant a monopoly in the field of broadcasting, a result which the Act itself expressly negatives* * * * [Italics added.]

We are not aware that existing networks entered the field believing that they had exclusive franchises; nor are we aware that the networks have accepted the duties customarily associated with such franchises. So far as "preserving the fruits of enterprise" is concerned, we note that NBC and CBS are not immature enterprises which, having invested heavily in preliminary exploration, are now about to enjoy the fruits of their investment. Both have reaped, and reaped richly, almost since the time of their foundation. When the tremendous returns on investment which each has received, amounting in 1938 alone to 80 percent of the investment in tangible property in the case of NBC and 71 percent in the case of CBS, are pointed out, both defend such rates of return by insisting that networks are service enterprises in which profits are not a function of investment. They can hardly argue simultaneously that their investment, already returned many times over, is an essential element in radiobroadcasting which deserves to be protected by monopolistic rights.

The established position of NBC and CBS in the industry is a reason against, rather than for, permitting them to consolidate that position by restrictive covenants or by ownership or operation of stations. Their financial resources, diversified activities, trade contacts, and established listener goodwill [14] impose handicaps, difficult enough to overcome, upon any rival in the field of network operation.

Mutual states that there should be competition in the broadcasting field, but proposes, for example, that exclusivity be abolished and option time restricted only with respect to those stations serving cities with three or fewer comparable full-time stations. The effect of Mutual's proposals would be to open up the field to competition among the existing networks; but these proposals would buttress their positions vis-à-vis all others. Such a result, while no doubt welcome to Mutual, would hardly ensure the degree of competition which the Communications Act envisions and the public interest requires.

A constantly improving service to the public requires that all the competitive elements within the industry should be preserved. The door of opportunity must be kept open for new networks. Competition among networks, among stations, and between stations and networks, all of which profoundly affect station service, must be set free from artificial restraints. It is not in the public interest for any licensee station to make arrangements which tend to close that door or restrain that competition. Pursuant to the mandate of Congress that it grant licenses and renewals only to stations operating in the public interest, this Commission must refuse further to license stations which persist in these practices.

[14] See *supra*, pp. 30 *et seq*.

A. EXCLUSIVE AFFILIATION

1. Licensee allowed to broadcast programs of only one network

NBC and CBS, by contractual arrangements with their affiliates, prevent the great majority of them from broadcasting programs of any other national network. This restriction hinders the development of other national networks. The evidence is convincing that the purpose, as well as the effect, of exclusive affiliation, is to prevent the growth of other national networks.

Since its first contract in 1927, CBS has had an exclusive affiliation clause designed to obstruct what it calls "wildcat networks." NBC, however, did not adopt its exclusivity clause until 1936, after certain of its affiliates had begun to broadcast Mutual programs. The NBC vice president in charge of station relations testified at the committee hearings:

> At the very outset, this was something which we had assumed, this exclusivity of arrangements between the network and the station. It was something that we didn't think had to be put into writing and it was not until about 1936 that it did become phrased in this particular way, and that was only due to the fact that these exceptions were beginning to grow up where there was not that recognition by the stations of the viewpoint which I have expressed (Hedges, Tr. 1859).

NBC's assumption apparently had not been shared by its affiliates; for a substantial number of them had, in fact, carried Mutual programs. When the rise of Mutual posed the question of exclusivity as a practical problem for the first time, NBC countered with the present exclusivity clause. It is a fair inference that NBC's desire to entrench its position and to hinder the growth and development of a new national network played an important part in the decision to incorporate an exclusivity clause in the standard NBC affiliation contract.

But whatever the purpose of the exclusory clause, there is no doubt as to its effect. At the present time there are 45 cities with a population of more than 50,000 served by NBC or CBS or both to which Mutual cannot obtain any access whatever. In over 20 more, including Cleveland, Indianapolis, Houston, Birmingham, Providence, Des Moines, Albany, Charlotte, and Harrisburg, it can obtain only limited access to facilities. The difficulties facing a new network under these circumstances would be well-nigh insurmountable.

Of the 92 cities of more than 100,000 population, less than 50 have 3 or more full-time stations, even including locals, and less than 30 have 4 or more. Since a national network must have outlets in the more important markets of the country, it is readily apparent that exclusive network affiliation contracts severely limit the number of national networks which may do business.

But figures on the limited number of stations outside the NBC and CBS domain do not fully show the extent of their present dominance. NBC and CBS have, by their exclusive contracts, tied up the largest stations in the most desirable markets. This is evidenced by the fact that of the 30 clear-channel stations in 1938, there were 28 licensed to or affiliated with NBC or CBS; and this dominance of the clear channels is typical of NBC and CBS dominance with respect to high-power regional stations as well. Thus even where stations are available to a new network, they are, with few exceptions, locals or low-power regionals not able to compete effectively with the superior stations under exclusive contract to NBC and CBS.

As previously noted, there are natural obstacles making the formation and operation of a new network difficult enough at best; the existence and enforcement of exclusive contracts make it practically impossible. Obstacles should not thus be heaped one upon the other. Exclusive contracts, which foreclose the possibility of new networks, deprive the public of the improvement in station program content which could reasonably be expected to flow from competition by new national networks.

In the many areas where all stations are under exclusive contract to NBC or CBS, the public is deprived of the opportunity to hear Mutual programs. Restraints having this effect are to be condemned as contrary to the public interest irrespective of whether it be assumed that Mutual programs are of equal, superior, or inferior quality. The important consideration is that station licensees are denied freedom to choose the programs which they believe best suited to their needs; in this manner the duty of a station licensee to operate in the public interest is defeated. The Mutual programs which the stations would broadcast if permitted freedom of choice are, in these areas, withheld from the listening public. In addition, the very fact that Mutual is denied access to important markets immeasurably restricts its ability to grow and to improve program quality.

Not only is regular Mutual program service banned from large areas, but even individual programs of unusual interest are kept off the air. A concrete example of the manner in which exclusivity clauses operate against the public interest may be seen in the broadcasting of the World Series baseball games of October 1939. Mutual obtained exclusive privileges from the baseball authorities for the broadcasting of the series with the Gillette Co. as commercial sponsor. Thereupon it attempted to obtain time from various stations, including stations which were then under exclusive contract to NBC and CBS. CBS and NBC immediately called upon their outlet stations to respect the exclusive provisions of their contracts. Disregard of this reminder would have jeopardized a station's rights under the contracts. This prevented certain licensees from accepting a program for which they believed there was public demand and which they thought would be in the public interest.[15] It also deprived the advertiser of network advertising service in some areas, and prevented the licensee from receiving income which could have been obtained from acceptance of the program series. As a result, thousands of potential listeners failed to hear the World Series of 1939.[16]

[15] In a footnote to its supplementary brief, CBS contends that "Mutual was the real party at fault, if any existed. Columbia offered to have *its* stations carry the broadcast, the sole condition being that *it* not be forced to advertise its competitor, Mutual" [Italics supplied.] Since it is patent that compliance with this condition was impracticable, the offer was a mere gesture. Moreover, this CBS argument assumes that the affiliated stations in some way belong to CBS. The position seems to be that when an affiliate broadcasts a Mutual program, CBS is advertising Mutual. This confuses a broadcast by an affiliate of CBS with a CBS network broadcast. The network has wide latitude to advertise or refrain from advertising anything it pleases on its network programs. But it is the stations which are licensed to utilize the radio facility in the public interest, and they should be free to accept or reject programs which are in the public interest, whether or not CBS approves.

[16] Mutual refused to allow other stations within the territory of Mutual outlets to broadcast the program. This was because of its practice of respecting the territorial exclusivity of its affiliates. *Supra*, p. 36.

Only strong and compelling reasons would justify contractual arrangements which have the results we have described. We turn, therefore, to a consideration of the arguments proffered by NBC and CBS in support of their contention that the exclusivity clauses are necessary to the proper operation of network broadcasting.

NBC seeks to justify exclusivity on the ground that it eliminates "confusion" on the part of the radio audience concerning the affiliation of any particular station and enables the listening audience to know where to turn for the programs of any given network. But it is a well-known fact that audiences are keenly aware of the quality and merit of particular programs and follow their favorite programs from station to station. Numerous ratings of programs show that the power of programs to attract listeners varies widely among programs broadcast over the same station. Indeed, the whole effort to improve programs by spending large sums on talent and material is founded upon the theory that good programs attract large audiences. NBC's chief statistician testified that listening audiences do not stay tuned to a particular station but shift around to hear certain programs:

> It [a survey of listening audiences] merely shows that there are wide shifts of the audience from station to station, depending on programs; that the audience does not stay with any particular station throughout the morning or afternoon; in this case only the morning. There are wide shifts of programs as listening increases and decreases, depending upon the programs that happen to be on. There is no constant level of listening, nor constant level of listening to any one station (Beville, Tr. 418–19).

NBC's fear of listener confusion is apparently not shared by NBC's chief statistician.

A second argument advanced by NBC to justify exclusivity is that network broadcasting is a joint venture in which NBC spends large sums on sustaining programs to build up goodwill for station and network alike. It is urged that it would be unfair to NBC for an affiliated station, by disposing of its time to another network, to trade on the goodwill which has been built up through the broadcasting of NBC programs, and that it would remove the incentive for furnishing good sustaining programs to its affiliates.[17]

For various reasons this line of argument also fails to persuade. If we assume that NBC's incentive for supplying good sustaining programs to affiliates is its desire to build up a listening audience for NBC commercial programs, this does not aid its argument. For

[17] "In effect, network broadcasting is a joint enterprise. It is a joint enterprise necessarily because the National Broadcasting Co. has no voice, no articulation without the transmission of its programs by its stations.

"Being a joint enterprise, it creates a goodwill which is enjoyed by both the stations and the network, and for one party to be faithless to the other to the extent that it barters the goodwill which has been built through the broadcasting of NBC programs by disposing of its time to another network is unfair to the National Broadcasting Co. as it would be unfair to any other network having similar affiliations and providing a similar service to its audience, and to the station * * *

"There would be no incentive for the National Broadcasting Co. to continue to serve its stations with such a vast amount of sustaining service if it were reduced to a status of a mere time brokerage, as it would be in the case that a station could play fast and loose with its affiliations between networks" (Hedges, Tr. 1853–54).

"Obviously, if a network spent money, as we are doing, to develop the popularity of an individual broadcasting station in some territory, if we gave them sustaining programs and they attracted a listening audience and they built up circulation, and then some other organization came along that did none of these things, but just had a commercial program, and asked that broadcasting station to take their program and put behind it the goodwill and the circulation and the pioneering that had been done by whoever built that station up, of course, that somebody would have a temporary advantage, but American broadcasting would have a loss" (Sarnoff, Tr. 8521).

this would only give NBC a legitimate interest in seeing that the station did not broadcast poor programs during its non-NBC time. It is hardly to be presumed and, indeed NBC does not contend, that a station given free rein would choose a program from another network less attractive than the program which would otherwise have been broadcast.

The evidence introduced at the committee hearings leads to the conclusion that the elimination of exclusivity will not bring any deterioration in the overall quality of network sustaining programs. Indeed, as an historical matter, NBC supplied its affiliates with sustaining programs for some 10 years before it adopted exclusivity. No attempt was made to show that the introduction of exclusivity improved in any way the quality of the sustaining programs furnished by NBC to its outlets.

Moreover, sustaining programs are not a gratuity; they are sold like any other service.[18] From 1926, when NBC first began broadcasting, until 1935, a period of about 9 years, NBC charged its affiliates for its sustaining programs. CBS during most of the first year of operation also charged affiliates for sustaining programs. But after NBC and CBS abandoned direct payment for sustaining programs, affiliated stations were still required to furnish a valuable *quid pro quo* for these programs. The changed method, which is now in effect, provides that affiliated stations receive no compensation for a specified number of hours of network commercial programs, and reduced compensation for certain additional hours. To the extent of these hours, the network is paid by advertisers but does not have to share its receipts with station licensees. In short, stations pay handsomely for sustaining service, just as they always have done in the past. If NBC and CBS do not supply adequate sustaining programs, we cannot believe that others will not be ready and willing to take their place once the field is opened to them.

As we point out elsewhere in this chapter, the public interest will be better served if networks compete for outlet stations. Such competition undoubtedly will encourage the networks to supply sustaining programs whose good quality will induce stations to carry their commercial programs.

We are driven to the conclusion that the real purpose and function of NBC's exclusivity is to prevent competing networks from making any use of the audiences of its affiliates. But those audiences are not NBC's to use or withhold as it sees fit, even though NBC claims that they were attracted in part by virtue of its sustaining programs. The licensee must remain free to use its time and facilities, when they are not being utilized by NBC, in any way that it sees fit in the public interest. No station should be permitted to enter into an exclusive agreement which prevents it from offering the public outstanding programs of any other network or hinders the entrance of a newcomer in the field of network broadcasting.

Finally, it is broadly argued by NBC that the elimination of exclusivity will destroy the entire fabric of network broadcasting. "Destroy that provision," stated the chairman of the board of NBC, "and you will have destroyed the American system of network broadcasting." These forebodings are in strange contrast to the words of a

[18] *Supra*, pp. 37–44.

former president of NBC who testified that NBC "holds its network stations together only by the superiority of its network program service and by the demand of listeners for NBC network programs".[18]

The testimony of NBC's chairman must also be read in the light of his statement that he did not believe in competition between networks for stations. He testified: "The competition, it seems to me, is in the program end, rather than in the facility end, and this is as it should be." We cannot agree that so essential a factor in the operation of a network—the number and character of the affiliated stations which are its customers—should be removed from the field of competition. We cannot agree that the field should be forever limited to the present incumbents.

The president of CBS contends that the freedom of an affiliate to broadcast the programs of any network might be a stimulus for what he called "wildcat" networks operated by "opportunists who would have no permanent investment":

> If Columbia continued to have a call on station time but didn't have the exclusivity clause, the station could take the program from any network and that might be a stimulus for the so-called wildcat network.
>
> * * * * * * *
>
> I believe that if the present system were disturbed there would develop a class of opportunists who would have no permanent investment, who might have their office in their hat, who would be competing for temporary affiliations, with the result that the important elements of responsibility and reliability and high standards would be seriously impaired to the detriment of the public (Paley, Tr. 3464, 3465).

Obviously, CBS' exclusivity clause, assertedly designed to prevent "wildcat" networks, would as effectively preclude the competition of responsible networks. Indeed, CBS has a far greater stake in precluding the establishment of responsible networks which could offer real and continued competition to it than it has in barring the door to newcomers lacking in reliability. Their deficiency in this respect would bring their quick exit.

It is interesting to note that in another connection, in arguing that the rate of return upon its invested capital was not too high, CBS took a very different position on the importance of capital in network broadcasting. The brief states: "Broadcasting, as any other advertising enterprise, is a service business, the value of which is not dependent upon or determined by the value of the tangible assets devoted to the business."

The president of CBS also testified that there was no reason for organizing another network because a new network could not do any better than CBS was doing:

> I cannot see any advantage in organizing something new which I do not think would have any particular advantages or could do a particular job in any better fashion than we can do it. I don't think the public interest is involved just because two people happen to supply a service as against having one person supply an adequate service, especially since by having the one person supply the adequate service we can have greater solidity and permanence of the very thing he is trying to build up (Paley, Tr. 3556).

This attempted justification of exclusivity, however, fails to take into account the function of competition in our economy. CBS programs may be good; they are not perfect. CBS has not been granted an exclusive franchise to engage in network broadcasting; it has no

[18] *Supra*, p. 49.

right to exclude others from the field on the ground that it is already furnishing adequate service to the public, or on any other ground. Competition is in the public interest not because the particular service offered by a new unit is better than the existing service, but because competition is the incentive for both the old and the new to develop better services.

Both large network organizations also contend that, were it not for exclusivity, the station in each community with the best coverage would get all the superior programs; the less favored stations would get only the leftovers. As a result, they argue, existing inequalities in facilities would be accentuated and effective competition by the small stations rendered impossible. This solicitude for the smaller station is not easy to reconcile with the NBC and CBS policy of tying up the best possible stations in a city and refusing their programs to the smaller stations. The contention comes with little grace, too, from network organizations whose restrictive practices have tended to prevent the rise of new networks which might supply these less favored stations with programs.

Nor do we believe that the elimination of exclusivity will have the predicted results. On the contrary, its elimination should lead to an increased number of networks and, consequently, a larger supply of available network programs and a wider latitude for all stations in obtaining network programs. Then, too, there should be a gain in quality as well as quantity as a result of increased competition among networks for the time of outlet stations. Not only the more powerful stations, but those with less desirable facilities, and the public as well, will benefit.

From a practical standpoint, this contention by the networks overlooks the highly important matter of cost of time. The large stations in each city cannot monopolize the best commercial programs unless the advertising sponsors are willing to pay the higher rates charged by such stations. A great variety of factors will affect the sponsors' decisions on this matter. To be sure, if a sponsor desires effective coverage of all his best markets on a national scale, he will not be content with a network of low-power stations; as we have seen, the fact that NBC and CBS have tied up the best facilities in every important market has been the main obstacle to other networks. But in determining precisely how many high-powered stations should be purchased, each sponsor will want to consider, in the light of his radio advertising budget, such matters as the geographical location of each station in relation to his merchandising problem, its ratio of urban, suburban, and rural listeners, the income status of its audience, and numerous other such matters. Facilities highly desirable for one advertiser may be wasteful for others.

A glance at the network rates for these big stations is sufficient to show the importance of the cost factor. In Louisville, Ky., for example, there are four stations: a 50-kilowatt clear-channel station affiliated with CBS, a 5-kilowatt regional station affiliated with NBC's Red network, and two low-powered local stations, one of which is affiliated with Mutual and the other with NBC's Blue network. The full hourly rate for the local station is, in each case, about $120; for the regional station, $200; and for the big station, $475. Clearly, the big station will not be able to draw commercial programs away from the regional station unless the sponsor is willing to pay well over twice as much for the privilege. An advertiser who has been utilizing one of the local stations would have to quadruple his payments.

Applying the same test on the basis of some 25 cities suitable for a "basic" network, and of a 52-week program series, the results speak even more eloquently. If, in each of those cities, the program series were to be furnished to the most powerful station, the cost to an advertiser would apparently exceed by roughly $50,000 the cost of using the CBS or the NBC Red networks. If, in addition, the advertiser wished to cover the dozen or so cities which have 50-kilowatt stations but which are not included in any basic network, the advertiser would pay, for a 52-week series, roughly $37,000 more if he used the 50-kilowatt station in each city than if he used the CBS or NBC Red network stations in those cities.

Perhaps, in some cases, an advertiser will be willing to pay the additional amounts required to secure an unusual number of large stations for his program. But it is also likely that, in other cases, advertisers will seek to lower their costs by using fewer high-powered stations. The elimination of exclusivity, accordingly, seems likely to introduce a greater amount of flexibility into the situation by giving advertisers a wider range of choice with respect to rates and coverage.

Finally, if the dominant stations should take commercial programs during the more desirable broadcasting hours to the exclusion of public service programs, they would undermine their own position. Degeneration in the quality and variety of their programs might cause them to lose listeners, and bring about a weakening of their competitive commercial situation. Furthermore, stations enjoying the benefits of a public license have an obligation to render the public its due in the form of the best program service that the capital and intelligence of the licensee permits. This obligation is particularly clear where the license authorizes the use of high power, with the concomitant benefits of coverage, opportunity for profit, and exclusion of others from the spectrum. Accordingly, such tactics would render the dominant stations vulnerable to applications for their facilities by other stations or persons willing to furnish a better-rounded service.

Our conclusion is that the disadvantages resulting from these exclusive arrangements far outweigh any advantages. A licensee station does not operate in the public interest when it enters into exclusive arrangements which prevent it from giving the public the best service of which it is capable, and which, by closing the door of opportunity in the network field, adversely affect the program structure of the entire industry.

2. Network allowed to send programs to only one station

Hitherto we have dealt only with exclusivity of affiliation which obligates an outlet to broadcast the programs of only one national network. The correlative of this exclusivity is territorial exclusivity, whereby the network agrees not to transmit its programs to any other station in the "territory" of an existing affiliate.

The NBC vice president in charge of station relations testified that fidelity of the network to the station as well as of the station to the network is inherent in the American system of network broadcasting. He testified further that about the same principles apply to territorial exclusivity as to exclusivity of affiliation. He added, however, that

NBC had granted territorial exclusivity as a matter of contract right in only a few cases. Such exclusivity is granted to a station most reluctantly by NBC, and only after what he characterized as a "knock-down and drag-out fight," because, according to the witness, "the less restrictions that we have upon us are always to be preferred." There is no evidence in the record, however, that NBC ever sends its programs to other stations in the same area as its outlets, and the testimony of NBC's chairman would indicate that it does not.[19]

CBS, on the other hand, regards fidelity of the network to the station more rigorously. In the very provision of its affiliation contract which makes its affiliates exclusive CBS outlets, the affiliate is granted protection against the competition of CBS programs from other stations:

> Columbia will continue the station as the exclusive Columbia outlet in the city in which the station is located and will so publicize the station, and will not furnish its exclusive network programs to any other station in the city, except in case of public emergency.

Mutual grants its associated stations territorial exclusivity. At the time of the committee hearings, five organizations, including the Don Lee regional network, were given this protection against competition in their affiliation contracts; and, as a matter of practice, Mutual affords similar protection to its other outlets.

The question of territorial exclusivity is an important one because, among other reasons, network affiliates take only some of the programs offered them by the networks. With few exceptions,[20] stations may select freely from among the sustaining programs of their respective networks those that they want to broadcast and reject the others. An affiliate may reject a sustaining program because of its quality, or because it does not fit the program structure for a given day, or for any reason whatsoever. The affiliate's right to reject network sustaining programs is not restricted in the same way as its right to reject network commercial programs.[21]

Territorial exclusivity arrangements are important from the point of view of over-all program structure. To be sure, usually it would be wasteful duplication of service for a network simultaneously to send identical programs to stations whose service areas approximately coincide. If the only effect of territorial exclusivity were to prevent duplication, no fault could be found. But exclusivity goes much further; it protects the affiliate from the competition of another station in the same area which may wish to use network programs not carried by the affiliate.

Under territorial exclusivity, programs rejected by affiliates, sustaining or commercial, may not be offered by the network to other stations in the service area of the affiliate which rejects the program. An example of the adverse effect this may have upon the public is given in a brief filed August 7, 1940, by station WBNY at Buffalo, N. Y.[22]

---

[19] In answer to the question: "Do you think it equally sound to say that the network ought to obligate itself to the station to render service exclusively to that station in the area which is served by that station?", the chairman of the board of directors of NBC said: "I think so, except where it is known to be rendering service to another station, where it is known in advance that it does so; but, by and large, I should think that that obligation ought to be reciprocal; yes" (Sarnoff, Tr. 8522).

[20] *Supra*, p. 40.

[21] *Supra*, p. 38.

[22] The facts set forth by WBNY were not controverted by any party at the oral argument or in the supplementary briefs.

WBNY related that Mutual outlets in Buffalo rejected a sustaining program series known as "The American Forum of the Air," but that its efforts to obtain this program were futile. Consequently, this worth-while program was not broadcast to the Buffalo area despite the desire of WBNY to carry it.

It is not in the public interest for the listening audience in an area to be deprived of network programs not carried by one station where other stations in that area are ready and willing to broadcast the programs. It is as much against the public interest for a network affiliate to enter into a contractual arrangement which prevents another station from carrying a network program as it would be for it to drown out that program by electrical interference.

This is not to say, of course, that all programs not carried by an affiliate must be offered to all other nearby stations. Nor need sustaining programs be offered free of charge. Suitable arrangements for compensating networks for sustaining programs and stations for commercial programs will be arrived at between the parties. The crucial point is that it is not in the public interest for a station licensee to enter into an arrangement with a network to preclude other stations in the area from broadcasting network programs which it rejects.

B. LONG-TERM AFFILIATION CONTRACTS

Another way in which the national networks obstruct the growth of new networks is by means of long-term contracts with their affiliated stations.

The standard NBC affiliation contract is for a term of 5 years with the right granted to NBC, but not to the station, to terminate the contract upon a year's notice. The record in this proceeding shows that the purpose of the 5-year term is to prevent the affiliates from becoming affiliated with another national network. Perhaps the most conclusive evidence is the fact that the term of the NBC contracts was changed from 1 year to 5 in 1936, soon after Mutual was launched. According to the NBC vice president in charge of stations relations, NBC adopted the 5-year plan because competitors were taking away its stations and NBC wanted to keep its network intact:

> Our present contracts run up to 5 years. The reason for that was simply this. With a contract of this nature, which I have just described, where a station may cancel upon a year's notice, we were exposing ourselves to our competition. Our competition, so we were informed, were perfectly willing to sit down and negotiate contracts with such of our affiliates as they desired and bide their time for the year to elapse before they could take over the stations.
>
> It seemed rather poor business for us to leave ourselves in such a vulnerable position and for that reason we decided to further stabilize our business and to stabilize the network business not only for our own benefit but for the benefit of all those affiliates associated with us, by retaining the network in as intact order as was possible subject, of course, to the individualities that were involved and whose individual determinations in each case might induce further change within the network. For that reason, we adopted a 5-year plan (Hedges, Tr. 1819–20).

Furthermore, the change that occurred in 1936 affected only the obligation of the station, but not that of NBC. NBC retained the right, upon 12 months' notice, to terminate the contract with or without cause. NBC's contractual obligation was thus limited to a single year. There was no effort to stabilize the network-affiliate relationship on a 5-year basis. The new contract was clearly an effort to tie up the station for 5 years, if the network wanted to utilize it that long.

There was some testimony and argument to the effect that long-term contracts are indispensable to stable and efficient network operations, because NBC itself has certain long-term commitments. The argument is made in NBC's original brief that it entered into leases for studio space and invested large sums in equipment on the strength of these 5-year contracts, which would not have been done without contractual assurance that these studios would be useful for more than 1 year.

Analysis of the evidence shows that this contention is in the nature of an afterthought. From 1927 to 1938 NBC built 17 studio plants at a total cost of $7,719,200. Eleven of these seventeen studio plants, built at a cost of $5,519,700, or 71 percent of the total, were completed prior to 1936, while the term of the NBC affiliation contract was still only 1 year.

Nor is NBC's argument as to the need for long-term contracts consistent with its declared policy of "flexibility" in its dealings with the stations. NBC may decrease the network station rate of any one of its affiliates upon 90 days' notice if at the same time it reduces the rates of a majority of its affiliates; it may increase the network station rates of its affiliates; and it may terminate any of its affiliation contracts on 12 months' notice. NBC insists upon those rights on the ground that the network business is dynamic and ever changing, and that NBC must be in a flexible position at all times:

> This clause gives to NBC a degree of flexibility in respect to rates which is absolutely essential to meet any possible general reduction which might be made by other advertising media.
>
> It must be remembered that the depression, recession or whatever you want to call it, is still upon business generally although there has been some upturn. Nevertheless, when you are with stations for a period so long as 5 years, there is no telling what may happen and if a depression were to suddenly come about it might be very necessary in order to keep the network functioning as a national advertising medium to reduce those rates to meet the competition of national magazines or other media which advertisers may employ for national advertising purposes (Hedges, Tr. 1824).

However, NBC failed to give any reason why the network-affiliate relationship should be dynamic for the purpose of giving NBC flexibility but static for the purpose of binding the affiliates for long periods of time.

NBC also contends that network-outlet contracts for a single year are impractical for the reason that a national advertiser's use of broadcasting is quite different from a spot announcement which a local merchant may buy in an effort to find immediate customers. It is pointed out that the most important return which any national advertiser secures from his expenditures in broadcasting is the goodwill of listeners resulting from attractive programs over the same stations for a period of years. It is urged that national advertisers must have some reasonable assurance that the same stations will be available for several years, or they may be expected to take their advertising to other media which can assure continuity.

The evidence in the record fails to support this contention. The NBC vice president in charge of sales testified that NBC does not make any commitments with advertisers for a period longer than 1 year because it is difficult in the broadcasting business to determine what the situation will be after a year:

> We do not make commitments beyond 52 weeks because it is pretty difficult in this business to determine exactly what the situation would be after a year and we do not want to commit ourselves beyond a year. We don't know what new regulations may develop; what we may find it necessary to do. This radio business has changed pretty rapidly since it started, and we always want to be in the flexible position, as far as we are concerned, so that we can make any necessary moves, and we don't want to be cramped by longer than 52-week contracts (Witmer, Tr. 2166–2167).

This testimony shows conclusively that NBC does not give advertisers any assurance that they may use its facilities beyond a period of 1 year.

To summarize, NBC does not believe that there should be competition between networks for outlet stations, and adopted the 5-year affiliation contract for the purpose of precluding such competition. NBC's chairman testified that, if contracts with affiliates were for 1 year instead of 5, the stability of networks would be seriously affected; for there would be competition between the networks for stations. He said that the competition was, and should be, in programs rather than in facilities.[23]

The term of the standard CBS affiliation contract, like that of the NBC contract, is for 5 years. CBS, but not the station, may terminate it upon 1 year's notice. As evidence of a viewpoint similar to that of NBC, note should be taken of the following testimony of the CBS vice president in charge of station relations:

> It has been my personal experience that a length of time up to 5 years has been the practical period of time (for term of affiliation contracts) because should there be a year-to-year situation you would be continually renewing and renegotiating and renewing contracts, and you would also be *vulnerable from a competitive standpoint* (Akerberg, Tr. 3719). [Italics supplied.]

The long-term contracts of CBS and NBC were intended to, and do, prevent any real competition in the network-station market. The public is thus deprived not only of the advantages that might flow from the establishment and development of new networks, but it also loses the benefits of competition between existing networks for the better outlets.

Regardless of any changes that may occur in the economic, political, or social life of the Nation or of the community in which the station is located, CBS and NBC affiliates are bound by contract to continue broadcasting the network programs of only one network for 5 years. The licensee is so bound even though the policy and caliber of programs of the network may deteriorate greatly. The future necessities of the station and of the community are not considered. The station licensee is unable to follow his conception of the public interest until the end of the 5-year contract.

---

[23] Q. "If your contracts with your affiliated stations were for, say, a year instead of 5 or more years, do you think that that would materially affect the stability of the networks?"

A. Yes; I think not only materially but seriously."

Q. "Well, now, just how? When the contracts expire I suppose that there would be competition with the other networks for that affiliation?"

A. "There would be competition for the stations, competition between the networks, and since a network, in order to exist, must have certain stations on its network, the local stations would then deal with the highest bidder, and other questions would become subsidiary to that, and there would be a continuous battle back and forth to obtain the more desirable stations on these networks. That would throw the whole structure into a state of confusion. A year does not mean very much. The listener also has become accustomed to dialing to his favorite station on a certain network, and he would continually find that he would have to dial elsewhere. *The competition, it seems to me, is in the program end, rather than in the facility end, and this is as it should be*" (Sarnoff, Tr. 8542). [Italics supplied.]

The option of CBS and NBC to terminate the contract upon a year's notice, without a correlative option in the affiliate, gives the network the whip hand over the outlet. Such an arrangement is lacking in mutuality.

In general, Mutual's contracts with its affiliated stations permit both parties to cancel their affiliations after the first year, upon a year's notice. The contracts between Mutual and its seven stockholders, however, are for a 5-year period, but give to those stockholders, rather than Mutual, the privilege of cancelation upon a year's notice at any time after the first 2 years.

We conclude that long-term network affiliation contracts remove the choice outlets from the network-station market and thus prevent the establishment and development of new networks; that, under such contracts, stations become parties to arrangements which deprive the public of the improved service it might otherwise derive from competition in the network field; and that a station is not operating in the public interest when it so limits its freedom of action.

We are supported in this view by the fact that Congress has foreclosed vested rights in the field of radio broadcasting. Congress also provided that no radio station should be licensed for more than 3 years; licenses issued by the Commission in fact run for only 1 year. While the network-outlet contract is necessarily contingent upon the Commission's granting license renewals, we nevertheless conclude that, as a matter of policy, no radio station should even partially or contingently bind over its facility to a network for as long a period as 5 years.

With respect to the maximum term of the contract, no showing has been made that there is any business need for an affiliation contract longer than 1 year. On the contrary, competition will be strengthened if opportunity is provided for annual readjustments on the basis of comparative showings of networks and stations. We conclude, therefore, that station licensees will best serve the public interest if they refrain from entering into such contracts for periods in excess of 1 year and hold themselves free to negotiate with networks annually.

C. NETWORK OPTIONAL TIME

At the time of the committee hearings, both NBC and CBS had network optional time provisions in the affiliation contracts with their outlet stations. Mutual entered into similar arrangements with its 7 stockholders early in 1940, covering some 50 stations owned or operated by the stockholders or affiliated with their regional networks.

Upon 28 days' notice NBC may call upon its outlet stations to carry a commercial program during any of the hours specified as network optional time. This covered the entire broadcast day for 29 outlets of NBC in the far west and, for substantially all the rest of its affiliated stations, 8½ specified hours on week days and 8 specified hours on Sundays. Three and a half evening hours are included each day, and 4 evening hours on Sunday. The evening hours between 8 and 11, which are included within the NBC option, are the most profitable and valuable of the broadcast day.

In spite of the fact that it optioned such substantial periods of time, in 1938 NBC used for network commercial programs only 58.1 percent of the optioned time of stations on the basic Red network, and only 19.4 percent on the basic Blue network. The percentages, of course, would be far smaller if figures for all the supplementary stations were included, because the basic stations, located in the important markets and usually available to advertisers only as a group, carry far more network commercial programs than the supplementary stations.

NBC affiliates may utilize the optioned time only subject to 28 days' notice that NBC wants that time. This limits severely their ability to sell their own time. The NBC vice president in charge of sales testified that 13 weeks is the minimum time necessary for an advertising campaign to take hold:

> We feel in radio a new advertiser is likely not to feel the benefits of his radio advertising until he has been on the air a considerable length of time. It depends upon the circumstances. It may be necessary for him to be on 26 weeks before he begins to get a real lift from his radio advertising. He may be on only a matter of a few weeks; one program may give him a tremendous reaction. It all depends upon the circumstances, but by and large we feel that 13 weeks of radio advertising is about the minimum from which an advertiser can expect to get results (Witmer, Tr. 2165–2166).

To the extent that, and in the field where this is true, the provision for option time would make it impossible for the stations themselves to make any effective contracts for advertising programs.

To be sure, it is less difficult to shift the time of a local commercial program involving only one station than that of a network commercial program. Nevertheless, shifting a local commercial program may seriously interfere with the efforts of a sponsor to build up a regular listening audience at a definite hour, and the long-term advertising contract becomes a highly dubious project. This hampers the efforts of the station to develop local commercial programs and affects adversely its ability to give the public good program service.

NBC's time options likewise affect the ability to serve the public interest of those few of its affiliated stations (not subject to an exclusivity clause) which are affiliated also with Mutual. As of January 17, 1939, 25 NBC stations also served as outlets of Mutual. NBC's contractual right to utilize the time of these stations on 28 days' notice gives it the whip-hand over any other network broadcasting over these stations. Mutual's general manager gave testimony as to how this works out:

> For an example, a program would be developed to go on three radio stations at a particular hour. It would become a popular program; they would want to expand the program; we would find ourselves in the position of say, [sic] "If you desire to expand the program, we must provide certain facilities, subject to 28 days' notice." Some one else in direct solicitation of the same thing said, "We can supply either a different facility, either a better facility, or in many instances, the same facility where we can guarantee the time to you." We lost through our faults, we lost Lucky Strike. We could go through a number of specific things which we lost in the development.
>
> Now in analyzing that and while we realize that we are going to continue to grow and do the things which aggressive operation is expected to do, you do reach a certain point where people begin to understand the relative function which you can perform. As of today the function that we can perform is understood to be partially restrictive (Weber, Tr. 5193–94).

This uncertainty in the availability of NBC's affiliates to other networks places a serious obstacle in the way of the development of new networks. Few sponsors are willing to spend large sums in building up a program series to be broadcast over a definite number of stations at a certain hour if some of the important stations are subject to withdrawal upon order of a dominant network. Stability for NBC cannot be justified if attained at the cost of instability on the part of NBC's competitors and of their consequent inability to expand and provide the radio listening audience with effective program service.

NBC's optioning of time has an even more adverse effect upon the broadcasting of national spot commercial programs by means of transcriptions. The NBC exclusivity clause does not apply to transcriptions, but the optional-time provision does. The fact that transcription broadcasts, which fall within the periods optioned to NBC, can only be scheduled subject to a 28-day call by NBC, is a serious obstacle to obtaining sponsors for such programs. Like sponsors of other programs, they endeavor to build up regular listening audiences and this takes longer than 4 weeks. By keeping a 4-week call on the best time of its affiliates, NBC renders transcription programs a less effective competitor.

The CBS optional-time provision restricts the outlet stations even more than does that of NBC. While NBC optional time for most of its outlets covers 8 or 8½ specified hours per day, CBS optional time covers the entire broadcast day. Upon 28 days' notice CBS may call upon its outlet stations to carry a network commercial program at any hour.[24] This has the same restrictive effect upon other types of programs broadcast by CBS affiliates as does the NBC optional-time provision. Notwithstanding these disadvantages from the optioning by CBS of all the time of its outlets, CBS during 1938, used for commercial programs only 39 percent of the optioned time of its basic network stations.

Only five CBS affiliates were, as of January 1939, outlets of Mutual as well. The optioning of time by CBS restricts the broadcasting of Mutual programs over these five stations. Upon the elimination of the CBS exclusivity clause, the restrictive effect of the present optional-time provision upon the development of new networks would be apparent at once. Indeed, as a practical matter, it is not unlikely that, even if exclusivity as such were eliminated, the present network optional-time provisions would, unless likewise eliminated, perpetuate exclusivity.

From the time of its organization in 1934 until 1940, Mutual did not option any of the time of its associated stations. Early in 1940, however, Mutual entered into optional-time arrangements with its seven stockholders. These arrangements are less inclusive than those of NBC and CBS in that they cover only 3¼ to 4¼ specified hours on weekdays and 6 specified hours on Sundays and apply to only about half of the stations associated with Mutual. The contracts expressly provide that the optional-time provision shall lapse if the Federal Communications Commission prohibits that practice or the other national networks voluntarily abandon it.

---

[24] The one limitation on the right of CBS to call upon its stations for time for network commercial programs is that a station is not obliged to broadcast more than 50 converted hours of network commercial programs during any particular week. But this limitation has had no practical effect whatsoever. At the time of the committee hearings no CBS outlet had ever carried as many as 50 converted hours of network commercial programs in any 1 week.

NBC and CBS argue that some form of time optioning is indispensable to network operation because broadcasting competes with other advertising media, such as newspapers and magazines, which are free to guarantee to advertisers definite coverage in terms of time, space, and circulation. But firm commitments and guarantees for broadcast advertising are not dependent upon time options. Historical analysis shows that the networks did not institute time options to protect themselves against competition from newspapers or magazines. NBC adopted optional-time provisions because CBS had already done so and was thereby deriving a competitive advantage. NBC's vice president in charge of station relations testified:

> At least one of our competitors [CBS] was in a much more fortunate position in that respect, having a substantial number of contracts, so we understand and believe, which enabled it to secure right of way at any time of the day or evening. Of course that made it possible for the competitor to tell one of our clients who was dissatisfied with the inadequate network turned up, as a result of our availability requests, that he was in a position to deliver complete coverage and he would show the list of stations. As a result, we have lost considerable business (Hedges, Tr. 1722–1723).

Similarly, in 1940 Mutual adopted a number of optional-time provisions in its more important contracts in order to compete with the other national networks.

A station licensee must retain sufficient freedom of action to supply the program and advertising needs of the local community. Local program service is a vital part of community life. A station should be ready, able, and willing to serve the needs of the local community by broadcasting such outstanding local events as community concerts, civic meetings, local sports events, and other programs of local consumer and social interest.

We conclude that national network time options have restricted the freedom of station licensees and hampered their efforts to broadcast local commercial programs, the programs of other national networks, and national spot transcriptions. We believe that these considerations far outweigh any supposed advantages from "stability" of network operations under time options. We find that the optioning of time by licensee stations has operated against the public interest.

The fact that NBC was able to carry on its business for 7 years without time options, and changed only when CBS began to derive a competitive advantage from its time options, as well as the somewhat similar experience of Mutual, lead us to the conclusion that time options, with their restraint upon the freedom of licensees, are not an essential part of network operations. With all the networks operating on an equal footing, the absence of optional time as it now exists will not, we believe, hamper network operations or drive advertisers to other media.

D. REJECTION OF NETWORK PROGRAMS

While station rejection of network programs is not solely a problem of competition, its close relation to optional time and its general importance as an element of network broadcasting require its consideration.

It was noted in the preceding chapter that most NBC and CBS affiliates are required to take network commercial programs unless such programs are not in the public interest.[25] NBC even goes so far as to require that the licensee "be able to support his contention that what he had done has been more in the public interest than had he carried on the network program." Thus, the burden of proof is placed upon the licensee.

Practical difficulties confront a licensee who conscientiously seeks to carry out his duty to furnish the public with the best available programs. Precise information concerning the program the network proposes to distribute is not usually furnished and is not always easy to furnish. If, in addition to this obstacle, the licensee is not allowed to reject a program unless he can prove to the satisfaction of the network that he can obtain a better program, his efforts to exercise real selection among network programs become futile gestures, and he soon proceeds to broadcast network programs as a matter of course. The limitation on the right of rejection contained in the NBC and CBS contracts removes the licensee's incentive to find out what the network program is going to be.

It is the station, not the network, which is licensed to serve the public interest. The licensee has the duty of determining what programs shall be broadcast over his station's facilities, and cannot lawfully delegate this duty or transfer the control of his station directly to the network or indirectly to an advertising agency. He cannot lawfully bind himself to accept programs in every case where he cannot sustain the burden of proof that he has a better program. The licensee is obliged to reserve to himself the final decision as to what programs will best serve the public interest.

We conclude that a licensee is not fulfilling his obligations to operate in the public interest, and is not operating in accordance with the express requirements of the Communications Act, if he agrees to accept programs on any basis other than his own reasonable decision that the programs are satisfactory.

Even after a licensee has accepted a network commercial program series, we believe he must reserve the right to substitute programs of outstanding national or local importance. Only thus can the public be sure that a station's program service will not be controlled in the interest of network revenues.

These are principles of general application based on sections 301, 309, and 310 of the Communications Act. They apply to stations receiving programs from national networks, from regional networks, or from any other person engaged in supplying programs.[26] The licensee himself must discharge the responsibilities imposed by the law.

E. NETWORK OWNERSHIP AND OPERATION OF STATIONS

At the present time, NBC is the licensee of 2 stations each in New York, Chicago, Washington, and San Francisco, 1 in Denver, and 1 in Cleveland, or 10 stations in all. CBS is the licensee of 8 stations, 1 in each of the following cities: Charlotte, Minneapolis, St. Louis, Los Angeles, Chicago, Washington, New York, and Boston. Mutual has never owned any stations. At the time of the committee hear-

---

[25] *Supra*, pp. 38–39.
[26] See, in this connection, *Applications of Westinghouse Electric & Manufacturing Co. for Renewals of Licenses*, Docket Nos. 5823, 5824, 5825, and 5826, September 4, 1940.

ings, however, Mutual was owned by the licensees of stations WGN at Chicago and WOR at Newark. In January 1940, as previously set forth,[27] stock in Mutual was issued to 5 additional affiliates.

The 18 stations presently licensed to NBC and CBS are among the most powerful and desirable in the country. Of the 25 I–A clear-channel stations in the country, NBC and CBS are the licensees of 10. They are located in the largest and richest markets and their station rates, time sales, and revenues are among the highest for all stations.

Long-term affiliation contracts, with their exclusivity and optional-time provisions, seriously interfere with competition among networks. Ownership of broadcast stations by networks, however, goes even further. It renders such stations permanently inaccessible to competing networks. Competition among networks for these facilities is nonexistent, as they are completely removed from the network-station market. It gives the network complete control over its policies. This "bottling-up" of the best facilities has undoubtedly had a discouraging effect upon the creation and growth of new networks.

Furthermore, common ownership of network and station places the network in a position where its interest as the owner of certain stations may conflict with its interest as a network organization serving affiliated stations. In dealings with advertisers, the network represents its own stations in a proprietary capacity and the affiliated stations in something akin to an agency capacity.[28] The danger is present that the network organization will give preference to its own stations at the expense of its affiliates.[29]

Assuming that the question were presented as an original matter at this time, the Commission might well reach the conclusion that the businesses of station operation and network operation should be entirely separated. However, this Commission and its predecessor, the Federal Radio Commission, have heretofore approved as in the public interest the acquisition by NBC and CBS of most of these owned or operated stations and have periodically renewed the licenses of such stations. From a legal standpoint these circumstances confer no vested rights upon NBC or CBS, but we think it inadvisable to compel these networks to divest themselves of all of their stations.

In New York, Chicago, and Los Angeles or San Francisco, network operations have become so interwoven with station ownership that we do not deem it in the best interests of radio broadcasting to divorce the two at this time. Stations in these "key" cities make available a substantial minimum audience for network sustaining programs and

---

[27] *Supra*, p. 28.

[28] Owned or controlled stations have been far more profitable per unit than affiliated stations (*supra*, p. 33). This, however, does not necessarily indicate that there has been preferential treatment, since owned or controlled stations are, in general, high-power stations located in lucrative markets.

[29] CBS argues that the ownership of key stations by networks is essential as a reserve source of financing for network sustaining programs in the event network business should recede for a substantial period. It is pointed out in this connection that one of the paradoxes of the radio business is that when advertising revenue falls, the expense of servicing a network rises. It is true that the stations owned and operated by CBS have been extremely profitable, and to that extent they have strengthened the financial position of CBS. But the CBS network business has also been extremely profitable. As early as 1930, CBS had a net income of almost a million dollars, although it owned only two stations. The CBS network has not required any reserve for financing its network sustaining programs, and it is extremely unlikely that its owned stations could furnish such a reserve; for in the event that broadcasting fell on hard days and network income did recede, station income would no doubt similarly recede. Thus investments not dependent on broadcasting revenues would operate as a far more stabilizing factor than investment in stations.

enable the networks to make provision for adequate studios and other facilities on an economic basis at talent centers. They permit the networks to experiment with new techniques of program production and new ideas in program content and balance, and give assurance that the experiments will have a fair test over good facilities. In the light of these conditions and the fact that there exists in these cities the largest supply of stations, we do not deem it advisable to prohibit a national network organization from being the licensee of one station in these "key" cities.

Different considerations apply to other stations licensed to NBC and CBS. We do not believe, for example, that any substantial justification can be found for NBC's operation of two stations in New York, Washington, Chicago, or San Francisco. In none of these cities are the better radio facilities so numerous as to make it in the public interest for any one network organization to control two stations; in each case such dual ownership is bound to obstruct the development of rival networks and the establishment of new networks. In Washington (excluding local stations) there are but three regional stations, of which NBC controls two, and one clear-channel station, which is owned by CBS. In Chicago, the equivalent of two of the four 50,000-watt full-time facilities are owned by NBC,[30] and one by CBS. In San Francisco, the only two stations with better than regional power are NBC's. Competition will be greatly strengthened if the best facilities in important cities are not so tied in the hands of a single network organization. Even in New York, where desirable facilities are more plentiful, NBC's ownership of two clear-channel stations gives it a dominant position which tends to restrict competition on even terms from other networks.

We find, accordingly, that the licensing of two stations in the same area to a single network organization is basically unsound and contrary to the public interest. In any particular case, of course, networks will be given full opportunity, on proper application for new facilities or renewal of existing licenses, to call to our attention any reasons why the principle should be modified or held inapplicable.

In several cities where NBC or CBS owns one station, the available facilities are so few and of such unequal coverage that network ownership is undesirable. In Cleveland, a most important radio market, the only broadcasting facilities are one clear-channel station (owned by NBC), two full-time regionals, and one part-time regional. Charlotte, N. C., has but two stations, one of which is a 50,000-watt station owned by CBS. It seems clear that no network ownership whatsoever should be allowed in either of these cities. In several other cities, such as Denver (NBC), Minneapolis (CBS), and Washington (NBC and CBS), the available facilities are somewhat more plentiful, but the disparity among the facilities raises serious doubts whether any network ownership should be permitted. We find that it is against the public interest for networks to operate stations in areas where the facilities are so few or so unequal that competition is substantially restricted.

---

[30] There are five 50,000-watt stations in Chicago, but two of them (WENR and WLS) share time. NBC owns WMAQ and WENR. WENR is authorized to utilize the great majority of the valuable commercial hours. From Monday to Friday, WENR utilizes the time from 3 p. m. to 6:30 p. m., and from 8 p. m. on. On Saturday, WENR utilizes the time from 3 p. m. to 6:30 p. m., and on Sunday, from noon until 7 p. m., and from 8 p. m. on.

NBC and CBS have such competitive advantages over any actual or potential rival that no additional stations should be licensed to either and they should be required to dispose of some of the stations now licensed to them. We do not, however, deem it advisable to specify at this time a precise maximum figure for network ownership.

In exercising our licensing powers with respect to the renewal of the licenses now held by NBC and CBS, we propose to consider the applicability of the two principles hereinbefore set forth. Subject to the right and opportunity of CBS and NBC to show at hearing in a particular case that public interest requires otherwise, the Commission will not license to a single network organization more than one station within a given area, nor will it license stations to any network organization in communities where the available outlets are so few or of such unequal desirability as to require that all facilities be open to competition among networks for outlets and among stations for networks. In considering methods of divorcement, we will seek to ensure that the divorce of stations from networks shall be actual as well as formal, and will permit the orderly disposition of properties.

Mutual presents a somewhat different problem. The network corporation itself does not own or operate any stations; however, the stock of the network corporation is owned by various station licensees. This difference has several important practical aspects. To begin with, the licensees which own Mutual are not under common control and, therefore, there is no concentration of ownership or control of radio facilities in any one organization. Likewise, and probably more important, the network cannot control its owners; on the contrary, it is controlled by them. The stations which own Mutual can terminate the ownership relation by disposing of their stock. The choice in the case of Mutual is with the station, rather than with the network as in the case of NBC and CBS.

However, the foregoing does not completely solve the problem. The licensees which own Mutual have an interest in the network which tends to cause them to prefer Mutual programs over those of other networks. The judgment of licensees in making a choice among available programs should not be subject to distortion by such extraneous considerations. Under some circumstances, therefore, licensee ownership of networks might be subject to serious objection. However, there seem to be at least two reasons for not taking action in this connection at the present time. First, the three substantial interests in Mutual (25 percent each) are held by station licensees in New York and Chicago and a regional network (Don Lee) on the Pacific Coast which controls four California stations. Thus, the dominant interests in Mutual roughly parallel the direct ownerships of NBC and CBS which this report does not seek to disturb. Secondly, Mutual does not own studios, station facilities, or any substantial amount of property. It is largely a corporate vehicle for a cooperative network arrangement. Consequently, the licensee stock interests in Mutual are, at present, from an investment standpoint, largely symbolic. For the present at least, and particularly in the light of the dominant position of CBS and NBC, there is no reason to require these licensees to divest themselves of their stock interests in Mutual.

Accordingly, at this time we find no reason to establish a definite policy concerning licensee ownership of networks. If, in the future, the question becomes significant, we will give it further consideration.

F. NBC'S RED AND BLUE NETWORKS

Largely because it has 2 networks, many more stations are affiliated with NBC than with any other network organization. When NBC presented evidence at the committee hearings it had 161 outlet stations; the number had increased to 214 by the end of 1940. NBC is the licensee of 2 stations in each of 4 cities. At the time of the committee hearings, NBC had 2 outlets in over 30 cities. The number of cities in which there are 2 NBC stations is now about 40. One is generally a Red network station and the other a Blue network station, although the demarcation is frequently not clear.

The Red network carries more commercial programs, and the Blue more sustaining programs; the disparity in this respect is marked. In 1938, NBC sent 74.5 percent of its commercial programs over the basic Red and only 25.5 percent over the basic Blue. Although NBC does not separate income and expense as between them, the Red is obviously the money-maker of the two. In 1938 NBC paid its 17 independently owned outlets on the basic Red network $2,803,839 for network commercial programs; to the 18 on the basic Blue network it paid only $794,186.

Despite this great disparity, NBC's network affiliation contracts do not specify whether a given station is to be affiliated with the Red or the Blue network. NBC retains the right to shift a station from one network to the other, regardless of the station's wishes. This power gives NBC undue control over its affiliated stations.

NBC's witnesses testified that the Red and Blue networks compete vigorously for listening audiences and for the advertising dollar. But the competition between Red and Blue is largely of an intramural character. Even taking into account the changes which NBC has made in its organization since the time of the committee hearings, there is no complete allocation of stations or programs between the Red and Blue networks, nor any clear demarcation between the properties, personnel, income or expenses of the two networks. No claim is made that the two networks compete for affiliates. So far as competition for advertising and listeners is concerned, it is conducted in a friendly manner under the direction of the NBC board of directors and for the financial benefit of NBC.

Although the sales and program personnel allocated to the Red or the Blue network may now engage in friendly rivalry, it is hardly to be supposed that this rivalry will ever reach the point where NBC employees are acting against the best interests of NBC. Under such conditions, there can be no competition as that term is properly used.

NBC's chairman testified that if NBC owned all four networks, there would still be a competitive situation so far as the listener is concerned. This is a time-worn argument of corporations facing charges of monopoly. It proves too much, and reduces the whole theory of our competitive economy to an absurdity. What NBC's chairman was pleased to call "competition" is not the thing that keeps the opportunity to engage in network broadcasting open to anyone willing to risk his capital and energy, nor does it assure the public the benefits of the healthy and vigorous interplay of economic forces among those engaged in the business. If a single company owned and operated all the drug stores in a city, there would be no less a monopoly because the company refrained from closing all the stores but one, or even organized sales campaigns among the various stores. As long as all the efforts of the employees redound to the benefit of a single employer, there is merely the shadow of competition without its substance.

The operation of the Red and Blue networks by NBC gives it a decided competitive advantage over the other two national networks. In the first place, under the NBC discount policy, a discount up to 25 percent is granted to advertisers based upon the amount of business they do with NBC. This gives the Blue network, for example, a marked advantage over the other networks in getting the business of a national advertiser who is already sponsoring a program over the facilities of the Red network. In addition, NBC grants certain special discounts to advertisers to encourage the sale of time over certain Blue network stations.

Again, NBC is able to arrange certain of its most attractive facilities into one combination. In view of the differences between the power and frequency of individual stations, NBC's ability to substitute a more desirable station if an advertiser is dissatisfied with the one customarily provided puts its competitors at a decided disadvantage.

Likewise, the operation of two networks gives NBC a great advantage in terms of programming. By this arrangement, NBC has roughly twice as many hours at its disposal each day as does either CBS or Mutual. For any single period, CBS and Mutual must make a choice between two commercial programs, or between a commercial and sustaining program, or perhaps between an entertainment and a public service feature. NBC, with two networks at its disposal, can simultaneously send an educational program over the Blue and a variety entertainment commercial program over the Red. Furthermore, NBC is in a position to assure advertisers buying time on one of its networks that they will not meet serious competition for listening audiences from the programs scheduled simultaneously on its other network.

NBC takes the position that station demand for affiliation with it is the reason for its two networks. But it is not without significance that NBC's second network—the Blue—was formed before this demand had had any real opportunity to manifest itself. The Blue network was organized in 1926, immediately after NBC took over station WEAF (the key station of the Red network) and the Telephone Co. network. RCA already owned station WJZ, and this station was the basis of the present Blue network.

But without regard to how or why NBC created two networks, it seems clear that the Blue has had the effect of acting as a buffer to protect the profitable Red against competition. Available radio facilities are limited. By tying up two of the best facilities in lucrative markets—through the ownership of stations, or through long-term contracts containing exclusivity and optional-time provisions—NBC has utilized the Blue to forestall competition with the Red. We have already noted that Mutual is excluded from, or only lamely admitted to, many important markets. In such important cities as Milwaukee, Toledo, Salt Lake City, and Jacksonville, both the Red and the Blue have outlets, but Mutual can get no affiliation whatever. In Cleveland, Baltimore, New Orleans, Louisville, and Atlanta, both the Red and the Blue have outlets, but Mutual can get only an unsatisfactory facility in terms of power or coverage. In Houston, Birmingham, Providence, Des Moines, Memphis, Oklahoma City, and Tulsa, the Red and the Blue are provided for but Mutual must share an affiliate. The effect upon a new network of NBC's preemption of the best facilities in many markets would, of course, be even more restrictive. The existence of this situation can hardly fail to discourage anyone who might otherwise seek to enter the network broadcasting field.

We are impelled to conclude that it is not in the public interest for a station licensee to enter into a contract with a network organization which maintains more than one network. With two out of the four major networks managed by one organization, a station which affiliates with that organization thereby contributes to the continuance of the present noncompetitive situation in the network-station market. The reestablishment of fair competition in this market is contingent upon ending the abuses inherent in dual network operation; our regulation is a necessary and proper means of reestablishing that fair competition.

Our determination that it is not in the public interest for a station to enter into a regular affiliation contract with a network organization maintaining more than one network does not, however, rest merely upon competitive considerations. We are seriously concerned also with the maintenance of a free radio system from the point of view of concentration of power over licensees and their listeners.

In most large countries today, radio broadcasting is a governmental monopoly.[31] The United States has rejected government ownership of broadcasting stations, believing that the power inherent in control over broadcasting is too great and too dangerous to the maintenance of free institutions to permit its exercise by one body, even though elected by or responsible to the whole people. But in avoiding the concentration of power over radio broadcasting in the hands of government, we must not fall into an even more dangerous pitfall: the concentration of that power in the hands of self-perpetuating management groups.

Under any system of broadcasting, someone must decide what a station will put on the air and what it will not. Someone must select some programs and reject others. Congress has chosen to leave that power in the hands of individual station licensees, subject to the public interest provisions of the Communications Act and the powers delegated to this Commission. Decentralization of this power is the best protection against its abuse. We cannot permit the protection which decentralization affords to be destroyed by the gravitation of control over two major networks into one set of hands. While the concentration of power resulting from operation of a network is unavoidable, the further concentration of power resulting from operation of two networks by one organization can and should be avoided.

The radio spectrum is essentially public domain. In delegating to this Commission the power to license, Congress was moved by a fear that otherwise control over that public domain would gravitate into

---

[31] Huth, *La Radiodiffusion Puissance Mondiale, passim.*

too few hands.[32] Stations entering into regular affiliation contracts with a network organization operating more than one network defeat the manifest intent of Congress. We conclude that such concentration of power over licensees and their audiences violates the public interest.

G. LIMITATION OF COMPETITION BETWEEN NETWORK AND OUTLET

Improvement in the quality of electrical transcriptions in recent years has made it possible for individual stations, including network affiliates, to compete with networks for some of the business of national advertisers. In 1934, national spot business involving the use of electrical transcriptions amounted to $13,500,000; in 1938, to $34,680,000. Transcriptions have made it possible for affiliates to compete for national business by offering programs comparable in popularity to those of the networks. Continuing and unrestricted competition between network and outlet for this business will provide the public with steadily improving program service.

NBC has attempted to protect itself against competition with its affiliates for the business of national advertisers by inserting the following provision in its affiliation contracts:[33]

> If you accept from national advertisers net payments less than those which NBC receives for the sale of your station to network advertisers for corresponding periods of time, then NBC may, at its option, reduce the network station rate for your station in like proportion, in which event the compensation due you from NBC will be likewise reduced but the right of termination provided for in the preceding paragraph shall not thereby accrue to you.

This provision means that an affiliated station cannot accept the business of a national advertiser at a rate lower than that which NBC has established as the affiliate's rate for network programs without subjecting itself to the risk that this lower rate will be applied to all of the affiliate's network business. A contract of this kind, providing a severe penalty for price-cutting, is equivalent to, and has the same effect as, a price-fixing agreement.

NBC frankly concedes that the purpose of the provision is to prevent its affiliated stations from entering into competition for national advertising business:

> This means simply that a national advertiser should pay the same price for the station whether he buys it through one source or another source. *It means that we do not believe that our stations should go into competition with ourselves.* It means that if a national advertiser is able to plan a campaign whereby he could place a partial network order and a partial transcription order on these stations, in order to save money, all network business suffers, and this precaution was put in there to prevent that. However, we have not, up to date, reduced any of the station rates to meet the rates fixed by the stations themselves for national spot advertising, but that is no promise that we will not do it. * * *
>
> Last summer, one of the leading advertising agencies in the country that places millions of dollars' worth of business in radio advertising, in discussing a particular account that was on the NBC network, pointed out the wide discrepancy that exists at some stations between the charges which the National Broadcasting Co. makes and the charges which the station makes. The discrepancy was sufficiently great that with a list of 15 or 16 stations which were shown to me, *if the national advertiser had been willing to sacrifice the advantages of simultaneous live talent broadcasts and substitute therefor electrical transcriptions*

[32] *Federal Communications Commission* v. *Pottsville Broadcasting Co.*, 309 U. S. 134, 137.
[33] There is no similar provision in either the CBS or Mutual affiliation contracts. For a description of the way in which their contracts operate, see *supra*, pp. 34–44.

on those 15 or 16 stations, the client would have been able to save $44,000 in 1 year, and that is not particularly healthy, in my estimation **(Hedges, Tr. 1825–26). [Italics supplied.]**

No other explanation of NBC's position was made and no reason appears why the affiliate's national spot rate should be artificially pegged at the network rate. In setting the network station rates of its affiliates, NBC considers primarily the potential circulation or listening audience of each station. According to the testimony of its vice president in charge of station relations, absolutely no account was taken of the local competitive situation. Stations whose potential audiences were the same were given the same network rate whether they were the sole stations in their communities or had to split their audiences with several competing stations. Likewise, no account was taken of the purchasing power of the communities served by the affiliate, or of other factors that might affect the value of the station to advertisers.

Several factors tend to make national spot rates lower, at least where electrical transcriptions are used, than comparable network rates. In the first place, electrical transcription programs avoid the heavy telephone line charges incident to network broadcasts. Transcription programs are distributed to stations by shipping the actual discs on which the programs have been recorded.

Furthermore, opinions differ concerning the relative advertising effectiveness of transcriptions and live talent programs. There is no reason why such differences of opinion should not be permitted to play a part in negotiating station rates, or why they should not be reflected in rate differentials between the two types of business.

Finally, only the less desirable hours of the broadcast day are outside the NBC optional-time provisions and thus available for national spot business without being subject to call by NBC. If time within the option period is sold, such programs are subject to be shifted by NBC on 28 days' notice. This inability to enter into firm commitments makes national spot programs less desirable to advertisers than NBC network programs. While the elimination of option time will remove this factor, the others will, of course, remain.

It is no wonder, therefore, that many of NBC's affiliates, despite the danger of sanctions, have adopted a national spot rate less than the network rate. One exhibit shows that 53 NBC affiliates have a national spot rate lower than the network rate, whereas only 36 have a higher rate.

Despite the large number of affiliates whose national spot rates were lower than the network rate, NBC's vice president in charge of station relations testified that NBC had never reduced a station's network rate for this reason. But, he added, "that is no promise that we will not do it." The threat that the network rate will be reduced is ever present. The failure to invoke the power to reduce the network rate does not show that the provision has been ineffective. The mere retention of the power seems to have been sufficient to prevent the kind of free competition regarded by NBC as "not particularly healthy." Apparently the suggestion made in the summer of 1938 that one large advertiser could save some $44,000 annually by using transcriptions over 15 or 16 NBC affiliates did not develop beyond the stage of a mere suggestion. There is no evidence in the record that any advertiser and group of affiliates had the temerity to carry through such a money-saving project to determine whether NBC would invoke the rate-control provision of its affiliation contract when some real competition was offered.

We conclude that it is against the public interest for a station licensee to enter into a contract with a network which has the effect of decreasing its ability to compete for national business. We believe that the public interest will best be served and listeners supplied with the best programs if stations bargain freely with national advertisers.

H. INTERRELATIONS AMONG NETWORK PRACTICES

In considering above the network practices which necessitate the regulations we are adopting (*infra*, p. 91), we have taken each practice singly, and have shown that even in isolation each warrants the regulation addressed to it. But the various practices we have considered do not operate in isolation; they form a compact bundle or pattern, and the effect of their joint impact upon licensees necessitates the regulations even more urgently than the effect of each taken singly. A few examples will suffice to illustrate the way in which restraints in the network field reinforce one another and cumulatively impair the freedom of licensees to render the best possible public service.

Consider in the first place the conjoint effect of the restraints on the establishment of a new network. With more than 97 percent of the Nation's nighttime wattage affiliated with existing networks, a new network can hardly be built up from among unaffiliated stations. Nor are many affiliates free to change their affiliation to such a proposed new network, for most of them are under 5-year contracts.

If stations already affiliated should wish to carry some programs of such a proposed new network, they are restrained by their exclusivity clauses. And even without these exclusivity clauses, time sold to a new national network would be subject for the most part to options on 28 days' notice—thus preventing the development of an effective program series. Thus each doorway into the network field is both locked and bolted.

The exclusion of new networks from the industry is especially onerous because of the failure of existing networks to render service on a truly national basis. They have left a number of communities, especially in the West and Middle West, wholly without network service, and many more with inadequate service or service from only one network. Under such circumstances, it is especially important to keep the door open for new networks which may be willing to serve areas now unprovided for.

Consider next the position of a licensee tied to a network by the usual standard affiliation contract when he seeks to procure programs sponsored by national advertisers. The exclusivity clause of his affiliation contract prevents him from accepting such a program from any other network; hence he must either get it through the network with which he is affiliated or else try to get it on a spot basis.

But in soliciting a national advertiser for spot business, the licensee of a network-affiliated station runs up against the fact that all or the best part of his station's time is under option to the network, subject to 28 days' notice. Hence he cannot enter into a firm contract with the national advertiser for a period long enough to insure the

313425—41——6

advertiser of building a continuing audience. Some NBC affiliates are also hampered by the clause which enables NBC to penalize them if they sell time to national advertisers directly for less than NBC charges for their time.

Affiliates are heavily dependent upon their national network for access to national advertisers; but the network may have interests quite disparate from its outlets. It may, for example, own two networks and favor one as against the other. Or it may own stations itself, and hence be in a position where it will profit more by favoring the scheduling of programs over the stations it owns rather than over the full network. In short, the joint effect of the various practices mentioned is to place the licensee to a considerable degree at the mercy of the network with which he is affiliated, but to leave the network free to pursue interests which may be very different from those of the licensees affiliated with it. And, although the network may abandon him on 1 year's notice, a licensee, dissatisfied with the arrangement, cannot renounce it; he is bound for a period of 5 years.

Consider also the position of a station licensee who seeks to maintain a well-balanced schedule of local, regional, and national programs. He can broadcast important local events during periods when network commercial programs are being offered only if he can sustain the burden of proof that the network programs are not in the public interest. His local programs during all or many hours of the broadcast day can only be scheduled subject to the network's option on those hours. Only under exceptional circumstances can he schedule a local program for a time when the network is offering him a network commercial program. If a local sponsor demands assurances that his broadcast time will not be preempted by the network under its option, the station licensee has the choice between not scheduling the local sponsor's program at all or scheduling it for a period which the network gives to a regular sustaining program, thus depriving listeners of that sustaining program. Nor can the listeners procure that sustaining program through another local station, for the network affiliate has territorial exclusivity either by contract or in practice.

Consider in the third place the position of listeners in cities like Milwaukee, Toledo, Salt Lake City, and Jacksonville, in which Mutual can obtain no outlet whatsoever. Such listeners are, thanks to the usual exclusivity clause, deprived of Mutual program service even though the station licensees may wish to offer it along with NBC or CBS service. Where an NBC or CBS station rejects a network program, listeners are deprived, thanks to the territorial exclusivity clause, of an opportunity to hear that program even though another station wishes to broadcast it. The time-option clause and the clause restricting an NBC affiliate's right to compete with NBC deprive listeners of an opportunity to hear locally sponsored programs which might otherwise be available. The clause requiring affiliated stations to broadcast all network commercial programs offered during option hours, subject only to the usual "public interest" proviso, deprives listeners of the opportunity to hear other programs which the station might prefer to schedule during those periods.

At every turn, in short, restrictive clauses taken cumulatively operate with even greater force than their effect considered in isolation would suggest. Our decision to promulgate the regulations considered in this chapter is buttressed by this consideration of cumulative effect. This bundle of restraints upon the station licensees is not compatible with the public interest.

I. STATUS OF NETWORK-STATION RELATIONSHIPS UNDER THESE REGULATIONS

This report is based upon the premise that the network system plays a vital role in radio broadcasting and has brought great benefits to it. We have carefully drawn our regulations so as not to interfere with any of the three major functions which a network performs—the sale of time to advertisers; the production of programs, both commercial and sustaining; and the distribution of programs to stations.

Under the regulations herein set forth, a network will still be able to enter into regular affiliation contracts. A station will still be able to hold itself out as the regular affiliate of a given network.

A network can still sell the use of its facilities to advertisers in accordance with published rate schedules in much the same manner as it now does. The fact that networks must ascertain whether each station has a specific period uncommitted before entering into a firm contract for that period need not unduly hinder their selling activities. The network can and undoubtedly will require that all stations intending to broadcast its programs keep it currently informed of all station commitments.

The networks' right to produce programs is wholly unaffected. Their right to distribute programs is vastly enlarged, for hereafter any network will be free to distribute programs to any station.

Similarly, networks will be free to offer program service to stations regularly affiliated with them throughout any or all of the hours of the broadcast day. We do not see that the public interest requires, and nothing in our regulations necessitates or suggests, that stations shift hourly from network to network. We are concerned rather with insuring that, at reasonable intervals, a station will be free to change its regular network affiliation, and, as occasion requires, to broadcast the programs of networks with which it is not regularly affiliated, and to exercise independent judgment in rejecting or refusing network programs. To the extent that the networks' present status rests upon excellence of service rather than coercive power, it will remain substantially unaffected.

J. APPLICATION OF REGULATIONS TO REGIONAL NETWORKS

Examination of the record herein indicates that the practices of national networks subjected to criticism by us are followed by certain regional networks.[34]

We recognize that the regional networks are in a state of more rapid flux than the national networks; and that new regional networks have arisen since the committee hearings were held. Accordingly, we will carefully consider, in particular instances, any showing that the application of the regulations herein adopted to a station affiliated with a regional network will reduce rather than increase its ability to operate in the public interest.

---

[34] See *supra*, p. 29; *infra*, Appendix D.

Regional networks fall into two classes—purely regional networks, and nationally affiliated regional networks which act as conduits for national network programs.[35] The record indicates that the conditions which will be affected by the regulations contained in this report are more common among nationally affiliated regional networks than among regional networks not so affiliated.

Some regional network affiliation contracts contain exclusivity clauses preventing stations from carrying any network programs, regional or national, not sent through the regional network. Some contain clauses which prevent regional networks from sending programs to other stations in areas served by their affiliates; this clause is effective even though the affiliate rejects the network program. Some regional networks have options on substantially all the time of their affiliates; and some stations affiliated with regional networks have signed away their right to reject network commercial programs offered during optioned hours, save only for the usual proviso concerning programs the broadcasting of which would violate the "public interest" provision of the Communications Act. At least one regional network's standard affiliation contract provides that the network may proportionately reduce the compensation of any station which sells time to advertisers at less than the rate which the network charges for that station; thus, the stations are prevented from competing freely with the network for advertisers. Another regional network's contracts are binding upon its affiliates for 5 years, though on the network for only 1.

Restrictive contracts and the other practices with which these regulations are concerned restrain competition and operate against the public interest whether the network concerned is national, nationally affiliated regional, or purely regional. True, the national network restraints loom larger; but this should not and does not blind us to the need for terminating or forestalling similar restraints whose only distinguishing characteristic is that they are of local or regional rather than national scope. With respect to a given station, a given community, or a given region, a restrictive contract between a station and a regional network, or ownership of many stations by a regional network, may operate to foster a local monopoly and to impair station operation in the public interest just as effectively and as intensively as similar practices on a national scale.

With respect to nationally affiliated regional networks, the need for applying our regulations is especially clear. When a licensee enters into a long-term exclusive contract containing optional time and other restrictive clauses with a nationally affiliated regional network, the effect, so far as restraint of competition is concerned, is substantially the same as if the station had entered into such a contract directly with a national network. Indeed, in some situations the effect may be even more restrictive. Consider, for example, the plight of a station in Washington or Oregon which wishes to carry Mutual network programs. Mutual has an exclusive contract with Don Lee

[35] As used in this report "nationally affiliated networks" include not only regional networks directly affiliated with national networks but also regional networks which, like Pacific Broadcasting Co., carry national network programs fed to them by other nationally affiliated regional networks. In both cases the regional network serves as intermediary for the delivery of national network programs to stations. Certain of the outlets of some of the regional networks are also affiliated, on an individual basis, with NBC, CBS, or Mutual. See table on p. 29; see also Appendix D.

providing that it will send programs to Pacific coast stations only through Don Lee. The latter, in turn, has an exclusive contract with Pacific Broadcasting Co. providing that it will send programs to stations in Washington and Oregon only through Pacific. The Pacific standard affiliation contract binds a station for 5 years, prevents a station from carrying any network programs not delivered to it by Pacific, places all of the station's time under option to Pacific, and deprives the station of the right to reject network commercial programs except only those which would interfere with a locally originated program of "major public interest or public necessity". Thus, in order to get Mutual programs, a station in Washington or Oregon must subject itself to these restrictive conditions for a 5-year term, and must bind itself to accept both Pacific and Don Lee as well as Mutual programs. And even then its access to Mutual programs is conditional. If Pacific severs its affiliation with Don Lee, or Don Lee leaves Mutual, the station is shut off from Mutual for the life of its contract.

Exempting the relationship between regional networks and their outlets from the regulations here presented would open the way for permitting this type of arrangement to become the usual pattern of network affiliation. National networks might then surround themselves with a group of associated regional networks, and if stations were permitted to enter into restrictive affiliation contracts with these regional networks, the present restraints would be perpetuated. Our application of the regulations to the relationship between the stations and regional networks as well as to national networks will make impossible such developments.

Many regional networks now operate successfully within the scope of these regulations. Some of these regional networks are in fact cooperative station enterprises, bound together by mutual interest rather than by formal contract. Others are profit enterprises binding stations to them by contract; such contracts vary all the way from those wholly permissible under the regulations to those transgressing substantially every regulation. In general, it may be said that the more powerful a network becomes, the more restrictions it is able to place upon its outlet stations. We believe that this process of increasing restrictions should be reversed, and that stations affiliated with regional networks should retain their freedom of operation in the public interest as fully as stations affiliated with national networks. Accordingly, we find that the public interest requires the application of the regulations to stations affiliated with regional as well as national networks. In the application of these regulations to regional networks, and particularly the regulation with respect to ownership of stations, the Commission will take into consideration any factors of a local character which tend to remove them from the purposes of the regulations we are adopting.

VIII. JURISDICTION

We are satisfied that the Commission has jurisdiction to issue the regulations contained in the attached order, both as an exercise of its licensing function in the public interest and under the grant of authority contained in section 303 (i) "to make special regulations applicable to radio stations engaged in chain broadcasting." Either basis alone amply supports our jurisdiction; together they leave no doubt that the power exercised in these regulations is within the clear intent of Congress. But since much of the oral argument was devoted to the question of the Commission's jurisdiction, and since supplementary briefs discussing this question were filed by several interested parties pursuant to the direction of the Commission, we include a short statement of the legal basis for our conclusions.

A. JURISDICTION UNDER THE COMMISSION'S LICENSING POWER

In considering the scope of the Commission's licensing power as a basis of jurisdiction in this proceeding, two questions are presented. First, has the Commission authority to deny a license or a renewal on the ground that the applicant's contractual relations with a network either impair his ability to operate in the public interest or limit the maximum utilization of radio facilities by artificially restraining competition and restricting the growth and development of new networks? Secondly, if the first question is answered in the affirmative, can the Commission formulate into general rules and regulations the principles which it intends to apply in passing on individual applications?

1. The power to deny applications

Congress has delegated to the Commission the task of determining whether the grant of an application for a license or renewal will serve "public interest, convenience, or necessity." The standard of public interest is given significance "by its context, by the nature of radio transmission and reception, by the scope, character, and quality of services," and by the general objectives of the statute.[1] As thus construed by the Supreme Court, the term "public interest" clearly refers to the interest of the listening public in the fullest and most effective utilization of radio facilities.

The general objectives of the Communications Act, as stated in section 1, are to "make available, so far as possible, to all people of the United States a rapid, efficient, Nation-wide, and world-wide wire and radio communication service." This provision is supplemented by section 303 (g) which provides that the Commission

[1] *Federal Radio Commission* v. *Nelson Bros. Bond and Mortgage Co.*, 289 U. S. 266, 285; cf. *United States* v. *Lowden*, 308 U. S. 225.

shall "study new uses for radio, provide for experimental uses of frequencies, and generally encourage the larger and more effective use of radio in the public interest." With the number of radio channels limited by natural factors, the public interest demands that those who are entrusted with the available channels shall make the fullest and most effective use of them. If a licensee enters into a contract with a network organization which limits his ability to make the best use of the radio facility assigned him, he is not serving the public interest.

We have already seen that many of the provisions of the affiliation contract do prevent the licensee from fully utilizing his facility. Time options adversely affect the ability of licensees to serve the local needs of their communities for program and advertising service. Artificial limitations on the price which licensees may charge national advertisers hamper licensees' efforts to render the best possible program service. Restrictions imposed on the affiliates' freedom to reject network commercial programs prevent them from assuming their full statutory responsibility (which under the Act they cannot delegate) of determining what programs should go out over the facilities licensed to them. Exclusivity provisions which prevent affiliates from carrying the programs of other networks and which prevent any other station within the "territory" of the affiliate from obtaining programs from the latter's network, deprive many listeners of the opportunity to hear certain worthwhile programs. Long-term affiliation contracts prevent the licensees from bargaining at reasonable intervals for the best network programs. Affiliation with a network organization operating two networks contributes to a concentration of control over stations and the programs they broadcast incompatible with the public interest. Network ownership of a large number of stations creates a potential conflict between the interest of the network as a station owner and its interest as a network organization.

It is no answer to say that the network stations render better service to the public than do unaffiliated stations. This is by no means established by the evidence, particularly if consideration is given to such factors as the needs of the local communities in which the stations are located. But, even if the superiority of network station service were assumed, it would not follow that the regulations we are adopting are either unnecessary or invalid. The Commission's licensing function is not limited to determining simply whether the service of one station is satisfactory as compared with that of other stations. The Commission has the duty to grant licenses and renewals only to those applicants who propose a maximum utilization in the public interest of the facilities they request.

It would hardly be contended, for example, that the Commission lacks authority to deny a license or renewal to an applicant whose use of his facility is limited by an inefficient antenna design which fails to make the optimum use of an advantageous transmitter site. Surely the Commission would not be required to issue a license just because the applicant could show that he was laying down as strong a signal as that of other stations with the same power. If the peculiar advantages of his transmitter site would enable him to achieve more extensive coverage with a more efficient antenna system, the public interest demands that he install such an antenna.

It is fundamental that any determination of public interest must be based upon a consideration of the service a station renders against the background of the service it could render. We have found that however meritorious the service of network affiliates as compared to that of nonnetwork stations, that service could be markedly improved if the affiliates were free from the restrictions that now bind them. This is no different from the determination that a licensee does not operate in the public interest if he merely renders as good a service as that of other stations with equal power where his advantageous transmitter site would enable him to render a superior service with an efficient antenna system.

So far we have considered only the direct impact of these restrictions on the licensee's ability to serve the public interest. But this is only a part of the Commission's responsibility. The public interest in the fullest and most effective utilization of radio facilities is likewise adversely affected by the curtailment of competition which these restrictions entail. In the last chapter we noted that the network-outlet contracts have resulted in closing the door of opportunity to new networks and have stifled competition among stations for network affiliation, among networks for station outlets and between networks and stations for advertisers and listeners. We noted too that network ownership of numerous radio stations has likewise meant the curtailment of opportunities for new networks and has given the existing networks a substantial competitive advantage over any newcomers. We noted, further, that, with two of the four major networks managed by one organization, affiliation with that organization contributed to the continuance of the present noncompetitive situation in the network-station market. The net effect has been that broadcasting service has been maintained at a level below that possible under a system of free competition. Having so found, we would be remiss in our statutory duty of encouraging "the larger and more effective use of radio in the public interest" if we were to grant licenses to persons who persist in these practices.

The Commission's duty to act also flows from the fact that Congress expressly wrote into the act the requirement of free competition in the radio field. It provided in section 3 (h) that persons engaged in radio broadcasting should not be deemed common carriers. By section 313 it specifically made the antitrust laws applicable to persons engaged in radio communication and authorized the courts to revoke the license of any person found guilty of violating the antitrust laws. In section 311 it directed the Commission to refuse a license to any person whose license has been revoked by a court under section 313 and authorized the Commission to refuse a license to any person found guilty by a Federal court of having violated the antitrust laws with respect to radio communication. By section 314 it forbade persons engaged in radio communications from engaging in communication by wire, or vice versa, if the effect thereof is substantially to lessen competition or to restrain commerce. These elaborate provisions against restraints on competition leave no doubt that Congress intended to safeguard free competition in the radio broadcasting industry. In the very Act in which it made clear its mandate as to free competition, Congress set up this Commission to license radio stations in the public interest. We cannot believe that Congress intended to leave us powerless to deal with restraints which might fetter the free competitive field it sought to maintain or to require us to promote unlawful conduct by our own affirmative action.

The Supreme Court decisions interpreting the Communications Act and its predecessor support the view that the preservation of free competition is one of the objectives recognized by Congress. In *Federal Communications Commission* v. *Sanders Bros. Radio Station*, 309 U. S. 470, 474–5, the Court said:

> Thus the Act recognizes that the field of broadcasting is one of free competition. The sections dealing with broadcasting demonstrate that Congress has not, in its regulatory scheme, abandoned the principle of free competition, as it has done in the case of railroads, in respect of which regulation involves the suppression of wasteful practices due to competition, the regulation of rates and charges, and other measures which are unnecessary if free competition is to be permitted.

In *Federal Communications Commission* v. *Pottsville Broadcasting Co.*, 309 U. S. 134, 137, the Court said:

> Congress moved under the spur of a widespread fear that in the absence of governmental control the public interest might be subordinated to monopolistic domination in the broadcasting field. To avoid this Congress provided for a system of permits and licenses.

While many of the network practices raise serious questions under the antitrust laws,[2] our jurisdiction does not depend on a showing that they do in fact constitute a violation of the antitrust laws. It is not our function to apply the antitrust laws as such. It is our duty, however, to refuse licenses or renewals to any person who engages or proposes to engage in practices which will prevent either himself or other licensees or both from making the fullest use of radio facilities. This is the standard of public interest, convenience or necessity which we must apply to all applications for licenses and renewals.[3]

---

[2] In this category would be included at least territorial exclusivity and exclusivity of affiliation (*Montague & Co.* v. *Lowry*, 193 U. S. 38; *Shawnee Compress Co.* v. *Anderson*, 209 U. S. 423; *United States* v. *Terminal Railroad Assoc.*, 224 U. S. 383; *Standard Fashion Co.* v. *Margrane-Houston Co.*, 258 U. S. 346); and agreements between outlets and networks penalizing stations for selling time to national advertisers at less than the network rate. (*Dr. Miles Medical Co.* v. *Park & Sons Co.*, 220 U. S. 373; *United States* v. *Trenton Potteries Co.*, 273 U. S. 392; *United States* v. *Socony-Vacuum Oil Co.*, 310 U. S. 150.)

[3] The networks seem to contend that our power to deal with restrictions on competition is limited to the authority conferred in section 311. That section provides:

"The Commission is hereby directed to refuse a station license and/or the permit hereinafter required for the construction of a station to any person (or to any person directly or indirectly controlled by such person) whose license has been revoked by a court under section 313, and is hereby authorized to refuse such station license and/or permit to any other person (or to any person directly or indirectly controlled by such person) which has been finally adjudged guilty by a Federal court of unlawfully monopolizing, or attempting unlawfully to monopolize, radio communication, directly or indirectly, through the control of the manufacture or sale of radio apparatus, through exclusive traffic arrangements, or by any other means, or to have been using unfair methods of competition."

It is not entirely clear just what point the networks seek to make. If the argument they advance is that we cannot deny a license to an applicant on the ground that his practices violate the antitrust laws unless a Federal court has first found the applicant guilty, then they misinterpret our decision. We do not predicate our jurisdiction to issue the regulations on the ground that the network practices violate the antitrust laws. We are issuing these regulations because we have found that the network practices prevent the maximum utilization of radio facilities in the public interest.

If the contention is that we cannot consider restrictions on competition unless they do constitute violations of the antitrust laws and have been so declared by a Federal court, it completely disregards the legislative history of the Communications Act and its predecessor as well as Supreme Court decisions. The encouragement "of the larger and more effective use of radio in the public interest" which we are required to foster and the power to license stations to serve in the public interest are independent of the grant of authority contained in section 311. That section merely emphasizes the importance which Congress attached to the preservation of competition in the radio field. It directs or

The networks contend, however, that the Commission has no jurisdiction over the contractual relations between licensees and networks because they are "business" practices and policies beyond the pale of Commission action. The language of the Supreme Court in the *Sanders* case—"The act does not essay to regulate the business of the licensee"—is cited in support of this argument. The simple answer to this contention is that it misreads the *Sanders* case. The Court there held that the Commission has no authority over the business of broadcast licensees *qua* business, as it does in the case of common carriers. This is very different from a holding that, even in the presence of adequate ground of jurisdiction, an activity is exempt from regulations merely because it is a business practice. As stated by the Court:

In contradistinction to communication by telephone and telegraph which the Communications Act recognizes as a common carrier activity and regulates accordingly in analogy to the regulation of rail and other carriers by the Interstate Commerce Commission, the act recognizes that broadcasters are not common carriers and are not to be dealt with as such. Thus the act recognizes that the field of broadcasting is one of free competition. The sections dealing with broadcasting demonstrate that Congress has not, in its regulatory scheme, abandoned the principle of free competition, as it has done in the case of railroads, in respect of which regulation involves the suppression of wasteful practices due to competition, the regulation of rates and charges, and other measures which are unnecessary if free competition is to be permitted.

There is nothing in the *Sanders* opinion which gives any support to the contention that we cannot, in exercising our licensing function, consider factors which might affect the ability of the station to serve the public interest just because those factors happen to be what might be called the business of the licensee. In denying licenses to applicants on the ground that their contractual arrangements with the networks prevent them from utilizing the available radio facilities in the fullest and most effective manner, the Commission does not regulate the business practices of licensees. There is here no attempt to fix rates, to prescribe a uniform system of accounts, to regulate advertising, to supervise the programs or the business policies of the licensee, or to impose any of the obligations which are applicable to common carriers. The denial by the Commission of a license or renewal merely involves a determination that the contractual relations with the networks affect adversely the ability of licensees to operate their stations in the public interest. This is no different in principle from a denial of a license on the ground that a contract which a licensee has with a third person for the exchange of certain of his assets—obviously a business matter—renders him insolvent and incapable of operating in the public interest. Licensees cannot escape the consequences of their acts or shirk their duty of properly serving the public by the simple device of describing their operating activities as business practices.

---

authorizes the Commission, as the case may be, to refuse a license on the basis of a finding by a court that the applicant violated the antitrust laws, without requiring the Commission to hold its own hearing to verify the facts found by the court or to determine whether the practices which constitute the violation would in fact prevent the fullest use of radio facilities. It certainly does not detract from our power to refuse a license or renewal when our own hearing or investigation reveals that practices of the applicant (whether violations of the antitrust laws or not) prevent the maximum utilization of radio facilities.

2. The power to issue rules and regulations

The objection has been raised that even if we have the power to deny a license or renewal on the ground that a particular affiliation contract prevents an individual station from operating in the public interest, we are nevertheless without power to issue rules and regulations of general applicability. But this contention reads out of the Communication Act the power given to the Commission by Congress in section 303 (f) to "make such regulations * * * as it may deem necessary * * * to carry out the provisions of this act." See also section 303 (r). It would deny the Commission, too, the power contained in section 4 (j) "to conduct its proceedings in such manner as will best conduce to the proper dispatch of business and to the ends of justice." We believe that the announcement of the principles we intend to apply in exercising our licensing power will expedite business and further the ends of justice.

Announcements of policy may take the form of regulations or of general public statements. In either case, the applicant's right to a hearing on the question whether he does in fact propose to operate in the public interest is fully preserved. The regulations we are adopting are nothing more than the expression of the general policy we will follow in exercising our licensing power. The formulation of a regulation in general terms is an important aid to consistency and predictability and does not prejudice any rights of the applicant. Good administrative practice would seem to demand that such a statement of policy or rules and regulations be promulgated wherever sufficient information is available upon which they may be based.[4]

B. JURISDICTION UNDER THE COMMISSION'S POWER TO MAKE SPECIAL REGULATIONS RESPECTING CHAIN BROADCASTING

If any doubts exist as to the propriety of the regulations viewed as an exercise of the Commission's licensing power, they are completely dispelled by section 303 (i). This section gives to the Commission the specific power to "make special regulations applicable to radio stations engaged in chain broadcasting." No language could more clearly cover what we are doing here.

It has been contended, however, that this provision only empowers the Commission to deal with problems of a technical nature involved in chain broadcasting. The complete answer to this contention is that the language employed by Congress is too broad and general to permit of so narrow an interpretation. We cannot assume that Congress did not mean what it said.

Moreover, the legislative history of this provision demonstrates that Congress did intend section 303 (i) to be of general application and specifically that it should include the power to deal with restrictions upon competition in chain broadcasting.

Section 303 (i) is carried over verbatim from section 4 (h) of the Radio Act of 1927.[5] It appeared for the first time, in a somewhat

[4] See *Administrative Procedure in Government Agencies*, 77th Cong. 1st sess., S. Doc. 8, p. 27.

[5] The NBC brief in this proceeding quotes from page 21 of the Federal Radio Commission's *First (sic: Second) Annual Report to Congress* (1928) as evidence for the view that the Commission considered its power to regulate chain broadcasting under section 4 (h) of the 1927 act was limited to its obligation to maintain a fair, efficient, and equitable distribution of broadcasting facilities. The brief suggests that when Congress

different form, in the bill as reported by the Senate Committee on Interstate Commerce. It reads as follows:

When stations are connected by wire for chain broadcasting, [the Commission should] determine the power each station shall use and the wave lengths to be used during the time stations are so connected and so operated, and make all other regulations necessary in the interest of equitable radio service to the listeners in the communities or areas affected by chain broadcasting.

The report of the Senate committee states that this provision gives to the Commission "complete authority * * * to control chain broadcasting." [6]

The bill passed the Senate in the above form. The conference committee revised the section and reported it back in the more general and flexible form which finally became law.

The meaning of section 4 (h) was explained by Senator Dill, the Senate sponsor of the bill, in the debate on the conference report. He said:

In the first place, under this bill chain broadcasting today * * * is absolutely without any regulation. We have no law today to handle the situation, and the various radio organizations, including the Radio Corporation of America and the American Telephone & Telegraph Co., are going ahead and building up the chain stations as they desire without let or hindrance and without any restrictions, because the Secretary of Commerce has no power to interfere with them. Unless this proposed legislation shall be enacted they will continue to do so, and they will be able by chain-broadcasting methods practically to obliterate the independent small stations, as the man who wrote the telegram suggests. *While the commission would have the power under the general terms of the bill, the bill specifically sets out as one of the special powers of the commission the right to make specific regulations for governing chain broadcasting.* As to creating a monopoly of radio in this country, let me say that this bill absolutely protects the public, so far as it can protect them, *by giving the commission full power to refuse a license to anyone who it believes will not serve the public interest, convenience, or necessity.* It specifically provides that any corporation guilty of monopoly shall not only not receive a license but that its license may be revoked; and if after a corporation has received its license for a period of three years it is then discovered and found to be guilty of monopoly, its license will be revoked.

* * * * * * *

*** * * In addition to that, the bill contains a provision that no license may be transferred from one owner to another without the written consent of the commission, and the commission, of course, *having the power to protect against a monopoly*, must give such protection.**

I wish to state further that the only way by which monopolies in the radio business can secure control of radio here, even for a limited period of time, will be by the commission becoming servile to them. *Power must be lodged somewhere, and I myself am unwilling to assume in advance that the Commission proposed to be created will be servile to the desires and demands of great corporations of this country.*[7] [Italics supplied.]

---

thereafter reenacted without change section 4 (h) as section 303 (i) of the Communications Act, it presumptively approved this interpretation by the Federal Radio Commission.

In fact, however, the Commission merely pointed out that it had issued a regulation (General Order No. 43, Sept. 8, 1928) limiting the use of cleared channels for chain programs by requiring a separation of 300 miles between stations broadcasting such programs, with certain exceptions; and that later, for reasons of policy, it had suspended the order. Neither in the passage quoted nor elsewhere in the report did the Commission even allude to any limitation in its jurisdiction over chain broadcasting. Moreover, it does not follow from the fact that this regulation was concerned with fair distribution of facilities that the Commission construed this section as applicable only to problems of a technical nature involved in chain broadcasting. Consequently, there is no logical basis for the presumption contended for by NBC. *Cf. Helvering* v. *Hallock*, 309 U. S. 196.

[6] S. Rep. 772, 69th Cong., 1st sess. (1926), p. 3.

[7] 68 Cong. Rec. 2881. See also statements by Representative White, 68 Cong. Rec. 2579–2580, and by Senator Dill, 67 Cong. Rec. 12,352.

This explanation of the scope of section 4 (h) by the Senate sponsor of the bill completely substantiates the Commission's jurisdiction to issue the regulations involved here. It shows that section 4 (h) was written into the statute to remove any possible doubt which might exist under the licensing provision of the Act with respect to the Commission's power to regulate chain broadcasting. As Senator Dill said: "While the Commission would have the power under the general terms of the bill, the bill specifically sets as one of the special powers of the Commission the right to make specific regulations for governing chain broadcasting."

IX. CONCLUSION

We have exercised our jurisdiction upon the premise, generally accepted by the public and the industry, that the network method of program distribution is in the public interest. We subscribe to the view that network broadcasting is an integral and necessary part of radio. The regulations which we are promulgating are designed to preserve without loss the contributions of network broadcasting to the public and to the affiliated stations, while ensuring that licensees will exercise their responsibilities under the law. We believe that these regulations will foster and strengthen network broadcasting by opening up the field to competition. An open door to new networks will stimulate the old and encourage the new.

The prophecy that regulations such as we are adopting will "result in the eventual destruction of national program service" and "destroy the American system of network broadcasting" is, we believe, the exaggeration of advocacy. The practices which we find contrary to public interest were instituted to restrict competition within the broadcasting field, not to protect commercial broadcasting from competition by other types of advertising. Everyone familiar with broadcasting as an advertising medium knows that radio reaches a different audience from other types of advertising, and that it reaches them in a different way. We doubt that the networks have so little faith in the stability of their own enterprise as is suggested by their insistence that the whole structure of commercial broadcasting will collapse if their relations with outlets are modified along the lines indicated. It is incredible that the industry's footing is so insecure. The prediction that advertisers will desert radio in favor of newspapers, magazines, or billboards is singularly unconvincing.

We are under no illusion that the regulations we are adopting will solve all questions of public interest with respect to the network system of program distribution. For example, we have not dealt with the activities of the principal networks in the fields of electrical transcription and talent supply, although we recognize, as did the committee, that their activities in these fields "raise problems which vitally concern the welfare of the industry and the listening public." The problems in the network field are interdependent, and the steps now taken may perhaps operate as a partial solution of problems not directly dealt with at this time. Such problems may be examined again at some future time after the regulations here adopted have been given a fair trial.

We have been at pains to limit our regulations to the proven requirements of the situation, and especially to ensuring the maintenance of a competitive market. Radio broadcasting is a competitive industry. The Congress has so declared it in the Communications Act of 1934, and has required the fullest measure of competition possible within physical limitations. If the industry cannot go forward on a competitive basis, if the substantial restraints upon competition which we seek to eliminate are indispensable to the industry, then we must frankly concede that broadcasting is not properly a competitive industry. If this be the case, we recommend that the Congress should amend the Communications Act to authorize and direct regulations appropriate to a noncompetitive industry with adequate safeguards to protect listeners, advertisers, and consumers. We believe, however, that competition, given a fair test, will best protect the public interest. That is the American system.

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D. C.

COMMISSION ORDER IN DOCKET NO. 5060.

IN THE MATTER OF THE INVESTIGATION OF CHAIN BROADCASTING

May 2, 1941

WHEREAS, the Commission on March 18, 1938, by Order No. 37, authorized an investigation "to determine what special regulations applicable to radio stations engaged in chain or other broadcasting are required in the public interest, convenience, or necessity;"

WHEREAS, on April 6, 1938, the Commission appointed a Committee of three Commissioners to supervise the investigation, to hold hearings in connection therewith, and "to make reports to the Commission with recommendations for action by the Commission;"

WHEREAS, the Committee held extensive hearings and on June 12, 1940, submitted its report to the Commission;

WHEREAS, briefs were filed and oral arguments had upon the Committee report and upon certain draft regulations issued for the purpose of giving scope and direction to the oral arguments; and

WHEREAS, the Commission, after due consideration, has prepared and adopted the Report on Chain Broadcasting to which this Order is attached;

NOW, THEREFORE, IT IS HEREBY ORDERED, That the following regulations be and they are hereby adopted:

3.101 No license shall be granted to a standard broadcast station having any contract, arrangement, or understanding, express or implied, with a network organization[1] under which the station is prevented or hindered from, or penalized for, broadcasting the programs of any other network organization. See Chapter VII, A, 1.

3.102 No license shall be granted to a standard broadcast station having any contract, arrangement, or understanding, express or implied, with a network organization which prevents or hinders another station serving substantially the same area from broadcasting the network's programs not taken by the former station, or which prevents or hinders another station serving a substantially different area from broadcasting any program of the network organization. See Chapter VII, A, 2; and J.

3.103 No license shall be granted to a standard broadcast station having any contract, arrangement, or understanding, express or implied, with a network organization which provides, by original term, provisions for renewal, or otherwise, for the affiliation of the station with the network organization for a period longer than one year: *Provided*, That a contract, arrangement, or understanding for a one-

[1] The term "network organization," as used herein, includes national and regional network organizations. See Chapter VII, J.

313425—41——7

year period, may be entered into within sixty days prior to the commencement of such one-year period. See Chapter VII, B.

3.104 No license shall be granted to a standard broadcast station having any contract, arrangement, or understanding, express or implied, with a network organization which prevents or hinders the station from scheduling programs before the network finally agrees to utilize the time during which such programs are scheduled, or which requires the station to clear time already scheduled when the network organization seeks to utilize the time. See Chapter VII, C.

3.105 No license shall be granted to a standard broadcast station having any contract, arrangement, or understanding, express or implied, with a network organization which (a), with respect to programs offered pursuant to an affiliation contract, prevents or hinders the station from rejecting or refusing network programs which the station reasonably believes to be unsatisfactory or unsuitable; or which (b), with respect to network programs so offered or already contracted for, prevents the station from rejecting or refusing any program which, in its opinion, is contrary to the public interest, or from substituting a program of outstanding local or national importance. See Chapter VII, D.

3.106 No license shall be granted to a network organization, or to any person directly or indirectly controlled by or under common control [2] with a network organization, for more than one standard broadcast station where one of the stations covers substantially the service area of the other station, or for any standard broadcast station in any locality where the existing standard broadcast stations are so few or of such unequal desirability (in terms of coverage, power, frequency, or other related matters) that competition would be substantially restrained by such licensing. See Chapter VII, E.

3.107 No license shall be issued to a standard broadcast station affiliated with a network organization which maintains more than one network: *Provided*, That this regulation shall not be applicable if such networks are not operated simultaneously, or if there is no substantial overlap in the territory served by the group of stations comprising each such network. See Chapter VII, F.

3.108 No license shall be granted to a standard broadcast station having any contract, arrangement, or understanding, express or implied, with a network organization under which the station is prevented or hindered from, or penalized for, fixing or altering its rates for the sale of broadcast time for other than the network's programs. See Chapter VII, G.

It is Further Ordered, That these regulations shall become effective immediately: *Provided*, That, with respect to existing contracts, arrangements, or understandings, or network organization station licenses, the effective date shall be deferred for 90 days from the date of this Order: *Provided further*, That the effective date of Regulation 3.106 may be extended from time to time with respect to any station in order to permit the orderly disposition of properties.

Federal Communications Commission,
T. J. Slowie, *Secretary*.

---

[2] The word "control," as used herein, is not limited to full control but includes such a measure of control as would substantially affect the availability of the station to other networks.

APPENDICES

Appendices

APPENDIX A

Order Instituting Chain Broadcasting Investigation

Federal Communications Commission,
Washington, D. C., March 18, 1938.

Order No. 37

Whereas under the provisions of section 303 of the Communications Act of 1934, as amended, "the Commission, from time to time, as public convenience, interest, or necessity requires, shall—(1) Have authority to make special regulations applicable to radio stations engaged in chain broadcasting"; and

Whereas the Commission has not at this time sufficient information in fact upon which to base regulations regarding contractual relationships between chain companies and network stations, multiple ownership of radio broadcast stations of various classes, competitive practices of all classes of stations, networks, and chain companies, and other methods by which competition may be restrained or by which restricted use of facilities may result; Now therefore,

It is ordered, That the Federal Communications Commission undertake an immediate investigation to determine what special regulations applicable to radio stations engaged in chain or other broadcasting are required in the public interest, convenience, or necessity; such investigation to include an inquiry into the following specific matters, as well as all other pertinent and related matters, including those covered in the report on social and economic data prepared by the Engineering Department of the Federal Communications Commission and filed with the Commission on January 20, 1938:

1. The contractual rights and obligations of stations engaged in chain broadcasting, arising out of their network agreements.
2. The extent of the control of programs, advertising contracts, and other matters exercised in practice by stations engaged in chain broadcasting.
3. The nature and extent of network program duplication by stations serving the same area.
4. Contract provisions in network agreements providing for exclusive affiliation with a single network and also provisions restricting networks from affiliation with other stations in a given area.
5. The extent to which single chains or networks have exclusive coverage in any service area.
6. Program policies adopted by the various national and other networks and chains, with respect to character of programs, diversification, and accommodation of program characteristics to the requirements of the area to be served.
7. The number and location of stations licensed to or affiliated with each of the various national and other networks. The number of hours and the specified time which such networks control over the station affiliates and the number of hours and the specified time actually used by such networks.
8. The rights and obligations of stations engaged in chain broadcasting so far as advertisers having network contracts are concerned.
9. Nature of service rendered by each station licensed to a chain or network organization, particularly with respect to amount of program origination for network purposes by such stations.
10. Competitive practices of stations engaged in chain broadcasting as compared with such practices in the broadcasting industry generally.
11. Effect of chain broadcasting upon stations not affiliated with or licensed to any chain or network organization.
12. Practices or agreements in restraint of trade or furtherance of monopoly in connection with chain broadcasting.

13. Extent and effects of concentration of control of stations locally, regionally, or nationally in the same or affiliated interests, by means of chain or network contracts or agreements, management contracts or agreements, common ownership or other means or devices, particularly insofar as the same tends toward or results in restraint of trade or monopoly.

***It is further ordered,* That hearings be held in connection with such investigation at such times and places as the Commission shall designate.**

***It is further ordered,* That a copy of this order be posted in the office of the Secretary and that a copy of the same be mailed to each licensee of a broadcast station and to each chain and network organization.**

By the Commission.

T. J. SLOWIE, *Secretary.*

APPENDIX B

MEMORANDUM OF SUBMITTAL ACCOMPANYING REPORT OF COMMITTEE ON CHAIN BROADCASTING, AND CONCLUSION OF THE COMMITTEE'S REPORT

[Excerpt from Committee Report dated June 12, 1940, pp. i–vi and pp. 133–138]

TO THE FEDERAL COMMUNICATIONS COMMISSION:

There is transmitted herewith the report of the Committee on chain broadcasting made pursuant to Order No. 37, authorizing an investigation to determine the necessity for and the nature of special regulations applicable to radio stations engaged in chain or other broadcasting which are required in the public interest, convenience, and necessity.

This report deals with the following subjects: The predominance of network organizations in the radio broadcast field; contractual relation of network organizations to station licensees; radio broadcasting and the supply of talent; transcription services in the radio broadcast industry; and multiple ownership of radio broadcast stations. There is attached to the report, as appendix A, an exhaustive and detailed digest of the evidence received by this Committee during the extensive hearings held by it as well as of other related material in the official files of the Commission. There is also attached, as appendix B, a report compiled by the law department entitled "Report of Persons and Other Entities Holding Stock Interest In, Control Over, or Official Relationship to More Than One Standard Broadcast Station Reported to the Federal Communications Commission to April 1, 1940."

The Committee is of the opinion that these materials form an adequate basis upon which the Commission may proceed to a consideration of the need for a revision of its licensing policy in the radio broadcast field in order to correct the serious inequities and arbitrary practices which have developed in connection with chain broadcasting.

The record discloses an unhealthy predominance of the network organizations in the radio broadcasting field which is due, in large measure, to the contractual arrangements forced upon stations seeking affiliation with a network. These contractual arrangements have resulted in a grossly inequitable relation between the networks and their outlet stations to the advantage of the networks at the expense of the outlets. These advantages have, in turn, led to further and further expansion of the networks' activities and a sharp curtailment of the scope of activity of the outlet stations.

The provisions of these contracts which forbid the outlet to accept programs from any other network, which prohibit the outlet from accepting programs from national advertisers at rates lower than those charged by the network, and which require the outlet to keep available for the use of the network all, or almost all, of its time, stifle competition and tend to make the outlet the servant of the network rather than an instrument for serving the public interest. The station is thereby rendered incapable of serving as a medium of local self-expression through the broadcast of local programs.

The onerous burden of proof placed upon the outlet when it desires to reject a commercial network program has resulted in the almost universal acceptance of all such network programs and the delegation by the licensee-outlet of its duty to operate in the public interest.

The long life of these contracts and the retention by the networks of the option of renewal, without according a like privilege to the outlet, give the chains a dominant bargaining position sufficient to enable them to dictate policies to the station licensees.

A disproportionate share of the receipts from a network broadcast is retained by the network organization under these contracts. We believe that individual and corporate licensees should be independent and successful if they are to serve fully the public interest.

It is the committee's opinion that many of the evils of chain broadcasting can be removed by the elimination of certain provisions now found in the regular network-outlet contract. The committee believes that there is authority under the statute to deal with the problems raised by these contractual arrangements. Section 303 (*i*) of the Communications Act of 1934 provides that the Commission shall "have authority to make special regulations applicable to radio stations engaged in chain broadcasting." It is our opinion that the authority so granted by the act includes the power to make regulations governing the contracts entered into between a licensee and a network where such contracts affect the duty or ability of licensees to operate in the public interest. The power conferred by section 303 (*i*) is buttressed by the grant of authority contained in sections 307 (*d*) and 309 (*a*) requiring the Commission to refuse licenses or renewals thereof unless the Commission finds that public interest, convenience, or necessity would be served by granting the license or renewal. It is our opinion, based upon the extensive investigation which we have just completed, that public interest, convenience, or necessity are adversely affected by inclusion in the network-outlet contracts of many of the contractual provisions referred to above.

As the report clearly shows, the activities of the principal networks in the fields of electrical transcription and talent supply raise problems which vitally concern the welfare of the industry and the listening public. These and other network practices which have tended to restrict competition in the radio broadcast field can be eliminated or, at least, ameliorated by a redefinition of the licensing policy of the Commission. The problems in the chain broadcasting field are interdependent and closely related with one another and with the network-outlet contract. The elimination of arbitrary and inequitable contractual arrangements will tend to subject the networks to active competition and will render the independent station more secure within the industry, and better able to cope with the networks in all fields of broadcast activity.

The committee believes that the Commission should proceed at once to deal with these problems to the extent that Congress has given it authority in the Communications Act of 1934. In our opinion, the Commission possesses ample power under the Communications Act to redefine its licensing policy and require the elimination of inequitable and arbitrary contractual arrangements which affect the duty of the licensee to serve the public interest.

The committee believes that competition in the radiobroadcast field can be further enhanced by a revaluation of the so-called clear-channel policy, whereby new stations are refused access to clear channels regardless of the service which the new station would be able to render and regardless of how small the interference to the clear-channel station would be. The record evidences that all but two of the high-power clear-channel stations in the United States are on the Columbia and National networks as well as all the high-power regional stations. The exclusive grant of a clear channel to a station which can only serve limited areas prevents people in other sections of the country from receiving service from stations which could otherwise operate on the clear-channel frequency. In our opinion, the Commission should consider the wisdom and practicability of utilizing the clear channels so that people living in all sections of the United States can have the benefit of radio reception at present denied them.

The committee desires also to direct the attention of the Commission to the following problems suggested by the report:

1. The necessity and advisability of requiring networks to be licensed by the Commission.
2. The ownership of stations by networks.
3. The ownership of more than one station by an individual or corporation.
4. The control of talent by networks.
5. The dominant position of National in the transcription field.
6. The difficulties involved in supervising the transfer of control of corporate licensees because of their stock being listed on stock exchanges.

The actual administrative experience which the Commission will obtain under its new licensing policy will enable it to suggest to the Congress the enactment of amendatory legislation to deal with these problems if such is later found to be necessary.

The committee recognizes that various benefits to the public may be achieved through the proper operation of chain broadcasting. It is the opinion of the committee that through the exercise of the powers of the Commission in dealing with the contractual relations between network and outlet, the potential advantages of the chains in this country can be retained. At the same time, the abuses which have prevented many of its potential advantages from being realized can be corrected. It is the committee's belief that the removal of arbitrary and inequitable provisions from network-outlet contracts will eliminate many of the detrimental practices involved in chain broadcasting without sacrificing any of the benefits.

By the committee.

THAD H. BROWN, *Vice Chairman.*
PAUL A. WALKER, *Commissioner.*
FREDERICK I. THOMPSON, *Commissioner.*

* * * * * * *

VI. CONCLUSION OF COMMITTEE REPORT

The record reveals at every turn the dominant position of the network organizations in the field of radio broadcasting. Of the 660 standard broadcast stations in operation during the year 1938, major networks served 350. These 350 stations included almost all of the high-power stations in the country.

In order to buttress their dominant position in the broadcast industry, the chain organizations have established the practice of owning or otherwise controlling powerful and profitable stations. During the year 1938 Columbia and National alone owned or controlled 23 such stations. The record reveals that the chains have been developed around these network owned and controlled stations and have been operated largely for the networks' benefit. The interests of the independent outlet stations, which are the real foundation of nation-wide broadcasting, have been subordinated to the interests of the network owned and controlled stations.

The problem with respect to the ownership of two or more stations by the same person or group of persons is not unlike that of network ownership of stations. The record evidences a definite trend toward concentration of ownership of radio stations. The 660 commercial stations in 1938 were owned by a total of 460 persons, both natural and corporate. Eighty-seven of these persons owned more than one station each and received in 1938 approximately 52 percent of the total business of all commercial broadcasting stations. To the extent that the ownership and control of radio-broadcast stations falls into fewer and fewer hands, whether they be network organizations or other private interests, the free dissemination of ideas and information, upon which our democracy depends, is threatened.

The predominance of network organizations is evidenced by their disproportionate share of the income of the broadcasting industry. The net operating income of all the stations and networks for the year 1938 was $18,854,784. Of this amount, $9,277,352 or about half of the total went to National and Columbia and their 23 owned or otherwise controlled stations. The remainder had to be divided among the 310 stations which were not on any chain and the 327 chain stations which were not owned or controlled by National and Columbia.

The predominance of network organizations is further evidenced by the fact that all but two of the 30 high-power, unlimited-time, clear-channel stations and all the high-power regional stations are on the National and Columbia networks. The inescapable conclusion is that National and Columbia, directed by a few men, hold a powerful influence over the public domain of the air and measurably control radio communication to the people of the United States. If freedom of communication is one of the precious possessions of the American people, such a condition is not thought by the committee to be in the public interest and presents inherent dangers to the welfare of a country where democratic processes prevail.

Except in those cases where a station is owned or controlled by a network, chain broadcasting is effectuated by means of contracts between the network organizations and its outlet stations. The existing contracts reveal many arbitrary and inequitable practices on the part of the networks. The provision that the outlet station cannot accept programs from any network other than the one to which it is bound by contract deprives the station of profitable business and the listening public of programs for which there is a demand. The practice of requiring stations to set aside all or a major portion of their broadcast time for the utilization of the networks, regardless of whether such time is used or not, places an undue burden upon the outlet station and lessens the ability of the station to serve the local needs of the community. The provision that nonnetwork rates for national advertising business cannot be less than those of the network prevents the outlet station from entering into a healthy competition for advertising business. The provisions of the contract concerning the free use of the first converted hours, combined with low initial compensating rates for the next hours, result in an inequitable distribution of proceeds from network broadcasting. Whereas Columbia and National had aggregate network time sales of $44,313,778 for 1938, they paid to the 253 independently controlled stations on their networks only $12,267,560, approximately one-half of which was paid to 25 of these stations with a relatively strong competitive position based on the need of the networks for their particular facilities. Moreover, the contracts generally cover periods of time far in excess of the period for which the station is licensed and bind the outlet to network policies far beyond the expiration date of the license.

These arbitrary contractual arrangements are further reflected in the program policies of the network organizations. Outlet stations are required by their contracts to accept all commercial programs sent by the network organizations unless they are able to prove to the satisfaction of the networks that a particular program will not serve public interest. Since the outlet stations have only general advance knowledge of the content of the program, they have come to accept whatever the network chooses to forward to them. Furthermore, approximately 90 percent of the commercial programs sent by network organizations are produced by advertising agencies, so that the delegation of program responsibility by the licensee is carried one step further.

The record reveals a number of instances in which chains have gone even further than the regular network-outlet contract and have actually taken over the management of the station. Section 310 (*b*) of the Communications Act provides that licenses for radio-broadcast stations shall not be transferred or assigned unless the Commission shall decide that such transfer is in the public interest and shall give its consent thereto in writing. The Commission has already taken cognizance of this problem and is engaged in investigating these contracts.

The operation by National of two distinct networks with separate service to two stations in each of many cities is evidence of the complete domination of the licensee stations exercised by the chains through the network-outlet contract. It is also one of the most inequitable byproducts of these contracts. The contracts which stations have with National do not specify to which of its chains the outlet is to be linked. The outlet station is only informed that it is a part of the National network. By virtue of this factor, National has the power to determine the economic fate of any of its outlets by arbitrarily assigning it to the prosperous Red network or to the unprofitable Blue network. These two networks have not been operated as competing units, with the benefit of competition accruing to the outlet station and the listening public, but as two parts of the National system with advantages to National only. The dual-network system has been utilized by National to prevent competing stations and other networks from entering communities served by it.

The predominance of the network organizations is further accentuated by their activities in the talent and electrical-transcription fields. The policy of Columbia and National of placing talent under the management of and exclusive contract to a network organization has the effect of limiting the efforts of much of the best talent in the country to network programs and of arbitrarily restricting the programs of independent competing stations, as well as the communities in which they are located. In the field of electrical transcriptions the National Broadcasting Co. has become a dominant factor. It has gained great competitive advantages in this field from its position in radio broadcasting, and its transcription activities have in turn, buttressed its position in the radiobroadcast industry. Since the unrestricted utilization of electrical-transcription programs is frequently an absolute necessity for independent stations lacking affiliation with a network, National's dominant position in the electrical-transcription field endangers the ability of these stations to serve the public interest adequately.

It seems apparent that the predominance of network organizations, the perpetuation of inequitable relations between such organizations and their outlet stations, and the lack of a more active competition within the radio broadcast industry are, in large part, the result of the contractual provisions that have been described in this report. The heart of the abuses of chain broadcasting is the network-outlet contract. It is the committee's considered opinion that many of the existing inequities and arbitrary practices will find correction in the reformation of these contracts.

APPENDIX C

Procedure for Oral Argument on Network Inquiry Report

Federal Communications Commission,
Washington, D. C., November 28, 1940.

The Federal Communications Commission today announced procedure for the oral argument on the committee network inquiry report made public June 12, 1940.

The hearing is scheduled for Monday and Tuesday, December 2 and 3, in hearing room A, Interstate Commerce Commission Building, starting at 10: 30 a. m.

Each party will be allowed a maximum of 1 hour of argument on the issues of fact and policy raised in the committee report. The order of argument will be as follows: National Broadcasting Co.; Columbia Broadcasting System; Independent Radio Network Affiliates, Inc.; Don Lee Broadcasting System; Mutual Broadcasting System; Roy L. Albertson (WBNY); Rock Island Broadcasting Co. (WHBF); Voice of Longview (KFRO); World Broadcasting System, Inc.; Association of Radio Transcription Producers of Hollywood, Inc.; American Federation of Musicians; Independent Artists' Representatives; Associated Music Publishers, Inc.

In order to facilitate the oral argument, counsel are requested to consider the advisability and effect of the promulgation by the Commission of the following special regulations with respect to chain broadcasting. In several instances these suggestions are in the alternative, and the Commission desires to hear argument on the advisability and effect of alternative suggestions. It is to be understood that the regulations have not received the approval of the Commission, and are to be taken as suggestions by the Commission intended to focus the attention of counsel upon the issues raised in the report. It should also be understood that counsel are not in any way limited to a discussion of these regulations but may address themselves to any of the issues of fact or policy raised by the report of the chain broadcasting committee.

1–A. No licensee of a standard broadcast station shall enter into any contractual arrangement, express or implied, with a network organization which provides for or has the effect of establishing an exclusive affiliation with the network organization.

OR

1–B. No licensee of a standard broadcast station shall enter into any contractual arrangement, express or implied, with a network organization which provides for or has the effect of establishing an exclusive affiliation with the network organization; *Provided*, That such restriction shall not apply to licensees of stations located in or rendering primary service to cities receiving adequate primary service from five or more full-time stations.

2. No licensee of a standard broadcast station shall enter into any contractual arrangement, express or implied, with any network organization which gives the network organization an option on the hours of operation of the licensee's station for the broadcasting of commercial programs (*a*) for more than 30 percent of the converted hours of operation in any city receiving adequate primary service from three full-time stations with comparable facilities: (*b*) for more than 20 percent of the converted hours of operation in any city receiving adequate primary service from two full-time stations with comparable facilities; (*c*) for more than 10 percent of the converted hours of operation in any city receiving adequate primary service from one full-time station; (*d*) for a total number of converted hours exceeding by more than 25 percent the converted hours during which such licensee has broadcast commercial programs transmitted to the licensee by the network organization during the 6 months preceding the effective date of the contract.

3–A. No licensee of a standard broadcast station shall enter into any contractual arrangement, express or implied, with any network organization, the terms of which exceed in duration the effective period of the license granted by this Commission. For the purposes of this section, an agreement shall be considered as exceeding in duration the effective period of the license if the agreement gives either party an option to extend the contract beyond the termination of the license; *Provided*, That this restriction shall not be construed as preventing a licensee from entering into a contract with a network organization a reasonable period of time, not to exceed 30 days, in advance of the expiration date of the existing contract.

OR

3–B. No licensee of a standard broadcast station shall enter into any contractual arrangement, express or implied, with a network organization which gives the network organization any rights with respect to the renewal or cancelation of such contractual arrangement not given to the licensee.

OR

3–C. No licensee of a standard broadcast station shall enter into any contractual arrangement, express or implied, with a network organization for a period longer than 2 years.

4. No licensee of a standard broadcast station shall enter into any contractual arrangement, express or implied, with a network organization which controls, restrains, limits, or in any other way interferes with the establishment of the rates to be charged by the licensee for the sale of available broadcast time to advertisers or other clients.

5. No licensee of a standard broadcast station shall enter into any contractual arrangement, express or implied, with a network organization which has the effect of or will result in the broadcasting of the programs of one network company by two or more standard broadcast stations rendering adequate primary service to the same city.

6–A. After January 1, 1942, no licensee of a standard broadcast station shall, directly or indirectly, own or be owned by, or be under common control with or have any interests in a chain or network organization; *Provided*, That the Commission will grant reasonable extensions of time in the event that the licensee is unable to meet the requirements of this restriction before its effective date.

OR

6–B. No person engaged in network broadcasting shall be licensed to operate more than two clear channel stations or more than three standard broadcast stations of all classes.

OR

6–C. No person engaged in network broadcasting shall be licensed to operate any standard broadcast station located in a city receiving adequate primary service from less than five full time standard broadcast stations.

7. No licensee of a standard broadcast station shall enter into any contractual arrangement, express or implied, which prevents the licensee from rejecting, for reasonable cause, any program offered by the network organization. The contracts between station licensees and network organizations shall expressly guarantee the right of program rejection by the licensee, and the judgment of such licensee shall be *prima facie* evidence of the reasonableness of rejection claims.

APPENDIX D

Regional Networks

The regional network field has been in a state of more rapid change than the national network field. Since the time of the Committee hearings, some regional networks have become defunct, and new ones have sprung up. Among the latter, for example, are the Carolina Broadcasting System, associated with Mutual; the Intermountain Network, associated with Mutual; the Minnesota Radio Network, associated with NBC; the Southern Network, associated with Mutual; and many others.[1] The summary which follows, accordingly, is not an exhaustive survey of regional networks, but rather a résumé of information concerning regional networks as developed in the record of this proceeding.

A. California Radio System

The California Radio System was formed November 21, 1936, to engage in network operations. It was originally operated by a partnership composed of McClatchy Broadcasting Co., wholly owned by McClatchy Newspapers, on the one hand, and Hearst Radio, Inc., and the Evening Herald Publishing Co., both controlled by William Randolph Hearst, on the other. The following stations composed the original network:

Station	Location	Owner
KEHE	Los Angeles	Evening Herald Publishing Co.
KYA	San Francisco	Hearst Radio, Inc.
KFBK	Sacramento	McClatchy Broadcasting Co.
KERN	Bakersfield	Do.
KMJ	Fresno	Do.
KWG	Stockton	Do.

The Hearst interests withdrew from the partnership in November 1937, and the McClatchy Broadcasting Co. acquired sole control of the network and operated it as one of its departments. Station KYA remained on the network under a contract of affiliation and the other Hearst station, KEHE, was replaced by KFWB in Hollywood. Subsequently, stations KFOX in Long Beach, KTMS in Santa Barbara, and KOH in Reno, Nev., were added to the network. Station KOH is owned by The Bee, Inc., a wholly owned subsidiary of McClatchy Newspapers.

The typical affiliation contract of the California Radio System, as of the time of the committee hearings, provided that the network should have free use of the affiliate's facilities for network commercial programs for 150 hours per year (not more than the equivalent of 3½ nighttime hours per week) and that the network should pay the station 50 percent of its rate for hours used in excess of the free time. The outlet placed all its time at the disposal of the network subject to 15 days' notice, except that the station could retain three daytime hours per day, which, however, were not specified. The station could freely reject any network sustaining program, but it was required by contract to accept network commercial programs subject only to the optional-time provisions. The contract had no date of termination, but either party could cancel on 6 months' notice.

California Radio System was not a contract outlet for any other network; but as of the time of the Committee hearings the four stations owned by McClatchy Broadcasting Co. and station KTMS served, individually, as contract outlets for NBC, and KOH was affiliated on an individual basis with CBS.

The net time sales of the network for 1938, after agency commissions, amounted to $109,848, of which $88,027 was paid to its four owned stations and $21,821 to the other five stations on the network.

[1] Broadcasting, *1941 Year Book,* pp. 308–309.

B. Yankee and Colonial Networks

The Yankee Network, Inc., was incorporated on April 12, 1930, as The Shepard Broadcasting Service, Inc.; its present name was adopted in December 1936. It is owned by John Shepard, Jr., through a holding company, the Winterstreet Corporation.

Colonial Network, Inc., was organized August 5, 1936. Its stock is divided equally between John Shepard III, president of Yankee, and his brother, Robert F. Shepard. At the end of 1938, 13 stations were affiliated with both Yankee and Colonial, 4 others were affiliated with Yankee only and 1 other with Colonial only. The reason for forming Colonial was to make full use of the 16-hour telephone circuit for which Yankee had contracted but which it was using only part of the time. Colonial was permitted to use the Yankee circuits whenever they were not being used by Yankee and was not charged for their use except when connection was made with an outlet station affiliated with Colonial but not with Yankee. The circuits were used by Yankee approximately 5 of the 16 hours per day and by Colonial the remaining 11.

At the end of 1938 the following stations, all but three independently owned, comprised the Yankee Network:

WNAC, Boston.*
WEAN, Providence.*
WICC, Bridgeport.*
WLBZ, Bangor.
WNBH, New Bedford.
WFEA, Manchester.
WLLH, Lowell-Lawrence, Mass.
WSAR, Fall River.
WRDO, Augusta, Maine.
WTIC, Hartford.
WTAG, Worcester.
WCSH, Portland, Maine.
WLNH, Laconia, N. H.
WNLC, New London.
WHAI, Greenfield.
WCOU, Lewiston-Auburn, Maine.
WATR, Waterbury.

*Owned by Yankee.

The Colonial Network was composed of the above stations (except WNAC, WTIC, WTAG, and WCSH) and in addition Station WAAB in Boston, owned by Yankee. Station WNAC was the key station of the Yankee Network and Station WAAB was the key station of the Colonial Network.

Yankee as a network did not carry the programs of any national network, but nine of its outlets (WNAC, WEAN, WICC, WCSH, WTIC, WTAG, WFEA, WLBZ, and WRDO) were individually affiliated with NBC in 1938. Colonial, on the other hand, was associated with Mutual on a network basis as a "participating member."[2]

The network-outlet contracts used by Yankee and Colonial were, as a general practice, in the form of three-party agreements between the station licensees and both networks. They followed a more or less standard form which was varied in individual cases, particularly with respect to the amount of time under option to the networks, the compensation of the stations, the payment of telephone wire charges, and the amount of free time given to the networks.

The affiliation was not for a fixed term, but could be terminated by either station or network on 12 months' notice.

Yankee and Colonial took options on a substantial number of specified hours of most of their outlets; for seven stations, at the end of 1938, the option covered the entire broadcast day. The outlets agreed to broadcast, upon 28 days' notice, all network commercial programs offered during the time included within the option except those which, in the opinion of the station, were against public interest, convenience, or necessity.

Yankee and Colonial compensated their outlets for broadcasting commercial programs at a specified rate, generally 30 percent of the network rate for the station. In some instances, stations gave the networks a certain amount of free time, varying from 1 to 3 hours per week. Stations were permitted to broadcast all available network sustaining programs without additional charge.

Most of the stations were bound by an exclusivity clause which read:

"The station agrees not to accept programs directly from any other network other than Yankee or Colonial without permission in writing from Yankee or Colonial, but will accept programs originating with other networks if fed to them by Yankee or Colonial."[3]

Yankee and Colonial granted territorial exclusivity to their outlets as a matter of practice, but not as a matter of contractual right.

[2] In 1940 Colonial became one of the stockholder owners of Mutual.
[3] It should be noted, however, that, as of the end of 1938, 9 Yankee outlets were affiliated also with NBC, apparently with the permission of Yankee.

The Yankee Network maintained a news service which gathered and edited news, an artists' bureau, and a weather service department in connection with weather forecasting for New England, New York, and Long Island.

The network net time sales of Yankee for 1938 amounted to $564,225, of which Yankee retained $428,434 (76 percent) and paid $136,791 (24 percent) to 13 contract outlets.

Colonial had network net time sales for 1938 of $190,758, of which it retained $114,764 (60 percent) and paid $53,680 (28 percent) to 3 Yankee-owned stations (WAAB, WEAN, and WICC) and $22,314 (12 percent) to its other outlets. Of those net time sales, $49,422 (26 percent) was derived from Colonial programs and $141,336 (74 percent) from Mutual programs.

C. Don Lee Broadcasting System

The Don Lee network was founded in December 1928 by Don Lee, Inc., a corporation engaged principally in selling automobiles, when it connected its two owned stations (KFRC in San Francisco and KHJ in Los Angeles) by a telephone circuit for chain broadcasting. During that month the three stations owned by McClatchy newspapers (KMJ in Fresno, KWG in Stockton, and KFBK in Sacramento) joined the Don Lee Network, and after November 14, 1930, when McClatchy newspapers acquired Station KERN at Bakersfield, that station became affiliated with Don Lee. In 1933 Station KOH, at Reno, also owned by McClatchy newspapers, joined Don Lee.

In September 1929 Don Lee, Inc., became the CBS representative on the Pacific coast and furnished its outlets with CBS programs. Don Lee, Inc., expanded its network coverage of the Pacific coast in 1932 by adding Stations KOIN in Portland, KOL in Seattle, KVI in Tacoma, and KFPY in Spokane as contract outlets. In May 1931, Don Lee, Inc., acquired control of Station KDB in Santa Barbara and the ownership of Station KGB in San Diego and both of those stations became Don Lee, Inc., operated stations, serving also as outlets for CBS.

Don Lee's relationships with McClatchy newspapers and CBS continued until December 1936, when the five stations owned by the McClatchy interests left Don Lee to become associated with NBC and California Radio. CBS at the same time terminated its affiliation with Don Lee and established its own operations on the Pacific coast, taking over directly the contracts with four stations previously associated with Don Lee (KOIN, KOL, KVI, and KFPY). Don Lee thereupon became a "participating member" of Mutual and transmitted Mutual programs to its outlets.[4]

Since June 1932, network operations and the ownership of Stations KFRC, KHJ, and KGB have been vested in the Don Lee Broadcasting System, a wholly-owned subsidiary of Don Lee Holding Co., which in turn is wholly owned by the estate of Don Lee (deceased). The estate also controlled Station KDB in Santa Barbara through ownership of all the stock of its licensee.

Don Lee System expanded beyond California into the Pacific Northwest in the fall of 1937 through a contract with Pacific Broadcasting Co. During 1938 the Don Lee System was composed of 28 outlets. Fourteen of these, located in Washington and Oregon, received Don Lee network service through Pacific. Of the other 14, all located in California, 11 served the Don Lee System under direct contracts and the other 3 were owned by the system. One of the stations under direct contract (KDB), moreover, was under common ownership with the Don Lee System.

Don Lee System furnished its outlets with 16 hours of commercial and sustaining programs daily. From 16 to 20 percent of the Don Lee commercial programs were received from Mutual and the balance were furnished by Don Lee. The outlet stations of the Don Lee System had no direct contractual relations with Mutual; they received Mutual programs only through the facilities of Don Lee. Indeed, Mutual offered service to Pacific coast stations only through Don Lee.

The typical Don Lee affiliation contract, as of the time of the committee hearings, was for a specified term, with three additional terms of 1 year each, provided both parties gave notice to extend 90 days prior to expiration. The contract with Pacific Broadcasting Co., however, was for 5 years, but either party could terminate at the end of any year if the net income of Pacific from network business did not equal the cost of telephone lines.

The stations optioned all their time to Don Lee for network commercial programs. They were not required, however, to take any network programs which

[4] In 1940 Don Lee became one of the stockholder owners of Mutual.

would interfere with any local program of major public interest, convenience, and necessity.

Don Lee was generally entitled to free time over its outlet stations not exceeding 2 hours per week. For commercial time in excess of the free time, Don Lee paid the California stations with which it had individual affiliation contracts specified percentages of their network rates. The arrangement with Pacific was different. The latter network paid telephone-circuit expenses north of San Francisco and received all revenue collected by Don Lee from advertisers for the use of Pacific facilities until these expenses were covered. Thereafter it received from Don Lee 85 percent of such net revenue. Don Lee supplied sustaining programs to its outlets at no additional charge.

The affiliates agreed not to permit the use of their facilities by any other broadcasting company, system, or network, and, in turn, Don Lee agreed not to send its programs to other stations located in the same city as any of its outlets, or to any stations in Oregon or Washington other than the outlets of the Pacific Broadcasting Co.

The net time sales, after agency commissions, of Don Lee System and its 4 controlled stations for 1938 were $853,333, of which $417,324 was derived from Don Lee network time, $129,753 from Mutual network time, and $306,256 from nonnetwork sales of the 4 stations. The 28 stations composing the network during 1938 received $651,352 from networks, of which $547,077 (84 percent) went to the 4 Don Lee owned stations and $104,275 (16 percent) to the 24 independently owned outlets.

D. Pacific Broadcasting Co.

The Pacific Broadcasting Co. was incorporated in October 1937, after the Don Lee System became an outlet for Mutual, for the purpose of establishing further outlets for Mutual and Don Lee programs among a group of stations in Oregon and Washington.

The three shareholders of Pacific had interests in six stations in Washington and Oregon,[5] four of these (KMO, KIT, KOL, and KGY) became Pacific network outlets. The other two, KHQ and KGA[6] in Spokane, remained outlets for NBC.

During 1938 Pacific had 14 outlets: 9 in Washington and 5 in Oregon.

Pacific had no studio or other program production facilities. It relied in the main upon Mutual and Don Lee and to a lesser extent upon its contract outlets for network programs.

By contract with Don Lee, Pacific had the exclusive right to transmit Mutual and Don Lee programs in Oregon and Washington, and it agreed not to carry the programs of any network other than Don Lee and Mutual. By using the programs made available to it by Don Lee, Mutual, or its outlets, Pacific supplied its network with 16 hours of programs daily. The typical affiliation contract between Pacific and its outlets, as of the time of the committee hearings, required the station, upon 10 days' notice, to accept network commercial programs during any period of the broadcast day, except that the station was not required to take any program which would interfere with any locally originated program of major public interest or public necessity. The term of the contract was for 1 year, but Pacific had an option to extend for 4 additional terms.

Pacific contracted for and paid the telephone circuit expenses of its main line, including the line to the Don Lee System at San Francisco. The stations paid the telephone wire charges for circuits connecting them with Pacific main circuits. The outlets agreed to give Pacific 7 nighttime hours of free time per

[5] See the following table:

Name	Station	Percent of ownership
Carl E. Haymond	KMO, Tacoma	99.
	KIT, Yakima	100.
Louis Wasmer	KHQ, Spokane	99.
	KOL, Seattle	42.
	KGY, Olympia	49½.
	KGA, Spokane	(Lessee and licensee, owned by NBC.)
Archie G. Taft	KOL, Seattle	48⁷⁄₁₆.
	KGY, Olympia	49.

[6] While not a Pacific contract station, KGA acted as a Pacific network outlet for certain commercial programs.

week (or their equivalent) for network commercial programs and 2 additional free hours at any time for network promotional programs. For all time used for commercial programs, in excess of the free time, Pacific paid its outlets specified rates. Sustaining programs were available to outlet stations at no additional charge.

The stations agreed not to permit any other broadcasting company, system, or network to use its facilities; and Pacific agreed not to send its programs to any other station in the same city.

The total net time sales, after agency commissions, of the 14 outlets of Pacific for 1938 amounted to $580,602, of which $36,468 (6 percent) was received from Pacific, the remainder being nonnetwork net time sales.

E. Michigan Radio Network

Michigan Radio Network was established on January 1, 1933, as an operating department of King-Trendle Broadcasting Corporation.[7] King-Trendle had been incorporated on April 25, 1930, by John H. King and George W. Trendle, who had previously been engaged in the operation of motion picture and vaudeville theaters. On May 7, 1930, King-Trendle purchased station WXYZ in Detroit; on March 24, 1931, it leased station WOOD at Grand Rapids; and on December 21, 1931, it leased station WASH at Grand Rapids, which had been sharing time with WOOD. Thereafter, King-Trendle operated the two stations in Grand Rapids as one station, WOOD-WASH.

Michigan Radio Network furnished programs from station WXYZ in Detroit to its contract outlets within the State of Michigan. From 1933 to the date of the Committee hearings the following stations were affiliated with the network:

WXYZ, Detroit.	WELL, Battle Creek.
WOOD–WASH, Grand Rapids.	WKZO, Kalamazoo.
WIBM, Jackson	WBCM, Bay City.
WFDF, Flint	WJIM*, Lansing.

*Joined network July 1, 1934.

On September 29, 1934, station WXYZ became one of the original four "member" stations of Mutual; but the station withdrew from Mutual on September 29, 1935, to join NBC's basic Blue Network. The NBC affiliation contract provided that King-Trendle might furnish to the stations on the Michigan network NBC's commercial programs sent to WXYZ, and also the sustaining programs, except the "Music Appreciation Hour" conducted by Walter Damrosch, the program on Sundays at noon, and all speeches but those by the President of the United States. At the same time, station WOOD–WASH became affiliated with NBC as an optional station.

The standard affiliation contract between Michigan Network and its outlets, as of the time of the committee hearings, was for a term of 1 year, but it could be canceled if a majority of all stations on the network and the network agreed.

The contract provided that the outlet, upon 2 weeks' notice, must accept any network commercial program offered during any hour of the broadcast day, except programs the broadcasting of which would not be in the public interest, convenience, and necessity. The station was permitted to reserve for itself not more than one and one-half hours each evening between 6 p. m. and 10 p. m. for local broadcasting, provided that such periods did not conflict with network commercial programs offered.

The outlet granted the network 1 hour per day before 6 p. m. and 1 hour after 6 p. m. which the network could sell commercially and for which the outlets did not receive compensation. For time used commercially by the network in excess of the 2 free hours per day, the station was paid a specified rate. Michigan Network paid telephone circuit expenses and supplied sustaining programs without additional charge.

The contract provided that the station would not permit the use of its facilities by any other broadcasting chain or network; and the station also agreed not to sell time to third persons at a rate less than that specified in its contract with Michigan Network.

The hours of commercial programs sent to its outlets by Michigan Network did not, as a rule, exceed the number of free hours given to the network. More than one-half of all programs sent to its outlets by Michigan radio were those received from NBC.

[7] This company was originally incorporated under the name of Kunsky-Trendle Broadcasting Corporation. Its name was changed to King-Trendle Broadcasting Corporation in 1936.

The network time sales of Michigan Network for 1938 amounted to $133,314, of which $83,853 (62.5 percent) was paid to its three controlled stations and $49,461 (37.5 percent) was paid to its six contract outlets, whose total net time sales amounted to $288,238. The net time sales of the three stations operated by Michigan Network amounted to $651,645 for 1938, of which $113,203 was received from NBC.

In 1938 King-Trendle entered into an agreement with NBC's transcription bureau whereby NBC transcribed Michigan's Lone Ranger program, and leased the transcriptions to stations throughout the world except specified major trade markets in which Michigan Network reserved the right to lease the transcriptions.

F. Texas State Network

Texas State Network was incorporated on August 1, 1938, to render program service to stations within the State of Texas and to provide a state-wide advertising medium. Network operation commenced September 15, 1938.

At the time of the committee hearings, Texas State had 23 outlets, all independently owned. One (KPLT at Paris) was operated by Texas State under a management contract; the remaining 22 served as contract outlets. Four of the stations also served as outlets for NBC and one for CBS.

Texas State was an "affiliate" of Mutual and furnished Mutual programs to its outlets.

The standard Texas State affiliation contract was for 1 year, with an automatic extension for a period of 2 more years unless the network or the outlet gave notice to the contrary. The outlet agreed, upon 28 days' notice, to carry network commercial programs at any time during the 7 specific hours[8] optioned to the network, except that, because of "its public responsibility," it could reject a network program, the broadcasting of which would not be in the public interest, convenience, and necessity.

The network agreed to provide the outlet with 17 hours of live talent programs per day. There was no particular charge specifically allocated to sustaining programs; but most of the outlets agreed to pay Texas State $500 per month in consideration of network affiliation; a few paid somewhat less. In addition, each station gave Texas State 5 unit hours each week free for network commercial programs. Texas State maintained network telephone lines at its own expense and paid each outlet the station card rate less agency commission of 15 percent and less a network selling commission of 15 percent, for network commercial programs, in excess of the free time.

The contract contained a provision, similar to the provision in the standard NBC affiliation contract, which gave the network the right to reduce station compensation if the station sold time to advertisers at rates lower than those charged by the network. It also prohibited a station from altering its network station rate or station card rate without the consent of the network and its outlet stations.

The net times sales, less agency commissions, of Texas State for the period from September 15, 1938, to January 31, 1939, amounted to $79,468, of which $47,335 (59 percent) was paid to its outlets. During this period Texas State collected $57,082 from its outlets under the arrangement whereby the stations agreed to pay the network $500 per month. That amount represented approximately 120 percent of the amount Texas State paid to the stations.

G. Arrowhead Network

Arrowhead Network is a trade name given by Head of the Lakes Broadcasting Co. to its three owned stations located in northern Minnesota, a section known locally as the "Arrowhead" area. The stations were WEBC in Duluth, WHLB in Virginia, Minn., and WMFG in Hibbing.

The three stations were under one ownership and were interconnected for mutual program-service purposes, the entire benefits of which inured to the owner. For 1938 the net time sales, after agency commissions, of the three stations were $239,276.

---

[8] 7 : 30 a. m. to 9 : 30 a. m.; 11 : 30 a. m. to 1 : 30 p. m.; 5 : 30 p. m. to 7 : 30 p. m.; and 9 : 00 p. m. to 10 : 00 p. m. Four outlets of Texas State were also affiliated with NBC. Since their arrangements with Texas State were subordinated to their relationship with NBC the standard Texas State affiliation contract was modified, particularly with respect to its optional-time provision, to apply to them.

H. Empire State Network, Inc.

Empire State Network, Inc., was incorporated on September 23, 1938, and ceased operations on November 7, 1938. During its 43 days of operation it sold time principally for political speeches.

The stations affiliated with the network were:

WABY, Albany.
WIBX, Utica.
WSAY, Rochester.
WMBO, Auburn.
WBNY, Buffalo.
WNBF, Binghamton.
WHN, New York.

Most of the stations granted the network 2 hours of free time per week and received from the network 30 percent of the revenue from sales over their facilities. The total revenue of the network for its 43 days of existence was $12,927.

I. Inter-City Broadcasting System

Inter-City Broadcasting System is a trade name selected in 1935 when the owners of stations WMCA in New York and WIP in Philadelphia agreed to exchange their programs by the use of telephone circuits. Subsequently, other stations joined the group, which was connected by permanent telephone lines for the entire broadcast day of 16 hours. The stations which served as outlets for this program service were:

WMCA, New York.
WPRO, Providence.*
WMEX, Boston.
WLAW, Lawrence, Mass.
WIP, Philadelphia.
WDEL, Wilmington.
WGAL, Lancaster.
WCBM, Baltimore.
WORK, York,
WOL, Washington.†

*Affiliated with CBS; broadcast only occasional Inter-City programs.
†Affiliated with Mutual; broadcast only occasional Inter-City programs.

Station WMCA had contracts with each of the outlet stations and served as selling agency for the group. It made all contracts with advertisers for programs produced in its studios and did the billing for all the stations. The charges to advertisers for network services were the station rates of the individual stations from which WMCA retained, as its commission, an amount ranging between 10 and 15 percent of the billing. Each station except WPRO and WOL was required to clear unsold time for Inter-City commercial programs.

J. Pennsylvania Network

Pennsylvania Network was formed during 1938 as a means of providing revenue from selling the time of a group of stations in Pennsylvania to political parties, and it ceased operations with the conclusion of the political campaign of 1938.

Station WCAU in Philadelphia acted as selling agent for the group. There were no affiliation contracts; sales in each instance were subject to acceptance by the stations; and revenue and the expense of telephone circuits (which were provided for temporary periods) were shared *pro rata* by the stations.

K. Texas Quality Network

Texas Quality Network, a cooperative sales group, was formed in September 1934. The network was not a corporation and had no headquarters nor employees.

The stations affiliated with the network were:

$\left.\begin{array}{l}\text{WFAA, Dallas}\\ \text{WBAP, Fort Worth}\end{array}\right\}$ share time.
KPRC, Houston.
WOAI, San Antonio.

Since each station in the group was under a separate affiliation contract with NBC, Texas Quality programs were contracted for only at hours which did not conflict with NBC programs.

The relations between the stations affiliated with Texas Quality were rather loose. Any station could terminate its membership in the network on 2 weeks' notice. Each station acted as sales agent for the group, soliciting business at a price equal to the sum of the rates of the stations plus the telephone circuit cost involved. Sales were subject to acceptance by each of the stations in the group in every instance. Contracts were made by advertisers directly with each of the stations; but the soliciting station billed the advertisers and distributed the proceeds pro rata to the other stations after deducting agency commissions, its own commission, and time charges, and telephone expenses. The network kept no books except a record of telephone line expenses, maintained at Station WFAA, which amounted to $2,690 monthly.

L. *Virginia Broadcasting System, Inc.*

Virginia Broadcasting System, Inc., was incorporated on February 1, 1936. Its stock was owned in equal shares by the owners of the following five stations in the State of Virginia, which comprised the network:

WRNL, Richmond.
WCHV, Charlottesville.
WLVA, Lynchburg.
WBTM, Danville.
WGH, Newport News.

There were no written affiliation contracts. Each station acted as sales agent for the group, soliciting business at a price equal to the sum of the rates of the stations to be used, and the sales were subject to acceptance by the individual stations in each instance. The soliciting station furnished the program service, billed the advertiser for the service furnished by the group, and distributed the proceeds to the other stations after deducting its own time charges.

For the first 3 months of operation the group was permanently connected with a telephone circuit for 16 hours per day. That service was abandoned in May 1936 because of the expense involved, and since that time the network has existed only for the purpose of broadcasting special events.

Additional Views of

COMMISSIONERS T. A. M. CRAVEN AND NORMAN S. CASE

IN THE MATTER OF CHAIN BROADCASTING

(COMMISSION ORDER No. 37—DOCKET No. 5060)

TABLE OF CONTENTS

ADDITIONAL VIEWS OF COMMISSIONERS T. A. M. CRAVEN AND NORMAN S. CASE

I. GENERAL

All members of the Commission recognize that improvements in the present broadcast service as well as in the organization thereof are not only possible but also desirable. However, the minority disagrees with the proposals which the majority has adopted as a method of securing improvements. We fear that the proposals of the majority will result inevitably in impaired efficiency of the existing broadcast organization of the country. This system has been developed as a result of practical experience over a period of years. In the main it is operating very well in the public interest. Undoubtedly it provides the public with the best broadcasting service in the world. Naturally, there are faults which may need correction. However, some of the corrective processes suggested by the majority may easily result in faults which are far more basic than the known defects which exist today. Furthermore, it appears that insufficient recognition is given to the practical considerations which are inherent in the American system of broadcasting and which cannot be circumvented. It seems that no weight is given to the fact that broadcasting is dynamic and not static. No consideration seems to be given to the probable effect of new developments. Also inadequate recognition is given to the effect of the natural and economic limitations within which broadcasting must operate. Likewise, inadequate recognition is given to the natural laws which influence basically the manner in which broadcasting renders a social service to the public of America.

No member of the Commission condones any form of monopoly which concentrates power contrary to the public interest or which constitutes unreasonable restraint of competition. However, the majority appears to suggest that "unlimited" competition is the most important factor in securing improvements in radio broadcasting service and proposes to issue regulations the effect of which will prohibit certain contracts which now exist between chain companies and their affiliates. The intent of these regulations is to ban all arrangements which limit the ability of any broadcast station licensee to engage at any time in any and all forms of competition. While the minority insists upon competition they suggest the principle of "Free competition accompanied by good radio service to the public" rather than competition which affects adversely program service.

The minority is of the opinion that the most important problem confronting the Commission may be stated briefly as follows:

Considering the necessity of a balanced radio broadcast service of interest to and in the interest of the public, and recognizing the natural limitations inherent in radio, how can greater equality of opportunity be extended to persons desiring to utilize radio as a media of broadcasting information to the public?

The solution of the problem requires a broad viewpoint as well as a balanced consideration of at least all of the following factors which among others contribute to broadcast service in the interest of the public:

1. The establishment of a "free radio" insofar as is practicable within inherent natural limitations.
2. Good programs.
3. An equitable distribution of facilities to states and communities.
4. Diversification of control of radio stations among many licensees.
5. Competition.
6. Efficiency of program distribution to the nation as a whole.
7. Operation of each station in the public interest rather than for the private interest of the licensee.
8. Natural economic laws of supply and demand.
9. Principles of sound business.

A limited approach, or conclusions based upon over-emphasis of one phase of the problem, will result in unsound administration and unfortunate consequences to the radio service to which the public is entitled. More specifically, we fear that the revolutionary change proposed by the majority will result in the destruction of the present excellent national program distribution system and the substitution therefor of some new kind of system, the effects of which the majority does not adequately visualize.

It is axiomatic that unlimited availability of the few existing radio facilities and efficient national program distribution cannot both be attained at the same time. There is no open market condition in the business of broadcasting as in other businesses. Nature has determined that. To attempt to circumvent these basic economic laws is fraught with peril to an industry which has hitherto achieved a marked degree of success. Regulation in disregard of economic laws may foster a situation in which competition among competently managed networks would be replaced by an unwholesome conglomeration of opportunistic "time brokers" catering to an aggregation of local monopolies in the various towns and cities of the nation. This will result in—

(1) Responsibility for carrying sustaining programs of public importance would be so diffused that such service would likely become nobody's business and the difficulty in clearing time on a national network would become an almost insurmountable task.

(2) The incentive would be removed for the origination of such sustaining features as the European war broadcasts, the American Farm and Home Hour, the Town Meeting of the Air, Toscanini, etc. If the proposals of the majority are enforced there can be no logical determination of who will pay for such service or how it will be developed.

These considerations and other far-reaching adjustments that would be involved would plunge the American broadcasting system from the *known* of good public service to the *unknown* in which all the consequences cannot be foreseen. It is, therefore, no exaggeration to predict that the decision of the majority instead of resulting in "free competition", would more likely create "anarchy" or a kind of business chaos in which the service to the public would suffer.

The majority appears to conclude that it is necessary to exert control over certain business policies of radio station licensees in much the same manner as has been proven suitable for public utilities other than radio. However, in arriving at this conclusion there appears to have been no weighing of the advantages and the disadvantages of the present broadcast structure in terms of good program service to the public. Hence, no conclusions based upon evidence in the record have been made of the reasonableness of the present practices of the industry. For 14 years, existing contract arrangements have been enforced both through formal and informal agreements, and broadcasting in America has achieved greater progress than in any country in the world. The record does not disclose that there is *unreasonable* restraint of competition resulting from certain contracts which the majority proposes to prohibit.

It is possible that the majority in its desire to regulate one facet of the broadcast problem has overlooked some of the other important considerations and hence may have made impossible the attainment of an ideal objective. For example, in asserting jurisdiction to regulate the business practices of broadcast station licensees the majority may have assumed certain power which is not delegated to it under the law. In broadcasting, Congress evidently intended to apply the constitutional doctrine of a "free press". In so doing, Congress recognized that the advantages of a "free radio" were more important than the advantages of the type of regulation heretofore considered necessary in the public utility field. As evidence of their intent, Congress specified that radio broadcasting should not be classed as a common carrier even though licensed by the Government to operate as a form of monopoly in the public domain. The type of regulation specified by Congress for broadcasting clearly envisioned that the Communications Commission should not regulate the programs, the business practices or business policies of broadcast station licensees. Congress specified a type of regulation designed to maintain its policy of a "free radio". This type of regulation differs from that applied to other private business operations in the public domain.

Thus, the question of the power of the Commission to regulate the business phases of broadcasting may be approached from the standpoint of public interest. Congress required that radio, like the press, must be free from those restraints of Government which hamper free expression and which control what may be said or who may speak. The most important function of Government should be to facilitate the attainment of a "free radio". Therefore, it may be argued that if the licensing authority interferes with the business practices of persons engaged in broadcasting, there is concentrated in a single Government agency a power which must lead inevitably to undesirable restraints upon a "free radio". Such concentration of power in Government is just as contrary to public interest as the concentration of control of broadcast stations among a limited number of licensees.

It is obvious that if all the stations in the country were licensed to one person, that person, even though regulated by the Government, would have vast power to control an important media of information.

Even though such person had the best of intentions for the welfare of the public, his would be the sole judgment which determined how radio would be utilized to influence public opinion. Such an extreme is unthinkable. On the other hand, if we had innumerable licensees and therefore innumerable competitive judgments, all under the autocratic regulatory supervision of a single Government agency vested with final and unrestrained power of life and death over the economic destinies of each licensee, we likewise would have an intolerable situation, however well-intentioned such Government agency may be. It was for this reason that Congress provided not only for a diversification of control of radio broadcasting among licensees, but also for diversification of jurisdiction among various regulatory agencies of Government. It was not intended by Congress that any licensee merely because he was a radio broadcaster should be exempt from the application of laws directed to business enterprise generally. The Department of Justice and the Federal Trade Commission as well as other Government agencies include broadcasters within their jurisdiction when administering the laws relating to all business enterprise. Congress empowered the Communications Commission to regulate only that phase of radio operation which relates to licensing stations. This embraces a fair and equitable distribution of radio facilities to states, communities and persons in a manner which insures diversification of control among many licensees, as well as a good program service of interest to and in the interest of the public. It likewise includes the regulation of technical aspects of operating stations and certain other phases of radio operation affecting public interest which are not under the jurisdiction of other agencies of Government. The Commission is charged with the responsibility of determining the qualifications of licensees to operate radio broadcast stations, but the Commission does not have responsibility to determine the guilt of licensees for violations of law, the administration of which is not under the direct jurisdiction of the Communications Commission. If licensees of radio stations are found guilty of violation of such other laws, the Commission's responsibility in the premises rests solely as to the qualifications of such licensees to operate stations in the interest of the public.

If some form of monopoly exists in radio broadcasting which is contrary to the best interests of the public, it should be remembered that the Commission has licensed all broadcasting stations in the United States after finding time and time again that each of the licensees was operating his station in the public interest. Therefore, if the Commission has erred in the past, it can now correct the mistake by exercising in individual cases the licensing power delegated to it under the Communications Act of 1934.

The Commission should encourage the organization of independent, highly competitive national networks. However, if there are limitations or barriers to the establishment of additional competitive networks, the Commission need not and should not promulgate rules the effect of which would destroy all existing systems, merely to provide some other private enterprise with an opportunity to capture the revenues of broadcasting. There are better ways to encourage and secure additional competition.

II. DISCUSSION OF CERTAIN IMPORTANT FACTORS

(A) CONFLICTING TRENDS

The current scarcity of channels to accommodate the demands therefor imposes a severe limitation to freedom of action in solving some basic problems. This limitation forces a choice among conflicting trends. Some advocates of changes in the operation or of regulation of broadcasting fail to consider the inevitable results of this natural limitation. Consequently, needless misconceptions arise, as well as suggestions of panaceas which cannot solve the problem in any practical manner. Furthermore, some are prone to accept current conditions in broadcasting as static, in spite of the fact that the technical and performance bases are dynamic. None can prophesy the future of technical progress. Therefore, misconceptions of basic factors are hazardous and may tomorrow constitute artificial barriers to the very improvements which today appear desirable.

The more important conflicting trends in the dynamic field of broadcasting include:

(1) Inhibitions against patterns of centralized operation conflict with efficient program distribution on a national scale. There is a temptation to over-emphasize local interest to the detriment of national interest, and vice versa. The real goal should be efficiency of service from a national standpoint rather than a vague objective which fosters a conglomeration of local units uncoordinated for rendering a truly national service.

(2) A broadcasting station is licensed to render a public service as contrasted to a private service, even though it is operated by private enterprise for profit. Licensees naturally emphasize their rights under a license and are under continuous economic pressure to broadcast programs that will win and hold listeners. Persons in Government, on the other hand, assert that licensees do not discharge all the responsibilities which are necessary to operate a station in the interest of the public, particularly with respect to affording opportunity for balanced presentations of debatable social questions.

There cannot be sufficient facilities, nor is there sufficient time for everyone to use a broadcasting station to express to the public particular social or economic philosophies. It is essential, therefore, that broadcast licensees exercise wise judgment as to the desires of the listening audience and in choosing the speakers who may appear before the microphone.

It is equally important that Government should not undertake to impose in advance any standards in this field. Such course is fraught with such obvious peril that further discussion is unnecessary.

The best method of judging whether a licensee has utilized his facilities in the interest of the public is to examine the manner in which the station has operated, and then determine whether the judgments exercised meet a rational test of public interest.

(3) The hours of a broadcast day automatically limit the number of persons who can use facilities. Therefore, the greater the num-

ber of stations in any community the broader the opportunity for all desiring to use such facilities. However, as the number of stations in a community of any given purchasing power increases, the revenues available are diluted. If there are too many stations the quality of service rendered by each may be affected adversely. At least, some will be forced to render inferior service because of inadequate income. Thus we are faced again with a choice between opposite trends. The present policy of the Commission is to encourage competition regardless of adverse economic effects. This general concept of the law is at variance with the natural laws which force a limited market.

Unfortunately, efforts to apply a concept of unlimited competition in the teeth of a technical limitation in the availability of channels encourages concentration of facilities in larger communities at the expense of smaller communities. This trend is augmented by the economic tendency to concentrate facilities in large centers of population where there is greater purchasing power to support profitable stations. The desirable social objective to render radio service to all listeners, both rural and urban, at times conflicts with the pressure to make multiple transmission facilities available in all of the metropolitan centers of the nation. These factors unless controlled cause inequitable distribution of facilities to the various States and communities, contrary to the requirements of the Communications Act of 1934. Thus, a policy of unlimited competition is in conflict with the legal mandate to distribute facilities fairly, efficiently and equitably throughout the nation. This dilemma becomes even more difficult to resolve because allocation of facilities to any area is dependent upon voluntary applications. It is obvious that unlimited competition among stations in any community is impractical when the total number of facilities available for the entire nation is limited. Emphasis, therefore, should be placed upon an equitable distribution of facilities to the various communities of the nation, rather than upon an impractical objective of unlimited competition which can never be wholly achieved because of physical facts. Furthermore, if primary emphasis is placed upon the equitable distribution of facilities to the communities of the nation, there need be no concern for any destructive local competition until the radio technique has advanced to the point where many more channels are available. Moreover, if this course is followed, it should facilitate the establishment of additional networks if the economics of the situation justify such a development.

(B) COMPETITION

(1) In order to obtain a common basis of understanding, it is necessary to agree that in the legal sense unlawful monopoly is confined to unreasonable practices which restrain trade or limit competition in violation of the anti-trust statutes. Competent legal authorities hold that unlawful monopoly is the acquisition of something for one's own self, not necessarily the whole of a given commodity or the whole commerce therein, but control at least, of a part thereof sufficient to constitute withholding from the public the right to deal therein in an open market. In broadcasting, however, we cannot start with a premise of an unlimited market. Natural laws limit the availability of radio facilities not only in each com-

munity but also in the nation. Therefore, we must frankly recognize in considering the regulatory problem that we are dealing with a phenomenon limited by natural causes. The paramount objective should be "public interest, convenience and necessity" as related in terms of the best radio service to the nation as a whole.

(2) Intensive competition exists in broadcasting within the natural restrictions of a limited number of facilities. Not only do major networks compete vigorously with each other for the advertising dollar, but also all stations, including those affiliated with networks, compete with the networks. Furthermore, each individual station in a community or region competes with every other station in that community or region. Moreover, radio as a whole is in stern competition for the advertising dollar with other media.

In 1938, 350 of the 660 commercial stations in the country were affiliated with one or another of the major networks. During the time utilized for network programs, competition on the part of these stations is limited to that competition occurring among the networks themselves. A station affiliated with a network has optioned certain time to the chain company and thereafter does not engage in competition with the chain company for such of the time as is used for commercial programs. However, the station still competes for "spot" advertising from sponsors who use the networks with which the station is affiliated. The competition of networks is subject to dynamic changes. Stations frequently change their connections with networks and will continue to shift affiliations as occasion demands. Since 1938 the number of network stations has increased.

(3) The necessity of efficient network organizations for the distribution of broadcast programs of national interest is axiomatic. Cohesive organizations which are always available for broadcasting intelligence to the entire nation provide the most effective force for national unity and may become absolutely essential in times of national emergency. There should be as many of these national network organizations in full competition with one another within the sphere of our economic system and as is practicable within the physical limitations imposed by nature. In like manner, it is highly desirable to encourage the organization of Regional and State networks. Without such competitive organizations for program distribution the very vitality of radio would disappear. Network competition for listeners has been the greatest progressive factor in the development of American broadcasting. Elimination of network programs is unthinkable. Government policies which might handicap efficient organization for network program distribution undoubtedly would create a public outcry against the depreciation in program service which would be a logical consequence.

These factors are of practical importance not only to the public, but also to the broadcaster, both when he desires to render service to the public as well as when he desires to sell the service of his station. They are of particular importance to the advertiser who desires to utilize the advantages of radio as a media to increase the volume of business. This practical situation confronting everyone interested in broadcasting should be recognized if the public is to secure good broadcasting service as well as to benefit indirectly from the standpoint of economics in the form of the cheaper costs inherent in volume production and distribution of goods. Therefore, in dealing with the broad question of possible monopoly or restraint of trade in broadcasting, the fact that unlimited availability of facilities and efficient program distribution cannot both be attained must be clearly recognized. We must likewise recognize that in broadcasting there cannot be the "open" market condition of other businesses. Nature has determined this.

(4) Certain practices of networks have been the subject of complaint aside from the contract arrangements between the chain companies and their affiliates. These include the operation of talent agencies, concert bureaus and transcription and record companies. It was a natural and logical development that in the early days of network broadcasting the networks should attempt to develop their own sources of talent. The record in this proceeding indicates that network companies utilize many sources of talent and make available to all the artists whose services are under exclusive contract to their management agencies. However, it does appear that there exists some conflict in the networks' position of being both buyer and seller of the services of the talent which they manage. It is believed that this Commission is without jurisdiction to remedy any abuses which may exist. Therefore, it appears proper to advise the network companies that the showing made in these proceedings indicates at least an opportunity to engage in unfair trade practices. Under such circumstances, the networks should be given an opportunity to divest themselves of these activities, or, in the alternative, the entire record should be referred to the Federal Trade Commission for a more thorough investigation upon which it could base findings and appropriate action.

However, it should be emphasized that network organizations should not be prevented from developing new talent. The record of this proceeding fails to disclose any great public concern about existing practices and it has not been established that the public has been injured because network companies maintain talent agencies. Rather, the complaints come from competing agencies who allege that the management of talent by networks who are also users of talent, results in unfair trade practices. The Federal Trade Commission is the appropriate agency to receive such complaints and make a determination. This Commission cannot pass upon these matters and, as related to broader questions involved in these proceedings, this problem is of relative insignificance. From this record it would appear that the desirable objective is to maintain an "open market" for talent with a minimum of restriction of opportunities for performers. With respect to the manufacture and sale of transcriptions and records by companies operating networks, a similar question may be involved. The complaints of competitors should be directed to the appropriate agency, namely, the Federal Trade Commission.

(5) The most important and frequent allegations of monopoly in broadcasting spring from the contractual arrangements between the chain companies and their affiliates. Under the standard form of contract an affiliate agrees to restrict the use of a station to a particular national network and to option a large portion of the time of such affiliate regardless of whether all of such time is used by

the chain company. It is claimed by some that the exclusive and the option clauses in certain of the chain contracts have limited the ability of the licensees to fulfill their responsibilities to the public. There are those who assert that the disputed clauses not only constitute a restraint upon free competition but also limit the ability of licensees to fulfill their responsibilities to the public as required by the law. Others contend that the legal effect of the contracts as well as actual practice indicates that licensees have not been prevented from fulfilling their duties under their licenses. We think that the record of these proceedings amply supports the latter view.

In entering into affiliation contracts licensees have placed certain voluntary restrictions upon themselves. However, the contracts provide that the station may cancel any program which in the judgment of the licensee is contrary to public interest or may substitute local programs of outstanding interest. In an extreme case, a licensee may be confronted with the choice between violation of the terms of his contract or the failure to carry some particular program or event which he knows his listeners want to hear. However, these cases are isolated and rare and do not appear to afford a proper basis to adopt a sweeping policy which might impair the cohesiveness of the national network organizations. In these circumstances the advantages should be weighed against the disadvantages before any attempt is made to disturb these contractual arrangements. It seems clear from this record that the benefits of the type of network organizations which have developed far outweigh any abuses which have been shown.

If this type of contract is essential to the maintenance of sound network operation—and the great weight of the evidence is to that effect—no attempt should be made to change them.

It is not necessary or desirable to prohibit options of a station's time. The record does not reveal that the operation of the option clauses have restricted the affiliates in their obligations to their local communities.

In fact, affiliation connections and time options appear essential because they facilitate better radio service to the public. Also, they appear necessary for effective coordination of program service on a national scale, because without them the situation would be analogous to a railroad in which each station-master along a *through route* had adequate power to make his own train schedules for through trains.

There is another aspect of network affiliation contracts which must be considered from the stations' point of view. The affiliated stations through their contractual arrangements with the networks have something which is in the nature of a valuable franchise. Networks, because of the exclusive arrangements with stations, have the incentive to develop good programs and to build up the affiliate stations as an institution in the community. Likewise, the station under its contract publicizes the programs of the network and identifies itself as the exclusive outlet for the particular network. The record shows that this arrangement has resulted in real competition among networks to win the listeners' interest. Such a competitive situation is definitely in the public interest. The result is that the affiliate station operating under an exclusive contract has greater value to adver-

313425—41——9

tisers, both local and national. The experience of independent network stations definitely proves that a network contract is a valuable asset, both in terms of public service and in financial return to the station. The record in these proceedings indicates that the overwhelming majority of the affiliate stations recognizes that their existing network contracts constitute a most valuable franchise. The overwhelming majority of these stations does not want these arrangements disturbed. Through their testimony and by counsel, they have stated that they would prefer to maintain an individual bargaining position with the networks without intervention by this Commission into their business arrangements. This is as it should be, and measured in terms of public service—which should be the Commission's only concern—these contracts have met the test.

(6) In any consideration of the problems involved in chain broadcasting, one should not overlook the fact that the public should have a wide choice of programs. If all the stations in the country habitually broadcast identical programs, the service rendered would be limited. If the best interests of the public are to be served, no two stations rendering primary service to substantially the same area should habitually broadcast identical programs. Furthermore, more than one station in any community continuously rendering identical program service is a waste of radio facilities. It is not deemed necessary for the Commission to issue a regulation prohibiting duplication of a program in the same primary service area. Economic laws take care of such situations automatically and the practice is not sufficiently prevalent to justify any attempt to adopt a general regulation.

(7) Some criticisms of broadcasting are erroneously attributed to the fact that most of the licensees are business men. It is claimed that as such, their judgment as to social philosophies is similar. Thus, as a group they are said to reject social and economic philosophies advocated in recent years by some of our more "advanced thinkers". Therefore, it is claimed that the broadcasting licensees as a group are rendering to the people of the United States the character of broadcasting which tends to favor one social philosophy as contrasted to all others and that as a result the existing broadcasting service is not useful in accomplishing desired social improvements. The indisputed facts are that radio broadcasting has been utilized as an open forum. Furthermore, under the American system, the objective has been to render to the public the radio service the public desires rather than to force upon the public the type of service which individuals think the public should have.

Experience does not justify the conclusion that the limited number of available frequencies should be apportioned to groups of men or to separate organizations who are proponents of particular social philosophies. In fact, such a course might well destroy the general usefulness of radio. It would result in a trend toward the use of radio for a particularized purpose rather than its use in the public interest generally.

Under the American system of broadcasting the licensees are required to exercise independent judgment with respect to the operation of their stations. If this judgment is such as to render to the public the service the public desires, there can be no valid criticism. On the other hand, if a licensee does not render to the public the type of service it desires, the qualifications of such a licensee to operate a broadcasting station should be open to question. We think that the Congress directed the Commission to require that no broadcasting station shall be operated for a single private interest. If there is doubt as to what Congress intended, it should be asked to clarify or specifically affirm this policy. Every broadcasting station should be operated solely in the interest of the entire public and no licensee should operate his station in a manner which reflects only one school of thought in controversial political, social, and economic matters of vital interest to the public. We think that, on the whole, broadcasters recognize this policy and adhere to it. It has found expression in the industry's voluntary code and is fulfilled in most important aspects.

(C) LICENSING POLICY

(1) It can be argued that all forms of unregulated monopoly are inherently contrary to public interest, and that to protect the public it is essential to regulate all monopolies. There can be no logical objection to such a doctrine when it is designed to restrain the exercise of unbridled power by private enterprise operating in the field of the public domain. In broadcasting Congress has provided for such regulation through the control of the issuance of licenses by the Federal Communications Commission. Therefore, any concentration of control in radio broadcasting which is contrary to public interest can be curbed by applying the licensing policy specified by Congress. The present Act implies that competition in broadcasting should be fostered through the application of a licensing policy designed to prevent a single individual from operating a preponderance of stations in a community or in the nation. If the licensing policy should permit one person to operate several stations within a community or to control the operation of too many stations in the nation, it is possible that a single person might be able to prevent the use of radio by persons other than those approved by the licensee. Such a course would be contrary to the spirit not only of the Act but also contrary to the best use of radio under the American system.

There are several instances of common ownership of several stations in a single community. However, no one has complained officially to the Commission of any abuses arising from such common control and there is no evidence in the files of the Commission or in the record of the hearing which indicates the necessity of promulgating a rule to correct such an imagined "evil". Nevertheless in some of these instances the operation of more than one station in the same community by a single licensee may raise a question of whether such concentration of control is in the public interest. In other cases such a situation may be in the public interest. The simplest and fairest way to solve the matter is for the Commission to adopt a policy, by regulation or otherwise, not to license more than one station in the same community to a single person, unless such person can show that such multiple operation is in the public interest. If such a course of action be adopted, a hearing should be held on the reasonableness of the proposed rule. At the same time the applications for renewal of all existing licenses which are not in conformity with the proposed rule should be set for hearing. If as a result of these hearings, it is found that the continuance of the existing licenses of some of the licensees would not be in the public interest, the Commission should afford such licensees a reasonable time, say at least two years, in which to dispose of their stations.

(2) In connection with the problem of broadcasting control, it has been alleged that chain companies which operate networks utilize a large portion of the radio stations of the nation for the distribution of their programs. This question is raised with added fervor because such chain companies have the exclusive and optional clauses in contracts with their affiliates to assure control of the time of stations. Thus, it has been argued that such a chain company has the power to prevent the use of radio by persons other than those who can successfully negotiate with the chain company for time on a network. This question is one of the most difficult and controversial matters confronting the Commission.

As a remedy for this alleged evil, it has been proposed that program production agencies which engage in the business of providing programs to regularly established networks be prohibited from obtaining a license for the operation of any radio station.

It is essential that such an administration of the licensing power be analyzed thoroughly before adoption in order that we may be assured that the "cure" is not more vicious than the alleged evil. Every broadcast station licensee is a program production agency. A chain company is merely a program production agency equipped with land lines, and organized for efficient program distribution to the radio stations in the nation. Such efficiency of organization is essential and desirable if the public is to receive the best service. Therefore, there can be no valid objection to such organization, particularly when the service rendered is as acceptable to the public as it has been in the past. If the licensing of stations to such organizations will augment the efficiency of program distribution, there can be no valid objection to granting radio station licenses to such companies. Therefore, it would appear undesirable in the public interest to refuse on the basis of a general policy such companies licenses for any radio broadcasting stations. If a licensing policy is adopted which limits the number of stations licensed to chain companies in such manner as to insure competition and diversification of judgment, public interest would be served quite adequately. It is difficult to see why, in the interest of efficiency and cohesiveness in the distribution of programs on a national scale, there is any valid objection to licensing chain companies to operate at least one radio station in each of the larger metropolitan cities of the nation.

A more difficult question is raised by the operation of two network systems by a single company. The Commission might make the finding that two stations in a single community which obtain network service from the same source do not perform a proper public service. However, this would require evidence in a particular case in which the type of service rendered by each station was carefully analyzed and a record on these issues specifically developed. There is no evidence in this proceeding on the failure of stations affiliated with the company operating two networks to meet the test of public interest. Nevertheless, the common ownership of dual networks raises questions of unreasonable restraint of competition. Therefore thorough-going inquiry is necessary to determine the legal effect of such dual operation in terms of monopolistic practices or restraint of trade. Such an inquiry is obviously under the exclusive jurisdiction of the Department of Justice which has the duty to prosecute matters pertaining to monopoly and restraint of trade. The Commission can request the Department of Justice to initiate an inquiry to determine the real facts. Or, if the Commission desires a determination of the proper public policy on this question, it could request Congress to make an appropriate declaration. However, before either of these steps is taken it is believed that there is available a more practical and immediate approach. This problem seems to be one which lends itself to an effort by all parties concerned to seek a solution by voluntary agreement.

In the solution of this problem one should not overlook the fact that operation of dual national networks provides an excellent "safety valve" in the present broadcast organization. There is readily available at all times an efficient nation-wide organization of radio facilities for discussion of important public questions. This "safety valve" should not be abandoned until a satisfactory substitute has been provided. Therefore, before taking any final steps it appears essential that all networks assume an even greater obligation to make their facilities available as a forum for discussion of public questions, as well as for sustaining programs of outstanding interest.

Undoubtedly there is a strong presumption that four highly competitive independently operated national networks would result in improved service to the public. However, as a corollary to this result it is essential that no single network be assigned an inequitable share of the duty to provide the service which makes radio broadcasting most useful in aiding the development of the political, social and economic welfare of the nation.

Therefore, precautions must be taken by the industry itself to avoid such inequalities or else the advantages to be gained by the elimination of dual operation of networks will be lost. It is doubtful, as has been stated, that the Commission through its licensing power or its rule-making power has the authority to accomplish the divestiture of one of the dual network systems. However, if it be determined finally that the disadvantages of dual operation of networks outweigh the advantages, and if a satisfactory substitute has been provided, the company which has developed the two networks it now operates should be given every opportunity to voluntarily adjust its operations to the end that the problem of common ownership of dual networks is eliminated. Failing this, the Commission should refer the entire matter to Congress.

(3) It has been suggested that any program production agency, particularly chain companies, should be compelled to obtain a Federal license to engage in such a business. There are numerous agencies which organize talent and in a sense produce programs to be utilized by the various radio stations. It is a simple matter to lease wires from a program production center to various broadcast stations distributed throughout a region or the nation. Such wires

can be leased for either a short or a long period. Some of these program production agencies may be organized on a large scale while others may be organized on a small scale. In any event, if the Government should adopt the policy of licensing program production agencies, the Government would be confronted at all times with a significant question. This question is inevitably whether the proposed program content will or will not be in the public interest. This is censorship. Furthermore, it would give to the licensing agency of the Government a power never contemplated in the statute or in its administration to date. It would constitute a power of Government to control what was said and who should speak. It would be control of the news obtained by the press and intended for distribution to the public by radio. Such a power concentrated in a licensing agency of the Government is dangerous in a democracy and would inevitably lead to a further curtailment of freedom of expression. This violates the Constitution of the United States. There is no reason why basic principles of democracy should be abandoned merely because radio is a modern instrumentality with inherent limitations in its application to the public service. Thus it is obvious that the advantages alleged to accrue from the licensing of program production agencies are outweighed overwhelmingly by the one disadvantage just discussed.

In view of the foregoing, the Government should neither prevent program production agencies from obtaining licenses to operate radio broadcast stations, nor should the Government compel program production agencies to secure a Federal radio license to engage in such a business. There is nothing before the Commission to justify such a course.

(D) ECONOMIC STABILITY

(1) Wide variations of prosperity exist between the various elements of the broadcasting industry. While some of this is caused by natural economic laws, and by differences in markets, the necessary inequality between the various classes of stations as well as differences imposed by nature within each class are also important factors affecting earning capacity.

(2) The business of broadcasting is essentially a service business. It has no tangible commodity of a permanent character. It has merely a temporary license to use frequencies which are essential to the operation of its equipment. Not only must each broadcaster maintain the public confidence and interest in the service rendered, but also the licensee must operate on a rigid basis of regulation by the Federal Government. In addition, the industry is confronted with swift change, rapid obsolescence and speedy and new demands upon the enterprise, initiative and capital of its members. There is always present the threat of sweeping changes in the technical base on which the radio stands, as for example, such developments as television and frequency modulation. In time of economic recession in the nation the business of broadcasting is affected immediately by cancellations of contracts for services. Thus, there is a potential risk ever present in the business of broadcasting, and a necessity for adequate financing at all times.

(3) These conditions constitute an economic situation which influence directly the broadcaster's capability to render a public service. Naturally, the Commission should be just as much concerned with the economic situation as it is with encouraging progress toward desired social objectives. However, it should recognize that its authority is not absolute and that it is not charged with the responsibility of directing the economic activities of its licensees. There is the positive duty to make certain that Commission policies do not detract from the economic stability of the industry, but there is no justification for the adoption of radical measures which would revolutionize the entire economic foundation without any certain knowledge that real improvements can be obtained.

An important contribution which the Commission can make to the stability of broadcasting is by an extension of the licensing period. The Commission now has the power to extend the period up to three years and there is no valid reason why this should not be done forthwith. Such a policy would result in an important administrative economy by reducing the great volume of needless and periodic reviews by the Commission staff of a mass of information which is accumulated and filed for no real public purpose. Such an extension of the licensing period would in no way limit the Commission's power to proceed by revocation against licensees who contravene public interest in the operation of their stations, and would create a helpful atmosphere of security.

Finally, it has been implied that there is something harmful or wicked about the earnings of some broadcasting licensees. Congress did not intend this Commission to penalize profits. Congress does now and will continue to tax the earnings of all broadcasters, as an examination of the financial statements of any of the leading companies in the field will show. If there be undue or unjust enrichment, the Federal tax policy is the remedy; not an extension of regulation.

III. SUMMARY OF SUPPORTING FACTS

(A) GENERAL

The Report of the Committee appointed to recommend Proposed Rules Governing Standard Broadcast Stations and Standards of Good Engineering Practice, (Docket 5072–A) outlines the physical aspects of the existing radio broadcast structure. In brief, this report disclosed that there was a concentration of the best radio facilities in the larger metropolitan districts of the nation and that the listeners in the less sparse areas of population obtained radio service principally from the larger stations located in the large centers of population. One of the recommendations of this Committee was as follows:

> In granting applications for improvements of facilities, the Committee recommends that the Commission adhere in general to the following order of priority:
>
> (1) Communities having no radio stations and capable of supporting same.
>
> (2) Communities having existing stations with inadequate technical facilities to serve properly the population therein.
>
> (3) Communities having an adequate number of radio stations and capable of supporting additions without detriment to resultant service.
>
> (4) Existing stations at a competitive disadvantage with other stations in the community by reason of inadequate technical facilities.
>
> In connection with the problem of distribution and improvement of broadcasting facilities the evidence is clear that for the purpose of allocation, each of the 96 metropolitan districts of the nation should be considered a single community. The economic interdependence of the various incorporated cities, towns, and villages in such a metropolitan district, the overlapping service areas of broadcasting stations located in such districts, and the general scarcity of broadcasting facilities available for distribution to the nation as a whole are compelling factors contributing to the impracticability of attempting to assign separate broadcasting facilities to each of the individual communities within each metropolitan district.
>
> The Committee, therefore, recommends that when considering the distribution of broadcasting facilities to all communities in the nation, the Commission classify as a single entity each of the 96 metropolitan districts described by the Bureau of Census.

The Report on Social and Economic Data Pursuant to the Informal Hearing on Broadcasting, Docket 4063, beginning October 5, 1936, submitted by the Engineering Department of the Commission on July 1, 1937, outlined in considerable detail the social and economic factors affecting the operation of the broadcasting structure at that time. The evidence developed since that date, and particularly in Docket 5060, relating to the Investigation of Chain Broadcasting pursuant to Order No. 37, contains no information of an economic character which indicates that the evidence obtained previously is erroneous in any respect.

The basic pertinent facts as disclosed in the hearing on Chain Broadcasting, Docket 5060, may be summarized in brief as follows:

(B) ORGANIZATION OF BROADCASTING FACILITIES

In the United States in 1938 there were 660 radio broadcast stations which operated on a commercial basis. These stations rendered program service to the various communities, States, and rural areas of the nation. 350 of the stations were organized in 4 major networks for program distribution on a national scale. These national networks transmitted to the radio listeners of the country programs originating not only in various parts of the United States but also in the most important centers of the world.

Three of these networks of stations were vitalized by a central organization known as a chain company which undertook to produce programs and secure advertising revenue for the networks as a whole. Each of these chain companies had a centralized program production organization which coordinated the distribution of programs originating in the various parts of the nation. In addition, each of the chain companies had a sales organization which made contact with advertisers and advertising agencies and arranged for sponsors of the various programs. Some of the programs were produced by sponsors. Other programs, particularly those of the sustaining type, were organized and produced by the chain company, or in the event of news or political broadcasts, were "covered" by the chain company also. Some programs were produced by individual stations of the network and distributed to the entire network. The other major network was organized similarly to the three just mentioned, except that the production of programs was undertaken principally by the stations in the network.

There were 3 national chain companies, namely, the Columbia Broadcasting System, the National Broadcasting Company, which had 2 national networks, and the Mutual Broadcasting System. Columbia and National had contracts with their affiliates which bound the latter as outlets, and bound them to retain on option a definite amount of time. Until more recently Mutual operated on a voluntary "mutual" basis and permitted its outlets to take programs from other chain companies, as well as providing liberally for "time" to be retained by the affiliates. The other principal difference between Columbia and National on the one hand and Mutual on the other is that Columbia and National are separate corporate entities owning stations and contract with affiliates for exchange of services at an agreed price. Mutual is owned by several station licensees and makes affiliation contracts with other stations. Mutual in its headquarters sales-agency capacity usually takes a commission of 3.5% from members and 15% from affiliates for business it secures for the System. Any station, a part of Mutual, may secure business for the System on a commission basis.

There were 310 stations which were not affiliated with any national network. Some of these 310 stations were affiliated with regional networks, but in some instances these stations were in such locations as to preclude affiliation with a major national network without duplication of programs in the same area to the public. Also, some of these 310 stations were located in remote sections of the country or in sparsely settled communities where the cost of network program service was greater than the revenues secured from advertisers desiring to use the station as an outlet. Therefore, in 1938 these 310 stations relied solely upon local resources or upon transcriptions or upon regional networks for the production of programs. However, since that date some of them have become affiliated with a national network.

In addition to the 4 major national networks there were several regional networks in 1938, which were organized to transmit programs originating in any part of a particiular region or particular section of the country, depending upon the number of stations comprising such a network.

The 660 stations were classified in accordance with the rules of the Federal Communications Commission. This classification is necessary in order that, in so far as is practicable within the requirements of good engineering practice, there may be a fair, efficient, and equitable distribution of facilities to the various states and communities of the nation, and at the same time permitting the rendition of good service to all the listeners wherever located in the nation.

In 1938 the distribution of the 660 stations by classes and by size of community is indicated in Table 1 A attached hereto. This table shows that there were 31 full time 50 kw clear channel stations, 4 limited time 50 kw clear channel stations, 14 full time clear channel stations having a power less than 50 kw, and 4 stations of the same class having only limited time. There were 8 high power regional stations, all of which had full time. These 61 clear channel and high power regional stations render service over wide areas and are the type of stations relied upon for service to rural listeners.

There were 296 regional stations utilized primarily for rendering program service to cities and areas immediately adjacent thereto. Of these 296, 195 were full time stations, 68 were limited time or day stations, and 33 were part time stations which shared their frequency assignment with one or more stations. There were 303 local stations intended to be utilized primarily for rendering service to small and medium sized cities or towns. Of these 303, 227 were full time and 76 were part time stations.

The distribution of the class of stations to the various size of cities was as follows:

City population	Total number of stations	Clear channel	High power regional	Regional	Local
2,000,000 or over	83	17	0	47	19
1,000,000 to 2,000,000	27	5	0	17	5
500,000 to 1,000,000	40	3	4	22	11
250,000 to 500,000	85	13	0	52	20
100,000 to 250,000	94	9	4	48	33
50,000 to 100,000	50	3	0	26	21
25,000 to 50,000	89	2	0	30	57
Less than 25,000	192	1	0	54	137
Total	660	53	8	296	303

It is significant to note that 329, approximately one half of the total stations in the country were located in the 96 metropolitan districts of the nation. Of the remaining 331 stations, 215 were of the local classification, 110 were of the regional class and 6 were clear channel stations.

(C) THE ECONOMICS OF BROADCASTING.

Broadcasting stations are supported primarily by advertisers desiring to utilize these media as a means of promoting the sale of commodities or services to the public.

Each broadcaster, whether the licensee of a large station or of a small one, each network and each program production agency, receives compensation in proportion to the value of the services rendered by each such organization. This value is affected directly by the degree to which the broadcast licensee, the network, or the program production agency satisfies the public. In other words, the greater the public interest in the radio service being rendered, the greater the value of radio to all concerned. Thus, the closer radio broadcasting service attains the objective of satisfying the public, the greater the rewards to the members, both large and small, of the industry. This is as it should be. Any attempt to circumvent this basic economic law, by Government fiat or otherwise, is certain to result in economic instability with its inevitable adverse effects upon sound American business enterprise as well as upon good program service to the public.

Advertisers are interested in "circulation" within a market. The "circulation" obtained by any radio station is dependent upon the number of listeners in the area covered by the station. The number of listeners depends upon the character of the program service rendered by the station, the licensed power of the station, its hours of operation and the number of competitive stations in the same market area.

Good markets are of primary interest to an advertiser because in an area where the purchasing power is large, the advertiser may reasonably expect a fair return on the monies expended for advertising, provided of course the public becomes interested in the product being distributed. On the other hand, if the purchasing power of the public in any given market is insufficient to justify the cost of advertising, the manufacturer or the wholesaler or the retailer may not desire to expend advertising funds in such a poor market.

Thus the revenue and income of the broadcast industry as well as units thereof are affected by—

(1) character of program service,
(2) type of facility,
(3) type of market in which a station is located,
(4) competition from other stations in the same market; and by
(5) management.

To date, stations which are located away from the centers of talent have been successful in stimulating public interest in the program content broadcast from their stations by being affiliated with a network. This affiliation enables a station to broadcast programs produced in the best talent centers and by the best talent in every section of the country and permits the dissemination of news of important events, not only in this country but also abroad. A station which is not affiliated with a network and not located favorably with respect to talent and market is handicapped in producing a program service which can sustain public interest.

Generally speaking, those stations which operated at a profit in 1938 were in a favorable position with relation to the factors just enumerated. On the other hand, those stations which operated at a loss had one of the following factors unfavorable to them:

(1) Circulation.
(2) Intense competition.
(3) Management.

In many instances the lack of favorable circumstances in the foregoing three factors was augmented by lack of network affiliation, inadequate facilities as to power and hours of operation, or by extraordinary expenses or utilization of "profits" in the form of salaries.

This outline of the economics of broadcasting is based upon an accumulation of data which has been condensed in the Tables attached hereto. Inasmuch as these Tables represent a compilation of data secured from a series of far more complex Tables, it is difficult to brief further the data without sacrificing adequate representation of all the factors which must be considered. It is, therefore, recommended that the Tables which are attached hereto be studied in order that full appreciation may be had of the significance of all the economic factors involved and in order that independent conclusions may be reached.

The locations of the different classes of stations operating at a profit or loss in the different types of markets are indicated in Table I B attached hereto. It should be noted that the poorer the class of station the greater chance of losing in any market. Also, the poorer the market the greater the chance of operating at a loss. The greatest percentage of losers were the local stations. While there were a greater number of local stations than any other single class, the chances of operating at a loss were greater in local stations than in any other class. Likewise, the chances of operating at a loss were greater when a station was licensed only for part time. Generally speaking, network stations had greater revenues than stations not affiliated with any major network, and consequently the chances of losing were less for network stations. These factors are illustrated by the following Table, which shows the percentage of losers by classes of stations.

Percent of stations of each class operating at loss in 1938	Classes of stations
7.5	Clear channel and high power regional, unlimited time.
12	Clear channel, part time.
26	Regional, unlimited time.
42.6	Regional, day and unlimited time.
45.4	Regional, part time.
45.3	Local, unlimited time.
48.7	Local, part time.
36.5	All stations.
26.5	Network stations.
47.5	Nonnetwork stations.

In general, the broadcast revenues of the various stations decreased as the value of the market in which the station was located decreased. Revenue of stations having good facilities was greater than those with less favorable facilities.

These facts are illustrated by the curves given in Tables II, III, IV and IV–B.

The average revenue and income under the various conditions for 660 stations in 1938 is illustrated in Tables V, V–B, VI and VII. These show that 420 stations operated at a profit and 240 stations operated at a loss in 1938. Of these 660 stations, 350 were affiliated with one of the major networks and 310 were not affiliated with any major network. Of the 350 network stations, 92 operated at a loss. Of the 310 non-network stations, 148 operated at a loss. Most of the stations affiliated with networks operating at a loss were located either in a poor market or in a good market in which there was intense competition. Some of the other stations operating at a loss had poor facilities, such as only part time or low power. Eighty-two of the stations operating at a loss were located in cities of less than 25,000 population, 54 in cities from 25,000 to 100,000, 57 in cities from 100,000 to 500,000 and 47 in cities of over 500,000 population.

The distribution of broadcast revenue and income to the various classes of stations and to the chain companies is indicated in Tables VIII, IX, X, and XI. The distribution of the dollar revenue and income is indicated in Tables XII and XIII.

From these tables it is obvious that the vast volume of revenue went to the chain companies and the 350 stations on the networks. Three hundred and ten stations not affiliated with any network had 12.7 per cent of the total volume of revenue. The three major chain companies and the stations licensed to them had 40.1 per cent of the total revenue, distributed as follows: 16.5 per cent to Columbia, 23.1 per cent to National and 0.1 per cent to Mutual. The stations affiliated with but not licensed to the chain companies obtained 46.7 per cent of the revenue. Four regional networks obtained 0.5 per cent of the revenue.

The ratio of net income to net time sales in 1938 for selected typical stations in various classes of markets and for the chain companies; is given herewith.

Organization or class of station	Ratio of net income to net time sales (per cent)	Approximate 1930 population of Metropolitan District in which station is located
Columbia Broadcasting System	21.2	(1)
National Broadcasting Company	15.2	(1)
Mutual Broadcasting System		(2)
50-kilowatt clear channel station	23.9	161,000
Do	32.3	2,100,000
1-kilowatt regional with network affiliation	13.8	379,000
Do	11.5	181,000
Do	.2	495,000
Do	5.8	2,850,000
1-kilowatt regional with no network affiliation	1.2	2,300,000
Do	6.5	2,300,000
Do	15.9	2,850,000
Do	3.4	10,900,000
Local station with network affiliation	3.3	119,000
Do	3.4	155,000
Do	15.3	19,000
Do	7.8	118,000
Do	10.8	425,000
Do	10.4	52,000
Do	5.0	820,000
Do	18	332,000
Do	32.4	399,000
Do	21.7	1,900,000

[1] Nation-wide network.
[2] Operating losses made up by members.

Organization or class of station	Ratio of net income to net time sales (per cent)	Approximate 1931 population of Metropolitan District in which station is located
Local station with no network affiliation	0.04	606,000
Do	2.7	16,000
Do	19.1	860
Do	19.7	1,290,000
Do	.9	371,000
Do	3.2	949,000
Do	10.4	2,850,000
Do	8.3	21,400
Do	10.4	4,365,000
Do	7.9	14,300

The amount of net income and the percentages for the chain companies and the groups of stations are as follows:

Organization or class of station	Net income	Ratio of net income to net time sales (per cent)
Columbia Broadcasting System	$3,541,739	[1] 21.2
National Broadcasting Company	3,434,301	[1] 15.2
2 clear channel stations	505,162	28.8
4 regional stations affiliated with networks	35,780	7.4
4 regional stations not affiliated with networks	68,632	6.9
10 local stations affiliated with networks	106,625	14.0
10 local stations not affiliated with networks	46,449	7.5

[1] The relationship to total revenue, which includes net time sales and incidental revenues, is 19.2 per cent and 13.3 per cent, respectively.

IV. CONCLUSIONS

There are certain factors which should provide the basis for consideration of the many complex problems in the field of radio broadcasting. However, as has been stated elsewhere in this report, no abrupt changes should be attempted without positive indication that such changes will result in improved service to the public. The record in this instant investigation does not justify sweeping proposals to change the developments resulting from practical experience.

It must be considered that since 1927, the American system of broadcasting has developed under a Congressional formula which, until recently, has been administered in its broad policy aspects with fair consistency by the Commission and, on the whole, uniformly interpreted by the Courts.

It must be admitted that imperfections exist. No human institution is free from error. It is significant, however, that this record fails to disclose important abuses. Moreover, no information is available to the Commission which justifies an invasion of the business practices of the licensees of this Commission.

It is true that some of the pioneers in broadcasting have achieved conspicuous financial success. Likewise others who have made contributions to the industry and the public have been well rewarded. This fact alone affords no proper basis for a radical extension of the regulatory scheme.

The record shows that in broadcasting there exists vigorous competition in the areas that count. It is the duty of the Commission to preserve and encourage such competition. However, we should not embark upon novel or untried courses of regulation based upon mere speculation as to how American businessmen should manage their affairs. Rather we should consider that the consequences of our acts might injure or retard further improvement in the existing system and the service which it now performs.

Competition accompanied by good radio service to the public should continue to be fostered by the Commission. However, the blind adherence to the slogan "free competition," regardless of all practical factors, is unsound and will result in a conglomeration of uncoordinated radio stations rendering an inferior service to the public.

On the whole, radio broadcasting has an excellent record of public service. This includes both networks and the independent stations. Possibly with a few isolated exceptions, radio has been scrupulously fair in dealing with questions of political, social and economic importance. It has been progressive and enterprising in the entertainment field. The public has been and should continue to be its most important and only censor.

Radio is so constituted that it is sensitive to public criticism and responds promptly to changing public tastes. For this Commission or any agency of Government to attempt to substitute its judgment for that of the public involves an arrogant presumption which should be avoided at all costs. That such a policy is not contemplated by anyone on the Commission seems quite clear. However, it can be argued with logic that invasion of this economic field by the licensing authority in the absence of clear legal mandate, would constitute an inevitable prelude to the second step of assuming the role of arbiter of public tastes.

Circumstances may require the Federal government to exercise broad powers in many fields of our economic life; but it is imperative that broadcasting be maintained as a free American institution. To adopt some pattern of government regulation as applied in other fields is to ignore the real nature of broadcasting. Borrowed techniques just don't fit. Broadcasting must be kept free from unnecessary Government restraints. Nowhere has this concept been given better expression than in a recent statement of the President of the United States wherein he said:

> Your Government has no wish to interfere or hinder the continued development of the American system of broadcasting. Radio was born and developed in the real American way and its future must continue on that basis.

Our views in this matter may be summarized as follows:

1. The Commission is without jurisdiction to promulgate regulations which undertake to control indirectly the business arrangements of broadcasting licensees.

2. The record shows vigorous competition among networks and independent stations within the limitations of facilities imposed by nature and thus no finding of illegal monopoly can be made by this Commission, even if it can be assumed that this Commission had the legal authority to make such determination.

3. The Commission through its licensing powers has ample authority to deal with any abuses that may arise, or which may now exist. Thus with the possible exception of clarification of the procedural and appellate provisions of the Communications Act of 1934, no legislative changes seem necessary.

4. There is no support in the record of these proceedings or otherwise in the possession of the Commission which would require new regulations which would attempt to control the relations between networks and affiliates.

5 Broadcasting service is essentially a ~~national service~~. It must be recognized that listeners prefer good programs originating from any source where there is superior talent and which may have greater entertainment value than would otherwise be available from a purely local source.

6. There is an important function to be served by the smaller local stations. The Commission should continuously strive to improve the technical efficiency of such stations and, within the limits of the Act, afford encouragement to broader economic opportunities for such stations. This should not be attempted by the destruction or impairment of existing services. There is room for both.

7. There is the strong presumption that four competing national networks independently operated might afford opportunity for improved service, although there is nothing in this record to establish that stations affiliated with the company operating two networks have not rendered a good public service. It is, therefore, recommended that informal discussions begin forthwith between the Commission and the representatives of the company operating two networks with a view of obtaining a voluntary segregation.

8. Network companies maintain concert and artist managment bureaus as an incident to their operations. The Commission has no jurisdiction in this field. However, the companies should be notified that the Commission intends to request an inquiry by either the Federal Trade Commission or the Department of Justice, or both, in the event the companies do not divest themselves of these activities within a reasonable time.

9. There is no reason why the Commission should not forthwith extend the terms of broadcast licenses to the full statutory limit of three years. This would create an atmosphere of greater stability in the industry and would in no way detract from the Commission's power to proceed by revocation against licensees who contravene the standard of public interest.

Finally, it seems appropriate to emphasize that our government is concerned with many important and crucial problems. This is no time to embark upon a new and untried course for which no urgent need can be established. It seems to us that the kind of democratic freedom which we are preparing to defend requires those in government to manifest restraint and tolerance. There is no evidence to justify an attempt at unnecessary controls of the broadcasting industry under even normal circumstances. In this atmosphere of world tension, our own national unity would be disserved by a new experiment at "reform" of an established system of mass communication upon which so many of our people rely for information and diversion.

313425—41——10

TABLE V-A.—*Average revenues and average broadcast income, 660 stations according to major network service in the relative classes of market areas shown by class of stations according to profit or loss, 1938*

Area I

Class of station	Stations with a profit: Major network: Number stations	Stations with a profit: Major network: Average	Stations with a profit: No major network: Number stations	Stations with a profit: No major network: Average	Stations with a loss: Major network: Number stations	Stations with a loss: Major network: Average	Stations with a loss: No major network: Number stations	Stations with a loss: No major network: Average	Total stations in area: Stations: Major network	Total stations in area: Stations: No major network	Total stations in area: Stations: Total
Clear channel:											
50,000 watts:											
Unlimited	23	R $805,090 I 296,967			1	R $1,186,785 L 17,224			24		24
Part-time	3	R 481,538 I 81,164							3		3
5,000 to 25,000 watts:											
Unlimited	6	R 271,576 I 83,175			3	R 149,865 L 60,976			9		9
Part-time											
Regional:											
Unlimited:											
High power	4	R 319,299 I 52,526							4		4
Other	50	R 298,936 I 79,797	10	R $206,986 I 14,913	11	R 153,863 L 39,092	9	R $134,520 L 34,724	61	19	80
Limited and day	2	R 140,267 I 1,179	13	R 80,402 I 9,781	1	R 120,453 L 25,595	7	R 66,103 L 19,459	3	20	23
Part-time	1	R 426,522 I 183,377	9	R 133,177 I 11,999	2	R 76,681 L 1,751	4	R 62,752 L 3,701	3	13	16
Local:											
Unlimited	3	R 110,654 I 16,672	12	R 73,673 I 6,438	2	R 25,731 L 647	8	R 83,551 L 5,786	5	20	25
Day and part-time			8	R 28,053 I 4,483			12	R 23,376 L 4,780		20	20
Total	92	R 422,328 I 130,527	52	R 104,273 I 9,565	20	R 182,708 L 33,028	40	R 71,833 L 14,179	112	92	204

Area II

Class of station	Stations with a profit: Major network: Number stations	Stations with a profit: Major network: Average	Stations with a profit: No major network: Number stations	Stations with a profit: No major network: Average	Stations with a loss: Major network: Number stations	Stations with a loss: Major network: Average	Stations with a loss: No major network: Number stations	Stations with a loss: No major network: Average	Total stations in area: Stations: Major network	Total stations in area: Stations: No major network	Total stations in area: Stations: Total
Clear channel:											
50,000 watts:											
Unlimited	7	R $517,152 I 118,490							7		7
Part-time	1	R 304,358 I 140,602							1		1
5,000 to 25,000 watts:											
Unlimited	4	R 195,850 I 27,972							4		4
Part-time	2	R 196,081 I 32,765			1	R $88,866 L 12,712			3		3
Regional:											
Unlimited:											
High power	4	R 153,135 I 26,883							4		4
Other	59	R 140,769 I 30,680	2	R $42,150 I 2,792	15	R 83,942 L 12,183	1	R $76,911 L 1,223	74	3	77
Limited and day	4	R 61,729 I 8,825	10	R 54,999 I 6,993	4	R 59,819 L 9,767	6	R 38,254 L 11,632	8	16	24
Part-time	6	R 110,666 I 13,717	1	R 18,511 I 1,342	3	R 30,287 L 10,687	3	R 28,345 L 4,239	9	4	13
Local:											
Unlimited	28	R 60,934 I 9,354	13	R 36,133 I 3,290	19	R 41,010 L 5,375	18	R 29,900 L 3,708	47	31	78
Day and part-time	2	R 42,293 I 10,059	8	R 31,643 I 3,223	1	R 23,122 L 9,544	8	R 12,847 L 3,829	3	16	19
Total	117	R 142,902 I 29,613	34	R 40,461 I 4,277	43	R 57,684 L 9,006	36	R 28,679 L 5,028	160	70	230

Total number of stations for the area in the respective categories			144				60								151				79			
Total with profit									92	52	144									117	34	151
Total with loss									20	40	60									43	36	79
Clear channel:																						
50,000 watts:																						
Unlimited																						
Part-time																						
5,000 to 25,000 watts:																						
Unlimited	1	R 79,438 I 5,076							1		1											
Part-time												1	R 48,176 I 1,109							1		1
						Area III												Area IV				
Regional:																						
Unlimited:																						
High power																						8
Other	16	R 65,275 I 11,729	2	R 26,691 I 1,400	5	R 40,749 L 4,866	5	R 29,187 L 5,951	21	7	28	2	R 97,261 I 6,300	3	R 21,406 I 3,519	3	R 59,207 L 11,674	2	R 26,862 L 905	5	5	10
Limited and day			5	R 42,769 I 3,006			7	R 19,344 L 3,152		12	12	1	R 58,205 I 1,539	4	R 23,706 I 1,001			4	R 13,837 L 12,856	1	8	9
Part-time												1	R 56,474 I 11,007			2	R 28,244 L 2,159	1	R 45,189 L 16,786	3	1	4
Local:																						
Unlimited	18	R 38,574 I 6,600	20	R 31,943 I 4,725	9	R 28,790 L 4,006	28	R 21,485 L 3,855	27	48	75	7	R 29,125 I 2,728	23	R 19,978 I 2,499	5	R 16,769 L 6,825	14	R 16,765 L 3,154	12	37	49
Day and part-time			9	R 29,489 I 4,044	4	R 19,006 L 1,782	4	R 20,118 L 2,623	4	13	17	2	R 24,934 I 4,956	10	R 15,851 I 2,493	1	R 16,455 L 5,818	7	R 15,943 L 714	3	17	20
Total	35	R 51,948 I 8,901	36	R 32,541 I 4,131	18	R 30,038 L 3,751	44	R 21,896 L 3,869	53	80	133	14	R 43,652 I 3,947	40	R 19,426 I 2,424	11	R 30,401 L 7,208	28	R 17,878 L 4,256	25	68	93
Total number of stations for the area in the respective categories			71				62								54				30			
Total with profit									35	36	71									14	40	54
Total with loss									18	44	62									11	28	39

R = Average broadcast revenue.
I = Average broadcast income.
L = Average broadcast loss.

TABLE V B.—*Average broadcast revenues and average broadcast income 660 stations according to profit or loss, shown by classes of stations*

1938

Class of station	420 stations with a profit: Stations: Major network	420 stations with a profit: Stations: No major network	420 stations with a profit: Stations: Total	420 stations with a profit: Averages: Major network	420 stations with a profit: Averages: No major network	420 stations with a profit: Averages: All stations	240 stations with a loss: Stations: Major network	240 stations with a loss: Stations: No major network	240 stations with a loss: Stations: Total	240 stations with a loss: Averages: Major network	240 stations with a loss: Averages: No major network	240 stations with a loss: Averages: Total	660 stations: Major network: Number stations	660 stations: Major network: Averages	660 stations: No major network: Number stations	660 stations: No major network: Averages	660 stations: All stations: Number stations	660 stations: All stations: Averages
Clear channel:																		
50,000 watts:																		
Unlimited	30	----	30	R $737,904 I 255,322	----	R $737,904 I 255,322	1	----	1	R $1,186,785 L 17,224	----	R $1,186,785 L 17,224	31	R $752,384 I 246,530	--	----	31	R $752,384 I 246,530
Part-time	4	----	4	R 437,243 I 96,024	----	R 437,243 I 96,024	----	----	----	----	----	----	4	R 437,243 I 96,024	----	----	4	R 437,243 I 96,024
5,000 to 25,000 watts:																		
Unlimited	11	----	11	R 226,572 I 56,001	----	R 226,572 I 56,001	3	----	3	R 149,865 L 60,976	----	R 149,865 L 60,976	14	R 210,135 I 30,935	----	----	14	R 210,135 I 30,935
Part-time	3	----	3	R 146,779 I 22,213	----	R 146,779 I 22,213	1	----	1	R 88,866 L 12,712	----	R 88,866 L 12,712	4	R 132,301 I 13,482	----	----	4	R 132,301 I 13,482
Regional:																		
Unlimited:																		
High power	8	----	8	R 236,217 I 39,704	----	R 236,217 I 39,704	----	----	----	----	----	----	8	R 236,217 I 39,704	----	----	8	R 236,217 I 39,704
Other	127	17	144	R 192,843 I 47,246	R $133,633 I 9,886	R 185,853 I 42,835	34	17	51	R 98,029 L 19,768	R $87,485 L 20,306	R 94,514 L 19,947	161	R 172,820 I 33,094	34	R $110,559 L 5,210	195	R 161,965 I 26,415
Limited and day	7	32	39	R 83,665 I 5,599	R 59,496 I 6,754	R 63,834 I 6,547	5	24	29	R 71,945 L 12,932	R 36,792 L 11,645	R 42,853 L 11,867	12	R 78,782 L 2,122	56	R 49,766 L 1,132	68	R 54,886 L 1,306
Part-time	8	10	18	R 143,374 J 34,586	R 121,710 I 10,933	R 131,339 I 21,446	7	8	15	R 42,959 L 5,697	R 47,654 L 5,538	R 45,463 L 5,612	15	R 96,513 I 15,787	18	R 88,796 I 3,613	33	R 92,304 I 9,146

Local:																		
Unlimited	56	68	124	R 52,434	R 36,061	R 43,455	35	68	103	R 33,531	R 30,043	R 31,228	91	R 45,164	136	R 33,052	227	R 37,907
				I 8,033	I 4,000	I 5,821				L 4,960	L 3,899	L 4,259		I 3,036		I 51		I 1,247
Day and part-time	4	35	39	R 33,613	R 25,757	R 26,562	6	31	37	R 19,566	R 18,560	R 18,723	10	R 25,185	66	R 22,376	76	R 22,746
				I 7,508	I 3,513	I 3,923				L 3,748	L 3,338	L 3,405		I 754		I 295		I 356
Total number of stations	258	162	420				92	148	240				350		310		660	
Group average				R 224,818	R 53,990	R 158,927				R 76,192	R 36,282	R 51,581		R 185,750		R 45,536		R 119,892
				I 61,396	I 5,485	I 39,830				L 12,887	L 7,011	L 9,263		I 41,870		L 481		I 21,978

R = Average broadcast revenue.
I = Average broadcast income.
L = Average broadcast loss.

TABLE VI.—*Average broadcast revenues and average broadcast income of 350 stations serving as outlets for major networks distributed by classes of stations according to profit and loss.*

1938

Particulars	Stations showing profit			Stations showing loss			Number stations	Total average total broadcast revenues	Average broadcast income
	Number stations	Average total broadcast revenues	Average broadcast income	Number stations	Average total broadcast revenues	Average broadcast income			
1	2	3	4	5	6	7	8	9	10
Area 1:									
Clear channel, unlimited, 50,000 watts or more	23	$805,090	$296,967	1	$1,186,785	[d]$17,224			
Clear channel, part-time, 50,000 watts or more	3	481,538	81,164	None					
Clear channel, unlimited, 5,000 to 25,000 watts	6	271,576	83,175	3	149,865	[d]60,976			
Clear channel, part-time, 5,000 to 25,000 watts	None			None					
Regional, unlimited, high power	4	319,299	52,526	None					
Regional, unlimited, other than high power	50	298,936	79,797	11	153,863	[d]39,092			
Regional, limited and day	2	140,267	1,179	1	120,453	[d]25,595			
Regional, part-time	1	426,522	183,377	2	76,681	[d]1,751			
Local, unlimited	3	110,654	16,672	2	25,731	[d]647			
Local, day and part-time	None			None					
Total	92	422,328	130,527	20	182,708	[d]33,028			
Area 2:									
Clear channel, unlimited, 50,000 watts or more	7	517,152	118,490	None					
Clear channel, part-time, 50,000 watts or more	1	304,358	140,602	None					
Clear channel, unlimited, 5,000 to 25,000 watts	4	195,850	27,972	None					
Clear channel, part-time, 5,000 to 25,000 watts	2	196,081	32,765	1	88,866	[d]12,712			
Regional, unlimited, high power	4	153,135	26,883	None					
Regional, unlimited, other than high power	59	140,769	30,680	15	83,942	[d]12,183			
Regional, limited and day	4	61,729	8,825	4	59,819	[d]9,767			
Regional, part-time	6	110,666	13,717	3	30,287	[d]10,687			
Local, unlimited	28	60,934	9,354	19	41,010	[d]5,375			
Local, day and part-time	2	42,293	10,059	1	23,122	[d]9,544			
Total	117	142,902	29,613	43	57,684	[d]9,006			
Area 3:									
Clear channel, unlimited, 50,000 watts or more	None			None					
Clear channel, part-time, 50,000 watts or more	None			None					
Clear channel, unlimited, 5,000 to 25,000 watts	1	79,438	5,076	None					
Clear channel, part-time, 5,000 to 25,000 watts	None			None					
Regional, unlimited, high power	None			None					
Regional, unlimited, other than high power	16	65,275	11,729	5	40,749	[d]4,866			
Regional, limited and day	None			None					
Regional, part-time	None			None					
Local, unlimited	18	38,574	6,600	9	28,790	[d]4,006			
Local, day and part-time	None			4	19,455	[d]1,782			
Total	35	51,948	8,901	18	30,038	[d]3,751			

[d] Represents loss

TABLE VI.—*Average broadcast revenues and average broadcast income of 350 stations serving as outlets for major networks distributed by classes of stations according to profit and loss*—Continued.

1938

Particulars	Stations showing profit			Stations showing loss			Number stations	Total average total broadcast revenues	Average broadcast income
	Number stations	Average total broadcast revenues	Average broadcast income	Number stations	Average total broadcast revenues	Average broadcast income			
1	2	3	4	5	6	7	8	9	10
Area 4:									
Clear channel, unlimited, 50,000 watts or more	None	--------	--------	None	--------	--------	--------	--------	--------
Clear channel, part-time, 50,000 watts or more	None	--------	--------	None	--------	--------	--------	--------	--------
Clear channel, unlimited, 5,000 to 25,000 watts	None	--------	--------	None	--------	--------	--------	--------	--------
Clear channel, part-time, 5,000 to 25,000 watts	1	48,176	1,109	None	--------	--------	--------	--------	--------
Regional, unlimited, high power	None	--------	--------	None	--------	--------	--------	--------	--------
Regional, unlimited, other than high power	2	97,261	6,300	3	59,207	[d] 11,674	--------	--------	--------
Regional, limited and day	1	58,205	1,539	None	--------	--------	--------	--------	--------
Regional, part-time	1	56,474	11,007	2	28,244	[d] 2,159	--------	--------	--------
Local, unlimited	7	29,125	2,728	5	16,769	[d] 6,825	--------	--------	--------
Local, day and part-time	2	24,934	4,956	1	16,455	[d] 5,818	--------	--------	--------
Total	14	43,652	3,947	11	30,401	[d] 7,208	--------	--------	--------
Summary:									
Clear channel, unlimited 50,000 watts or more	30	737,904	255,322	1	1,186,785	[d] 17,224	31	$752,384	$246,530
Clear channel, part-time, 50,000 watts or more	4	437,243	96,024	None	--------	--------	4	437,243	96,024
Clear channel, unlimited, 5,000 to 25,000 watts	11	226,572	56,001	3	149,865	[d] 60,976	14	210,135	30,935
Clear channel, part-time, 5,000 to 25,000 watts	3	146,779	22,213	1	88,866	[d] 12,712	4	132,301	13,482
Regional, unlimited, high power	8	236,217	39,704	None	--------	--------	8	236,217	39,704
Regional, unlimited, other than high power	127	192,843	47,246	34	98,029	[d] 19,768	161	172,820	33,094
Regional, limited and day	7	83,665	5,599	5	71,945	[d] 12,932	12	78,782	[d] 2,122
Regional, part-time	8	143,374	34,586	7	42,959	[d] 5,697	15	96,513	15,787
Local, unlimited	56	52,434	8,033	35	33,531	[d] 4,960	91	45,164	3,036
Local, day and part-time	4	33,613	7,508	6	19,566	[d] 3,748	10	25,185	754
Total	258	224,818	61,306	92	76,192	[d] 12,887	350	185,750	41,870

[d] Represents loss.

Table VII.—*Average broadcast revenues and average broadcast income 310 stations not serving as outlets for major networks distributed by classes of stations according to profit and loss*

1938

Particulars	Stations showing profit: Number stations	Stations showing profit: Average total broadcast revenues	Stations showing profit: Average broadcast income	Stations showing loss: Number stations	Stations showing loss: Average total broadcast revenues	Stations showing loss: Average broadcast income	Number stations	Total average total broadcast revenues	Average broadcast income
1	2	3	4	5	6	7	8	9	10
Area 1:									
Regional, unlimited, other than high power	10	$206,986	$14,913	9	$134,520	[d] $34,724	------	------	------
Regional, limited and day	13	80,402	9,781	7	66,103	[d] 19,459	------	------	------
Regional, part-time	9	133,177	11,999	4	62,752	[d] 3,701	------	------	------
Local, unlimited	12	73,673	6,438	8	83,551	[d] 5,786	------	------	------
Local, day and part-time	8	28,053	4,483	12	23,376	[d] 4,780	------	------	------
Total	52	104,273	9,565	40	71,833	[d] 14,179	------	------	------
Area 2:									
Regional, unlimited, other than high power	2	42,150	2,792	1	76,911	[d] 1,223	------	------	------
Regional, limited and day	10	54,999	6,993	6	38,254	[d] 11,632	------	------	------
Regional part-time	1	18,511	1,342	3	28,345	[d] 4,239	------	------	------
Local, unlimited	13	36,133	3,290	18	29,900	[d] 3,708	------	------	------
Local, day and part-time	8	31,643	3,223	8	12,847	[d] 3,829	------	------	------
Total	34	40,461	4,277	36	28,679	[d] 5,028	------	------	------
Area 3:									
Regional, unlimited, other than high power	2	26,691	1,400	5	29,187	[d] 5,951	------	------	------
Regional, limited and day	5	42,769	3,006	7	19,344	[d] 3,152	------	------	------
Regional, part-time	------	------	------	------	------	------	------	------	------
Local, unlimited	20	31,943	4,725	28	21,485	[d] 3,855	------	------	------
Local, day and part-time	9	29,489	4,044	4	20,118	[d] 2,623	------	------	------
Total	36	32,541	4,131	44	21,896	[d] 3,869	------	------	------
Area 4:									
Regional, unlimited, other than high power	3	21,406	3,519	2	26,862	[d] 905	------	------	------
Regional, limited and day	4	23,706	1,001	4	13,837	[d] 12,856	------	------	------
Regional, part-time	------	------	------	1	45,189	[d] 16,786	------	------	------
Local, unlimited	23	19,978	2,499	14	16,765	[d] 3,154	------	------	------
Local, day and part-time	10	15,851	2,493	7	15,943	[d] 714	------	------	------
Total	40	19,426	2,424	28	17,878	[d] 4,256	------	------	------
Summary:									
Regional, unlimited, other than high power	17	133,633	9,886	17	87,485	[d] 20,306	34	$110,559	[d] $5,210
Regional, limited and day	32	59,496	6,754	24	36,792	[d] 11,645	56	49,766	[d] 1,132
Regional, part-time	10	121,710	10,933	8	47,654	[d] 5,538	18	88,796	3,613
Local, unlimited	68	36,061	4,000	68	30,043	[d] 3,899	136	33,052	51
Local, day and part-time	35	25,757	3,513	31	18,560	[d] 3,338	66	22,376	295
Total	162	53,990	5,485	148	36,282	[d] 7,011	310	45,536	[d] 481

[d] Represents loss.

TABLE VIII.—*Brcadcast revenue and income in relation to major network service*

1938

Item	Network system station group	Number stations	Broadcast revenue	Broadcast income	
				Amount	Ratio to net time sales (per cent)
1	2	3	4	5	6
1	Columbia Broadcasting System, Inc., and stations serving it exclusively. (See Table IX)	104	$33, 198, 850	$7, 410, 976	24. 1
2	National Broadcasting Company, Inc., and stations serving it exclusively. (See Table IX)	116	42, 518, 060	8, 072, 737	21. 2
3	Mutual Broadcasting System, Inc., and stations serving it exclusively. (See Table IX)	19	5, 475, 298	385, 405	7. 0
4	Stations serving 2 or more networks, including 1 major network or more. (See Table IX)	111	16, 050, 047	3, 134, 773	21. 6
5	Total for major network systems	350	97, 242, 255	19, 003, 891	21. 7
6	Stations not serving any major network (including 305 which served no network)	310	14, 116, 123	[d] 149, 107	
7	Four regional networks [1]		549, 513	67, 569	13. 5
8	Total for the industry	660	111, 907, 891	18, 922, 353	18. 7

[1] Not included in FCC published tabulations for 1938 (Release No. 34737-1).
[d] Represents loss.

TABLE IX.—*Broadcast revenue and income Major network Systems*

1938

Item	Major network system	Number stations	Broadcast revenue	Broadcast income	
				Amount	Ratio to net time sales (per cent)
1	2	3	4	5	6
1	(a) Columbia Broadcasting System, Inc., and Stations licensed to it	9	$18, 472, 198	$4, 303, 249	25. 8
	(b) Stations serving CBS exclusively	95	14, 726, 652	3, 107, 727	22. 2
2	(a) National Broadcasting Company, Inc., and stations licensed to it	10	23, 405, 735	3, 548, 489	17. 5
	(b) Stations licensed to others but operated for NBC	5	2, 466, 951	537, 436	23. 8
	(c) Stations serving NBC exclusively	101	16, 645, 374	3, 986, 812	25. 7
3	(a) Mutual Broadcasting System, Inc. (No Stations licensed to or operated for it)		100, 486	30, 383	30. 2
	(b) Stations serving MBS exclusively	19	[1] 4, 880, 461	355, 022	8. 5
4	(a) Stations serving CBS and other networks	10	1, 361, 767	134, 170	10. 4
	(b) Stations serving NBC and other networks	46	11, 459, 443	2, 893, 234	28. 6
	(c) Stations serving MBS and other networks	55	3, 228, 837	107, 369	3. 5

[1] Does not include $494,351 contributed by members in liquidation of operating deficits.

TABLE X.—*Relative financial results of operation major network systems and other groups*

1938

Item	Network system or station group	Number stations	Broadcast revenue		Broadcast income	
			Amount	Ratio to industry total %	Amount	Ratio to industry total %
1	2	3	4	5	6	7
1	(a) Columbia Broadcasting System, Inc. and stations licensed to it	9	$18,472,198	16.4	$4,303,249	22.50
	(b) Stations serving CBS exclusively	95	14,726,652	13.2	3,107,727	16.30
	(c) Received from CBS by 10 stations serving CBS and 1 other network or more		329,022	0.3	[1] 64,400	0.34
	(d) Total CBS system business		33,527,872	29.9	7,475,376	39.14
2	(a) National Broadcasting Company, Incorporated and stations licensed to it	10	23,405,735	20.9	3,548,489	18.60
	(b) Stations licensed to others but operated for NBC	5	2,466,951	2.2	537,436	2.81
	(c) Stations serving NBC exclusively	101	16,645,374	14.8	3,986,812	21.00
	(d) Received from NBC by 46 stations serving NBC and 1 other network or more		3,537,393	3.2	[1] 688,600	3.61
	(e) Total NBC system business		46,055,453	41.1	8,761,337	46.02
3	(a) Mutual Broadcasting System, Inc. (no stations licensed to or operated for it)		[2] 594,837	0.6	30,383	0.18
	(b) Stations serving MBS exclusively	19	4,880,461	4.3	355,022	1.65
	(c) Received from MBS by 55 stations serving MBS and 1 other network or more		550,556	0.5	[1] 107,000	0.65
	(d) Total MBS system business		6,025,854	5.4	492,405	2.48
4	Stations serving 1 major network or more and also 1 other network or more, excluding amounts received from major networks, showing business derived from their own efforts	111	11,633,076	10.4	[1] 2,274,773	12.00
5	Four regional networks [3]		549,513	0.5	67,569	0.36
6	Stations not serving any major network (including 305 which served no network)	310	14,116,123	12.7	[4] 149,107	
7	Total for the industry	660	111,907,891	100.0	18,922,353	100.00

[1] Apportioned in the ratio which major network revenue bears to total revenue, the remainder being allocated to the non-major network business of the 111 stations.
[2] Includes $494,351 which was not revenue from the operating point of view, since it represented contributions by members in liquidation of operating deficits.
[3] Not included in FCC published tabulations for 1938 (Release No. 34737-1).
[4] Represents loss.

TABLE XI.—*Relative financial results of operation, separately for station and network operations*

1938

Item	Station group or network	Number stations	Broadcast revenue	Broadcast income: Amount	Broadcast income: Ratio to net time sales (per cent)
1	2	3	4	5	6
1	Stations showing profit:				
	(a) Serving as outlets for major networks	258	$58,002,968	$15,840,040	27.2
	(b) Not serving as outlets for major networks (including 161 which served no network)	162	8,746,374	888,493	10.1
	(c) Total showing profit	420	66,749,342	16,728,533	25.0
2	Stations showing loss:				
	(a) Serving as outlets for major networks	92	7,009,669	[d] 1,185,595	
	(b) Not serving as outlets for major networks (including 144 which served no network)	148	5,369,749	[d] 1,037,600	
	(c) Total showing loss	240	12,379,418	[d] 2,223,195	
3	Total station operation	660	79,128,760	14,505,338	18.3
4	Network operation:				
	(a) Columbia Broadcasting System		12,812,587	2,541,721	20.0
	(b) National Broadcasting Company		18,822,194	1,777,342	9.5
	(c) Mutual Broadcasting System		[1] 594,837	30,383	5.1
	(d) Four regional networks		549,513	67,569	12.3
	(e) Total network operation		32,779,131	4,417,015	13.6
5	Total for the industry	660	111,907,891	18,922,353	16.9

[1] Includes $494,351 which was not revenue from the operating point of view, since it represented contributions by members in liquidation of operating deficits.

[d] Represents loss.

TABLE XII.—*Relative distribution of revenue and income dollar separately for station and network operation*

Item	Station group or network	Number stations	Broadcast revenue dollar	Broadcast income dollar: Distribution	Broadcast income dollar: Ratio to industry total (percent)
1	2	3	4	5	6
1	Stations showing profit:				
	(a) Serving as outlets for major networks	258	51.8	83.7	74.
	(b) Not serving as outlets for major networks (including 161 which served no network)	162	7.8	4.7	
	(c) Total showing profit	420	59.6	88.4	79.
2	Stations showing loss:				
	(a) Serving as outlets for major networks	92	6.3	d 6.3	
	(b) Not serving as outlets for major networks (including 144 which served no network)	148	4.7	d 5.5	
	(c) Total showing loss	240	11.0	d 11.8	
3	Total station operation	660	70.6	76.6	
4	Network operation:				
	(a) Columbia Broadcasting System		11.60	13.50	12.00
	(b) National Broadcasting Company		16.80	9.40	8.54
	(c) Mutual Broadcasting System		.52	.15	.14
	(d) 4 regional networks		.48	.35	.32
	(e) Total network operation		29.40	23.40	21.00
5	Total for the industry	660	100.00	100.00	100.00

d Represents loss.

TABLE XIII.—*Condensed summary of broadcast income of selected networks and groups of stations, 1938*

Item	Particulars	Number stations	Net time sales	Per cent of total	Total broadcast revenues	Per cent of total	Broadcast expenses	Per cent of total	Broadcast income	Percent of total	Ratio of net income to net time sales (per cent) [1]
1	2	3	4	5	6	7	8	9	10	11	12
1	Columbia Broadcasting System, Inc	9	[2] $16, 689, 393	16. 5	$18, 472, 198	16. 4	$14, 168, 949	15. 2	$4, 303, 249	22. 7	21. 2
2	Mutual Broadcasting System, Inc	None	100, 486	. 1	594, 837	. 5	564, 454	. 6	[3] 30, 383	. 2	0
3	National Broadcasting Company, Inc	[4] 15	[2] 22, 582, 049	22. 3	25, 872, 686	23. 1	21, 786, 761	23. 5	4, 085, 925	20. 8	15. 2
4	Regional network companies	15	3, 272, 200	3. 2	3, 794, 058	3. 4	3, 333, 670	3. 6	460, 388	2. 4	(See 8)
5	Stations serving as outlets for NBC only	101	15, 553, 539	15. 3	16, 645, 374	14. 9	12, 658, 562	13. 6	3, 986, 812	21. 1	14. 1
6	Stations serving as outlets for CBS only	95	14, 006, 896	13. 8	14, 726, 652	13. 2	11, 618, 925	12. 5	3, 107, 727	16. 4	18. 3
7	Stations serving as outlets for Mutual only	19	4, 177, 729	4. 1	4, 880, 461	4. 4	4, 525, 439	4. 9	355, 022	1. 9	8. 3
8	Stations serving as outlets for more than one network (other than those shown on Line 4 above)	96	11, 750, 987	11. 6	12, 805, 502	11. 4	10, 063, 548	10. 8	2, 741, 954	14. 5	9. 8
9	Stations serving as outlets for regional networks only	5	417, 445	. 4	623, 781	. 6	765, 562	. 8	[d] 141, 781		(Loss)
10	Stations not serving as outlets for any network	305	12, 842, 413	12. 7	13, 492, 342	12. 1	13, 499, 668	14. 5	[d] 7, 326		(Loss)
11	Total		101, 393, 137	100. 0	111, 907, 891	100. 0	92, 985, 538	100. 0	18, 922, 353	100. 0	

[1] Based on representative samples for the itemized category if the category includes more than 1 licensee or company. The term refers to income available for dividends.

[2] While serving exclusively as outlets for CBS and NBC, some of the stations showed revenue from regional networks. This actually was revenue from sales of station time to stations in "hook-ups" such as Texas Quality Network, which is not a regional network, but the revenue of the stations in the "hook-up" is from regional chain or network service.

[3] Shown as profit but actually represent excess of contributions over expenses.

[4] Includes $888,178 net expense of operating these stations incurred by their licensees, namely, General Electric Company and Westinghouse Electric and Manufacturing Company.

[d] Represents loss.

U. S. GOVERNMENT PRINTING OFFICE: 1941

Interstate & Foreign commerce