THE REGULATION OF

AMERICAN BROADCASTING

USING THIS BOOK

This is a compendium of abstracts and exerpts taken from some of the most important laws and decisions affecting the operation and programming of broadcasting and cablecasting.

It is intended as a source of legal interpretation. For industry, it is a reference source which traces the development of issues germain to broadcasting from the time they were first delt with to the present. For schools, the book is not only a reference book but it is a workbook of assignments. Because of the chronological organization, it requires an instructor to provide the framework for the development of broadcast law in the United States and to highlight those cases which have had the greatest impact. Indeed, an instructor may feel more comfortable using a conventional text in conjunction with this work to take advantage of another author's perspective; several are available which can be used, though most take a mass communications approach.

The material is organized in six sections: Section A holds abstracts of portions of the Communications Act of 1934 and portions of other relevant federal acts; Section B is comprised of excertps from the Rules and Regulations of the Federal Communications Commission; Section C is composed of abstracts of FCC rulings and federal and state court decisions; Section D is taken from the Radio and Television Codes of the National Association of Broadcasters; Section E contains two locating aids -- a topical index and a title index; and Section F is designed specifically for broadcast law students and consists of written problems to be answered using the information in the first five sections.

The broadcaster using this work must not presume that it will be a substitute for a skilled attorney who specializes in communications law. It can, however, point the direction for the myriad small problems relating to operation and programming which frequently confront the station owner, manager, program manager, continuity acceptance director and sales manager. The broadcaster will find the material most helpful by referring in the topical index to the appropriate topic heading and turning then to the referred locations in parts A, B, C, and/or D.

For the student, the hypothetical problems which begin on page 264 are the starting point. After reading the first problem the student should turn to page 261 which illustrates the form the written answer should take. Then the student needs to refer to the topical index to locate appropriate regulations and decisions. Next he or she should read each of the references to ascertain that it applies directly to the problem and, having read all the relevant citations, arrive at a conslusion about the problem.

For the instructor who selects this book as a workbook, it will be prudent to spend one class period working through one or two of the problems with the students, that they understand its value. Since each of the assignments covers labeled topic areas, the instructor does not need to follow the assignments in the sequence given

S E C T I O N A

selected exerpts from

THE COMMUNICATIONS ACT of 1934

THE CONSTITUTION OF THE UNITED STATES

THE UNITED STATES CODE

THE UNITED STATES GENERAL REVISION OF COPYRIGHT LAW

Selected Excerpts from THE FEDERAL COMMUNICATIONS ACT OF 1934 (From Title 47 of the U.S. Code)

A-1 Creation of the Federal Communications Commission.

Section 151. For the purpose of regulating interstate and foreign commerce in communication by wire and radio as to make available . . a rapid, efficient, nation-wide and world-wide wire and radio communication service . . there is created a commission to be known as the "Federal Communications Commission", which shall be constitued as hereinafter provided, and which shall execute and enforce the provisions of this chapter.

A-2 Definitions

Section 153. For the purposes of this chapter . . (b) "Radio Communication" or "communication by radio" means the transmission by radio or writing, signs, signals, pictures and sounds of all kinds. . (o) "Broadcasting" means the dissemination of radio communications intended to be received by the public . . (p) "Chain broadcasting" means simultaneous broadcasting of an identical program by two or more connected stations . . (k) "Radio station" or "station" means a station equipped to engage in radio communication or radio transmission of energy . . (1) "Person" includes an individual, partnership, association, joint-stock company, trust or corporation . . (c) "Licensee" means the holder of a radio station license granted or continued in force under authority of this Act . . (bb) "Station license" . . . or "license" means that instrument of authorization required by this chapter . . for the use or operation of apparatus for transmission of . . communications, or signals by radio...

A-3 Membership of the Commission.

Section 154. (a) The Federal Communications Commission . . shall be composed of seven commissioners appointed by the President, by and with the advice and consent of the Senate, one of whom the President shall designate as chairman.

(b) Each member of the Commission shall be a citizen of the United States. No member of the Commission or person in its employ shall be financially interested in the manufacture or sale of radio apparatus . . (or) in communication by wire or radio . . or hold any official relation to any person subject to any of the provisions of this chapter, nor own stocks, bonds or other securities of any coporation subject to any of the provisions of this chapter.

Not more than four commissioners shall be members of the same political party . . . Such commissioners shall not engage in any other business, vocation, profession or employment, but shall not apply to the presentation or delivery of publications or papers for which a reasonable honorarium or compensation may be accepted.

A-4 Powers and Duties of the Commission.

Section 154. (h) Four members of the Commission shall constitute a quorum. The Commission shall make an annual report to Congress . . . Such reports shall contain . . (1) such information and data collected by the Commission as may be of value in the determination . . connected with the regulation of interstate and foreign wire and radio communication . . (or) . . (2) as will be of value to Congress in appraising the . . accomplishments

of the Commission and the adequacy of its staff . . (and) . . (5) specific recommendations to Congress as to additional legislation which the Commission deems necessary or desirable...

Section 303. The Commission . . as public convenience, interest or necessity requires, shall (a) classify radio stations . . (b) . . Prescribe the nature of the service to be rendered by each class of licensed stations and each station within any class . . (c) . . assign frequencies for each individual station . . (d) . . determine the location of . . individual stations . . (e) . . regulate the kind of apparatus to be used . . (f) . . (and) make such regulations not inconsistent with law to prevent interference between stations and to carry out the provisions of this chapter.

(h) have authority to establish areas or zones to be served by any station . . (i) . . to make special regulations applicable to . . stations engaged in chain broadcasting . . (j) . . to make general rules . . requiring stations to keep such records of programs . . as it may deem desirable . . (o) . . to designate call letters of all stations . . (q) . . to require the painting and/or illumination of radio towers if . . such towers constitute . ., or may constitute a menace to air navigation . . . (and) . . (s) . . to require that . . . television (receivers) . . . be capable of adequately receiving all frequencies allocated by the Commission to television broadcasting.

(i) The Commission may perform any and all acts, make such rules and regulations, and issue such orders, not inconsistent with this chapter, as may be necessary in the execution of its functions.

A-5 Duties of the Chairman.

Section 5. The member of the Commission designated by the President as chairman shall be the chief executive officer of the Commission. It shall be his duty to preside at all meetings and sessions of the Commission, to represent the Commission in all matters relating to legislation and legislative reports . . . and generally to coordinate and organize the work of the Commission . . . to promote prompt and efficient disposition of all matters within the jurisdiction of the Commission.

A-6 Requirement of License to Broadcast.

Section 301. It is the purpose of this chapter to maintain the control of the United States over all the channels of interstate and foreign radio transmission; and to provide for the use of such channels, but not the ownership thereof, . . for limited periods of time, under licenses granted by the Federal Authority . . .

No person shall use or operate any apparatus for the transmission of . . communications or signals by radio . . . from any state, territory or possession of the United States.. to any other State, Territory, or possession of the United States..or within any State when the effects of such use extend beyond the borders of said State, (or produce interference in) any place beyond its borders...

A-7 Licensing of Radio Engineers.

Section 303. (l) The Commission shall have authority to prescribe the qualifications of station operators..and to issue (operator's licenses) to such citizens..of the United States as the Commission finds qualified.

(m) have authority to suspend the license of any operator upon proof ..that the licensee (operator) .(A). has violated the provision of any Act..

or any regulation made by the Commission, . . . (or) (c) has willfully damaged . . . radio apparatus or installations . . (d) . . has transmitted signals . . . containing profane or obscene words, language or meaning . . . (or) . . false or deceptive signals or a call signal or letter . . . not assigned to the station he is operating or . . . has attempted to obtain . . . an operator's license by fraudulent means.

A-8 Government-owned Stations.

Section 305. Radio stations belonging to and operated by the United States shall not be subject to the provisions of sections 301 and 303 of this title. All such Government stations shall use such frequencies as shall be assigned . . by the President. All such stations . . . when transmitting any radio communication other than (one) relating to Government business, shall conform to such rules and regulations designed to prevent interference with other stations and the rights of others, as the Commission may prescribe.

A-9 "Public Interest" the Basis for License Grants.

Section 307. The Commission, if public convenience, interest or necessity will be served thereby . . . shall grant to any applicant therefore a station license provided for by this chapter.

A-10 Period of License, and Possible License Renewal.

Section 307. No license granted for the operation of a broadcasting station shall be for a longer term than three years . . . Upon expiration of any license . . . a renewal . . . may be granted . . . for a term of not to exceed three years in the case of broadcasting licenses...

The Commission may by rule prescribe the period or periods for which licenses shall be granted and renewed. . . but the Commission may not adopt or follow any rule which would preclude it . . . from granting or renewing a license for a shorter period than that prescribed . . . if, in its judgment, public interest, convenience and necessity would be served by such action.

A-11 Renewal of License.

Section 307. Upon the expiration of any license . . . a renewal of such license may be granted . . . for a term of not to exceed three years . . . In order to expedite action on applications for renewal of broadcasting station licenses . . . the Commission shall not require any such applicant to file any information which previously has been furnished to the Commission or which is not directly material to the considerations that affect the granting or denial of such application, but the Commission may require any new or additional fact it deems necessary to make its findings.

A-12. Existing License in Effect Pending Decision on Renewal.

Section 307. Pending any hearing and final decision on such an application (for license renewal) and the disposition of any petition for rehearing . . . the Commission shall continue such license in effect.

A-13 Distribution of Frequencies.

Section 307. In considering applications for licenses . . . and renewals . . . the Commission shall make such distribution of license, frequencies, hours of operation, and of power among the several States and

communities as to provide a fair, efficient, and equitable distribution of radio service to each of the same.

A-14 Written Application Required.

Section 308. The Commission may grant construction permits or station license, or modifications or renewals thereof, only upon written application thereof received by it, provided that in cases of emergency . . . due to damage to equipment, or during a national emergency proclaimed by the President or declared by the Congress . . . the Commission may grant construction permits and station licenses . . . without the filing of a formal application (not to) continue in effect beyond the period of the emergency.

All applications for station licenses, or modifications or renewals thereof, shall set forth such facts as the Commission by regulation may prescribe as to the citizenship, character, and financial, technical and other qualifications of the applicant to operate the station; the ownership and location of the proposed station; . . . the frequencies and the power desired to be used; the hours of the day . . . during which it is proposed to operate the station; the purposes for which the station is to be used; and such other information as it may require.

The Commission at any time after the filing of such original application and during the term of any such license, may require from an applicant or licensee further written statements of fact to enable it to determine whether such . . . application should be granted or denied or such license revoked. Such application and/or such statement of fact shall be signed by the application and/or licensee.

A-15 Granting Applications for License.

The Commission shall determine, in the case of each application filed with it, . . . whether the public interest, convenience, and necessity will be served by the granting of such application, and if the Commission (finds it would be served) . . . shall grant such application. (However,) no such application . . . shall be granted . . . earlier than thirty days following issuance of public notice by the Commission of the acceptance of the filing...

A-16 Party in Interest.

Section 309. Any party in interest may file with the Commission a petition to deny any application . . . at any time prior to the day of Commission grant thereof without hearing or the day of formal designation thereof for hearing ... The petitioner shall serve a copy of such petition on the applicant. The petition shall contain specific allegations of fact sufficient to show that the petitioner is a party in interest and that a grant of the application would be prima facie inconsistent with (the public interest, convenience and necessity). If . . . the Commission . . . is unable to make the findings . . . it shall formally designate the application for hearing of the ground or reasons then obtaining and shall forthwith notify the applicant and all other known parties in interest of such action . . . specifying with particularity the matters and things in issue...

A-17 Hearings Designated by the Commission.

Section 309. If upon examination of any such application (for a license, license renewal or construction permit) the Commission is uable to make the finding (granting the application) . . . it shall formally

designate the application for hearing . . . and shall forthwith notify the applicant and other known parties in interest . . . of . . . (the) reasons therefore, . . . any hearing subsequently held upon such application shall be a full hearing in which the applicant and all other parties in interest shall be permitted to participate. The burden of proof shall be upon the applicant...

(Section 309 as amended also provides for hearings on protests to grants; Section 312 provides for hearings, unless waived, upon cease and desist orders and revocations; Section 316 for hearings on modification of license or permits).

A-18 Licensee to Have no Vested Rights in Facilities Granted.

Section 301. . . No such license shall be construed to create any right beyond the terms, conditions and periods of the license.

Section 309. Each license shall contain, in addition to other provisions, a statement of the following: . . . the 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.

Section 304. No station license shall be granted by the Commission until the applicant thereof shall have signed a waiver of any claim to the use of any particular frequency or of the ether as against the regulatory power of the United States because of the previous use of the same, whether by license or otherwise.

A-19 License and Privileges Granted by the License may not be Illegally Transferred.

Section 309. Each license shall contain . . . a statement of the following condition: . . . Neither the license nor the right granted thereunder shall be assigned or otherwise transferred in violation of this chapter.

A-20 Station Transfer Applications.

Section 310. No construction permit or station license, or any rights thereunder, shall be transferred, assigned or disposed of in any manner . . . directly or indirectly, or by transfer of control of any corporation holding such permit or license, to any person, except upon application to the Commission and upon finding by the Commission that the public interest, convenience and necessity will be served thereby . . . In acting thereon, the Commission may not consider whether the public interest, convenience and necessity might be served by the transfer, assignment or disposal of the permit or license to a person other than the proposed transferee or assignee.

A-21 Applicants not Eligible to Receive Station Licenses.

Section 310. The station license required shall not be granted to or held by: any alien or the representative of any alien; any foreign government or the representative thereof; any coporation organized under the laws of any foreign government; any coportation of which any officer or director is an alien or of which more than one-fifth of the capital stock is owned . . . by aliens or their representatives . . . or by any corporation organized under the laws of a foreigh country; (or) any coporation directly or indirectly controlled by any other corporation of which any officer or

more than one-fourth of the directors are aliens, or of which more than one-fourth of the capital stock is owned or voted . . . . by aliens...

Section 311. The Commission is hereby directed to refuse a station license to any person whose license has been revoked by a court under Section 313. (Section in question provides for revocation of licenses by a court, if licensee has been found quilty of unlawful monopoly or of combination in restraint of trade.)

A-22 Notice of Filing.

Section 311. When there is filed with the Commission any application . . . for a station in the broadcasting service, the applicant-shall give notice of such filing in the principle area which is served or is to be served by the station...

A-23 Revocation of License by the Commission.

Section 312. The Commission may revoke any station license or construction permit--(1) for false statements knowingly made either in the application or in any statement of fact which may be required; . . . (2) (or) because of conditions coming to the attention of the Commission which would warrant it in refusing to grant a license or permit on an original application; (3) (or) for willful or repeated failure to operate substantially as set forth in the license; (4) (or) for willful or repeated violation of . . . any provision of this chapter or any rule or regulation of the Commission; . . . (5) (or) for violation of or failure to observe any final cease and desist order issued by the Commission under this section; (6) (or) for violation of Section 1304, 1343, or 1464 of Title 18 of the United States code.

(In actions to revoke licenses, the same procedure is followed as that outlined for the issuing of cease and desist orders, above.)

A-24 Cease and Desist Orders.

Section 312. Where any person has failed to operate substantially as set forth in a license, (or) has violated or failed to observe any of the provisions of this chapter, . . . or has violated or failed to observe any rule or regulation of the Commission authorized by this chapter . . . the Commission may order such person to cease and desist from such action.

Before . . . issuing a cease and desist order . . . the Commission shall serve upon the licensee or person involved an order to show cause why a cease and desist order should not be issued. Any such order to show cause shall contain a statement of the matters with respect to which the Commission is inquiring and shall call upon said licensee . . . or person to appear before the Commission at a time and place stated in the order . . . and give evidence upon the matter specified therein . . . If after hearing, or a waiver thereof, the Commission determines that . . . a cease and desist order should issue, it shall issue such order, which shall include a statement of the findings of the Commission and the grounds or reasons therefore . . . and shall cause the same to be served on said licensee, permittee or person.

A-25 Revocation of License by a Federal Court.

Section 313. All laws of the United States relating to unlawful restraints and monopolies and to combinations. In restraint of trade are declared to be applicable to the manufacture and sale . . . (of) radio

apparatus . . . (and to) interstate or foreign radio communications. Whenever in any suit, action or proceeding brought under the provisions of any of said laws . . . any licensee shall be found guilty of the violation of the provisions of such laws . . the court, in addition to the penalties imposed by said laws, may adjudge, order, and/or decree that the licensee shall thereupon cease...

A-26 Preservation of Competition in Commerce.

Section 314. (No) person . . . in the business of transmitting . . . signals by radio . . . shall . . . unlawfully . . . create monopoly in any line of commerce . . . (or) substantially lessen competition or . . . restrain commerce...

A-27 Broadcasts by Legally Qualified Candidates for Public Office.

Section 315. (a) If any licensee shall permit any person who is a legally qualified candidate for any public office to use a broadcasting station, he shall afford equal opportunities to all other such candidates for that office in the use of such broadcasting station. Provided, that such licensee shall have no power of censorship over the material broadcast under the provisions of this section. No obligation is imposed under this subsection upon any licensee to allow the use of its station by any such candidate.

(b) The charges made for the use of any broadcasting station by any person who is a legally qualified candidate for any public office in connection with his campaign for nomination, or election, to such office shall not exceed (1) during the forty-five days preceeding the date of a primary or primary runoff election and sixty days preceeding the date of a general or special election in which such person is a candidate, the lowest unit charge of the station for the same class and amount of time for the same period; and (2) at any other time, the charges made for comparable use of such station by other uses thereof.

(c) Appearance by a legally qualified candidate on any--bona fide newscast, bona fide news interview, bona fide news documentary (if the appearance of the candidate is incidental to the presentation of the subject or subjects covered in the news documentary), or on-the-spot coverage of bona fide news events (including but not limited to political conventions and activities incidental thereto), shall not be deemed to be use of a broadcasting station within the meaning of this subsection.

Nothing in the foregoing sentence shall be construed as relieving broadcasters in connection with the presentation of newscasts, news interviews, news documentaries and on-the-spot coverage of news events, from the obligation imposed upon them under this chapter to operate in the public interest...

For purposes of this section:

(1) the term "broadcasting station" includes any community antenna television system; and

(2) the terms "licensee" and "station licensee" when used with respect to a community antenna television system means the operator of such system.

A-28 Implied Obligation to Provide Time for Discussion of Controversial Issues.

Section 315. (a) Nothing in the foregoing shall be construed as relieving broadcasters . . . from the obligation . . . to afford reasonable

opportunity for the discussion of conflicting views on issues of public importance.

A-29 Modification of Licenses or Permits.

Section 316. (a) Any station license or construction permit may be modified by the Commission either for a limited time or for the duration of the term thereof, if in the judgment of the Commission such action will promote the public interest, convenience and necessity . . . No such order of modification shall become final until the holder of the license or permit have been notified in writing of the proposed action and the grounds and reasons therefore, and shall have been given reasonable opportunity . . . to show cause by public hearing, if requested, why such order of modification should not issue. . .

(b) In any case where a hearing is conducted pursuant to the provisions of this section, . . . the burden of proof shall be upon the Commission.

A-30 Identification of Sponsored Materials.

Section 317. (a) All matter broadcast by any radio station for which service, money, or any other valuable consideration is directly or indirectly paid, or promised to or charged or accepted by, the station so broadcasting, from any person, shall, at the time the same is broadcast, be announced as paid for or furnished, as the case may be, by such person.

Section 508. (a) Any employee of a radio station who accepts or agrees to accept from any person (other than such station), or any person (other than such station) who pays or agrees to pay such employee any money, service or other valuable consideration for the broadcast of any matter over such station shall, in advance of such broadcast, disclose the fact of such acceptance or agreement to such station.

(e) The inclusion in the program of the announcement required by section 317 shall constitute the disclosure required by this section.

(g) Any person who violates any provision of this section shall, for each such violation, be fined not more than $10,000 or imprisoned not more than one year, or both.

A-31 Materials Supplies not Requiring Sponsor Identification.

Section 317. (a) "Service or other valuable consideration" shall not include any service or property furnished without charge or at a nominal charge for use on . . . a broadcast unless it is so furnished . . . for an identification . . . of any person, product, service, trademark, or brand name beyond an identification which is reasonally related to the use of such service or property on the broadcast.

(c) The licensee . . . shall exercise reasonable diligence to obtain from its employees and other persons . . . information to enable such licensee to make the announcement required by this section.

(d) The Commission may waive the requirement of an announcement . . . in any case . . . (where) it determines the public interest, convenience or necessity does not require . . . such announcment.

A-32 Requirement of Licensed Operator.

Section 318. The actual operation of all transmitting apparatus in any radio station for which a license is required by this chapter shall be carried on only by a person holding an operator's license issued hereunder, and no person shall operate any such apparatus in such station

except under and in accordance with an operator's license issued to him by the Commission.

A-33 Construction Permits.

Section 319. (a) No license shall be issued under the authority of this chapter for the operation of any station the construction of which is begun or is continued after this chapter takes effect, unless a permit for its construction has been granted by the Commission. The application for a construction permit shall set forth such facts as the Commission may prescribe as to the citizenship, character, and the financial, technical, and other ability of the applicant to construct and operate a station, the ownership and location of the proposed station . . . the frequencies desired to be used, the hours of the day or other periods of time during which it is proposed to operate the station, the purpose for which the station is to be used, the type of transmitting apparatus to be used, the power to be used, the date upon which the station is expected to be completed and in operation, and such other information as the Commission may require.

(b) Such permit for construction shall show specifically the earliest and latest dates between the actual operation of such station is expected to begin, and shall provide that said permit will be automatically forfeited if the station is not ready for operation within the time specified or within such further time as the Commission may allow, unless prevented by causes not under the control of the grantee.

A-34 Original License after Construction.

Section 319. (c) Upon the completion of any station for the construction . . . of which a permit has been granted, and upon it being made to appear to the Commission that all the terms, conditions and obligations set forth in the application and mpermit have been fully met, and that no cause of circumstance . . . first coming to the knowledge of the Commission since the granting of the permit make the . . . operation of such station against the public interest, the Commission shall issue a license to the lawful holder of said permit for the operation of said station. Said license shall conform generally to the terms of said permit.

A-35 Programs Originated for Broadcast by Foreign Stations Heard in the United States.

Section 325. (b) No person shall be permitted to use or maintain a radio broadcast studio from which . . . sound waves are converted into electricial energy or mechanical or physical reproduction of sound waves produced, and caused to be transmitted or delivered to a radio station in any foreign country for the purpose of being broadcast from any radio station having power . . . sufficient . . . that its emmissions may be received consistently in the United States, without first obtaining a permit from the Commission upon proper application therefore.

A-36 Rebroadcasts only with Permission.

Section 325. (a) . . . Nor shall any broadcasting station rebroadcast the program or any part thereof of another broadcasting station without the express authority of the originating station.

A-37 False Signals of Distress.

Section 325. (a) No person within the jurisdiction of the United States shall knowingly utter or transmit, or cause to be uttered or transmitted, any false or fraudulent signal of distress, or communication relating thereto...

A-38 Censorship by the Commission Prohibited.

Section 326. Nothing in this chapter shall be understood or construed to give the Commission the power of censorship over the radio communications or signals transmitted by any radio station, and no regulation or condition shall be promulgated or fixed by the Commission which shall interfere with the right of free speech by means of radio communication.

A-39 Noncommercial Educational Broadcasting Facilities.

Section 390. The purpose of (this subpart) is to assist, through matching grants, in the construction of public telecommunications facilities...

A-40 Criteria for Grants.

Section 393. (a) The Secretary (of Commerce), in consultation with the Corporation, public telecommunications entities, and . . . others, shall establish criteria for making construction and planning grants.

(b) The Secretary shall pose determinations of whether to approve applications for grants under this subpart, and the amount of such grants, on criteria developed persuant to subsection (a) . . . and designed to achieve (1) the provisions of new telecommunications facilities to extend service to areas not receiving public telecommunication services; (2) the expansion of the (areas presently served); (3) the development of public telecommunications facilities owned by, operated by, and available to minorities and women...

A-41 Corporation for Public Broadcasting.

Section 396. (b) There is . . . to be established a nonprofit corporation, to be known as the "Corporation for Public Broadcasting," which will not be an agency or establishment of the United States Government....

(c) The Corporation shall have a Board of Directors consisting of fifteen members appointed by the President....Not more than eight members . . . may be . . . of the same political party. The term of office . . . shall be six years.

(d) The members of the Board shall annually elect one of their number as Chairman.

(g) The Corporation is authorized (to make available) programs of high quality, obtained from diverse sources; establish and develop . . . systems of interconnection; . . . assure maximum freedom . . . from interference . . . or control of program content.

(i) The Corporation shall submit an annual report . . . to the President. The report shall include a comprehensive and detailed report of the Corporation's operations, activities, financial conditions, and accomplishments, . . . and such recommendations as the Corporation deems appropriate.

A-42 Federal Interference.

Section 398. Nothing contained (in this part) shall be deemed . . . to authorize any department, agency officer, or employee of the United

States to exercise any direction, supervision, or control over public telecommunications or over the Corporation...

A-43 Editorializing and Support of Political Candidates.

Section 399. No noncommercial educational broadcasting station may engage in editorializing or may support or oppose any candidate for political office.

A-44 Enforcement of Orders of Commission.

Section 401. (b) If any person fails or neglects to obey any order of the Commission. . . the Commission . . . may apply to the appropriate diszrict court of the United States for the enforcement of such order . . . (T)he court shall enforce obedience of such order by a writ of injunction or other proper process, . . . to restrain such person . . . from futher disobedience of such order...

A-45 Appeals from Commission Decisions to Federal Courts.

Section 402. (b) Appeals may be taken from decisions and orders of the Commission to the United States Court of Appeals for the District of Columbia . . . by any applicant for a construction permit or station license . . . (or) for the renewal of modification of any such instrument of authorization, whose application is denied by the Commission; by any party to an application for authority to transfer . . . such instrument of authorization . . . whose application is denied by the Commission; . . . by the holder of any construction permit or station license which has been modified or revoked by the Commission; . . . (or) by any person upon whom an order to cease and desist has been served under Section 312 of this title.

(h) In the event that the court shall . . . remand the case to the Commission the order of the Commission it shall remand the case to the Commission to carry out the judgment of the court and it shall be the duty of the Commission . . . to forthwith give effect thereto . . . upon the basis of the proceedings already had and the record upon which said appeal was heard and determined.

(c) Such appeal shall be taken by filing a notice of appeal with the court within thirty days from the date upon which public notice is given of the decision or order complained of. Such notice . . . shall contain a concise statement of the nature of the proceedings as to which the appeal is taken (and) a concise statement of the reasons on which the appeal is taken (and) a concise statement of the reasons on which the appeallant intends to reply...

(d) Upon the filing of any such notice of appeal the Commission shall . . . notify each person shown by the records of the Commission to be interested in said appeal...

(i) The court's judgment shall be final, subject, however, to review by the Supreme Court of the United States upon writ of certiorari....

A-46 Inquiry by Commission on its Own Motion.

Section 403. The Commission shall have full authority and power at any time to institute an inquiry, on its own motion, in any case and as to any matter . . . which complaint is authorized to be made....

(Under this section the Commission has authority to initiate its own investigations to obtain information regarding a myriad of issues relevant to broadcasting and cablecasting without waiting for a complaint to be lodged)

A-47 Rehearings Before the Commission.

Section 405. After an order (or) decision has been in any proceeding, . . . any party thereto, or any other person . . . whose interests are adversely affected thereby, may petition for rehearing . . . It shall be lawful for (the Commission) . . . in its discretion, to grant such a rehearing if sufficient reason therefore be made to appear.

Rehearings shall be governed by such general rules as the Commission may establish, except that no evidence other than newly discovered evidence, evidence which has become available only since the original taking of evidence or evidence which the Commission believes should have been taken in the original proceeding, shall be taken on any rehearing.

A-48 Presiding Over Hearings.

Section 409. (a) In every case of adjudication . . . which has been designated by the Commission for a hearing . . . the person or persons conducting the hearing . . (shall do so in accordance with) the Administrative Procedure Act.

A-49 Initial and Final Decisions.

Section 409 (a) In every case of adjudication . . . which has been designated by the Commission for hearing, the person or persons conducting the hearing shall prepare and file an initial . . . decision . . . (b) . . . any party to the proceeding shall be permitted to file exceptions . . . to the . . . decision, which shall be passed upon by the Commission...

A-50 No Consultations by Examiners.

Section 409. (c) In any . . . hearing no . . . person who has participated in the presentation or preparation for presentation of such case . . . shall . . . directly or indirectly make any additional presentation respecting such case to the hearing officer or officers or to the Commission . . . unless upon notice and opportunity for all parties to participate.

A-51 Power of Subpoena for Hearings, etc.

Section 409. (e) For the purposes of this chapter the Commission shall have the power to require by subpoena the attendance and testimony of witnesses and the production of all books, papers, schedules of charges, contracts, agreements and documents relating to any matter under investigation... (f) Such attendance of witnesses, and the production of such documentary evidence, may be required from any place in the United States, at any designated place of hearing.

(g) Any of the district courts of the United States . . . may, in the case of . . . refusal to obey a subpoena issued to any common carrier or licensee or other person, issue an order requiring such . . . to appear before the Commission . . . and give evidence touching the matter in question; and any failure to obey such order of the court may be punished by such court as a contempt thereof.

A-52 Fines Levied by the Commission.

Section 503. (b) Any person who is determined by the Commission . . . to have willfully or repeatedly failed to comply substantially with the terms and conditions of any licenses . . . (or) failed to comply with any of the provisions of this chapter or of any rule, regulation or order

(or) violated any provision of section 317(c) or 509(a) of this title; or violated any provision of section 1304, 1343 or 1464 of Title 18; shall be liable . . for a forfeiture penalty . . in addition to any other penalty provided for by this chapter... The amount of any forfeiture shall not exceed $2,000 for each violation. Each day of a continuing violation shall constitute a separate offense.

A-53 Coercive Practices Prohibited.

Section 506. (a) It shall be unlawful, by use of express or implied threat of the use of force, violence, intimidation, or duress, or by the use of express or implied threat of the use of other means, to coerce, compel or constrain . . a licensee . . to employ . . any person or persons in excess of the number of employees needed by such licensee to perform actual services, or . . to pay or agree to pay more than once for services performed . . or to refrain from broadcasting for from permitting the broadcasting of a noncommercial . . cultural program . . or of any radio communication originating outside of the United States.

(b) It shall be unlawful . . to coerce, compel or constrain a licensee or any other person . . to pay any exaction for the privilege of producing, preparing, manufacturing, selling, buying, renting, operating, using or maintaining recordings, transcriptions, or mechanical or electrical reproductions used in broadcasting, or in the production, performance or presentation of a program or programs for broadcasting, or . . to impose any restriction upon such production . . for the purpose of preventing or limiting the use of such . . equipment, . . materials in broadcasting, or . . to pay . . any exaction on account of the broadcasting, by means of recordings or transcriptions, of a program previously broadcast, payment having been made for the services actually rendered in the performance of such program.

(c) This section shall not be held to make unlawful the enforcement . . by means lawfully employed, of any contract right heretofore or hereafter existing, or of any legal obligation heretofore or hereafter incurred or assumed.

A-54 Prohibited Practices in Contests.

Section 509. (a) It shall be unlawful for any person, with intent to deceive the listening or viewing public to supply to any contestant in a purportedly bona fide contest . . . special and secret assistance whereby the outcome . . will be . . . predetermined (or) to engage in any . . . scheme for the purpose of prearranging . . . a contest of intellectual knolwedge, . . skill, or chance.

(c) Whoever violates . . this section shall be fined not more than $10,000 or imprisoned not more than one year, or both.

FROM THE CONSTITUTION OF THE UNITED STATES

A-55 First Amendment, with Guarantee of Freedom of Speech and of the Press.

Article 1. Congress shall make no law respecting the establishment of religion, prohibiting the free exercise thereof; or abridging the freedom of speech or of the press, or the right of the people peaceably to assemble and to petition the Government for a redress of grievances.

FROM TITLE 18 OF THE UNITED STATES CODE

A-56 Lotteries and Information Concerning Lotteries.

Section 1304. Whoever broadcasts by means of any radio station ..

or whoever operating any such station, knowingly permits the broadcasting of, any advertisement of or information concerning any lottery, gift enterprise or similar scheme, offering prizes dependent in whole or in part upon lot or chance, or any list of the prizes drawn or awarded by means of any such lottery, gift enterprise or scheme, whether said list contains any part or all of such prizes, shall be fined not more than $1,000 or imprisoned not more than one year, or both.

Each day's broadcasting shall constitute a separate offense.

Section 1307. The privisions of sections .. 1304 shall not apply to an advertisement, list of prizes, or information concerning a lottery conducted by a State acting under authority of State law-broadcast by a radio or television station licensed to a location in that State or an adjacent State which conducts such a lottery.

A-57 Fraud by Wire, Radio, or Television.

Section 1343. Whoever, having devised . . any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretences, representations or promises, transmits or causes to be transmitted by means of wire, radio, or television communication in interstate or foreign commerce, any writings, signs, signals, pictures or sounds for the purpose of executing such scheme or artifice, shall be fined not more than $1,000 or imprisoned not more than five years, or both.

(Originally adopted in 1952, as part of the 1952 amendments to the Communications Act: recorded by amendment of 1956).

A-58 Profane or Indecent Language.

Section 1464. Whoever utters any obscene, indecent or profane language by means of radio communication shall be fined not more than $10,000 or imprisoned not more than two years, or both.

(Originally a portion of Section 326 of the Communications Act of 1934.)

FROM THE UNITED STATES GENERAL REVISION OF COPYRIGHT LAW
TITLE 17 OF THE U.S. CODE

A-59 Privileges of Copyright Owner.

Section 102. (a) Copyright protection subsists...in original works of authorship fixed in any tangible medium of expression, now known or later developed, from which there can be perceived, reproduced, or otherwise communicated, either directly or with the aid of a machine or device.

(b) In no case does copyright protection for an original work of authorship extend to any idea, procedure, process, system, method of operation, concept, principle, or discovery, regardless of the form in which it is described, explained, (or) illustrated...

Section 106. (T)he owner of a copyright under this title has the exclusive rights to .. reproduce the copyrighted work in copies or phonorecords; to prepare derivative works . . to distribute copies . . to the public by sale . . or by rental, lease or lending; . . and in the case of . . pictorial, graphic, or sculptural works, including the individual images of a motion picture or other audiovisual work, to display the copyrighted work publically.

Section 107. Notwithstanding the provisions of section 106, the fair use of a copyrighted work, including such use by reproduction in copies

or phonorecords . . for purposes such as criticism, comment, new reporting, teaching (including multiple copies for classroom use), scholarship, or research is not an infringement of copyright. In determining whether the use made of a work . . is a fair use the factors to be considered shall include the purpose and character of the use, including whether such use is of a commercial nature . . the amount and substantiality of the portion used in relation to the . . work as a whole; and the effect of the use upon the potential market . . of the copyrighted work.

A-60 Limitations on Cable Carriage.

Section 111. (c) (1) ...(S)econdary transmissions to the Public by a cable system of a primary transmission made by a broadcast station licensed by the Federal Communications Commission or by an appropriate governmental authority of Canada or Mexico and embodying a performance or display of a work shall be subject to compulsory licensing...

(2) ..(T)he . . secondary transmission to the public by a cable system of primary transmission made by a broadcast station ...of a work is actionable as an act of infringement...if the content of the particular program in which the performance or display is embodied, or any commercial advertising or station announcements transmitted by the primary transmitter during, or immediately before of after, the transmission of such program, is in any way willfully altered by the cable system through changes, deletions, or additions, except for the alteration, deletion, or substitution of commercial advertisements performed by those engaged in television commercial advertising market research...

(4) ..(The) ..performance or display of a work is actionable as an act of infringement..if (A) with respect to Canadian signals, the community of the cable system is located more than 150 miles from the United States-Canadian border and is also located south of the forty-second parallel of latitude, or (B) with respect to Mexican signals, the secondary transmission is made by a cable system which received the primary transmission by means other than direct interception of a free space radio wave emitted by such broadcast television station, unless prior to April 15, 1976 such cable system was actually carrying, or was specifically authorized to carry, the signal of such foreign station on the system persuant to the rules.. of the Federal Communications Commission.

(d) (1) ..(T)he cable system shall, at least one month before the date of the commencement of operations of the cable system...and thereafter within thirty days after each occasion on which the ownership or control or the signal carriage complement of the cable system changes, record in the Copyright Office a notice including a statement of the identity and address of the person who owns or operates the secondary transmission service...

A-61 Schedule of Royalty Fees.

Section 111. (2) A cable system whose secondary transmissions have been subject to compulsory licensing under subsection (c) shall, on a semiannual basis, deposit with the Register of Copyrights..

(A) a statement of account, covering the six months next preceding, specifying the number of channels on which the cable system made secondary transmissions to its subscribers, the names and locations of all primary transmitters .. (Cablecast), ..the total number of subscribers, the gross amounts paid to the cable system...(by subscribers), and such other data as the Register of Copyrights may...prescribe by regulation. Such statement shall also include a special statement of account covering any non-network television programming that was carried...

(b) ...(A) total royalty fee for the period covered by the statement, computed on the basis of specified percentages of the gross receipts from subscribers to the cable service...as follows:

(i) 0.675 of 1 per centum of such gross receipts for the privilege of further transmitting any nonnetwork programming of a primary transmitter...beyond the local service area of such primary transmitter...

(ii) 0.675 of 1 per centum of such gross receipts for the first distant signal equivalent;

(iii) 0.425 of 1 per centum of such gross receipts for each of the second, third, and fourth distant signal equivalents;

(iv) 0.2 of 1 per centum of such gross receipts for fifth distant signal equivalent and each additional distant signal equivalent thereafter; and

in computing the amounts payable...in the case of any cable system located partly within and partly without the local service area of a primary transmitter, gross receipts shall be limited to those gross receipts derived from subscribers located without the local service area...and;

(C) if the actual gross receipts paid by subscribers...total $80,000 or less, gross receipts of the cable system for the purpose of this subclause shall be computed by subtracting from such actual gross receipts the amount by which $80,000 exceeds such actual gross receipts, except that in no case shall a cable system's gross receipts be reduced to less than $3,000. The royalty fee payable under this subclause shall be 0.5 of 1 per centum, regardless of the number of distant signal equivalents, of any; and

(D) if the actual gross receipts paid by subscribers...are more than $80,000 but less than $160,000, the royalty fee payable under this subclause shall be (i) 0.5 of 1 per centum of any gross receipts up to $80,000; and (ii) 1 per centum of any gross receipts in excess of $80,000 but less than $160,000 regardless of the number of distant signal equivalents, if any.

A-62 Infringement on Copyrighted Material.

(e) (1) ..(R)elating to nonsimultaneous secondary transmissions by a cable system, any such transmissions are actionable as an act of infringement..unless--

(A) the program on the videotape is transmitted no more than one time to the cable system's subscribers; and

(B) the copyrighted program, episode, or motion picture videotape, including the commercials contained within..is transmitted without deletion or editing; and

(C) an owner or officer of the cable system (i) prevents the duplication of the videotape while in the possession of the system,..

(D) the nonsimultaneous transmission is one that the cable system would be authorized to transmit under the rules..of the Federal Communications Commission in effect at the time of the nonsimultaneous transmission...

(f) Definitions. A "distant signal equivalent" is the value assigned to the secondary transmission of any nonnetwork television programming carried by a cable system in whole or in part beyond the local service area of the primary transmitter of such programming. It is computed by assigning a value of one to each independent station and a value of one-quarter to each network station and noncommercial education station...."

FROM THE ACT AUTHORIZING THE FEDERAL TRADE COMMISSION
TITLE 15 OF THE U.S. CODE

A-63 Prohibition of Fraudulent Advertising.

Section 52. It shall be unlawful for any person, partnership or corporation to disseminate..any false advertisement by..mail, or in commerce by any means, for the purpose of inducing, directly or indirectly, the purchase of food, drugs, devices or cosmetics.

Section 55. The term "false advertisement" means an advertisement.. which is misleading in a material respect; and in determining whether any advertisement is misleading, there shall be taken into account..not only representations made..by statement, word, design, device, sound or any combination thereof, but also the extent to which the advertisement fails to reveal facts material..with respect to consequences which may result..under the conditions prescribed in said advertisement, or under such conditions as are customary or usual.

Section 45. (a) The (Federal Trade) Commission is empowered and directed to prevent persons, partnerships or corporations, except banks, common carriers subject to the Acts to regulate commerce, air carriers and foreign air carriers..from using unfair methods of competition in commerce and unfair or deceptive acts or practices in commerce.

(Other sections of Title 15 provide for maximum fines of $5,000 and/or six months imprisonment for a first offense, and of $10,000 and/or one year imprisonment for subsequent offenses. Publishers, broadcast licensees and other advertising media are not liable to the penalties listed, unless they refuse to furnish the Federal Trade Commission with the names and addresses of the individuals who caused the dissemination of the fraudulent advertising. The Federal Trade Commission is authorized to require newspapers, broadcasting stations, etc., to submit copies of all advertising carried, for examination; it may also issue cease and desist orders against advertisers who in any way violate the "false advertising" provisions of Title 15.)

SECTION B

selected exerpts from

THE RULES AND REGULATIONS

of the

THE FEDERAL COMMUNICATIONS COMMISSION

Excerpts from the

RULES AND REGULATIONS OF THE
FEDERAL COMMUNICATIONS COMMISSION

From the Code of Federal Regulations, Title 47
Revised as of October 1, 1978

B-1 Standard Broadcast Stations.

Sec. 73.1 The term "AM broadcast station" means a broadcasting station licensed for the dissemination of radio communication intended to be received by the public and operated on a channel in the band 535-1605 kilohertz (KHZ). The term "AM" broadcast is synonymous with the term "standard broadcast as contained elsewhere in this chapter.

Sec. 73.21(a) A class I station is a dominant station operating on a clear channel and designed to render primary and secondary service over an extended area and at relatively long distances... The operating power shall be not less than 10 kilowatts nor more than 50 kilowatts.

A Class II station is a secondary station which operates on a clear channel..and is designed to render service over a primary service area which is limited by and subject to such interference as may be received from Class I stations. Whenever necessary a Class II station shall use a directional antenna or other means to avoid interference with Class I stations and with other Class II stations...

Class II stations are divided into three groups:

(i) A Class II-A Station is an unlimited time Class II station operating...with power of not less than 10 kilowatts nighttime nor more than 50 kilowatts at any time.

(ii) A Class II-B Station is an unlimited time Class II station other than those in Class II-A (and operating) with power not less than 0.25 kilowatts nor more than 50 kilowatts.

(iii) A Class II-D station is a Class II station operating day time or limited time. A Class II-D station shall operate with power not less than 0.25 kilowatts nor more than 50 kilowatts.

(b) A Class III station is a station which operates on a regional channel and is designed to render service primarily to a principle center of population and rural area contiguous thereto..(i) A Class III-A station which operates with power not less than 1 kilowatt nor more than 5 kilowatts..(ii) A Class III-B station is a Class III station which operates with a power not less than 0.5 kilowatt and not more than 1 kilowatt night and 5 kilowatts daytime...

(c) A Class IV station is a station operating on a local channel and designed to render service primarily to a city or town and the suburban and rural areas contiguous thereto. The power of a station of this class shall not be less than 0.25 kilowatt and not more than 0.25 kilowatt nighttime, and 1 kilowatt daytime...

(Sec. 73.25 lists 25 clear channels in frequencies from 640 to 1210, plus 7 occupying frequencies of 1500 kc or over. Secs. 73.26 and 73.27 list 41 frequencies designated as regional frequencies and 6 as local frequencies.)

B-2 FM Broadcast Stations.

Sec. 73.206. (a) A Class A (FM) station...operates on a Class A channel and is designed to render service to a relatively small community, city or town, and the surrounding rural area... A Class A station will not be authorized to generate with effective radiated power greater than 3 kilowatts..and antenna height above average terrain of 300 feet...

(Twenty of the 100 channels used for FM operation are assigned for use by Class A FM stations. They are scattered through the FM band, which ranges from 88.1 to 107.9 megacycles.)

(b) A Class B station..is designed to render service to a sizable community, city, or town or to the principle city or cities of an urbanized area and the surrounding area...(The coverage of a Class B station..shall not exceed that obtained from 50 kilowatts effective radiated power and 500 feet antenna height above average terrain.

A Class C station is a station which..is designed to render service to a community, city, or town, and large surrounding area... The coverage of a Class C station..shall not exceed..100 kilowatts effective radiated power and antenna height above average terrain of 2,000 feet.

Sec. 73.211. Minimum effective radiated power shall be,

Class A .... 100 watts
Class B .... 5 kilowatts
Class C .... 25 kilowatts

(No minimum antenna height above average terrain is specified.)

Sec. 73.501. The..frequencies (from 88.1 to 91.9 megacycles) are available for noncommercial educational FM broadcasting.

(Following paragraphs limit licensing of noncommercial educational stations to nonprofit educational organizations, for use in the advancement of an educational program.)

B-3 Television Stations.

Sec. 73.614. Applications (for TV stations) will not be accepted if they specify less than 10 dbk (100 watts) visual effective radiated power in any horizontal direction... Maximum effective radiated power..shall be.. (for) Channels 2-6, 100 kw; Channels 7-13; 316 kw, with antenna heights not in excess of 1,000 feet above average terrain; Channels 14-83 5,000 kw, with antenna heights not in excess of 2,000 feet above average terrain (except with FCC authorization).

Sec. 73.621. Noncommercial educational (television)..stations will be licensed only to nonprofit educational organizations upon showing that the proposed stations will be used primarily to serve the educational needs of the community, for the advancement of educational programs, and to furnish a nonprofit and noncommercial television broadcast service. A noncommercial educational television station may broadcast programs produced by or at the expense of, or furnished by persons other than the licensee, if no consideration than the furnishing of the program and the costs incidental to its production and broadcast are received by the licensee. Payment of line charges by another station or network, or someone other than the licensee shall not be considered as being prohibited by this paragraph... The provisions of Sec. 73.654 (relating to announcements regarding sponsored programs) are applicable,..except than no announcement (visual or aural) promoting the sale of a product or service shall be transmitted in connection with any program - provided however, that where a sponsor's name or

product appears in the visual image during the course of a simultaneous or rebroadcast program either on the backdrop or in similar form, the portions of the program showing such information need not be deleted.

B-4 Television Assignments, Mileage Separations.

Sec. 73.606. The...table of assignments (originally presented in the Sixth Report and order of the FCC in 1952, but with modifications made since that time) contains the channels assigned to the listed communities in the United States...(and indicates which channels) are assigned for use by noncommercial educational broadcast stations only.

(The paragraph lists communities and channels assigned to each community.)

Sec. 73.610. Petitions to amend the Table of Assignments (given in Sec. 73.606) will be dismissed and all applications for new television broadcast stations or for changes in the transmitter sites of existing stations will not be accepted for filing if they fail to comply with the requirements of this section.

(The section continues by providing for minimum mileage separations between VHF stations on the same channel of 170 miles on Zone I, the congested Eastern and North Central area, including territory from Virginia north, that north of the Ohio River and east of the Mississippi; of 190 miles in Zone II, including all of the rest of the United States except that in Zone III, and of 220 miles in Zone III, including territory within a radius of approximately 150 to 175 miles from the coast of the Gulf of Mexico. For UHF stations, minimum mileage separations from the same zones are, respectively, 155 miles, 175 miles, and 205 miles.)

B-5 Television Translator and Booster Stations.

Sec. 74.701(a). A station.operating for the purpose of retransmitting the signals of a television broadcast station without significantly altering any characteristic of the original signal other than its frequency and amplitude, for the purpose of providing television reception to the general public (is the definition given for a television broadcast translator station.)

Sec. 74.733(c). A UHF television broadcast booster station (is) a station in the broadcasting service operating for the sole purpose of retransmitting the signals of a television broadcast station by amplifying and reradiating such signals which have been received directly through space, without significantly altering any electrical characteristic of the incoming signal other than its amplitude.

B-6 Applications for Broadcasting Facilities.

Sec. 73.3511. (Except in cases of national emergency) construction permits,..station licenses,..modifications of construction permits or licenses; renewals of licenses, (and)..transfers, shall be granted only upon written..application.

Sec. 1.516. An application for facilities..shall be limited to one frequency or channel assignment, and no application will be accepted for filing it if requests alternate frequency or channel assignments.

Sec. 1.615. Each licensee of a TV. FM or standard broadcast

station..other than non-commercial educational stations, shall file an Ownership Report (FCC Form 323) at the time the application for renewal of station license is required to be filed. Provided, however, that licensees owning more than one TV, FM, or (AM) station need file only one Ownership Report at 3-year intervals.

(Application made on Form 301 is for a Construction permit, authorizing construction of a new station. If the CP is granted, construction is completed, and following tests, the granting of a regular license follows as a matter of course though again, written application must be made. But the important first test is the securing of a construction permit; for this, Form 301 is used.)

(Form 323 lists the various items required--in virtually every case, the completed application form must be supported by a variety of supporting exhibits. Information required includes the following:

a) an ownership report, giving names, addresses, information concerning citizenship, etc., of owners, partners, or in case of corporation, officers, directors and major stockholders.
b) statement concerning ownership interest in any other broadcasting station or stations;
c) statement concerning interest of any owner, officer, director or stockholder in other forms of business enterprise;
d) information concerning financial qualifications of owning company or individuals listed under "a" above;
e) an engineering report, covering such items such as the channel and power applied for, type of transmitter and other technical equipment to be used, exact location of transmitter tower, and its height, and engineering estimates of area included in primary coverage area;
f) location, size, equipment to be used in studios and offices;
g) estimated cost of construction, and estimated operating costs and revenues for first year of operation;
h) plans for staffing station--size of staff, and if plans go that far, names of those tentatively planned to serve as manager, chief engineer, and other executives;
i) a very detailed description of the type of programming planned for the station, including any plans for network affiliation; also plans for local programming, with special emphasis on ascertainment of program needs--needs and interest of public major communities served, identification of representative groups, programs proposed to meet those needs and interests, procedures applicant has for the consideration and disposition of complaints or suggestions coming from public. Past programming, percent of total time on air, title of program, source, brief description of program, time broadcast, extent of community leaders or groups involved, hours broadcasting during composite day (local, network, recorded), and number and duration of commercials.)

B-7 Public Notice of Filing of Applications.

Sec. 73.3580 (c).. (A)n applicant filing any application..shall cause to be published a notice of such filing at least twice a week for two consecutive weeks..in a daily newspaper of general circulation published in the community in which the station is located or is proposed to be located...

(d) If the application seeks modification, assignment, transfer or renewal of an operating broadcasting station,..the applicant shall (also).. cause the notice to be broadcast over the station twice a week for two weeks.. For..television at least two..announcements between 6 p.m. and 11 p.m. (5 p.m. and 10 p.m. Central and Mountain). For a radio station, at least two between 7 a.m. and 9 a.m. and/or 4 p.m. and 6 p.m.

(h) Within seven days of the last day of publication or broadcast of the notice..the applicant shall file a statement with the Commission..setting forth the date on which the notice was published, the newspaper in which the notice was published, the text of the notice, and/or where appropriate, the dates and times the notice was broadcast...

B-8 Processing of Applications.

Sec. 73.2571. (c) Applications for new stations (except new Class II-A stations) or for major changes in the facilities of authorized stations are processed as nearly as possible in order in which they are filed... (However) the Broadcast Bureau is authorized to group together for processing, applications which involve interference conflicts, where it appears that the applications must be designated for hearing in a consolidated proceeding...

(h) If upon examination, the Commission finds that the public interest, convenience and necessity will be served by the granting of an application, the same will be granted. If..the Commission is unable to make such a finding..the procedure (governing the conduct of hearings) will be followed.

Sec. 73.3572. (d) Regardless of the number of applications filed for (television) channels in a city or the number of assignments available in that city, those applications which..request the same channel will be designated for hearing. All other applications for channels will, if the applicants are duly qualified, receive grants.

B-9 Multiple Ownership.

Sec. 73.35 (a). No license for a standard broadcast station shall be granted to any party..if such party directly or indirectly owns, operates or controls one or more standard broadcast stations..or one or more television broadcast stations...

(Sec. 73.240(a) and Sec. 73.636 provide similarly that no one owner may own or control two FM radio stations or two television stations which serve the same area. There is, however, no restriction upon ownership by the same individual or group of a standard radio station and an FM radio station located in the same community and serving substantially the same area.)

Section 73.35(b). No license for a standard broadcast station shall be granted to any party..if the grant of such license would result in a concentration of control of standard broadcasting in a manner inconsistent with public interest, convenience, or necessity. The Commission.. will..consider that there would be such a concentration of control contrary

to the public interest..for any party..to have a direct or indirect interest in..more than seven standard broadcast stations or of three broadcast stations..where any two are within 100 miles of the third, if there is a primary service contour overlap of any of the stations.

(Sec. 73.240 similarly limits the number of FM radio stations under single ownership to seven; Sec. 73.636 limits the number of television stations owned by any one individual or group to seven, of which not more than five may be VHF stations.)

Sec. 74.732. TV translators operated by TV broadcast licensees are not counted for purposes of Sec. 73.636...

Sec. 73.35(c). No renewal of license shall be granted for a term extending beyond January 1, 1980, to any party that as of January 1, 1975... owns, operates or controls the only daily newspaper published in a community and also..owns, operates or controls the only commercial aural station or stations with a city-grade signal during daytime hours... Divestiture is not required if there is a separately owned, operated or controlled television broadcast station licensed to serve the community.

(Sec. 73.240(c) has identical provisions for FM stations.)

B-10 Grants of Application for Construction Permits.

Sec. 1.533(b). Applications for construction permit or modification there of involving the installation of new transmitting apparatus should be filed at least 60 days prior to the contemplated construction.

Sec. 73.3591. If (the Commission) finds (on the basis of the application..or other matters which it may officially notice) that the application presents no substantial and material question of fact and meets the following requirements, (1) there is not pending a mutually exclusive application..; (2) the applicant is legally, technically, financially and otherwise qualified; (3) the applicant is not in violation of provisions of law..or of established policy of the Commission; and (4) a grant of the application would otherwise serve the public interest, convenience and necessity (it will make the grant).

B-11 Grant of License to Holder of Construction Permit.

Sec. 73.3536. Application for station license shall be filed by the permittee prior to service or program tests (which must be made under authority of the construction permit before a license is granted). The following application forms shall be used: FCC Form 302 (for new commercial broadcasting station license); FCC Form 341 (for license for a new noncommercial broadcast station); or FCC Form 347 (for a new TV translator station).

Sec. 1.68. An application for license by the lawful holder of a construction permit will be granted without hearing where the Commission... finds that all the terms, conditions and obligations set forth in the.. permit have been fully met, and that no cause or circumstance..first coming to the knowledge of the Commission since the granting of the permit would.. make the operation of such station against the public interest.

(If, of course, circumstances do arise which make the Commission unwilling to grant either a construction permit or a regular initial license without hearing, a hearing may be ordered, and final decision made on the basis of facts brought out in the hearing.)

B-12 Term of License.

Sec. 73.1020. Initial licenses for broadcast stations will ordinarily be issued for a period running until the date specified in this section for the State or Territory in which the station is located. If issued after such date, it will run to the next renewal date..and, when renewed, will normally be renewed for 3 years. If the FCC finds that the public interest, convenience or necessity will be served thereby, it may issue either an initial license or a renewal thereof for a lesser term.

(Refer to Expiration dates of regular licenses--B-45 for the dates specified by the Commission.)

B-13 Location of Main Studio.

Sec. 73.30. ..(E)ach standard broadcast station will be licensed to serve primarily a particular city, town (or other) political subdivision..which will be specified in the station license... Each station shall maintain a studio, which will be known as the main studio, in the place where the station is located...

(Sec. 73.210 makes similar provision for location of the main studio of an FM station, but provides that "Where an adequate showing is made.." the main studio may be outside the principal community. Sec. 73.613 provides that the main studio of a TV station must be located "in the principal community to be served," but makes provision for the same exception provided for FM stations.)

B-14 Origination of Local Programs.

Sec. 73.30. A majority (computed on the basis of duration and not number) of a station's programs, or in the case of a station affiliated with a network two-thirds of such station's non-network programs, whichever is smaller, shall originate from the main studio or from other studios or remote points situated in the place where the station is located.

(Sec. 73.210 uses identical language with respect to programs of an FM station. No similar provision is made with respect to programs carried by a television station.)

B-15 Minimum Operating Schedule.

Sec. 73.1740 (a). All commercial broadcast stations are required to operate not less than the following minimum hours:

(1) AM and FM Stations. Two-thirds of the total hours they are authorized to operate between 6 a.m. and 6 p.m. local time and two-thirds of the total hours they are authorized to operate between 6 p.m. and midnight, local time, each day of the week except Sunday.

(i) Daytime AM stations need comply only with the minimum requirements for operation between 6 a.m. and 6 p.m., local time.

(2) TV stations. (i) During the first 36 months of operation, not less than 2 hours daily in any 5 broadcast days per calendar week and not less than a total of:

(A) 12 hours per week during the first 18 months.
(B) 16 hours per week during the 19th through 24 months.
(C) 20 hours per week during the 25th through 30th months.
(D) 24 hours per week during the 31st through 36th months.

(ii) After 36 months of operation not less than 2 hours in each day of the week and not less than a total of 28 hours per calendar week.

B-16 Emergency Shut-Downs

Sec. 73.1740(a). In the event that causes beyond the control of a licensee make it impossible to adhere to the operating schedule of this section or to continue operating, the station may limit or discontinue operation for a period of not more than 30 days without further authority from the FCC. Notification must be sent to the FCC in Washington, D.C. not later than the 10th day of limited or discontinued operation. During such period, the licensee shall continue to adhere to the requirements in the station license pertaining to the lighting of antenna structures. In the event normal operation is restored prior to the expiration of the 30 day period, the licensee will so notify the Commission of this date. If the causes beyond the control of the licensee make it impossible to comply within the allowed period, informal written request shall be made to the FCC no later than the 30th day for such additional time as may be deemed necessary.

(b) Noncommercial educational AM and TV stations are not required to operate on a regular schedule and no minimum hours of operation are specified; but the hours of actual operation during a license period shall be taken into consideration in the renewal of noncommercial educational AM and FM broadcast licenses. Noncommercial education FM stations are subject to the operating schedule requirements according to the provisions of 73.561.

(Sec. 73.261 uses identical language referring to FM stations; Sec. 74.763 provides that TV translator and TV booster stations; respectively, "are not required to adhere to any regular schedule of operation," but, if "causes beyond the control of the licensee" require that either type of station "remain inoperative for a period in excess of 10 days," the Engineer In Charge of the district shall be notified.. in writing describing the cause of the failure and the steps taken to place the station in operation again," and that the Engineer In Charge must also be notified when operation is resumed.)

B-17 Requirement of Licensed Operator

Sec. 73.93(a). One or more operators holding a radio operator license or permit of a grade specified in this section shall be in actual charge of the transmitting system...

(c) A station using a non-directional antenna with a nominal power of 10 (kilowatts) or less may employ...persons holding any commercial radio operator license...if the station has at least one first-class radiotelephone operator readily available at all times.

(The same section specifies, however, that adjustment of equipment must be carried on under supervision of an operator with a first-class license; it also provides that the fulltime operator may be assigned to other duties, including operation of an FM station under

common ownership, if their other duties do not interfere with his duties in connection with operation of the standard radio station transmitter.

Sec. 73.265(a) uses language identical with that in the first paragraph above concerning operation of FM stations; here, too, the operator may be assigned to other duties.

Sec. 73.661 requires that a first-class licensed opeator must be on duty at the transmitter of a TV station at any time the transmitter is in use--and that he, too, can also be assigned to other duties which do not interfere.

Sec. 74.766 and Sec. 74.868 provide that TV translator stations and TV booster stations do not require operators if equipped for unattended operation; otherwise any class of licensed operator may be used.)

B-18 Program and Operating Logs.

Sec. 73.1800. The licensee..of each station shall maintain program, operating and maintenance logs... Each log shall be kept by the station employee or employees..competent to do so, having actual knowledge of the facts required, (who)..shall sign the appropriate log when starting duty and again when going off duty and setting for the time of each.

(To be entered in the program log is a separate entry showing time when each station ID, each sponsor identification and each identification of use of recordings is given; title of each program broadcast, with starting and ending time and one-word description of nature of program; also name of the network originating each network program broadcast. (Operating log gives excact time of sign-on and sign-off, notes all interruptions to the carrier wave and their duration, and also provides a number of items of technical information.)

Sec. 1810(j) Entries on an automatically kept program log may be made by automatic logging instruments with sequential language printouts corresponding to manually kept log entires.

Sec. 73.1800(e). No log or portion thereof shall be erased, obliterated or willfully destroyed within the period of retention provided by the (rules.)

(c) Any necessary corrections of a manually kept log..shall be dated and signed by the person who kept the log or the program director of the station manager of an officer of the licensee.

Sec. 73.1850. Program logs shall be made available for public inspection and reproduction at a location convenient and accessible to the residents of the community to which the station is licensed.

Sec. 73.1840. Logs of all stations shall be retained by the licensee for a period of two years.

B-19 Station Identification.

Sec. 73.1201(a). Broadcast station identification announcements shall be made (1) at the beginning and ending of each time of operation, and (2) hourly, as close to the hour as feasible, at a natural break in programming offerings. Television stations may make these announcements visually or aurally.

(b) Station identification shall consist of the station's call

letters immediately followed by the community..specified in its license.. provided, that the name of the licensee or the station's frequency or channel or both..may be inserted between the call letters and station location. No other insertion is permissible.

B-20 Broadcast of Taped, Filmed, or Recorded Material.

Sec. 73.1208. Any taped, filmed or recorded program material in which time is of special significance, or by which an affirmative attempt is made to create the impression that it is occurring simultaneously with the broadcast, shall be announced at the beginning as taped, filmed or recorded. The language of the announcement shall be clear and in terms commonly understood by the public.

B-21 Identification of Sponsored Programs.

Sec. 73.1212(a). When a broadcast station transmits any matter for which money, service or other valuable consideration is either directly or indirectly paid or promised to..such station, the station at the time of the broadcast shall announce that such matter is sponsored, paid for or furnished, either in whole or in part, and by whom...provided ...that "service or other valuable consideration" shall not include any service or property furnished either without or at a nominal charge for use on, or in connection with, a broadcast unless it is so furnished in consideration for an identification of any person, product, service, trademark, or brand name beyond an identification reasonably related to the use of such service or property on the broadcast.

B-22 Rebroadcasts of Programs.

Sec. 73.1207(a). The term "rebroadcast" means reception by radio of the programs of a radio station, and the simultaneous or subsequent retransmission of such programs by a broadcast station.

(b) No broadcasting station may rebroadcast the program or any part thereof, of an other U.S. broadcasting station without the express authority of the originating station. Stations originating emergency communications under a Detailed State EBS Operational Plan shall be deemed to have conferred rebroadcast authority on other participating stations.

(The broadcasting of a program relayed by common carrier facilities or remote pickup station is not considered a rebroadcast.)

B-23 Aural Transmissions from Television Stations.

Sec. 73.615(c). The aural transmitter of a television station shall not be operated separately from the visual transmizter, except for (tests of station equipment, or for emergency "fills" in case of equipments failure).

During periods of transmission of a test pattern..aural transmission shall consist only of a single tone or series of variable tones.

(Test patterns may be used to accompany aural news broadcasts, or pre-regular broadcast day announcements of the day's program schedule.)

B-24 Broadcasts by Qualified Candidates for Public Office.

Sec. 73.1940 (a) (1) A legally qualified candidate for public office is any person who has publically announced his or her intention to run for

nomination or office; (and) is qualified under the applicable local, State or Federal law to hold the office for which he or she is a candidate...

(2) A person seeking election to any public office including that of President or Vice President of the United States, or nomination for any public office except that of President or Vice President.. shall be considered a legally qualified candidate if..that person (i) has qualified for a place on the ballot, or (ii) has publically committed himself or herself to seeking election by the write-in method and is eligible under applicable law to be voted for by (write in)..and makes a substantial showing that he or she is a bona fide candidate...

(3)..Except that no person shall be considered a legally qualified candidate for nomination by the means set forth in this paragraph prior to 90 days before the beginning of the convention, caucus or similar procedure in which he or she seeks nomination.

(5) The term "substantial showing" of bona fide candidacy as used in..this section means evidence that the person claiming to be a candidate has engaged to a substantial degree in activities associated with political campaigning...

(c) (2). In making time available to candidates for public office no licensee shall make any discrimination between candidates in charges, practices, regulations, facilities, or services for or in connection with the service rendered pursuant to this part, or make or give any preference to any candidate for public office or subject any such candidate to any prejudice or disadvantage; nor shall any licensee make any contract or other agreement which shall have the effect of permitting any legally qualified candidate..to broadcast to the exclusion of other legally qualified candidates for the same public office.

(e) A request for equal opportunities must be submitted to the licensee within one week of the day on which the first prior use.. occurred.

(Identical language is used in providing rules applying to cablecasts in Sec. 76.205.) (Note that at no place above is there any reference whatever to broadcast "in behalf of", candidates must actually appear in person to come under the provisions of the above applications of Section 315 of the Act of 1934.)

B-25 Charges for Time Used by Qualified Candidates.

Sec. 73.1940(b). The charges, if any, made for the use of any broadcasting station by any person who is a legally qualified candidate.. shall not exceed (1) during the 45 days proceeding the date of the primary or primary runoff election and during the 60 days preceeding the date of a general or special election in which such person is a candidate, the lowest unit charge of the station for the same class and amount of time for the same period, and (2) at any other time the charges made for comparable use of such station by other users thereof. The rates, if any, charged all such candidates for the same office will be uniform and shall not be rebated by any means direct or indirect. A candidate shall be charged no more than the rate the station would charge if the candidate were a commercial advertiser... All discount privileges otherwise offered by a station to commercial advertisers shall be available on equal terms to all candidates for public office.

(Identifal provisions are made for cable in Sec. 76.205.)

B-26 Records of Requests for Political Time.

Sec. 73.1940(d). Every licensee shall keep and permit public inspection of a complete record..of all requests for broadcast time made by

or on behalf of candidates for public office, together with an appropriate notation showing the disposition made by the licensee of such requests, and the charges made, if any, if request is granted.

(Such) records..shall be retained for a period of two years.

(Identical provisions are made for cable in Sec. 76.2056.)

B-27 Identification Announcements for Donated Program Materials.

Sec. 73.1212(d). In the case of any political broadcast matter or any broadcast matter involving the discussion of a controversial issue of public importance for which any film record, transcription, talent, script, or other material or service of any kind is furnished, either directly or indirectly, to a station as an inducement for broadcasting such matter, an announcement shall be made both at the beginning and conclusion of such broadcast on which such material or service is used that such film, record, transcription, talent, script, or other material or service has been furnished to such station in connection with the transmission of such broadcast matter. Provided, however, that in the case of any broadcast of 5 minutes duration or less either at the beginning or the conclusion of the broadcast only one such announcement need be made.

(e) The announcement...shall...fully and fairly disclose the true identity of the person or persons..by whom.. the services or valuable consideration referred to in paragraph (1) of this section are furnished.

B-28 Exclusivity in Network Affiliation Contracts.

Sec. 73.132. No licensee of an AM broadcast station shall have any arrangement with a network organization which prevents or hinders another station serving substantially the same area from broadcasting the network's program 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... This section does not prohibit arrangements under which the station is granted first call within its primary service area upon the network's programs.

(Sec. 73.232 uses the same language for FM stations.
Sec. 73.658 uses substantially the same language
to make equivalent provisions concerning TV stations.)

B-29 References to Time.

Sec. 73.1209. Unless specifically designated..all references to time contained (in the Rules and Regulations), and in license documents and other authorizations..shall be understood to mean local time; i.e., the time legally observed in the community.

B-30 Operation During Emergency.

Sec. 73.986(a). AM broadcast stations may, without further Commission authority, employ their full daytime facilities during nighttime hours to carry emergency weather warnings and other types of emergency information..(such as) (b) widespread fires, discharge of toxic gases, widespread power failures, industrial explosions, and civil disorders.

(c) If requested by responsible public officials, an AM station may.. transmit emergency point-to-point messages for the purpose of requesting or dispatching aid in rescue operations.

(f) Immediately upon cessation of an emergency during which broadcast facilities were used (as outlined above)..a report in letter form shall be forwarded to the Commission in Washington, D.C. setting for the nature of

of the emergency (and the station's actions)...

(g) If the Emergency Broadcast System..is activated at the National-level while non-EBS emergency operation under this section is in progress, the EBS shall take precedence.

(Similar language for FM stations is used in Sec. 73.298 and for TV stations in Sec. 73.675.)

B-31 Public Notice of Licensee Obligation.

Sec. 73.1202. Each licensee..shall make an announcement informing the public of the licensee's obligation to the public and of the appropriate method for individuals to express their opinions of the station's operation. Such announcements shall be aired on the first and sixteenth day of each calendar month..

(Except in the six month's preceeding license renewal when the provisions of Sec. 1.580 apply.)

B-32 Lottery Regulations.

Sec. 73.1211(a). No licensee of an AM, FM, or television..station, except as noted in paragraph (c) of this section, shall broadcast any advertisement of or information concerning any lottery, gift enterprise, or similar scheme, offering prizes dependent in whole or in part upon lot or chance, or any list of the prizes drawn or awarded by means of any such lottery, gift enterprise, or scheme, whether said list contains any part or all of such prizes.

(b) The determination whether a particular program comes within the provisions..of this section depends upon the facts of each case. However, the commission..will consider that a program comes within the provisions of..this section of in connection with such program a prize consisting of money or thing of value is awarded, to any person whose selection is dependent, in whole or in part, upon lot or chance, if as a condition of winning or competing for such prize, such winner or winners are required to furnish any money or thing of value or are required to have in their possession any product sold, manufactured, furnished, or distributed by a sponsor of a program broadcast on the station in question.

(c) The provisions of paragraphs (a) and (b)..shall not apply to.. a lottery conducted by a State acting under authority of State law when such information is broadcast: (1) by a radio or television..station licensed to a location in that State, or (2) by a..station licensed to a location in an adjacent State which also conducts such a lottery.

(Similar language is used in Sec. 76.213 for cable television transmissions.)

B-33 FM Subsidiary Communications Authorization.

Sec. 73.293. A FM broadcast licensee..may apply for a Subsidiary Communications Authorization (SCA) to provide limited types of subsidiary services on a multiplex basis. Permissible uses must fall within one or both of the following categories: (1) transmission of programs which are of a broadcast nature, but which are of interest primarily to limited segments of the public wishing to subscribe thereto (such as background music, storecasting, special time signals, etc., or) (2) transmission of signals..directly related to the operation of FM stations (such as relaying broadcast material to other FM or standard broadcast stations,

remote cueing, remote control telemetering, etc.)

Sec. 73.294(a). The SCA is of a subsidiary or secondary nature and shall not exist apart from the FM license... The licensee or permittee must seek renewal of the SCA (on form 318) at the same time it applies for its renewal of FM license..(b) The grant or renewal of an FM..license..shall not be furthered or promoted by the proposed or past operation under SCA; the..broadcast operation (must be) in the public interest wholly apart from the SCA activities...

Sec. 73.295(d) . The logging, announcement, and other requirements imposed by Secs. 73.282, 73.293, 73.284, 73.287, 73.288, and 73.289 are not applicable to material transmitted on authorized subcarrier frequencies. (f) Each licensee.. shall maintain a daily operating log for SCA operation in which the following entries shall be made (excluding subcarrier interruptions of five minutes or less):

1. Time subcarrier generator is turned on.
2. Time modulation is applied to subcarrier.
3. Time modulation is removed from subcarrier.
4. Time subcarrier generator is turned off.

Sec. 73.297. FM..stations may, without further authority, transmit stereophonic programs.. Provided, however, that the Commission..shall be notified within 10 days of..the commencement of stereophonic programming.

B-34. TV Translator Stations.

Sec. 74.702(b). Any one of the 12 standard VHF channels...may be assigned to a VHF translator on condition that no interference is caused to the direct reception...of any television broadcast station operating on the same or any adjacent channel.

(c) Any one of the 15 UHF channels from 55-69 inclusive, may be assigned to a UHF translator of up to and including 100 watts peak visual.. power.

Sect. 74.635(a). The power output...of a VHF translator...shall not exceed 1 watt peak visual power...if (located) East of the Mississippi River or 10 watts of (located) West of the Mississippi River or in Alaska or Hawaii..(and of a UHF translator...to a maximum of 100 watts peak visual power...)

Sec. 74.731(b). A...translator station may be used only for the purpose of retransmitting the signals of a television broadcast station or another television translator station...for direct reception by the general public.

(e) A television translator station shall not deliberately retransmit the signals of any station other than the station it is authorized by license to retransmit.

Sec. 74.732. The licensee of a...translator station shall not rebroadcast the programs of any television station without obtaining prior consent of the station whose...programs are proposed to be retransmitted. The Commission shall be notified of the call letters of each station rebroadcast and the licensee of the...translator station shall certify that written consent has been received from the licensee of the station whose programs are retransmitted.

B-35. Antenna Structure, Marking and Lighting.

Sec. 73.1213(b). The licensee...of an AM, FM, or TV broadcast station, if the sole occupant of the antenna and/or the antenna supporting

structure, is responsible for conforming to the requirements of this (section).

(c) If a common tower is used...by more than one licensee..each licensee shall be responsible for painting and lighting the structure when, ..required by Commission rules. However, each such licensee may...designate one of the licensees..as responsible for painting and lighting the structure.

Sec. 73.1215. The following requirements and specifications shall apply to indicating instruments...

(There follows detailed requirements for lighting instruments and monitoring devices.)

B-36 Fraudulent Billing Practices.

Sec. 73.1025. No licensee...shall knowingly issue...to any local, regional or national advertiser..or any other party, any bill....or other document which contains false information concerning the amount actually charged by the licensee for the broadcast advertising..or which misrepresents the quantity of advertising actually broadcast.

B-37 Transfer of Ownership of a Station.

Sec. 73.3540(c). Application for consent to the assignment of construction permit or license must be filed with the Commission on FCC Form 314 (Assignment of License) or FCC Form 315 (Transfer of Control)..at least 45 days prior to the contemplated effective date of assignment or transfer of control.

B-38 Time Reservation Contracts.

Sec. 73.139. No license..shall be granted..to a standard broadcast station which has a contract..or understanding..pursuant to which, as consideration or partial consideration for assignment of license or transfer of control, the assignor of a station license or the tranferor of stock.. retains any rightof reversion of the license..or reserves the right to use the facilities of the station for any period whatsoever.

(Identical language is used in Sec. 73.241 with respect to provisions in contracts for sale of FM stations, and in Sec. 73.659 with respect to contracts for sale of television stations.)

B-39 Initial Ownership Report.

Sec. 73.3615(a). Each licensee of a..broadcast station..(and) (b) a permittee shall file an ownership report (FCC Form 323) within 30 days of the grant by the Commission of an application for an original construction permit.

(The report is to provide complete information concerning ownership of the station to be constructed: names and addresses of owners or partners; of a corporation, form of corporate structure, capitalization, etc., and names and addresses and citizenship as well as amount of stock held by each officer, director or stockholder; information as to family or business relationships between two or more officers or stockholders; also a listing of any interest the licensee or any owner may have in any other broadcasting station. (A similar report on the same form must accompany each application for license renewal.)

B-40 Annual Financial Report.

Sec. 73.3611. Each licensee..of a commercially operated standard, FM (or) television..station shall file with the Commission on or before April 1 of each year of FCC Form 324, an annual financial report.

B-41 Special Reports Required.

Sec. 73.3615. A supplemental Ownership Report (FCC Form 323) shall be filed by each licensee or permittee within 30 days after any change occurs in the information required by the ownership report from that previously reported.

(This includes any change in corporate organization or capitalization, any change in officers or directors of the owning corporation, issuance of new stock, changes in the officers of the corporation, or changes in officers or directors of a corporation holding 25% or more of either voting or non-voting stock in the corporation owning of station etc.)

Sec. 73.3613. Each licensee or permittee of a..broadcast station, whether operating...on a commercial or noncommercial basis, shall file with the Commission copies of the following contracts, instruments and documents.. within 30 days of the execution thereof.

(To be filed are copies of contracts relating to network service; contracts relating to network service, contracts relating to ownership or control; contracts with consultants, management companies or individuals managers if the agreements provide both for payment of a share of profits and for assuming by managers of a share in losses which occur; (not not regularly employed personnel). (The section lists specifically certain contracts that need not be filed but that are to be retained for Commission inspection upon request. Contracts relating to sale of time to time brokers for resale, contracts of FM stations relating to SCA operation, contracts covering sale of time to any sponsor amounting to 4 hours or more a day, and contracts with chief operators and other engineering personnel.)

B-42 Inspection of Records.

Sec. 73.3526(a). Every applicant for a construction permit... (and)...every...licensee of a station..shall maintain for public inspection a file for such station containing...

(The following materials: (1) a copy of every application tendered for filing by the applicant, all correspondence with the FCC after it has been tendered, (3) a copy of every ownership and supplemental ownership report, (4) requests by candidates for public office, (5) a copy of the annual employment report, (7) letters from members of the public, (8) a copy of the annual programming report, (9) a listing of no more than ten significant problems and needs of the service area, (11) and a document stating how its community leaders and (12a) random sample of the public are chosen. (d) These documents are to be kept at a readily accessible place such as the main studio, a public registry or an

attorney's office, (e) The records specified above are to be retained for a period of three years in most cases.)

B-43 Letters of Inquiry.

Sec. 1.89 (a). Any licensee who appears to have violated any provision of the Communications Act or any provision of (the Commission's Rules and Regulations) will...be served with a written notice calling these facts to his attention and requesting a statement (on Form 793) concerning the matter...(b) Within 10 days from the receipt of notice..the licensee shall send a written answer..(c) (stating) action taken to correct the condition.

B-44 Notice of Revocation and "Cease" Orders.

Sec. 1.91 (a). If it appears that a station license or construction permit should be revoked and/or that a cease and desist order should be issued, the Commission will issue an order directing the person to show cause why an order of revocation and/or a cease and desist order...should not be issued.

(b) (Such) order..will contain a statement with respect to which the Commission is inquiring, and will call upon the person to whom it is directed to appear before the Commission at a hearing..and give evidence upon the matters specified...

(Not provided in the above paragraph, but according to FCC practice, three results may follow such an order:
a) the licensee may waive the hearing, with FCC approval, and comply with a cease and desist order issued by the Commission;
b) he may defend himself in the hearing and establish either his innocence of charges brought against him or the the conditions complained of have been corrected--and be restored to regular license status with or without an admonition by the FCC; or
c) he may defend himself unsuccessfully in the hearing, and upon a finding by the FCC may be made the subject of a cease and desist order--possibly with a fine assessed--and/or be placed on short-term license, or may have his license revoked.)

B-45 Expiration Dates of Regular Licenses.

Sec. 73.1020. Initial licenses for broadcast stations will ordinarily be issued for a period running until the date specified in this section for the State or Territory in which the station is located. If issued after such date, it will run to the next renewal date..and, when renewed, will normally be renewed for three years. If the FCC finds that the public interest, convenience or necessity will be served thereby it may issue either an initial license or a renewal thereof for a lesser term.

(Expiration dates are the same for all stations in any one state: The schedule of dates on which licenses expire is as below:
Aug. 1, 1978--Delaware, Pennsylvania.
Oct. 1, 1978--Maryland, District of Columbia, Virginia, West Virginia
Dec. 1, 1978--North Carolina, South Carolina.
Feb. 1, 1979--Florida, Puerto Rico, Virgin Island.

Apr. 1, 1979--Alabama, Georgia.
Jun. 1, 1979--Arkansas, Louisiana, Mississippi.
Aug. 1, 1979--Tennessee, Kentucky, Indiana.
Oct. 1, 1979--Ohio, Michigan.
Dec. 1, 1979--Illinois, Wisconsin.
Feb. 1, 1980--Iowa, Missouri.
Apr. 1, 1980--Minnesota, North Dakota, South Dakota, Montana, Colorado.
Jun. 1, 1980--Kansas, Nebraska, Oklahoma.
Aug. 1, 1980--Texas.
Oct. 1, 1980--Wyoming, Nevada, Arizona, Utah, Idaho, New Mexico.
Dec. 1, 1980--California.
Feb. 1, 1980--Washington, Oregon, Alaska, Guam, Hawaii.
Apr. 1, 1981--Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont.
Jun. 1, 1981--New Jersey, New York.

B-46 Application for License Renewal.

Sec. 73.3539. ..(A)n application for renewal shall be filed not later than (4 months) prior to the expiration date of the license sought to be renewed.

(The section continues, listing forms to be used for renewal applications; for commercial standard, FM or television stations, FCC Form 303; for educational stations, Form 342; for TV boosters, Form 349; and for TV translators, Form 348.)

(Information required in application for renewal of AM, FM or TV licenses is essentially the same as that required in original application for construction permit for the station--detailed statement concerning ownership--which is entered on FCC Form 323 and is detailed in item B-39 of this summary; recent balance sheet showing station's assets, liabilities and net worth; a list of all contracts in effect as required in Sec. 1.613 and noted in item B-41 of this summary; and engineering report giving a detailed description of transmitter and other technical equipment in use; an annual employment report; and finally, a very detailed program report including a breakdown of programs carried during a composite or typical week during the license period just ending, with number of commercial announcements carried during the week as well as types of programs and reports on extent and nature of programming in such fields as news, religion, education, public affairs, and discussions of important public issues. Program report also includes statement of policies followed or to be followed during the ensuing license period, and "promises" with respect to number of commercials, amount of live programming and extent of programming to be provided in fields other than entertainment.)

B-47 Emergency Broadcast System (EBS)

Sec. 73.901. (The EBS) applies to all broadcast stations under FCC jurisdiction...

Sec. 73.903. The EBS is composed of...stations and nongovernment industry entities operating on a voluntary, organized basis during

emergencies at National, State or Operational (Local) area levels.

Sec. 73.905. The Emergency Action Notification (EAN) is the notice to all licensees..of the activation of the EBS.

Sec. 73.906. The attention signal to be used by..stations to actuate muted receivers for inter-station receipt of emergency cueing announcements and broadcasts involves the use of two audio tones (which) shall have fundamental frequencies of 853 and 960 Hertz...

Sec. 73.908. The EBS checklist states...that actions to be taken by station personnel upon receipt of the (EAN)...

Sec. 73.910. Authenticator word lists...are issued every six months by the FCC and are used in conjunction with procedures contained in the EBS Checklist.

(These Authenticator words are used to verify the validity of EAN transmissions. Detailed instructions concerning participation in the EBS are found in following sections of the Rules and Regulations.)

Sec. 73.961. Tests of the EBS procedures will be made at regular intervals... Appropriate entries shall be made consistently in the station operating log or..program log on EBS Tests received and transmitted by broadcast stations.

B-48 Annual Employment Report.

Sec. 73.3612. Each licensee or permittee of a commercially or non-commercially operated AM, FM (or) TV..station with five or more fulltime employees shall file an annual employment report with the FCC on or before May 31 of each year on Form 395.

B-49 Over-the-Air Subscription Television Operations.

Sec. 73.641(a). Subscription television. A system whereby subscription television broadcast programs are..intended to be received in intelligible form by members of the public only for a fee or charge.

Sec. 73.642(a). Subscription television service may be provided only upon specific authorization... Such an authorization will be issued only for a station the principal community of which is located entirely within the Grade A contours of five or more commercial television broadcast stations (including the station of the applicant)... Only one such authorization will be granted in any community. (e) No subscription television authorization shall be granted to a party having any contract, arrangement which: Prevents it from rejecting any subscription television broadcast program which it reasonably believes to be unsatisfactory or unsuitable or contrary to the public interest; (f) (2) Charges, terms, and conditions of service to subscribers..may be divided into reasonable classifications... (3) Subscription television decoders shall be leased, and not sold, to subscribers.

B-50 Duplication of AM-FM Programming.

Sec. 73.242 (c). Effective 5/1/79... If either the AM or FM station is licensed to a community of over 25,000... the FM station shall not devote more than 25 percent of the average program week to duplicated programming.

(d) ...duplication is defined to mean simultaneous broadcasting of any particular program over both the AM and FM stations...(under common ownership in any given market.)

B-51 Equal Employment Opportunities.

Sec. 73.2080. Equal opportunity in employment shall be afforded by all licensees or permittees of commercially or noncommercially operated AM, FM, (or) TV..stations..to all qualified persons, and no person shall be discriminated against in employment because of race, color, religion, national origin or sex.

B-52 Broadcast of Telephone Conversation.

Sec. 73.1206. Before recording a telephone conversation for broadcast or..simultaneously (broadcasting)..a licensee shall inform (the) party.. of the licensee's intention to broadcast the conversation, except where such party..may be presumed to be aware..that it is being, or likely will be broadcast. Such awareness is presumed to exist only when the other party..is associated with the station (such as an employee or part-time reporter)..or where the other party originates the call and it is obvious that it is in connection with a program in which the station customarily broadcasts telephone conversations.

B-53 TV/FM Dual-Language Broadcasting in Puerto Rico.

Sec. 73.1210. Dual-language broadcasting (is)..the telecasting of a program in one language with the simultaneous transmission on..a particular FM..station of a companion sound track information in a different language. Television broadcast licensees in Puerto Rico may enter into dual-language time purchase agreements... All such agreements shall specify that the FM licensee will monitor the sound track..with a view to rejecting any material..inappropriate or objectionable. No..station may devote more than 15 hours per week to dual-language broadcasting, nor more than 3 hours..on any given day.

B-54 Licensee Conducted Contests.

Sec. 73.1216. A licensee that broadcasts or advertises information about a contest it conducts shall fully and accurately disclose the material terms of the contest, and shall conduct the contest substantially as..advertised. No contest description shall be false, misleading or deceptive with respect to any material term.

B-55 Personal Attacks. Political Editorials.

Sec. 73.1920(a). When, during the presentation of views on a controversial issue of public importance, an attack is made upon the honesty, character, integrity or like personal qualities of an identified person or group, the licensee shall, within a reasonable time and in no event later than one week after the attack, transmit to the persons or group attacked:

(1) Notification of the date, time and identification of the broadcast;

(2) A script or tape (or an accurate summary if a script or tape is not available) of the attack; and

(3) An offer of a reasonable opportunity to respond over the licensee's facilities.

(b) The provisions of paragraph (a) of this section shall not apply to broadcast material which falls within one or more of the following categories:

(1) Personal attacks on foreign groups or foreign public figures;

(2) Personal attacks occurring during uses by legally qualified candidates.

(3) Personal attacks made during broadcasts not included in paragraph (b)(2) of this section and made by legally qualified candidates, their authorized spokespersons, or those associated with them in the campaign, on other such candidates, their authorized spokespersons or persons associated with the candidates in the campaign; and

(4) Bona fide newscasts, bona fide news interviews, and on-the-spot coverage of bona fide news events, including commentary or analysis contained in the foregoing programs.

Sec. 73.1930 (a). Where a licensee, in an editorial, (1) Endorses or (2) opposes a legally qualified candidate or candidates, the licensee shall, within 24 hours after the editorial, transmit to, respectively, (i) the other qualified candidate or candidates for the same office or (ii) the candidate opposed in the editorial, (A) notification of the date and the time of the editorial, (B) a script or tape of the editorial and (C) and offer of a reasonable opportunity for the candidate or a spokeman of the candidate to respond over the licensee's facilities. Where such editorials are broadcast within 72 hours prior to the day of the election, the licensee shall comply with the provisions of this paragraph sufficiently far in advance of the broadcast to enable the candidate or candidates to have a reasonable opportunity to prepare a response and to present it in a timely fashion.

Cable Television Regulations

B-56 Definitions.

Sec. 76.5(a). Cable Television System. A nonbroadcast facility consisting of a set of transmission paths (channels) and associated signal generation, reception, and control equipment, under common ownership and control, that distributes or is designed to distribute to subscribers the signals of one or more television broadcast stations, but such term shall not include (1) any such facility that serves fewer than 50 subscribers, or (2) any such facility that serves or will serve only subscribers in one or more multiple unit dewllings under common ownership, control or managements.

(b) Television station; television broadcast station. Any television broadcast station operating on a channel regularly assigned to its community, and any television broadcast station licensed by a foreign government: Provided, however, that a television broadcast station licensed by a foreign government shall not be entitled to assert a claim to carriage or program exclusivity...

(f) Specified zone of a television broadcast station. The area extending 35 air miles from the reference point in the community to which that station is licensed or authorized by the Commission.

(k) Significantly viewed. Viewed in other than cable television households as follows: (1) For a full or partial network station--a share of viewing hours of at least 3 percent (total week hours), and a net weekly circulation of at least 25 percent; and (2) for an independent station--a share of viewing hours of at least 2 percent (total week hours), and a net weekly circulation of at least 5 percent.

B-57 Registration Statement Required.

Sec. 76.12. A system community unit shall be authorized to commence operation or add a television broadcast signal to existing operations only

after filing with the Commission the following information:

(a) The legal name of the operator, entity identification or social security number, and whether the operator is an individual, private association, partnership, or corporation. If the operator is a partnership, the legal name of the partner responsible for communications with the Commission shall be supplied:

(b) The assumed name (if any) used for doing business in the community;

(c) The mail address, and the telephone number to which all communications are to be directed;

(d) The date the system provided service to 50 subscribers;

(e) The name of each separate community or area served and the county in which it is located;

(f) The television broadcast signals to be carried which previously have not been certified or registered; and

(g) A statement of the proposed community unit's equal employment opportunity program.

B-58 Special Temporary Authority.

Sec. 76.29(a). In circumstances requiring the temporary use of community units for operations not authorized by the Commission's rules, a cable television system may request special temporary authority to operate. The Commission may grant special temporary authority, upon a finding that the public interest would be served thereby, for a period not to exceed ninety (90) days, and may extend such authority, upon a like finding, for one additional period, not to exceed ninety (90) days.

B-59 Franchise Standards.

Sec. 76.31. Franchise fees shall be no more than 3 percent of the franchisee's gross revenues per year from all cable services in the community... If the franchise fee is in the range 3 to 5 percent..the fee shall be approved by the Commission..upon (reasonable) showing..

Note--The following procedures..are recommended..but are not mandatory:

(1) The franchisee's legal, character, financial, technical, and other qualifications, and the adequacy and feasibility of its construction arrangements, have been approved by the franchising authority as part of a full public proceeding affording due process:

(2) The franchisee shall accomplish significant construction within one (1) year after receiving Commission certification, and shall thereafter reasonably make cable service available to a substantial percentage of its franchise area each year, such percentage to be determined by the franchising authority...

(3) The initial franchise period shall not exceed fifteen (15) years, and any renewal franchise period shall be of reasonable duration...

(b) Franchise fees shall be no more than 3 percent of the franchisee's gross subscriber revenues per year from cable television operations in the community (including all forms of consideration, such as initial lump sum payments)...

B-60 Significantly Viewed Signals.

Sec. 76.54(a). Signals that are significantly viewed in a county are those that are listed in Appendix A of the memorandum of the Cable Television Report and Order FCC 72530.

(b) Significant viewing in a cable television community..may be demonstrated by an independent professional audience survey of non-cable

television homes that covers at least two weekly periods separated by at least thirty (30) days but no more than one of which shall be a week between the months of April and September.

(c) Notice of a survey to be made shall be served on all licensees of television stations within whose predicted Grade B contour the cable community or communities are located.

(d) Signals of television broadcast stations not encompassed by the surveys may be demonstrated as significantly viewed by independent professional audience surveys...

B-61 Provisions for Systems Operating in Communities Located Outside of All Major and Smaller Television Markets.

Sec. 76.57. A community unit operating in a community that is located wholly outside all major and smaller television markets,..shall carry television broadcast signals in accordance with the following provisions:

(a) Any such community unit may carry or, on request of the relevant station licensee or permittee, shall carry the signals of:

(1) Television broadcast stations within whose Grade B contours the community..is located, in whole or in part;

(2) Television translator stations with 100 watts or higher power serving the community... In addition, any community unit may elect to carry the signal of any noncommercial educational translator station:

(3) Noncommercial educational television broadcast stations within whose specified zone the community..is located...;

(4) Commercial television broadcast stations that are significantly viewed in the community. See Sec. 76.54 (B-59).

(b) In addition to the television broadcast signal carried pursuant to paragraph (a) of this section, any such community unit may carry any additional television signals.

B-62 Provisions for Smaller Television Markets.

Sec. 76.59. A community unit operating in...a smaller television market...shall carry television broadcast signals only in accordance with the following provisions:

(a) Any such community unit may carry or, on request of the relevant station...shall carry the signal of:

(1) Television broadcast stations within whose specified zone the community is located...;

(2) Noncommercial educational television broadcast stations within whose Grade B contours the community is located...;

(3) Commercial television broadcast stations licensed to communities in other smaller television markets, within whose Grade B contours the community is located...;

(4) Television broadcast stations licensed to other communities which are generally considered to be part of the same smaller television market...;

(6) Commercial television broadcast stations that are significantly viewed in the community.

(b) In addition to the television broadcast signals (above)...any such community unit..may carry any additional television signals.

(d) In addition...any such community unit may carry:

(1) Any specialty station and any station while it is broadcasting a foreign language, religious or automated program. Carriage of such selected programs shall be only for the duration of the programs and shall

not require prior registration with the Commission.

(2) Any television station broadcasting a network program that will not be carried by a station normally carried in the community unit. Carriage of such additional stations shall be only for the duration of the network programs not otherwise available...(Provided, however, that a station which is significantly viewed under Sec. 76.54 need not be deleted pursuant to the network nonduplication provisions (See Sec. 76.92 (B-67)).

B-63 Provisions for First 50 Major Television Markets.

Sec. 76.61. A community unit operating in...one of the first 50 markets...shall carry television broadcast signals only in accordance with the following provisions:

(a) Any such community unit may carry or on request of the relevant station licensee or permittee shall carry the signals of:

(1) Television broadcast stations within whose specified zone the community is located...: Provided, however, that where a community unit is located in the designated community of a major television market, it shall not carry the signal of a television station licensed to a...community in another major television market, unless the designated community in which the community unit is located is wholly within the specified zone...;

(2) Noncommercial educational television broadcast stations within whose Grade B contours the community is located...;

(3) Television translator stations...serving the community...

(4) Television broadcast stations licensed to other designated communities of the same major television market...;

(5) Commercial television broadcast stations that are significantly viewed in the community. See Sec. 76.54 (B-59).

(b) In addition...

(1) Whenever...a community unit is permitted to carry three additional independent signals, one of these signals must be that of a UHF television broadcast station.

(e) In addition to the television broadcast signals carried pursuant to paragraphs (a) through (d) of this section, any such community unit may carry:

(1) Any specialty station and any station while it is broadcasting a foreign language, religious or automated program. Carriage of such selected programs shall be only for the duration of the programs and shall not require prior Commission notification or approval in the certificating process.

(2) Any television station broadcasting a network program that will not be carried by a station normally carried on the system. Carriage of such additional stations shall be only for the duration of the network programs not otherwise available, and shall not require prior registration with the Commission.

B-64 Provisions for Second 50 Major Television Markets.

Sec. 76.63(a). A community unit operating in a community located.. within one of the second fifty major television markets..shall carry television broadcast signals only in accordance with the provisions of Sec. 76.61, (see B-63) except that in paragraph (b)..the number of additional independent television signals that may be carried by community units.. is two (2).

B-65 Grandfathering Provisions.

Sec. 76.65(a). The provisions of Secs. 76.57, 76.59, 76.61, and 76.63 shall not require the deletion of any television broadcast or translator signals which a community unit was authorized to carry or was lawfully carrying prior to March 31, 1972...

B-66 Sports Broadcasts.

Sec. 76.67(a). No community unit located in..the specified zone of a television broadcast station licensed to a community in which a sports event is taking place, shall, on request of the holder of the broadcast rights to that event, or its agent, carry the live television broadcast signal carried by the community unit pursuant to the mandatory signal carriage rules of this part. For the purposes of this section, if there is no television station licensed to the community in which the sports event is taking place, the applicable specified zone shall be that of the television station licensed to the community with which the sports event or local team is identified...

B-67 Stations Entitled to Network Program Non-Duplication.

Sec. 76.92(a). Any community unit which operates in a community that is located...within the 35-mile specified zone of any commercial television broadcast station or within the secondary zone which extends 20 miles beyond the specified zone of a smaller market television broadcast station... and carries the signal of such station that community unit shall,..delete, upon request of the station licensee or permittee, the duplicating network programming of lower priority signals...(Provided, however, that a station which is significantly viewed under Sec. 76.54 need not be deleted pursuant to this section).

(b) For purposes of this section, the order of non-duplication priority of television signals carried by a community unit is as follows:

(1) First, all television broadcast stations within those specified zone the community is located..;

(2) Second, all smaller market television broadcast stations within whose secondary zone the community is located...

B-68 Syndicated Program Exclusivity; Extent of Protection.

Sec. 76.151. Upon receiving notification..

(No community unit, operating in a community that is located..within one of the first 50 major television markets, shall carry a syndicated program..for a period of 1 year from the date that program is first licensed or sold as a syndicated program to a television station in the United States for television broadcast exhibition;

(b) No community unit, operating in a community that is located... within a major television market, shall carry a syndicated program..while a commercial television station licensed to a designated community in that market has exclusive broadcast exhibition rights (both over-the-air and by cable) to that program...

(This section continues at length, detailing exceptions for prime vs. non-prime time broadcasts, off-network program series, and feature films.)

B-69 Parties Entitled to Exclusivity.

Sec. 76.153(a). Copyright holders of syndicated programs shall be

entitled to..exclusivity... In order to receive such exclusivity, the copyright holder shall notify each cable television system operator of the exclusivity sought...

(b) Television broadcast stations licensed to designated communities in the major television markets shall be entitled to..exclusivity...

(c) In order to be entitled to exclusivity for a program...a television station must have an exclusive right to broadcast that program against all other television stations licensed to the same designated community and against broadcast signal cable carriage of that program in the cable community.

B-70 Obscenity.

Sec. 76.215. No cable television system operator when engaged in origination cablecasting shall transmit or permit to be transmitted on the origination cablecasting channel or channels material that is obscene or indecent.

B-71 Sponsorship Identification; List Retention; Related Requirements.

Sec. 76221.

(The provisions of this section with regard to sponsorship identification are essentially the same as provided for broadcast stations with the following exceptions:)

(f) the announcement otherwise required by this section is waived with respect to the origination cablecast of "want ad" or classified advertisements sponsored by an individual. The waiver granted in ths paragraph shall not extend to a classified advertisement or want ad sponsorship by any form of business enterprise, corporate or otherwise. Whenever sponsorhip announcements are omitted pursuant to his paragraph, the cable television system operator shall observe the following conditions

(1) Maintain a list showing the name, address, and (where available) the telephone number of each advertiser;

(2) Make this list available to members of the public who have a legitimate interest in obtaining the information...

B-72 Channel Capacity.

Sec. 76.252(a). Any cable television system having 3500 or more subscribers shall comply with the following requirements respecting channel capacity:

(1) Minimum channel capacity. Each such system shall have..(the equivalent of 20 television broadcast channels) available for immediate or potential use for the totality of cable services to be offered.

(2) Two-way communications. Each such system shall maintain a plant having technical capacity for nonvoice return communications.

(b) This section applies to all cable television systems that are located in..a major television market and that commence operations after March 31, 1972. Systems that are located outside of a major telvision market and that commence operations after March 31, 1977, shall comply upon commencement of operations. All other systems shall comply on or before June 21, 1986. Systems that are in compliance with the provisions of subparagraph (a) (1) are not required to modify their facilities in order to comply with subparagraph (a)(2) of this section.

B-73 Number and Designation of Access Channels.

Sec. 76.254. Any cable television system having 3500 or more subscribers shall comply with the following requirements respecting the number and designation of access channels:

(a) The operator of each such system shall, to the extent of the system's activated channel capability, comply with the following requirements:

(1) Public access channel. The operator of each such system shall maintain at least one specially designated, noncommercial public access channel available on a first-come, nondiscriminatory basis;

(2) Education access channel. The operator of each such system shall maintain at least one specially designated channel for use by local educational authorities;

(3) Local government access channel. The operator of each such system shall maintain at least one specially designated channel for local government uses;

(4) Leased access channel. The operator of each such system shall maintain at least one specially designated channel for leased access uses. In addition, other portions of its nonbroadcast bandwidth, including unused portions of the specially designated channels, shall be available for leased uses. On at least one of the leased channels, priority shall be given part-time users.

(b) Until such time as there is demand for each channel full time for its designated use, public, educational, government, and leased access channel programming may be combined on one or more cable channels. To the extent time is available therefore, access channels may also be used for other broadcast and nonbroadcast services except that at least one channel shall be maintained exclusively for the presentation of access programming as required by paragraph (c) of this section.

(c) The operator of each such system shall, in any case, maintain at least one full channel for shared access programming: Provided, however, that, in the case of systems in operation on June 21, 1976, if insufficient activated channel capability is available to provide one full channel for shared access programming the system operator shall provide whatever portions of channels are available for such purposes. In meeting its access obligations, every operator of a cable television system shall make reasonable efforts in programming the system's bandwidth to avoid the displacement of access service.

(d) Whenever any of the channels described in paragraph (a) or (c) of this section is in use during 80 percent of the weekdays (Monday-Friday) for 80 percent of the time during any consecutive three-hour period for six consecutive weeks, the system operator shall have six months in which to make a new channel available for the same purposes: Provided, however, that the channel expansion mandated by this paragraph shall not exceed the activated channel capacity of the system...

B-74 Access Services.

Sec. 76.256. Any cable television system having 3500 or more subscribers shall comply with the following requirements respecting the provision of access services:

(a) Equipment requirement. The operator of each such system shall have available equipment for local production and presentation of cablecast programs other than automated services and permit its use for the production and presentation of public access programs. The operator of such

system shall not enter into any contract, arrangement, or lease for use of its cablecast equipment which prevents or inhibits the use of such equipment for a substantial portion of time for public access programming.

(b) Program content control. The operator of each such system shall have no control over the content of access cablecast programs; however, this limitation shall not prevent taking appropriate steps to insure compliance with the operating rules described in paragraph (d) of this section.

(c) Assessment of costs. (1) The channels described (above) shall be made available free of charge until five (5) years after the system operator first offers channel time for such cablecasting purposes.

(2) One of the public access channels described...shall always be made available without charge.

(3) Charges for equipment, personnel, and production of public access programming shall be reasonable and consistent with the goal of affording users a low-cost means of television access. No charges shall be made for live public access programs not exceeding five minutes in length...

(d) Operating rules. (1) For public access programming, the operator of each such system shall prohibit the presentation of: any advertising material designed to promote the sale of commercial products or services (including advertising by or on behalf of candidates for public office); lottery information; and obscene or indecent matter, and shall establish rules to this effect as well as rules requiring first-come nondiscriminatory access, and rules permitting public inspection of a complete record of the names and addresses of all persons or groups requesting access time. Such a record shall be retained for a period of two years.

(4) The operating rules governing public, educational, and leased access programming shall be filed with the Commission within 90 days after the system operator first activates any such channels, and shall be available for public inspection...

B-75 Nonfederal Access Regulation; Voluntary Access.

Sec. 76.258. No cable television system shall be required by a state or local entity to exceed the provisions...concerning channel capacity, activated channel capability, and equipment, absent Commission authorization, even if such a system has previously been certificated...

S E C T I O N C

selected exerpts from

FEDERAL COMMUNICATIONS COMMISSION DECISIONS

FEDERAL AND STATE COURT RULINGS

C-1 Witmark & Sons vs. Bamberger & Co., decision.

In 1923, the Witmark & Sons music publishing company brought suit in federal court against L. Bamberger & Co., owner of a department store in Newark, N.J., and also licensee of station WOR in that city, charging that the Bamberger company infringed upon Witmark's copyright by broadcasting music of which Witmark was the copyright owner, without permission. The defendant contended that there had been no violation of copyright laws, since the station produced its own programs without outside contribution in the form of paid advertising; consequently the performance of the song was not performance "for profit," the only type of public performance restricted by the terms of federal copyright laws. A federal district court ruled for the plaintiff, holding that even if the program was one for which no payment had been received from any outside source, the station licensee did receive the value of having the name of the station and of the store broadcast over the air, and consequently, performances over facilities of the station were at least indirectly performances "for profit."

--291 Fed. 776 (D.N.J. 1923)

C-2 U.S. vs. Zenith Radio Co.

The defendant, Zenith Radio Co. owned WJAZ in Chicago. Without the permission of Secretary of Commerce, Herbert Hoover, WJAZ operated with powers and on frequencies not in accordance with the terms of its license. Secretary Hoover brought action against Zenith to prevent interference with other stations in the area.

The Court ruled that the Act of 1912 did not confer upon the Secretary of Commerce powers sufficiently broad to cover the actions taken by Hoover. The Court said that "administrative ruling cannot add to the terms of an act of Congress and make conduct criminal which such laws leave untouched."

With this ruling, and that in Hoover vs. Intercity Radio Co. (286 F 1003 (D.C. Cir. 1923)), the Secretary of Commerce was forced to stop discretionary licensing and issue licenses to all who met the minimum criteria irrespective of any interference caused between stations. As a result of the chaos which followed, Congress enacted the Federal Radio Act of 1927.

--12 F. 2d 614 (N.D. Ill. 1926)

C-3 FRC Second Annual Report

In its Second Annual Report to Congress, the Federal Radio Commission noted its action in refusing to renew the license of station WCOT, in Providence, R.I. License was terminated on the grounds that the licensee went on the air on his own station to campaign for political office, to attack his personal enemies, and to express his personal views on all kinds of questions in which he was interested. The Commission charged that the licensee had repeatedly broadcast false statements and had made use of defamatory language; no charge was made, however, that any use had been made of profane language.

--Fed. Rad. Comm., Second Annual Report, pp. 152-53, 1928.

C-4 WCRW decision.

The Federal Communications Commission's "Blue Book" of March, 1946, refers to the action of the Federal Radio Commission in August, 1928, in refusing to renew the license of station WCRW (location not given). The Radio Commission stated that "it is clear that a large part of the

program is distinctly commercial in character, consisting of advertisers' announcements and of direct advertising, including the quoting of prices. . . . A limited amount of educational and community civic service (was provided), but the amount of time thus employed is negligible. . . . Manifestly this station is one which exists chiefly for the purpose of deriving an income from the sale of advertising of a character which must be objectionable to the listening public, and without making . . . any endeavor to render any real service to the public."

A week later, the Radio Commission placed four other stations on short-term license for similar reasons. These four were later returned to regular license status.

--Fed. Comm. Comm., Public Service Responsibility of Broadcast Licensees, p. 41, 1946.

C-5 Great Lakes application decision.

The Great Lakes opinion provides the only comprehensive statement of the Federal Radio Commission's views on the type of program service which should be provided by a station licensee. The opinion came in connection with the application of the Great Lakes Broadcasting Co. for a license for a new station; the application was denied because of the type of program service the Great Lakes Co. proposed to provide--one which the Radio Commission held would be of value or interest to only a small proportion of the public living within the area to be served by the station. The Commission's opinion reads, in part, as follows:

> Broadcasting stations are licensed to serve the public and not for the purpose of furthering the private or selfish interests of individuals or groups of individuals. The only exception to this rule has to do with advertising. . because advertising furnishes the economic support for the service and thus makes it possible. (But) the amount and character of advertising must be rigidly confined within limits consistent with the public service expected of the station. . . If a broadcasting station had to accept and transmit . . anything and everything any member of the public might desire to communicate to the listening public . . . the public would be deprived of the advantages of the self-imposed censorship exercised by the program directors of broadcasting stations who, for the sake of the popularity and standing of their stations, will select entertainment and educational features accerding to the needs and desires of their individual audiences. . .
>
> The service rendered by broadcasting stations must be without discrimination as between its listeners. . . The entire listening public within the service area of a station is entitled to service from that station. If, therefore, all the programs transmitted are intended for, and interesting or valuable to, only a small portion of that public, the rest of the listeners are being discriminated against. . . .
>
> The tastes, needs and desires of all substantial groups among the listening public should be met, in some fair proportion, by a well-rounded program in which entertainment . . . religion, education and instruction, important public

events, discussions of public questions. . . news, and matters of interest to all members of the family find a place. With so few channels. . . and so few hours in the day, there are obviously limitations on the emphasis which can appropriately be placed on any portion of the program . . . .

In such a scheme there is no room for the operation of broadcasting stations exclusively by, or in the private interests of, individuals or groups, so far as the nature of the program is concerned. There is not room in the broadcast band for every school of thought, religious, political and economic, each to have its separate broadcasting station. . . .Propaganda stations are . . . not consistent with the most beneficial sort of discussion of public questions. . . .

The Great Lakes opinion has often been cited by the Federal Communications Commission as the precedent for the requirement of a "balanced program service," and the types of material to be included in the program operations of a station are essentially the same as those to which attention is given in consideration of license or license renewal applications.

--Great Lakes Broadcasting Co., Fed. Rad. Comm., D. 4900, 1928.

C-6 FRC assertion of its right to consider program service.

In its Second Annual Report, the Federal Radio Commission stated in so many words its belief that the program service rendered by applicants should be taken into account in the granting or withholding of licenses. This, of course, is in keeping with its actions in the WCOT and WCRW refusals of license renewal, and in the refusal of a new license grant to the Great Lakes Broadcasting Co. The Radio Commission's language in its Report to Congress was as follows:

"The Commission believes that it is entitled to consider program service rendered various applicants, to compare them, and to favor those which render the best service." But during 1928 and the years following, the Radio Commission received applications for authorizations for full-time operation from large numbers of stations which had been authorized for only part-time operation, sharing time with sometimes as many as two or three other stations in the same community. Naturally, the granting of any such application resulted in other stations sharing the same frequency being removed from the air. The Commission believed that in such cases, the relative program service provided by time-sharing stations had to be considered, along with other elements in the records of the various stations.

--Fed. Rad. Comm., Second Annual Report, p. 161, 1928.

C-7 Duncan vs. United States.

Robert G. Duncan was a candidate for nomination in an Oregon primary election in which he was defeated. Both during and after the primary campaign, Duncan bought time on station KVEP in Portland, owned by William D. Schaeffer. In the course of his broadcasts, especially after his defeat, Duncan used profane and abusive language in referring to individuals and groups who had opposed his candidacy. As a result of complaints filed by a number of leading Portland citizens, the Federal Radio Commission ordered a license renewal hearing. Evidence was presented that Duncan had made vitriolic attacks on various individuals and groups, and had used such expressions as "by God" and "damned" repeatedly in his broadcasts.

Schaeffer contended that since he had sold the time to Duncan, he had no authority under the law to censor Duncan's material. The Radio Commission refused to accept this contention; it held that as a station licensee, Schaeffer had full authority over and consequently full responsibility for any materials broadcast over his station. In June, 1930 the station's license was terminated; the Commission's order stated that Duncan had defamed and maligned "the character of decent citizens by the direct use of profane and indecent language," and that the licensee, Schaeffer, was responsible, since "as proprietor of the station, he had full authority over all programs broadcast."

Since the Radio Act of 1927 included a section prohibiting the "utterance, by radio" of profane, obscene or indecent language (a section transferred in 1934 to the Communications Act, and later transferred to the U.S. Criminal Code), Duncan was also tried in a federal district court on a charge of using profane language in a radio broadcast, and was sentenced to serve six months in prison. He appealed to the Federal Circuit Court of Appeals, which in March, 1931 upheld the verdict of the lower court, denying Duncan's contention that the "no censorship by the Commission" clause of the Radio Act (identical with the similar provision in the Communications Act) prohibited the assessment of any penalty against him for his use of profane language on a broadcast program.

--48 F. 2d 128 (9th Cir. 1931), 283 U.S. 863 (cert. den. 1931).

C-8 KFKB vs. FRC.

Station KFKB, in Milford, Kansas, owned by Dr. John R. Brinkley, was used to advertise a "goat gland" rejuvenation operation performed by Brinkley in his hospital in Milford; also to broadcast a "Medical Question Box" program in which Brinkley prescribed medicines over the air for use by listeners who sent him letters in which their symptoms were described. Neither practice was viewed with favor by medical authorities; in July 1930, Brinkley's medical license to practice in the state of Kansas was revoked, and later that year, on the basis of complaints filed by the American Medical Association, a hearing was held on renewal of the broadcasting license of his radio station. As a result of the hearing, the Radio Commission refused to grant renewal of the station's license, finding that Brinkley had broadcast "obscene and indecent" materials in advertising his "goat gland" operation; and also that in prescribing for patients over the air he was engaging in "personal communication," rather than broadcasting.

Brinkley appealed the Radio Commission's decision to the Federal courts; the action represented the first major test of the Commission's licensing powers. In 1931, the U.S. Court of Appeals for the District of Columbia upheld the Commission's ruling, holding that the views of the Radio Commission on the undesirability of Brinkley's medical programs were "reasonable," and that the Commission had the right to consider the past performances of a licensee in passing on renewal of a station's license, without such consideration being in violation of the "no censorship by the Commission" clause in the Radio Act of 1927.

Following the decision by the court, the Brinkley station was taken off the air. Brinkley moved his operations to Del Rio, Texas, and set up the first of the high powered Mexican border radio stations to continue his

broadcasting operations under Mexican jurisdiction.
--47 F. 2d 670 (D.C. Cir. 1931)

C-9 Near vs. Minnesota.

The Hennepin County (Minnesota) County Attorney brought an action under a statute to enjoin the publication of what was described as a "malicious, scandalous, and defamatory" paper known as the Saturday Press. The Saturday Press charged that law enforcement officers and agencies failed to expose and punish criminal activity. Near appealed his state conviction, arguing the Fourteenth Amendment's due process of law clause protected his freedom to publish. The Supreme Court in a 5-4 decision ruled that pre-publication censorship by states was clearly not compatible with the First and Fourteenth Amendments.
--283 U.S. 697 (1931)

C-10 The Dr. Norman Baker decision.

Another of the rather considerable number of medical practitioners to cause difficulties for the Radio Commission was Dr. Norman Baker, who operated a hospital in Muscatine, Iowa, and was also licensee of station KTNT in that city. During 1930, several complaints were filed with the Federal Radio Commission by the Iowa State Board of Health, the Iowa Medical Association, and the American Medical Association accusing Baker of using his station to advertise a "cure" for cancer to be provided in his hospital, and "to malign, abuse and falsify" the medical profession in talks presented over the station's facilities by Baker himself. The Commission ordered a hearing on renewal of the station's license; following the hearing, the Radio Commission in June, 1931 denied license renewal, holding that

> The record discloses that he (Baker) continually and erratically over the air rides a personal hobby, his cancer cure ideas and his likes and dislikes of certain persons and things. Many of his utterances are vulgar, if not indeed indecent. . . (His personal and bitter attacks upon individuals, companies and associations, whether warranted or unwarranted, . . have not been in the public interest.

The station license was deleted in 1931.
--Fed. Rad. Comm., Fifth Annual Report, p. 78, 1931.

C-11 Trinity Methodist Church vs. FRC.

Another of the "personal interest" broadcasters of the early days of the Federal Radio Commission was Rev. Robert P. Shuler, pastor of the Trinity Methodist Church, South, in Los Angeles; the church was also the licensee of station KGEF in Los Angeles. Shuler used the station as a personal mouthpiece, launching over its facilities vitrolic attacks on those whose beliefs or opinions he did not share. In 1930, he was held in contempt of court on the basis of broadcasts in which he reputedly attempted to influence the verdict of a court in a pending criminal action.

In 1931, a hearing was held on renewal of the station's license, in which evidence was presented of repeated attacks made by Shuler on the Catholic Church, the Jewish race, the Salvation Army, Christian Science, and the local Chamber of Commerce. Following the hearing, in November of 1931, the Federal Radio Commission refused to grant license renewal to the station, one ground of action being that Shuler had "repeatedly made attacks upon public officials and courts" and "had vigorously attacked by name all organizations, political parties, public officials and individuals

whom he conceived to be moral enemies of society."

Shuler appealed the Commission's decision to the courts charging the Commission had violated the guarantee of freedom of speech provided in the First Amendment to the Constitution. In a 1932 decision, the U.S. Court of Appeals for the District of Columbia upheld the Commission ruling that "denial of license was neither censorship nor previous restraint. Appellant may continue to indulge his strictures upon the characters of men in public office, may criticise religious practices of which he does not approve, may even indulge private malice or personal slander--but he may not demand of right, the continued use of an instrument of commerce for such purposes."

--62 F. 2d 850 (C.D. Cir. 1932), cert. den. 288 U.S. 599 (1932)

C-12 Sorensen vs. Wood.

In August, 1930, Richard F. Wood, candidate for election as Nebraska Attorney General, in a political speech broadcast over station KFAB in Lincoln, characterized his opponent in the race, C. A. Sorensen, as "an irreligious libertine, a madman and a fool." Following the election, Sorensen--who won the election brought action for damages against Wood, and a separate action against the broadcasting station, charging that the statements made by Wood were libelous.

The station's defense was that since Wood was a qualified candidate for office, the Radio Act prohibited the station from censoring the speech in which the defamatory material was included. However, the Nebraska Supreme Court, which finally heard the case, ruled in 1932 that the station must be held liable for any defamatory statements made over its facilities, since a broadcasting station is not a common carrier and can to a large extent control the use of its facilities by others, especially by its decisions concerning those to whom time will be or will not be made available. Although the court recognized that by federal law, the station had no right of censorship over speeches made by candidates for office, it refused to give the station a privileged position in the transmission of libelous material.

The Nebraska court also held that the defamatory statements made by Wood were classed as libel rather than as slander, since they had been reduced to writing and were subsequently read over the air from a manuscript.

--123 Neb. 348, 243 N.W. 82 (1932), appeal dismissed, 290 U.S. 599 (1933)

C-13 Associated Press vs. KVOS.

In 1934, the Associated Press brought an action in a Federal district court seeking to restrain station KVOS, Bellingham, WA, from broadcasting news items "lifted" from columns of local newspapers which in turn had received the items from the A.P. newspaper service. The press association charged that employees of the station bought copies of local newspapers and used items from the papers in their broadcast news programs. No charge was made of violation of copyright; the Associated Press contended instead that use of its materials in the manner indicated constituted unfair competition.

The station, subject of an adverse decision in the district court, carried the case to the U.S. Circuit Court of Appeals. The circuit court held that since the station was in competition for advertising revenues with

the newspaper members of the press association, and since both newspapers and the station were engaged in providing news to the public, the station's practice did constitute unfair competition, and enjoined the station from broadcasting newspaper items. The Court's decision was in agreement with an earlier ruling of the U.S. Supreme Court in the case of International News Service vs. Associated Press, 248 U.S. 215, 1918, which held that while there could be no copyright of news as such, "piracy" by one newsgathering organization of the news items collected by another was unfair competition.

--80 F 2d 575 (9th Cir. 1935), reversed on other grounds, 299 U.S. 269 (1935).

C-14 Coffey vs. Midland Broadcasting Co.

Station KMBC, Kansas City, Mo., carried the March of Time program series which was originated by and delivered to the station by the Columbia Broadcasting System, with which the station was affiliated. In 1934, Coffey, a Kansas City police officer, brought an action for damages against the station, charging that he had been defamed in a March of Time broadcast which alleged that he was an ex-convict. No equivalent action was brought by Coffey against the network, the program sponsor or the advertising agency. Only the station was named in Coffey's suit.

The station contended that since the defamatory statement has been made on a network-originated program which has been fed to the station over network telephone lines, and since as a result,the station had no advance notice of and no control over the contents of the program, the station itself should not be held liable. The court, however, disagreed with this contention and held that since a broadcasting station is not a common carrier and consequently has the power of rejecting unsuitable programs, the station cannot claim the partial immunity which a common carrier enjoys; consequently, it must be held responsible for the programs and the materials it broadcast, regardless of the source from which such materials come. The Federal district court rendered a verdict in favor of the plaintiff, and against the station.

--8 F. Supp. 889 (W.D. Mo., 1934).

C-15 Scroggin & Co. Bank decision.

In 1935, station KFEQ in St. Joseph, Mo., was the subject of a hearing on license renewal, as a result of certain programs broadcast. Evidence presented in the hearing showed that the station was carrying a program featuring a "Doctor" Richards, who was represented as an "astrologer, psychologist and scientist," and who sold horoscopes to listeners and also gave advice on business affairs, domestic problems, investments, love and marriage. At the time many stations were carrying similar programs in which "astrologers" were featured.

The Federal Communications Commission held that such programs of advice to individual listeners were objectionable first, because they were in effect transmissions of individual messages, in violation of a station's license to broadcast; and second, because "astrology" programs of the type presented by Richards were designed to take advantage of the credulity of listeners, and as such were contrary to the public interest.

However, on the promise of the station's owners to discontinue the offending program and not to schedule programs of similar nature in the future, the Commission granted license renewal.

Most "astrology" programs disappeared from station schedules during the following year, party as a result of the KFEQ inquiry, partly for other reasons.

--1 F.C.C. 194 (1935).

C-16 Knickerbocker Broadcasting Co. decision.

The Communications Commission in 1935 ordered a hearing on renewal of the license of Station WMCA in New York, owned by the Knickerbocker Broadcasting Company, on the basis of broadcasting by that station of a program titled "Modern Women's Serenade," on which was advertised a product known as "Birconjel," a contraceptive jelly. Advertising talks on the program recommended use of the product "to avoid the consequences . . . of moral impropriety." The Commission held that the program and its advertising were offensive and in conflict with the public interest, and indicated that if it were not for the good record made otherwise by the station, license renewal would be denied because of the questionable program. The offensive program was discontinued.

--2 F.C.C. 76 (1935).

C-17 Bremer Broadcasting Co. decision.

License renewal of station WAAT, Jersey City, N.J., was set for hearing in 1935 on the basis of programs carried by the station in which results of horse races were given in code. The code would be interpreted only by listeners who were subscribers to a certain racing "scratch sheet" which provided a key to the code. The Commission ruled that the carrying of such a code was a violation of the conditions of the station's license, which required the station to broadcast "to the general public." According to the Commission, the airing of material which could be understood only by certain individuals was not a "broadcast to the general public," but a form of personal or individual communication, and this type of communication is not covered in a broadcast license. However, since the offensive program had been discontinued some time before the hearing took place, the Commission granted license renewal to the station.

Later during the same year, the Commission made a similar ruling in a case involving station WBNX of New York City, owned by Standard Cahill Co.

--2 F.C.C. 79 (1935).

C-18 United States Broadcasting Corp. decision.

During 1935, three Brooklyn, N.Y. stations, which had been sharing time on a single frequency, all filed application with the Communications Commission for authority for full-time operation on that one frequency. Since such an authorization to one station meant that the other two would be forced off the air, a comparative hearing was ordered.

At the hearing, evidence showed that one of the three stations, WARD, owned by the United States Broadcasting Co. devoted approximately half of its local time on the air to foreign language broadcasts. This fact was cited by the station as evidence of its superior service to the listening public; however, one of the two competing stations argued that instead, foreign language broadcasts were in effect "private message communications" in violation of the station's broadcasting license, since such foreign language broadcasts could not be understood by the general public which constitutes the audience of a broadcasting station. The commission did not

support either contention; it stated that the mere fact that programs are broadcast in a foreign language does not, ipso facto, make them of public interest, nor does it place them in the category of "private message broadcasts."

On another point, however, the Commission found the station's record highly unsatisfactory. The content of many of the station's foreign language broadcasts was found to be objectionable; for example, in certain religious talks by a rabbi, advertisements were inserted calling attention to the rabbi's availability for weddings.

Even more serious was the finding that station WARD had sold blocks of time to outside contractors on a basis which gave the contractors complete control over program content, which constituted an illegal "transfer of control" by the station.

Because of these program shortcomings and presumably other matters brought out in the comparative hearing, the Commission in 1935 awarded the full-time authorization to another station, and refused to grant license renewal to WARD.

The owners of WARD immediately filed notice of intention to appeal to the courts; pending a decision on such an appeal, the station was allowed to continue on the air, operating on temporary license. After numerous delays and protests, the station's temporary license was finally deleted in 1940.

--2 F.C.C. 208 (1935).

C-19 Hammond-Calumet Broadcasting Corp. decision.

During the winter of 1935-36, station WWAE in Hammond, In., carried advertising of a patent medicine manufactured by Pur-Erg Laboratories, a concern against which the Post Office Department had issued a fraud order on grounds that advertising of the company's products was false and fraudulent. When the FCC checked into the situation, the owners of the station contended that they had not been advised of the action of the postal authorities. The Commission held that since such actions were matters of public record, it was the responsibility of the station to investigate before accepting advertising accounts.

However, since the station had dropped the objectionable advertising as soon as its owner's attention had been called to the Post Office action, and since the station's record was otherwise good, the FCC in 1936 issued regular license renewal.

--2 F.C.C. 321 (1936).

C-20 Newton decision.

In considering license renewal of station WOCL in Jamestown, N.Y., the Commission took note of the fact that during the preceding autumn, a broadcast of a World Series baseball game had been made by the station without authorization. The WOCL announcer simply picked up the broadcast of the game by a Mutual Network station, and used the information to give, in his own words, his own report of the game. The question was raised whether this constituted a "rebroadcast," since unauthorized rebroadcasts of programs of other stations are prohibited in the Communications Act. The Commission held that the WOCL program was not a "rebroadcast", because "rebroadcasting" refers only to the reproduction of the actual signal of another station, unchanged, by mechanical means. The station's license was renewed.

Note that the Commission ruled only on whether or not the broadcast in question was a "rebroadcast" in the technical sense; whether the station had a legal right to present the program was not a matter at issue. Civil courts generally have held that a "recreation" of a sports broadcast similar to the one broadcast by WOCL, without the authority of the originating station or owner of rights to the broadcasting of the event, would be an infringement on the property rights of the originating network or station. But the question of property rights is not covered in the Communications Act, and consequently is not within jurisdiction of the Commission.

--2 F.C.C. 381 (1936).

C-21 WGBZ Broadcasting Co. decision.

Prior to 1936, station KGBZ, York, Nb., shared time on the 930 Kc. frequency with station KMA, Shenandoah, Ia. In 1935, KMA applied for full time on the frequency; the granting of the KMA application would necessarily crowd the Nebraska station off the air. In a hearing held in August, 1935, the licensee of KMA showed a consistent record of public service; the evidence concerning WGBZ, however, showed that the Nebraska station had carried extensive advertising of "Texas Crystal Salts" which it fraudulently represented over the air as a "cure" for almost every ailment from gall stones to heart disease; that it had recommended "Van Ness Herb Tea" as a reducing agent which was claimed to be "harmless", and that it had used its facilities for the sale of stocks in questionable business enterprises.

In a 1936 decision, the Communications Commission granted the application of KMA for full-time operation, and the WGBZ license was deleted.

--2 F.C.C. 599 (1936).

C-22 Don Lee Broadcasting System decision.

In 1936, the FCC ordered a hearing on renewal of license of station KFRC, San Francisco, owned by Don Lee Broadcasting System, on the basis of advertising carried over the station's facilities. Evidence indicated the station had carried advertising for a weight-reducing preparation called "Marmola". Exaggerated claims were made concerning the values of the product as a weight reducing agent, and the drug was represented as "harmless" to users. Medical evidence, however, indicated that the drugs might have harmful effects.

Station representatives testified that before accepting the account they had made inquiries to the Federal Trade Commission and had been informed that an action against the manufacturers of the product had been dismissed; however, the FTC had advised the station that the drug should be taken only on advice of a physician.

The Communications Commission held that the station was responsible for a full and careful investigation of all products accepted for advertising, including an investigation of the effects or possible effects of such products on purchasers. However, since the station had discontinued its advertising of "Marmola" some time before the hearing, and since the station's record was otherwise good, the Commission granted license renewal.

--2 F.C.C. 642 (1936).

C-23 WRBL Radio Station decision.

Station WRLB, Columbus, Ga., carried advertising announcements of a "jackpot drawing" for a used car to be given away to the holder of a

"lucky" ticket. Learning of the station's action, the Communications Commission ordered a hearing on renewal of the station's license. In the hearing, detailed information was presented concerning the nature of the "drawing." Tickets to be drawn were issued by the advertiser, a used-car dealer, to purchasers of used cars--and only to such purchasers--and the winner of the car given away was chosen by a "drawing", entirely by chance. The Commission held that since tickets were given only to buyers of merchandise--even though the goods were priced no higher than usual the game constituted a lottery because the elements of "prize" and "chance" were present.

Although the station was guilty of a violation of the anti-lottery provisions of the Communications Act, the Commission found that the objectionable lottery advertising had been dropped prior to the hearing, and that the station's record except on this one point was satisfactory. The Commission accordingly granted license renewal in 1936.

--2 F.C.C. 687 (1936).

C-24 Vandenberg Decision.

During the 1936 Presidential election campaign, the Republican National Committee bought time on the Columbia radio network for the presentation of a political speech by Senator Arthur Vandenberg of Michigan. The contract for sale of time required submission of an advance script. When the script of the proposed program was delivered to CBS offices in Chicago a few hours prior to the time set for broadcast, it was found to provide for a simulated "debate" between Vandenberg and President Franklin D. Roosevelt. The Roosevelt portion of the "debate" was to consist of materials from recordings made of speeches delivered by Roosevelt during the 1932 campaign--in which he took positions on many subjects that were in strong contrast to the positions his administration took after assuming office in 1933--while the Vandenberg "answers" were to be presented "live". At this time, theColumbia Broadcasting System followed the policy of not permitting the use of "dramatized" materials in campaign speeches; in line with this policy, CBS immediately ordered the program cancelled.

However, within minutes following the cancellation, Republican leaders protested to CBS officials in New York. In response to this pressure, CBS quickly reinstated the program, almost at the last minute, and allowed it to go on the air. However, the reinstatement came so late that most CBS stations had already made other plans, and the program was actually carried on only a limited number of the CBS affiliate stations.

Following the broadcast, the Republican National Committee complained to the Communications Commission that the Columbia Broadcasting System had "censored" the Vandenberg talk, in violation of provisions of Section 315 of the Communications Act. The Commission replied, in a letter dated October 20, 1936, that "since Senator Vandenberg was not himself a candidate, the station (CBS) was under no compulsion of law to permit broadcast of the speech.... A broadcast station is not under a public utility obligation to accept all program material offered." In other words the Commission held that CBS had the right to either censor or to refuse entirely the Vandenberg political program, since Section 315 provides special treatment only in the "use" of broadcasting stations by actual qualified candidates for office.

In the Newton case (C-20), the Commission considered only the aspects of the case involving the Communications Act. The same was true of the Vandenberg case. The Republican Committee did have a contract with the network. Although under state law (at least those in most states) the contract would presumably permit a reasonable degree of censorship and modification of materials in the script, complete cancellation of the program might be in violation of the terms of the contract. In a 1945 case in New York state, at least, a state court ruled that once the time has been sold for a political broadcast by a non-candidate, the contract may not be cancelled by the station "unless it had good and sufficient reason" such was inclusion in the script of defamatory material or other material broadcast of which is prohibited by law.

The Commission, however, merely applied the provisions of the Communications Act and of federal law--and did not pass on the violation-of-contract aspects involved.

--Newsweek, Oct. 24, 1936, p. 16; also in Broadcasting, Nov. 1, 1936, p. 87.

C-25 Liberty Broadcasting Co. decision.

Application for a construction permit for a new station was filed with the Communications Commission by the Liberty Broadcasting Co. of Athens, Ga. Before passing on the application, the Commission ordered a hearing. Evidence at the hearings indicated that the company was owned by two chiropractors who for several years had advertised their services on stations in Atlanta, Ga., and had presented paid programs which had repeatedly brought them into conflict with the health authorities both of Atlanta and of the state of Georgia. As a result, the stations which had carried the programs had discontinued them.

The Commission refused to grant the application; one ground for its refusal being the belief that there could be little doubt that the proposed station would be used primarily to advertise the services of its owners. The opinion denying the application noted that the Commission's experience with the ownership of stations by doctors who advertised their own services had been poor, and that it proposed in the future to be extremely careful in granting licenses to members of the healing professions.

--3 F.C.C. 218 (1936).

C-26 Radio Broadcasting Corp. decision.

License renewal of station KTWI in Twin Falls, Id., was questioned by the FCC in 1937 on the basis of certain programs broadcast by the station, one of which was a program known as "The Friendly Thinker." Although the featured personality of this program disclaimed clairvoyant powers and did not represent himself as an "astrologer," he did use the program to advise listeners on business affairs, love and marriage.

In its opinion the Communications Commission did not raise the issue of "point-to-point communication," as it had in the case of station KFEQ's "astrologer" program in 1935 (C-13). However, the Commission held that even though the program personality claimed to have no supernatural powers, programs of this general type were objectionable in that they tended to mislead the public; the test of desirability of such programs, the Commission held was not merely whether supernatural powers are claimed, but whether the listening public is mislead or harmed.

On the basis of the expressed disapproval by the Commission, the

station discontinued the questionable programs, and station license was renewed in 1937.

--4 F.C.C. 125 (1937).

C-27 Twentieth Century Sporting Club vs. Transradio Press Service.

In 1937, the National Broadcasting Company bought exclusive rights to the broadcast of the Louis-Farr heavyweight championship fight from the promoter of the fight, the Twentieth Century Sporting Club. However, Transradio Press, a newsgathering agency providing service to a number of radio stations, advertised that it would provide it subscriber stations with "up-to-the-minute" descriptions of the fight. As a result, Twentieth Century applied to the state courts of New York for an injunction to restrain Transradio from providing such descriptions to its subscribers.

At the trial, representatives of Transradio testified that they intended to "obtain tips" as to the progress of the fight from the NBS broadcast, and that this information would be supplemented by reports from watchers who were to be present at the fight. The New York State court, after hearing the evidence, granted the injunction, holding that Transradio and NBS were in competition with one another, that the Transradio plan called for an unlawful appropriation of the property of the promoter, and that any rebroadcast of the NBC description either by following the original text or by paraphrase would be an infringement on the property rights of the Twentieth Century Sporting Club and of NBC which had purchased exclusive broadcasting rights.

--165 Misc. 71, 300 N.Y.S. 159 (1937).

C-28 Mae West decision.

During December 1937, a broadcast of the Charlie McCarthy program over the NBC network included an "Adam and Eve" sketch, with the role of Adam taken by Charlie McCarthy and that of Eve by the program's special guest, Mae West. Actual lines in the script included nothing objectionable, but the inflections used by Mae West made the lines suggestive, and both the network and the Communications Commission received hundreds of letters from listeners expressing the opinion that the sketch as presented was vulgar and indecent.

After an informal investigation, the Commission decided that the sketch was in fact "vulgar and indecent, and against all proprieties," and in January, 1938 sent a reprimand to the National Broadcasting Co. and to each of the NBC stations which carried the program. The FCC warned stations that it would take into account the carrying of the program over their facilities in passing on license renewal. The letter stated that "each licensee carries his own definite responsibility for the character of the programs he broadcasts, and he must be. . . . held to account, regardless of the origin of the program."

No further action involving the broadcast was taken by the Commission.

--Broadcasting, Dec. 20, 1937, and Jan. 25, 1938.

C-29 KVOS, Inc. decision.

As a result of complaints about news programs including personal attachs upon individuals in the community, the license renewal application of station KVOS, Bellingham, Wa., was set for hearing. Testimony given at the hearing failed to substantiate the "attacks on individuals" charges; however, the fact was brought out that the station had a contract under

which an individual other than the licensee was to present all news programs on time purchased from the station, and which also provided that this individual "had complete jurisdiction" over the content of the news broadcasts he presented. The contract did provide, however, that the arrangement could be terminated at any time, by either party.

The Commission stated that it did not look with favor upon such arrangements because they bordered on illegal transfer of control over some part of the program schedule of the licensee. However, since the station had by contract retained the power to cancel the arrangement at any time, the FCC concluded final control rested in the hands of the licensee; consequently there was no violation of Section 309 of the Communications Act of 1934 which prohibits any transfer of control by the licensee. The station's license was renewed.

--6 F.C.C. 22 (1938).

C-30 Metropolitan Broadcasting Corp. decision.

In a consolidated hearing in 1938 on renewal of licenses of three stations in Brooklyn, N.Y., which shared time on the same frequency, evidence was introduced showing that one of the stations, WMBQ, owned by the Metropolitan Broadcasting Co., was involved in the broadcasting of information concerning a lottery. A local Brooklyn merchants' association had conducted a series of "drawings" of "lucky tickets"; tickets were given only to those who purchased merchandise from members of the association; a drawing was held to determine the "lucky winners"; and prizes were awarded to those whose tickets were drawn. Station WMBQ broadcasted the names of the winners in the drawings as they were held, and also the numbers of winning tickets; this information was given in advertisements paid for by the merchants' aasociation.

The Communications Commission held that this was in direct violation of Section 316 of the Communications Act of 1934 (at that time, the prohibition against broadcasting of lotteries or information concerning lotteries, now a part of the U.S. Criminal Code, was incorporated in Section 316). Because of the station's violations of Section 316, in combination with several other program shortcomings, the Commission refused to renew the license of the station.

Although the station was later granted a rehearing, the FCC's decision in the matter remained unchanged, and station WMBQ's license was deleted in 1939.

--5 F.C.C. 501 (1938).

C-31 "Beyond the Horizon" decision.

During July, 1938, the NBC Blue Network broadcast a radio adaptation of Eugene O'Neill's Pulitzer Prize-winning play, "Beyond the Horizon." The broadcast script, which followed the original O'Neill text as closely as possible, included such expressions as "damnation," "hell," and "for God's sake." Two months after the broadcast, the Federal Communications Commission received a postcard signed by two individuals who had heard the program, complaining about its use of profanity. The Commission made an informal investigation which included a reading of the "as broadcast" script of the program; on the strength of its investigation--and the complaint from the two listeners--it set for hearing the license renewal applications of fourteen stations which had carried the broadcast (the stations selected were those whose licenses were expiring within the next few weeks).

However the Commission's action raised a storm of editorial protest in newspapers at the Commission's interference with the broadcasting of a "work of art." The Commission reconsidered; at its next formal meeting one week later, it voted to recind its action and to cancel the hearings. The fourteen stations were granted license renewal.

--News story in Broadcasting, Oct. 15, 1938, p. 22.

C-32 Young People's Gospel Assn. for the Propagation of the Gospel decision.

Early in 1938, an application was filed with the Communications Commission for authority to construct a new radio station in Philadelphia; applicant was the Young People's Association for the Propagation of the Gospel, a fundamentalist religious group headed by the Rev. Percy Crawford. The application stated that the station would be used primarily to broadcast fundamentalist religious programs. Religious organizations or individuals holding beliefs at variance with those of the applicant would not be permitted to use the station's facilities to present religious programs.

The Commission rejected the application, holding that the "public interest" is not served when the facilities of a station are used for one special purpose and when the station becomes the mouthpiece of a single organization or group. Propaganda stations, according to the FCC, are not consistent with the requirement that stations should present both sides of controversial issues.

Some years later, Rev. Crawford was granted licenses to operate two FM radio stations in two different cities, but applications provided that time would be made available on the stations for religious programs in behalf of a variety of religious beliefs.

--6 F.C.C. 178 (1938).

C-33 KMPC, The Station of the Stars decision.

Complaints filed by Los Angeles area medical societies resulted in a hearing on renewal of the license of KMPC, Beverly Hills, Ca., in 1939. Evidence showed that the station had carried advertising in behalf of a "Basic Science Institute", a chiropractic organization which diagnosed and prescribed medicines for various ailments, and one of whose promoters had been convicted of violating the state Medical Practices Act. Advertising had also been carried for a "Samaritan Institute", which advertised a 48-hour cure for alcoholism conducted by employees practicing medicine without a license, again in violation of state law.

The Communications Commission held that the records of those connected with the two organizations should have warned the station, and that before advertising from either organization had been accepted and put on the air, a very thorough investigation should have been made by the station's operators. However, since the objectionable advertising had been taken off the air some time before the hearing, and the management of the station was completely changed, the Commission granted renewal of the station's license.

--6 F.C.C. 729, 7 F.C.C. 449 (1939).

C-34 FCC "undesirable program materials" Memo.

In March 1939, the Communications Commission released to the press a "memorandum" which had been prepared by its committee on procedure. Fourteen types of program material or program practices which the

Commission regarded as "objectionable" were listed. Their use by stations would be "considered" when those stations applied for license renewal. The materials or practices objected to were the following:

--Defamation.
--Racial or religious intolerence.
--Fortune telling or similar programs.
--Commendation of use of "hard" liquor.
--Obscene programs or those bordering on obscenity.
--Programs depicting torture.
--Excessive suspense in children's programs.
--Excessive use of recordings.
--Promiscuous solicitation of funds.
--Lengthy and frequent advertisements.
--Interruption of artistic programs by advertising.
--False, fraudulent or misleading advertising.
--Espousal by a station of one side of controversial topics.
--Refusal to give equial rights on both sides in controversial discussions.

The Commission later insisted that the "taboos" were not "official prohibitions" but that the memorandum was merely a committee recommendation that the various items listed "be considered" in passing on applications for license renewal.

--Variety, March 8, 1939, p. 40.

C-35 Mau vs. Rio Grande Oil Co.

In 1937, Mau, a chauffeur, was seriously wounded in an attempted holdup. A year later, the incident was dramatized on a program titled "Calling All Cars" which was broadcast over the CBS West Coast network, sponsored by the Rio Grande Oil Co. Mau's name was used on the program without his previous knowledge or consent. Consequently, Mau brought suit for damages against the sponsor of the program, charging that his privacy had been invaded and that as a result of the publicity given him by the broadcast, he had lost his position as chauffeur. Ruling on a motion to dismiss the action, the Federal court of the Northern District of California held in October, 1939 that "the plaintiff's right to be let alone has been violated, and uopn proof of his case he may recover damages."

--28 F. Supp. 845 (N.D. Calif. 1939).

C-36 Clef, Inc. vs. WMBD.

"Mu$ico" was the name given to a syndicated adaptation for radio of the game of "Bingo". It involved identification of musical selections broadcast during the "Mu$ico" program by listeners who mailed in their answers on Bingo-type cards secured from merchants who sponsored the program. The Kroger Grocery and Baking Co. had contracted for time on station WMBD, Peoria, Il., to broadcast a "Mu$ico" program. The station, however, refused to continue the program for the term of the contract on the grounds that the program would violate the lottery section of the Communications Act. The syndication company, Clef, Inc., which owned rights to the program, brought suit in federal district court to test the legality of the "Mu$ico" game. In November, 1939 the court ruled that the program was not a violation of Section 316 (formerly the lottery section) of the Communications Act, since it failed to meet the requirements of a lottery in two respects: there was no "consideration", since listeners who participated paid nothing for the privilege of taking part in the game, and winners were selected on a basis of their skill of recognizing musical numbers played, rather than on a basis of chance. The radio station was ordered to carry out the terms of its first contract with the Kroger Co.

This was one of the first, if not the first, court decision in a matter involving the definition of a lottery, as applied to radio.

--Broadcasting, Aug. 29, 1939.

C-37 Summit Hotel vs. National Broadcasting Co.

In one of his broadcasts on an NBC network program in June, 1935, Al Jolson, MC and comedian on the program, ad libbed the comment, "That's a rotten hotel", referring to the Summit Hotel of Uniontown, Pa. The hotel company filed suit for damages against NBC in Pennsylvania state courts; in spite of NBC's contention that Jolson was an employee of the program's sponsor, the Shell Oil Co., and not of NBC, and that the defamatory remark was ad libbed, the court awarded damages to the hotel in the amount of $15,000. NBC appealed to the state Supreme Court, which in September, 1939 reversed the decision of the lower court, holding that

> A broadcasting company which leases its facilities to another company (the sponsor of a program). . . is not liable for interjected defamatory remarks where is appears that it has exercised due care, and having inspected and edited the script had no reason to believe an extemporaneous defamatory remark would be made. . . . However, where the broadcasting station's own employee makes the remark, the station is liable.

Note that the court enunciated the doctrine of "due care"; also that the broadcasting company is to be held liable for any remarks ad libbed or otherwise, made by its own employee.

--341 Pa. 182, 8 Atl. 2d 302 (1939).

C-38 FCC vs. Sanders Brothers Radio Station.

In 1936, the Telegraph Herald, a Dubeque, Ia., newspaper, applied to the FCC for authorization for a radio station. The application was opposed by the Sanders Brothers, owners of WKBB, already operating in the city, on the grounds that construction of a second station would injure WKBB's economic position, since advertising revenues in Dubuque would not be large enough to support two stations. When the FCC granted the Telegraph Herald application, the Sanders Brothers brought suit in the Court of Appeals for the District of Columbia, charging that the Commission's action would "deprive the existing station's owners of property without due process." The Court of Appeals supported that position, whereupon the FCC appealed to the United States Supreme Court. In a decision in March, 1940, the Supreme Court upheld the FCC in its action in granting authorization for the new station. The court held:

> The Act does not essay to regulate the business of the licensee. The Commission is given no supervisory control of the programs, of business management or of policy. . . . The broadcasting field is open to anyone, provided there be an available frequency over which he can broadcast without interference to others, if he shows his competency, the adequacy of his equipment, and financial ability to make good use of the assigned channel. . . . Resulting economic injury to a rival is not of itself. . . an element which the petitioner (the FCC) must weigh in passing on an application for a broadcast license. If such 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 expressly negates. . . . The policy of the Act is clear that no person is to have anything in nature of a property right as the result of the granting of a license.

The first portion of the materials quoted has often been used to support the contention that the FCC has no legal right to exercise control over programs; however, the Supreme Court took a decidedly contrary position in the National Broadcasting Company case in 1943 (C-49). And while the Court held that the FCC is not required to consider possible economic injury to a licensee, the 1952 amendments to the Communications Act provided that the licensee of an existing station whose operations might be affected by the granting of a license for a new station is a "party at interest", and legally entitled to file objections to the proposed new grant. In addition, in the West Georgia case in 1958 (C-155), a federal Court of Appeals ruled that the Commission is obliged to take economic injury to an existing station into consideration, if such injury would result in an impairment of service to the listening public.

--Telegraph Herald, 4 F.C.C. 392 (1937); Sanders Brothers Radio Station vs. F.C.C., 103 F. 2d (D.C. Cir. 1939); F.C.C. vs. Sanders Brothers Radio Station, 309 U.S. 470 (1940).

C-39 WSAL decision.

In 1938, the FCC authorized construction of a radio station WSAL in Salisbury, Md. Two years later, the Commission discovered that the person to whom the license was granted had misrepresented his financial abilities to build and operate a station, having stated in his application that he had $18,000 available when actually available funds were only about $500. Furthermore, there was a probability that in applying for the station he had acted for someone else, to whom the station was to be turned over at a later time. Accordingly, the Commission in 1940 deleted the license, stating that it could not "escape the responsibility fixed by statute to ascertain the qualifications of applicants by considering truthful statements, and to act accordingly in the granting or refusal of licenses," and also that "communities will be better served by those who truthfully show themselves to be qualified than by persons willing to be used as mere figureheads for others."

--8 F.C.C. 34 (1940).

C-40 Cannon System Ltd. decision.

When Cannon System, Ltd., applied for a construction permit for a radio station in Glendale, Ca., in 1933, the application stated that at least one-third of the station's program time would be devoted to news programs, programs dealing with matters of public importance, or programs on an educational or service nature; it further stated that the station would make use of certain top-flight talent available in the community. When license renewal application for the station--KIEV--was filed in 1940, the Commission found that the programming promises included in the original application had not been carried out; that instead, the station's programming consisted almost entirely of recorded music. The FCC refused to grant a renewal of the station's license until the station took steps to bring its program performance more closely in line with the promises in its original 1933 application.

This is the important "precedent case" in the FCC's consideration of "promise vs. performance" in license renewal.

--8 F.C.C. 207 (1940).

C-41 Phillips vs. WGN.

In 1940, Irna Phillips, by that time a well-known daytime program developer and writer, brought suit in state courts in Illinois to restrain station WGN of Chicago from broadcasting the daytime serial program "Painted Dreams". Evidence presented showed that several years previously, Miss Phillips had been employed by the station as a script writer and had developed the program. Unknown to the station she had copyrighted scripts for the first ten programs on the series. The Illinois court held that in view of her relative inexperience at the time of her employment, any talent in writing that she acquired was developed while working for the station, and that this same lack of prior experience was an indication that her literary product as an employee had to be considered the property of the station. Consequently, the court ruled in favor of WGN, upholding the general rule that, in the absence of any definite contractual provision to the contrary, literary materials developed by an employee on "company time" are considered the property of the employer.

--307 Ill. App. 1, 29 N.E. 2d 849 (1940).

C-42 Mayflower Broadcasting Corp. (I).

In 1939, the Mayflower Broadcasting Corp. applied for a construction permit for a station using the facilities assigned to station WAAB owned by John Shepard III. Mayflower contended that during 1937 and 1938 Shepard had used the Boston station to carry personal editorials upholding causes he personally espoused and supporting candidates for political office whom he favored. Shepard admitted this, although he stated that the policy of editorializing had been discontinued late in 1938. In a January, 1941 decision, the Commission denied the application of the Mayflower company and renewed the license of WAAB, holding that the Mayflower group lacked the necessary financial qualifications, and also that Shepard's editorial broadcasts had been discontinued. However, the Commission took occasion to express its policy with respect to broadcast editorials, staing in its renewalof the WAAB license that "the public interest can never be served by a dedication of any broadcasting facility to (the licensee's) own partisan ends. . . . A broadcaster cannot be an advocate." This decision in effect banned the expression of editorial opinion of any sort by a broadcaster over his own facilities.

The opinion aroused so much unfavorable comment that eight years later, in what is popularly known as the "second Mayflower opinion," the Commission reversed its stand, stating that a licensee has the right to editorialize, but only if he follows the principles of balance and fairness in providing time for discussions of controversial issues.

--8 F.C.C. 333 (1941).

C-43 Cole vs. Phillips H. Lord.

Phillips Lord, a radio program "packager", was sued in state courts of New York by Cole, a former employee, who charged that at the time of his employment by Lord he delivered to the package company a number of scripts of radio programs for possible sale to sponsors. One of the programs in script form, carried the title "Racketeers & Company". The idea and format, according to Cole, was appropriated by the Lord organization and used as the basis of its own radio series, "Mr. District Attorney." Cole asked the courts to order that compensation be given for the use of his format. The Court of Appeals of New York ruled for the plaintiff, holding that "a property right exists in a combination of ideas evolved into a program",

and that "there is a well-recognized right to an original idea or combination of ideas, set forth in a formula for a program. . . . The plaintiff has established a case on the theory of implied contract. He delivered his program formula under circumstances requiring good faith on the part of the defendant. If his formula was used, he has a right to its reasonable value." Consequently, Lord was required to compensate Cole for the program.

--28 N.Y.S. 2d 404, 262 A.D. 116 (1941).

C-44 Mutual Broadcasting System vs. Muzak.

Exclusive rights to broadcast the 1941 World Series baseball games were purchased by the Mutual Broadcasting System, for $100,000. The Muzak Corporation, engaged in the business of feeding musical program materials by wire to restaurants, stores and other places of business in New York City, proposed to pick up the Mutual World Series broadcasts in their entirety, and to feed them to Muzak subscribers over telephone lines. Mutual asked the New York state courts for an injunction, restraining Muzak from using its broadcast materials in this manner. The New York court granted the injunction, holding that Muzak's proposed action constituted unfair competition.

--30 N.Y.S. 2d 419, 177 Misc. 489 (1941).

C-45 Josephson vs. Knickerbocker Broadcasting Co.

Plaintiff Josephson brought an action for damages against station WMCA in New York City, charging that in a political speech broadcast over the station's facilities, he had been defamed. The station's defense was that the speech had been presented by a candidate for office; that by the Communications Act the station was prohibited from censoring the speech; that prior to broadcast, station employees had examined the script of the talk and the script did not include the defamatory materials the candidate presented; and that the defamation, consequently, has been interpolated into the speech on an ad lib basis, without warning. The New York court in a 1942 decision upheld the station's contentions, ruling that since the Communications Act imposes certain restrictions on stations with respect to speeches by candidates, it is only fair that stations be granted corresponding immunities. The court held that in this particular case the station had shown that it had exercised "due care" in the selection of the speakers permitted to use the station's facilities, and in making an advance examination of the script. Consequently, the station should not be held responsible for defamatory materials introduced extemporaneously.

In this case, two elements are involved: first, liability for defamation in a talk by a candidate, in a situation in which by federal law censorship by the station is prohibited; second, the idea of the exercise of "due care".

--38 N.Y.S. 2d 986, 179 Misc. 787 (1942).

C-46 Code of Wartime Practices.

Shortly after the beginning of World War II, a U.S. Office of Censorship was created by executive order to exercise supervision over materials published or broadcast that had any relation to war conditions. Of course, censorship of the press (and by Supreme Court decision, the word "press" includes radio) is a violation of the First Amendment to the Constitution, which provides that Congress may enact no law which abridges freedom of the press. Accordingly, regulations of the Office of Censorship were to be observed "voluntarily" by publishers and broadcasters; the Office claimed for itself no power over materials, but only the right to "suggest" what

materials were unsuitable for broadcast, with the actual task of censorship left to the individual publisher or broadcaster. However, it's very reasonable to assume that those who did not "voluntarily" conform to the censorship standards might be in serious trouble. There are laws which prohibit the giving of "aid and comfort to the enemy", and in the case of broadcasters, there is always the problem of license renewal. But there was no instance of any significant variation from the censorship standards imposed, on the part of any publisher or broadcaster.

In February, 1942 the Office of Censorship released a printed booklet titled "Code of Wartime Practices", listing types of materials not to be broadcast. Prohibited materials included information concerning location or movements of troop units, movements of ships or convoys, location of military bases or fortifications, disposition of military aircraft, figures concerning the extent of production of war materials, foodstuffs or anything which might have military significance, and any but the most general information about damage resulting from enemy attacks or casualties incurred by American or Allied forces. Also prohibited was the broadcasting of any information whatever, direct or indirect, concerning weather conditions in any part of the United States.

Broadcasters were asked in addition to eliminate from schedules any "man-on-the-street" or other interview programs in which people other than station employees or well-known local citizens could have access to a microphone, as well as any type of "request" programs in which certain musical numbers would be played in response to telephoned requests, or notices of club meetings or their cancellation, etc., based on telephoned information. The purpose was to prevent the use of such programs of possible coded information which might be picked up by enemy submarines or other enemy agents.

The national networks in particular went considerably further than the code requirements in restricting the use of materials which might cause panic or in any way alarm or depress the public. The Office of Censorship terminated its activities at the end of the war with Japan in 1945.

--U.S. Office of Censorship, "Code of Wartime Practices", 1942.

C-47 Federated Publications decision.

In a hearing on renewal of the license of station WELL, Battle Creek, Mi., evidence was presented showing that the station's owners had entered into a written contract with a recently-employed station manager which provided that he was to receive all profits and to assume personally all losses resulting from operation of the station, and was to have a free hand in running the station, in all matters other than those of editorial policy. The Commission held that this was an improper delegation of the responsibilities of a licensee. However, the hearing revealed that in spite of the terms of the written contract, the owners actually had retained general control of the station and supervision over both programs and general business policies; consequently there had been, in fact, no actual "transfer of control" to the manager. Upon the cancellation of the written contract between owners and manager, the station's license was renewed.

--9 F.C.C. 150 (1942).

C-48 Voliva vs. Station WCBD.

Wilbur Glenn Voliva, head of a religious sect with headquarters in Zion City, Il., contracted for a series of religious broadcasts to be

presented over WCBD in Chicago. When the series started, the station insisted that Voliva submit scripts of the talks to be presented, prior to each broadcast. When Voliva failed to submit the required scripts, the station refused to allow him to go on the air. Voliva then asked an Illinois state court for an injunction compelling the station to fulfil its contract and allow him to make the broadcasts, without submission of an advance script. His argument was that doctrines of his church required him to speak extemporaneously, on the basis of "inspiration". In a 1942 decision, an Illinois court of appeals refused to issue the injunction, holding that the station's requirement of an advance script was not censorship as prohibited by the Communications Act, and holding further that failure of the station to supervise and to exercise final control over the content of its programs might be considered as a failure to exercise the duties of a licensee, and result in a loss of the station's license.

This is one of the important decisions relating to the right of a station to exercise complete control over materials broadcast over its facilities.

--313 Ill. App. 177, 39 N.E. 2d 685 (1942).

C-49 NBC vs. United States.

In 1941, the Communications Commission announced proposed new regulations, among which were several dealing with relations between networks and their affiliated stations. The Communications Act gave the Commission no power to regulate or license networks; consequently the proposed regulations used an indirect approach, announcing that "no license would be granted to any broadcasting station" which had a contract with a network company operating more than one national radio network, or a contract giving the network an option on more than a specified number of hours of the station's time each day, and so on.

The National Broadcasting Co--the only network company operating two national networks and consequently the direct target of one portion of the Commission's network regulations--brought an action in the federal district court for the southern district of New York, challenging the authority of the Commission, to issue the regulations. In 1943 the United States Supreme Court upheld the right of the Communications Commission to issue and enforce the regulations. The Court's decision read in part as follows:

> The Act itself established that the Commission's powers are not limited to the engineering and technical aspects of regulation of radio communication. Yet we are asked to regard the Commission as a kind of traffic officer, policing the wave lengths to prevent stations from interfering with each other. But the Act does not restrict the Commission merely to supervision of the traffic. It puts upon the Commission the burden of determining the composition of that traffic. . . . The facilities of radio are not large enough to accommodate all who wish to use them. Methods must be devised for choosing from among the many who apply. Since Congress itself could not do this, it committed the task to the Commission. . . . The Commission was not left at large in performing this duty; the touchstone provided by Congress was the "public interest, convenience or necessity", a criterion which is as concrete as the complication factors for judgment in such a field of delegated authority permit. . . . This

criterion is not to be interpreted as setting up a standard so indefinite as to confer an unlimited power.

In spite of the final sentence quoted, the decision upheld the rather general right of the Communications Commission to "determine the composition of the traffic", or in other words, what things may be broadcast, as well as holding that powers granted the Commission by the Communications Act are broad enough to cover the regulations in question.

--47 F. Supp. 940 (S.D.N.Y., 1942).

C-50 Radio Corp. of America, Transferor, and American Broadcasting Company, Transferee.

The Communications Commissions network broadcasting regulations announced in 1941 forced the National Broadcasting Co. to dispose of one of its two radio networks. In 1943, NBC arranged to sell its Blue Network to Edward J. Noble; since the properties to be sold included three network-owned "key" stations, the sale had to receive the approval of the FCC. In a hearing held in September, 1943, members of the Commission seemed, according to trade paper reports, to be most interested in the policies Noble proposed to follow with respect to sale of time for discussion of controversial issues; a general policy statement which at the time of sale served as a basis of operations for the Blue Network included a provision that the network would not provide time, on a paid basis, for the discussion of controversial issues. As a result of questions raised by representatives of the Commission, Noble late in September filed with the FCC a formal written statement promising that the network, under his ownership, would "refrain from adopting any restriction which will automatically rule out certain types of programs on the basis of the identity of the individual or organization sponsoring or offering them", and that "consideration would be given to the use of time on a commercial basis for the discussion of controversial issues". On the basis of Noble's statements concerning policies to be followed in relation to discussions of controversial issues, the Commission in 1943 gave its approval to the purchase of the network by the new owner, who shortly thereafter changed the name of the network to the American Broadcasting Company.

--10 F.C.C. 212 (1943).

C-51 Associated Press vs. United States.

The by-laws of the Associated Press prohibited AP service to non-members, prohibiting members from furnishing spontaneous news to non-members, and empowered members to block membership applications of competitors. A contract between AP and a Canadian press association obliged both to furnish news exclusively to each other. Charging that these conditions constituted violation of the Sherman Anti-Trust Act, the U.S. Government sought and received an injunction against Associated Press and AP members. The District Court issued summary judgment (no trial) because there was no dispute of fact concerning these issues. The Supreme Court upheld the District Court.

--52 F. Supp. 362 (S.D.N.Y. 1943), 326 U.S. 1 (1945).

C-52 Ashbacker Radio Corp. vs. FCC.

In 1944 the Fetzer Broadcasting Co. filed with the Commission an application for authority to construct a new broadcasting station at Grand Rapids, Mi., to operate on 1230 kc. with 250 watts power, and unlimited time. In May, before the Fetzer application had been acted upon, Ashbacker Radio Corp. filed an application for authority to change the

operating frequency of its station WKBZ of of Muskegon, Mi., from 1490 kc. with 250 watts power, unlimited time to 1230 kc. The Commission stated that simultaneous operation of the Fetzer and Ashbacker stations would cause intolerable interference, and granted Fetzer its application. WKBZ requested a hearing but was denied. The case went to the Supreme Court in 1945 where it was decided that where two bona fide applications are mutually exclusive the granting of one without a hearing to both deprives the loser of the opportunity which Congress chose to give him. The grant of the Fetzer application was nullified.

--326 U.S. 327 (1945).

C-53 United Broadcasting Co. decision.

On the basis of complaints filed by the United Auto Workers, the Communications Commission in 1945 ordered a hearing on renewal of the license of WHKC (now WTVN), of Columbus, Ohio. The union charged that the station had refused to sell time to the union for the presentation of the union position on controversial issues, while carrying sponsored network commentators who showed a strong anti-union bias; although the station did make time available to the union on a sustaining basis, it exercised a rigid censorship on the content of such union-presented programs. The station's position was that in refusing to sell time to the union, it was simply conforming to provisions of the Code of Practices of the National Association of Broadcasters, which prohibited sale of time to membership organizations, including unions, and which also forbade the sale of time for one-sided presentations on controversial issues.

Before the hearing was concluded, the station filed with the FCC a proposed revised statement--one which had union approval--of its policies concerning the handling of controversial issues; the statement pledged the station to selling time to union organizations, as well as making time available on a free basis; it also indicated that the station would sell time for one-sided presentations on controversial issues; finally it stated that the station would not censor scripts involving discussions of controversial issues except to eliminate materials believed to be contrary to law. The Commission approved the revised policy statement, and granted license renewal to the station, stating in its renewal that "the spirit of the Communications Act of 1934 requires radio to be an instrument of free speech", and that "operation of any station under the extreme principle that no time may be sold for the discussion of controversial issues is inconsistent with the concept of public interest".

One result of the FCC opinion was that the NAB eliminated from its code the provisions opposing sale of time for discussion of controversial issues.

--10 F.C.C. 515, 5 F.F. 799 (1945).

C-54 McIntire vs. William Penn Broadcasting Co.

Early in 1945, the new owners of station WPEN in Philadelphia notified several organizations which were sponsoring religious programs on the station that contracts for purchase of time for such programs would not be renewed, and that in the future WPEN would carry religious broadcasts only on a sustaining basis--with the organizations in question not included among those to whom free time would be given. The religious organizations whose programs were cancelled, headed by Rev. Carl McIntire, petitioned the FCC to compel the station to carry their programs. The Commission refused, stating that the Communications Act gave it no power

to require any station to carry any specific program.

McIntire appealed to federal courts, charging that in refusing to sell him time while giving free time to other religious groups, the station had discriminated against him. A Federal Court of Appeals decided against McIntire, holding that "a radio station is not a public utility which must sell its services to anyone who wishes to buy; instead, the licensee is free to make his own choice of what programs he broadcasts, to sell time as he sees fit and to allow free time on the same basis."

McIntire next appealed to the United States Supreme Court, which in 1946 refused to review the lower court's decision.

This decision is important in its making clear that a station is not a "public utility" and that a licensee may sell time or refuse to sell time, at his own discretion.

--FCC Letter to Carl McIntire, April 24, 1945; McIntire vs. William Penn Broadcasting Co., 151 F. 2d 597 (3rd Cir. 1945), 327 U.S. 779, cert. den. (1946).

C-55 Stephens Broadcasting Co.

During the 1944 primary election campaign in Louisiana, E.A. Stephens, candidate for the Democratic nomination for U.S. senator, broadcast a series of political talks over station WDSU in New Orleans--a station of which he was a part owner--in the choice time period from 7:45 p.m. to 8 p.m. When his opponent in the primary, Sen. John Overton, sought to buy time on the station, he was told that because of the station's commercial schedule, no time was available for his use until after 10:30 p.m. Overton complained to the Commission, which ordered a hearing on WDSU's license renewal. The FCC renewed the license, since testimony at the hearing indicated that the action concerning the providing of time for Overton had been taken by the station's manager without the knowledge of the owners.

However, the Commission condemned the action taken, stating that "the obligation of providing equal opportunity" for opposing candidates for public office" is not discharged merely by offering the same amount of time to each candidate. Quantity alone is not the sole determining factor. . . . A station licensee has the duty to cancel such previously scheduled programs as may be necessary to clear time for broadcasts of programs in the public interest," of course including broadcasts by candidates.

--11 F.C.C. 61, 3 R.R. 1 (1945).

C-56 Powel Crosley Jr. (AVCO decision).

When in 1945 Powel Crosley, major stockholder in the Crosley Corp. which in turn was the licensee of WLW in Cincinnati, wished to transfer his stockholdings in the corporation and various other business enterprises to the Aviation Corp. (AVCO) for a total consideration of some $22 million, the Communications Commission approved the transfer, but pointed out that the case revealed "a basic infirmity of the Communications Act", in that a station owner which retires from the business has "for all practical purposes, the power to select successor", and often with little regard for the public interest rather than the financial aspects of the transfer.

Consequently, the Commission set up a series of new procedures to be followed, whenever a licensee petitions for approval of a transfer of his license to a new proposed owner. First, the terms of the proposed transfer were to be published by the seller, and the same terms offered to any other interested buyer. Second, the FCC will take no action of the proposed sale for a period of 60 days, to permit other interested buyers to make

similar offers. Third, if no second buyer appears, the sale to the original proposed buyer will be considered by the FCC on its merits, with or without a hearing as the Commission may decide. Fourth, if other buyers do appear, offering the same terms as the original buyer, the Commission will choose among all of the available bidders, selecting the one a transfer to whom would be most in line with public interest (in most cases, a comparative hearing would be required before final decision was made.)

This new "AVCO rule" was put into effect with respect to all proposed transfers involving sale of any station or of a majority stock interest in a station. Stations objected on the grounds that the complicated procedure often prevented them from completing a sale until a long time had elapsed, or at an advantageous price. However, the rule remained in effect until enactment of the McFarland Bill in 1952, amending the Communications Act of 1934 (subsection "b" of Section 310) and limiting transfer proceedings to a determination of whether the prospective new licensee was qualified.

--11 F.C.C. 3, 3 R.R. 6 (1945).

C-57 Rose vs. Brown.

During the 1944 political campaign, Rose, who was not a candidate, signed a contract for a political talk with WSAY in Rochester, Ny. When Rose submitted his advance script, the station notified him that the broadcast was cancelled, since Rose was not representing a political party which had candidates on the official New York ballot. Rose asked a New York state court for an injunction to require the station to carry out the contract. The Court which heard the case granted the injunction, stating that since Rose was not himself a candidate, the station had been under no legal requirement to sell him time. However, since the station had sold that time, and a contract had been signed, the station was legally bound to carry out the provisions of the contract. In the opinion of the Court, the fact that Rose was not a member of a party with candidates on the official ballot was not in itself a sufficient reason for cancellation of a contract. However, the Court added, if the script submitted had included defamatory material, then the station would have been justified in refusing to carry the broadcast.

Note that the point at issue here is simply the enforcement of a contract to buy time. Since Rose was not a candidate, provisions of Section 315 of the Communications Act on providing equal time and on censorship of script do not apply.

--58 N.Y.S. 2d 604, 186 Misc. 553 (1945).

C-58 The "Blue Book" Memorandum (Public Service Responsibility of Broadcast Licensees).

On March 7, 1946 The Federal Communications Commission released a lengthly memorandum carrying the title, "The Public Service Responsibility of Broadcast Licensees"; because of the color of the booklet's cover, it is more familiarily known as the "Blue Book". The memorandum outlined in considerable detail what the Commission regarded as the basic requirements of "serving the public interest", and emphasized that in the future much greater attention would be given to the type of program service provided by stations in considering renewals of station licenses.

Promise vs. performance. First, the Blue Book called attention to the wide disparity existing in some cases between programming promises made by stations at the time of their original licensing or when applying

for increases in power, and the actual program schedules provided by those stations. The Commission promised that in the future, it would give due attention to a comparison of application promises with actual records of performance in passing on applications for license renewals.

Tests of program service. Next, the Blue Book outlined a number of basic tests of the quality of program service. To provide programs which would serve the public interest, the Commission stated that a station would be expected

(a) to schedule a "sufficiently large" number of sustaining programs to insure "well-rounded" program structure;
(b) to carry a "sufficient quantity" of "local live" programs, with such programs not "crowded out of the best listening hours";
(c) to provide programs "in reasonable sufficiency" devoted to discussions of important public issues;
(d) to provide program time on a non-paid basis, serving the interests of local non-profit organizations: religious, civic, agricultural, labor, educational, and the like;
(e) to schedule programs "serving particular minority tastes and interests", such as programs of classical music; and
(f) to see that the time devoted to advertising "bears a reasonable relationship to the amount of time devoted to programs.

The Blue Book also registered the Commission's displeasure with the failture of network affiliates to carry the "good" programs provided by the networks on a sustaining basis, such as forum discussions and symphony broadcasts; figures were provided which indicated that in most cases, such programs were scheduled by not more than one-third of the stations to which they were offered.

The Commission also expressed its disapproval of the inclusion on the stations of "too many" daytime serials or "soap operas", and of too great a quantity of recorded music in daytime schedules. No objection was registered to these types of programs per se; only to their overuse in a manner preventing the possibility of "program balance".

Overcommercialization. Particular stress was laid in the Commission's memorandum on the problem of overcommercialization. The report cited statistics indicating that during the month of January, 1955, 67 percent of the total program hours of all 50 kw stations, and 61 per cent of the total program hours of all 5 kw commercial stations, were devoted to the broadcasting of commercial programs. In addition, the commission cited certain stations which carried no sustaining programs whatever in what was referred to as "good listening time", between the hours of 6 p.m. and 11 p.m.

Also objected to was the over-use of commercial spot announcements. One station was mentioned which in a single week broadcast 2,215 commercial announcements, or an average of nearly 17 such announcements per hour of broadcasting. Other stations were cited which had carried as many as five or six commercial announcements consecutively, with no intervening entertainment material. In the area of overcommercialization, too, the Commission expressed its disapproval of the scheduling of commercial announcements within the body of news broadcasts.

At the same time that the Blue Book was released, the Commission announced that a revised form of license applications and license renewal applications would be used in the future--one which required stations to indicate in their application the approximate proportions of their total

broadcasting time which would be devoted to local as opposed to network programs; the approximate proportion of total broadcasting hours, daytime and evening separately, which would be used for commercially sponsored or participating commercial programs; the approximate number of commercial spot announcements which would be scheduled each week; and the amount of time to be devoted each week respectively to news, talks, religious programs, agricultural programs, educational programs, programs for local civic groups, and entertainment programs--as well as the proportion of time to be used for programs of recorded music. Furthermore, the practice was instituted of requiring each station applying for license renewal to provide a similar table giving an analysis of the station's actual program during a "composite week"--days throughout the year, chosen by the Commission--in the year immediately preceding the application for renewal of the station's license. This made it possible for the Commission to make a very direct comparison of "promises" with "performance", in considering license renewals.

The Blue Book was greeted by strong expressions of disapproval by leaders of the radio industry who saw in it an attempt by the Commission to exercise a much greater and more direct influence over station programming than had been exercised in the past. However, no legal action opposing the Commission's memorandum was attempted; the Blue Book was, after all, only a "memorandum" expressing the point of view of the Commission with respect to programming; furthermore, the writers of the Blue Book had very pointedly avoided the providing of any specific requirements in the field of programming. Stations were cautioned against carrying "too many" soap operas, or "too many" spot announcements, or against devoting "too great" a proportion of total broadcasting hours to commercial programs. But the Blue Book did not specify how many programs or how many hours were "too many". That was left up to the judgment of the individual licensee.

The Blue Book represents the first attempt by the FCC to outline in detail its standards and tests for determining whether or not a station is operating "in the public interest". It unquestionably has had an influence on the programming activities of stations for a number of years. The principles have been emphasized frequently in granting licenses to television stations, and the idea of "promise vs. performance" emphasized in the Blue Book has become what is perhaps the Commission's most effective tool in exerting pressure on programming practices of both television and radio stations.

--Federal Communications Commission, Public Service Responsibility of Broadcast Licensees, March 7, 1946.

C-59 Elmhurst vs. Shoreham Hotel.

In June, 1944 news commentator Drew Pearson reported in his weekly broadcast over the ABC network that Ernest F. Elmhurst, a defendant in sedition trials then in progress, was working as a bartender in the Shoreham Hotel in Washington in a position which enabled him to overhear private conversations between high government officials. As a result, Elmhurst was dismissed from his position by the hotel. Elmhurst brought suit in a federal court against the hotel, Pearson and the network, charing that Pearson's broadcast had been an invasion of his privacy. When the district court ruled against him, Elmhurst carried the case to the Court of Appeals for the District of Columbia. The Appeals Court in a 1946 decision upheld the lower court, stating that "the appellant's misfortune in being a defendant in a nationally discussed sedition trial

made him an object of legitimate public interest", and that consequently Pearson had a legal right to comment on Elmhurst's activities out of the courtroom. The Court stated that "the principle is well established that one who becomes involved in the news must pay the price of such publicity be being subjected to news reports concerning his private life".

--153 F. 2d 467 (C.D.D.A. 1946).

C-60 Robert H. Scott decision.

Early in 1945, Robert H. Scott petitioned the FCC to deny renewal of the licenses of KOW and two other San Francisco stations on the grounds that the stations had refused to provide time for a discussion of atheism although they gave time to various religious groups. The stations took the position that it was not in the public interest to represent views that would be obnoxious to a tremendous majority of listeners. In July, 1946, the Commission renewed the licenses of the three stations, but expressed the opinion that "any rigid policy that time should not be provided for the presentation of views which have a high degree of unpopularity" is contrary to the public interest, and not consistent with the concept of free speech.

The Commission was widely criticized for its opinion, and evidently modified its views as a result. When Scott in 1949 again asked the FCC to revoke the licenses of four California stations which had refused to carry his broadcasts in behalf of atheism, the Commission responded to Scott by saying that the situation was not one in which "the stations have denied equal opportunity for the presentation of a controversial issue of public importance. There is no obligation on the part of the station to grant the request of any and all persons for time to state their views".

--11 F.C.C. 372, 3 R.R. 259 (1946); 5 R.R. 59 (1949).

C-61 Arkansas-Oklahoma Broadcasting Corp. decision.

Rival applicants for construction permits for a new radio station in Ft. Smith, Ar., appeared in a comparative hearing held early in 1945. One of the applicants, owner of both daily newspapers in the Ft. Smith area, was charged with having violated the Robinson-Patman act by refusing to sell advertising space in his newspapers to advertisers who bought space in a competing local weekly newspaper; however, it was established that the unfair practices in question had taken place prior to the present owner's acquisition of the two daily newspapers, and that no charges were pending against the newspaper owner applicant. However, in a decision in August, 1946, the Commission awarded the facility to the non-newspaper applicant, the Arkansas-Oklahoma Broadcasting Corp., stating that the alleged violation of the Robinson-Patman act illustrated "the evils which may more readily be created when there exists an undue concentration of control of the media of mass communication in a single community", which would be the case, in the Commission's opinion, "were the owner the only two daily newspapers in a community also to become the owner of one of the community's two broadcasting stations".

This is the first case in which the Commission gave any indication of a reluctance to grant broadcasting facilities to owners of newspapers in the community. Of about 830 commercial stations on the air at the beginning of 1945, some 266 were licensed either to newspapers or to individuals or corporations with newspaper interests.

--3 R.R. 479 (1946).

C-62 WOKO vs. F.C.C.

In October 1942, license renewal application of WOKO, Albany, N.Y., was set for hearing on the basis of reported false statements in the application. In the hearing, evidence was presented that over a period of 12 years the station's owners, in renewal applications, had concealed the fact that a one-fourth interest in the station was owned by a former CBS executive who had aided the station in securing a CBS affiliation. In 1945 the FCC issued an order denying license renewal on the basis of the false statements made in the applications. The station appealed to a Federal Court of Appeals, which in January, 1946 reversed the Commission's action. This decision in turn was appealed by the FCC to the United States Supreme Court, which late in 1946, by unanimous vote, upheld the Commission in its action revoking the license of the station. The Commission thereupon ordered the station off the air.

--153 F. 2d 623 (D.C.C.A. 1946), 329 U.S. 223 (1946).

C-63 Albuquerque Broadcasting Co. decision.

On the basis of complaints concerning content of political speeches delivered over KOB, Albuquerque, N.M., by Larry Bynon, a candidate for nomination for Congress, the FCC in 1946 sent an investigator to New Mexico to look into the situation. The investigator discovered that the Bynon broadcasts had been identified by KOB on the air as having been paid for by a newspaper which Bynon owned; however, he also discovered that the newspaper had not had sufficient funds to make it probable that this was the actual source of the money paid to the station for time used by Bynon. The station, called to account for its action by the Commission, stated that it had been informed by Bynon that funds used to pay for some of Bynon's broadcasts had been donated to the newspaper by "anonymous citizens", and paid by the newspaper to the station. The owners of KOB also asked for clarification of the section of the Act of 1934 dealing with identification of sponsorship of political programs, and stated that until such clarification was provided by the FCC, the station would refuse to carry any political broadcasts.

In a letter written to owners of the station during the summer of 1946, the Commission stated that Section 317 of the Act makes mandatory an announcement of the identity of the sponsor in all cases where a station receives consideration, and that if a political candidate "desires to purchase time at a cost apparently disproportionate to his personal ability to pay, the licensee should make an investigation of the actual source of the funds to be used for payment".

As to the station's proposal to refuse further requests for political time, the Commission said that "the possibility of difficulties does not justify a licensee in adopting a general rule that it will not make time available for discussions of controversial issues or for broadcasts by duly qualified candidates. . . . Such refusal is inconsistent with the concept of public interest established . . . as the criterion of radio regulation".

--3 R. R. 1820 (1946).

C-64 Regents of New Mexico College vs. Albuquerque Broadcasting Co.

Prior to 1935, station KOB in Albuquerque, N.M., was owned by the University of New Mexico. In that year, the station was sold to a private corporation; one stipulation in the sales contract was that the

University retained an option on one hour each day of the station's time, to be used for programs presented by the University with no time payment to the station. The University exercised this option and presented programs over the station's facilities for a number of years. In 1946, however, considerable friction developed between the station's management and authorities of the University, partly over the University's demand for the use of "prime time", and partly as a result of the station's dissatisfaction with the quality of the programs presented. Upon failure of the station to provide the time periods desired, the University appealed to a federal court to require the station to live up to provisions of the contract. In January, 1947, the Federal Court of Appeals in Denver ruled against the University, holding that the contract giving the University control over a portion of the station's time was not valid, since it required surrender by the licensee over a degree of control over the programs broadcast. In the language of the Court.

> A radio station may not by private contract limit its right or duty to select programs. . . . The college may not choose specific hours for broadcasts or demand radio time without first submitting its proposed program to the broadcasting station for determination by the station whether the program is in the public interest.

This was the first court case involving a "time reservation contract" in which the seller of a station retains rights over certain periods of time on that station, following the sale.

--158 F. 2d 900 (10th Cir. 1947), 14 F.C.C. 288, 778 (1948).

C-65 Buffalo Broadcasting Corp. (Churchill Tabernacle decision).

Radio station WKBW of Buffalo, N.Y., originally licensed to the Churchill Evangelical Association, was sold in 1930 to a private commercial operator. One of the terms of the sale agreement was that Churchill was to have a certain number of hours of free time on the station each week, for a period of 100 years, for the broadcast of religious programs. The arrangement continued in effect until 1946, when the Communications Commission, which had not previously questioned the time-reservation agreement, refused to grant a renewal of the station's license on the grounds that the commercial licensee, the Buffalo Broadcasting Corp., was not exercising full control over the programs it broadcast, as a result of the provisions of its contract with the Churchill Tabernacle, as the religious organization was then called. To retain its license, the station cancelled its contract with the Tabernacle; the Tabernacle brought suit against the broadcasting company for breach of contract. The case was finally settled out of court by the offer of Churchill Tabernacle to re-purchase the station for $375,000. The Communications Commission approved the sale, and granted a renewal of the station's license--but to the new owner.

This is one of the best-known incidents involving problems resulting from a time-reservation contract. A considerable number of stations originally owned by religious or educational organizations were sold to commercial operators with similar time-reservation provisions in the sales contract. In 1949, the Communications Commission adopted a regulation prohibiting any further transfers of stations in which time-reserving provisions were a part of the sales agreement, and also ordering that all then-existing time-reservation arrangements must be terminated not later than

1964--giving the parties a period of 15 years to work out new agreements.
--3 R.R. 1386 (1947).

C-66 Mester vs. United States.

Late in 1944, Arde Bulova, licensee of WOV in New York City, arranged to sell the station to two brothers, Murray and Meyer Mester. The Communications Commission, in a decision in March, 1946, refused to approve the transfer, since the prospective purchasers had been in difficulties with the Federal Trade Commision as a result of false representations they had made as to the purity of the olive oil of which they were distributors. The Commission held that the Mesters "had shown a lack of sense of responsibility toward the public", and could not be entrusted with the "higher degree of public responsibility required of licensees of a radio station". Consequently, the Mesters could not be approved as purchasers of the station.

The Mesters appealed to a federal district court in New York, which upheld the Commission's decision. Appeal was then taken to the United States Supreme Court, which refused to take the case under consideration.

--11 F.C.C. 137 (1946), 70 F. Supp. (S.D.N.Y. 1947), 332 U.S. 749, cert. den. (1947).

C-67 Community Broadcasting Co.

One of the stations specifically cited for program shortcomings in the 1946 Blue Book was WTOL, Toledo, OL, which had been put on temporary license by the FCC in 1944, pending a Commission decision as to the policy to be followed with respect to overcommercialization. The record showed that in a typical week, only 8 per cent of the station's time was used to present sustaining programs, with less than 1 per cent of the time between 6 p.m. and midnight sustaining; that fewer than 15 per cent of the station's broadcasting hours were used to present local live programs; and that in some participating programs, as many as seven commercial announcements were inserted in each 15-minute program period. As a result of the Commission's action, the station made substantial improvements in its programming operations; consequently, in August, 1947 the Commission granted license renewal, on the grounds that the shortcomings cited in relation to the station's earlier operations had been corrected.

One such shortcoming mentioned in the renewal decision was "the employment of a general manager on an incentive pay contract under which the manager's income was directly related to the amount of gross time sales". A factor in the granting of license renewal was the promise that "in the future, no person connected with the programming of the station will be compensated on an incentive pay basis".

--12 F.C.C. 85, 3 R.R. 1360 (1947).

C-68 Homer P. Rainey decision.

In the Texas Democratic primary campaign of 1946, 14 men were candidates for nomination for governor, among them Homer P. Rainey. To prevent their listeners from being overwhelmed with political talks, the four Texas stations constituting the Texas Quality Network applied a policy, first adopted in 1940, under which time sold by the four stations as a network was to be limited to two 15-minute periods for each candidate for the nomination of governor, the exact time to be used by each candidate being determined by lot. Rainey, who wished to buy a greater amount of time on the stations, complained to the FCC that this was an "arbitrary limitation"

and that he was being discriminated against, since the newspapers which owned the four stations comprising the network all were opposing his candidacy. In a hearing held in Dallas in early July, at which all candidates in the primary were given opportunity to appear, all of the candidates except Rainey stated that they felt that the TQN stations were providing "equal opportunity" to all candidates for the governorship.

In an opinion released in 1947, the Commission questioned the desirability of concerted action among the four stations in applying any policy (the stations had dropped the joint policy by this time), but ruled that individually any station was entirely within its rights in limiting the total amount of time which would be made available to any one candidate, provided that all candidates for any given office were afforded equal treatment.

--11 F.C.C. 898, 3 R.R. 737 (1947).

C-69 Chavez vs. Hollywood Post No. 43.

In November, 1947, Chavez, a professional boxer, asked the California Superior Court of Los Angeles for an injunction to prevent the broadcasting of a television station, W6XAO (now KTSL-TV) of Los Angeles, of a boxing match in which he was scheduled the following month. Chavez stated that in his contract with the promoter of the boxing match called only for performance within the confines of the American Legion Stadium in which the fight was to be held; consequently that the broadcasting of the event would be an invasion of his privacy and would call for "services rendered without payment to him". The court refused the injunction, holding that the right of privacy was not involved, and that the promoter of the boxing show was the owner of the right to televise the match, that right being included in the right to present the contest before a paid audience, there being no provision in the promoter's contract with the boxer to the contrary.

--16 U.S.L.W. 2362 (1947).

C-70 Port Huron Broadcasting Co. decision.

Carl E. Muir, candidate for election to the City Council of Port Huron, Mi., contracted with station WHLS in that city for time to present a political speech in March, 1945. When Muir submitted his script, the station refused to broadcast the talk on the grounds that Muir planned to make "unwarranted attacks" against other city councilmen. Muir complained to the FCC; a hearing was held in November, 1945, but the Commission did not make final decision until June, 1948. At that time, the station license was renewed, but the Commission held that the station's action was illegal censorship of a talk by a political candidate. The Commission's opinion stated that

> If licensees are going to take it upon themselves to censor . . . they in effect set themselves up as sole arbiters of what is true and what is false, what is in fact libel and what is not, an exercise of power which may readily be influenced by their own sympathies and allegiances. . . . The assumption of a right to censor "possibly libelous" material or statements which "might subject the station to a suit" would give the station a positive weapon of discrimination between contesting candidates which is precisely the opposite of what congress intended.

The Commission, however, did make clear that its definition of censorship extended only to deletion of materials believed to be libelous or defamatory, but not to the elimination of profanity, obscene materials, and the like. The opinion continued

> The censorship prohibited under Section 315 of the Act includes the refusal to broadcast a speech by a candidate because of the allegedly libelous or slanderous content of the speech. Nothing in this opinion is intended to indicate that the licensee is necessarily without power to prevent materials in violation of the Communications Act or any other Federal law on broadcasting.
>
> --12 F.C.C. 1069, 4 R.R. 1 (1948).

C-71 News Syndicate decision.

During 1947, applicants for radio license grants in the New York City area included 17 applicants for assignments to the five FM channels available in the area. In a proposed decision following an extensive hearing, the FCC included the New York Daily News as one of the five applicants to which FM authorizations were to be granted. The American Jewish Committee opposed the awarding of a license to the Daily News, charging that the newspaper had shown bias against Jews in its news stories and editorials. After an examination of the evidence, the FCC issued a statement to the effect that the claim of bias was not sufficiently substantiated to justify refusal of a license on that basis. However, when the Commission released its final decision, the name of another applicant had been substituted for that of the Daily News in the list of successful applicants for the five FM channels, and no license was granted to the Daily News. In its opinion the Commission stated that "we have repeatedly recognized that in competitive applications, if all other factors are equal, the public interest is better served by preferring non-newspaper applicants over newspaper applicants, since this promotes diversity in the ownership of media of mass communication".

However, later in 1948 a television station owned by the Daily News, WPIX(TV), inaugurated service in the New York area.

--12 F.C.C. 805, 4 R.R. 205 (1948).

C-72 Capital Broadcasting Co. decision.

When WWDC, an AM radio station in Washington, D.C., applied for authorization for an FM station in 1946, the Commission refused to grant the FM license until the station promised to discontinue the broadcasting of a daily 3-hour broadcast of race track results. Later, three other Washington stations inaugurated racetrack programs of similar nature without objection from the Commission. In October, 1947 WWDC asked the FCC whether its license would be jeapordized if it resumed its racetrack programs, since inability to carry such programs placed the station at a competitive disadvantage. The Commission refused to make a declatory ruling, but in renewing the WWDC license in 1948, issued a statement giving its general views on racetrack programs.

According to the Commission's 1948 statement, racetrack broadcasts as such are not necessarily undesirable; racing is not illegal under federal laws, and information concerning results of races may be of interest to listeners. However, under certain circumstances, racetrack broadcasts may become undesirable: when a large proportion of the

station's time is devoted to such programs at the expense of other forms of service to the listening public; when such detailed information is given concerning track conditions, weights carried, names of jockeys, and so forth, that the broadcasts would be of substantial interest only to those who wager on races; or when racetrack programs are sponsored by "tip sheets" or are of such a nature as to encourage illegal gambling.

--4 R.R. 21 (1948).

C-73 Wayne M. Nelson decision.

After the action taken by the Communications Commission in 1934 and 1935 against the carrying of broadcasts by astrologers and mindreaders by radio stations, programs of this nature virtually disappeared from the air. However, the Commission discovered in December, 1947 that station WEGO, Concord, N.C., was carrying a program featuring "El Haren", a self-styled astrologer and fortune teller. The station was put on temporary license, pending a hearing on license renewal; the FCC wished to discover whether "programs consisting of fortune-telling or astrological readings by their nature tend to deceive or mislead the public", and also the amount of station time devoted by WEGO to "such programs", and the amount devoted to the airing of "important public issues". The station immediately cancelled the program; on the basis of its assurances that such programs would not be scheduled in the future, it was restored to regular license basis.

--12 F.C.C. 1091 (1948).

C-74 Federal Broadcasting System vs. American Broadcasting Co.

Station WSAY of Rochester, N.Y., had special contracts with both the American Broadcasting Company and Mutual under which both networks provided the station with program service. Each of the networks asked the station's owner to sign a regular network affiliation contract; on his refusal, both networks cancelled their arrangements with WSAY early in 1948, so that the station received no network programs. The owner of the station applied to a federal district court for an injunction to restrain ABC from refusing to provide its programs for WSAY use. When the district court refused to issue the injunction, WSAY carried its case to a federal court of appeals. The Court of Appeals in April, 1948 held that "a network is not a common carrier; it therefore has the right, in the absence of concerted action, to make such contracts as it chooses for the distribution of its programs". The Court also pointed out that many of the major provisions of the standard network affiliation contract had been specifically sanctioned by the Communications Commission in its network broadcasting regulations.

--167 F. 2d 349 (C.A. 2d 1948), 4 R.R. 2019 (1948).

C-75 Sam Morris decision.

During the primary election campaign in the late spring of 1948, station KRLD of Dallas, Texas, sold time to candidates for the Democratic nomination for U.S. Senator. Later, Rev. Sam Morris, Prohibitionist candidate for the Senate, attempted to buy time on the station for a campaign talk; the station refused to make the time available. Morris complained to the FCC, contending that although the station's facilities had not been used by his Democratic opponent during the regular election campaign, the opponent had appeared on the station's programs while a

candidate for the Democratic nomination; as a result, Morris contended that he was entitled to "equal opportunity".

The Commission, in a letter written to Morris, held that KRLD was completely within its rights, since it was refusing to sell time to all candidates for the U.S. Senate in the regular election, Morris included--but his opponents in the election as well. The Commission's letter pointed out that while both primary elections and regular elections are included under the provisions of Section 315 of the Communications Act, such elections must be considered as independent of each other, and "equal opportunities" called for in Section 315 need to be afforded only to legally qualified candidates for the same office, in the same election.

--4 R.R. 885 (1948).

C-76 Simmons vs. F.C.C.

In 1945, Allen T. Simmons, licensee of 5-kw WADC in Akron, Ohio, applied to the FCC for a change in frequency to 1220 kc and an increase in power to 50 kw. WGAR of Cleveland, only 50 miles from Akron, also applied for a power increase to 50 kw on the 1220 kc frequency to which it was already assigned. Following a comparative hearing on the two applications in 1946, the Commission in April, 1947 granted the application of WGAR, leaving WADC to operate on its original frequency and with power of only 5 kw.

Basis of the Commission's decision was the WGAR promised to provide a program service which the FCC considered superior to that offered by WADC; WGAR proposed to give strong emphasis to local programs, while WADC announced its intention to carry CBS network programs without interruption when ever such programs were available.

Simmons appealed the Commission's decision to the Federal Court of Appeals, contending that such consideration of the future programming plans of an applicant was "censorship", as prohibited by the Communications Act. The Court of Appeals in May, 1948 upheld the action of the Commission, ruling that the denial of the WADC application on the basis of its proposed programming did not constitute "censorship" by the Commission. Simmons appealed this decision to the United States Supreme Court, but the Supreme Court in October, 1948 refused to review the case.

--11 F.C.C. 1160 (1947), 145 F. 2d 578 (D.C. Cir. 1948), 4 R.R. 2023 (1948), 335 U.S. 846, cert. den. (1948).

C-77 Kelly vs. Hoffman.

In a defamation suit brought against WTTM of Trenton, N.J., the plaintiff, who was the director of public safety for the city of Trenton, stated in his complaint that the defamatory remarks were made by a news commentator Arthur D. Hoffman on a program sponsored by the local newspaper. The station and Hoffman were made co-defendants in the suit. The New Jersey state trial court eliminated the station from the action on grounds that the complaint had failed to state that WTTM had not exercised "due care" in trying to prevent Hoffman's remarks. However, the state Court of Appeals reversed this ruling and reinstated the case against the station. The appeals court held that a station can be held legally responsible for defamatory remarks made on the sponsored programs it broadcasts, unless it can prove that it exercised "due care", but still unable to prevent the broadcast of the defamatory materials.

According to the New Jersey Court of Appeals decision, the burden of proof with respect to a "due care" defense rests with the defandant station.

--137 N.J.L. 695, 61 A. 2d 143 (1948), 74 A. 2d 922 (1950).

C-78 U.S. vs. Paramount Pictures Corp.

The U.S. Juctice Department brought an action under the Sherman Anti-Trust Act against Paramount Pictures, Loew's, Radio-Keith-Orpheum, Warner Brothers, with Twentieth Century-Fox, Columbia Pictures, Universal, and United Artists, charging monopoly and/or restraint of trade in the distribution of motion pictures to theaters. The case finally was heard in the Supreme Court of the United States.

Broadcasting enters into the case only through the fact that the Supreme Court's opinion, written by Justice Douglas, includes the following:

> We have no doubt that moving pictures, like newspapers and radio are included in the press whose freedom is guaranteed by the First Amendment. That issue would be focussed here if we had any question concerning monopoly in the production of moving pictures. But monopoly in production was eliminated as an issue in these cases, as we have noted. [emphasis added].

The decision is significant for broadcasters because of the Court's specific inclusion of radio as a part of "the press" freedom of which is guaranteed in the First Amendment.

--334 U.S. 131 (1948).

C-79 Bay State Beacon vs. F.C.C.

Two rival concerns, the Cur-Nan Co. and Bay State Beacon, filed applications in 1947 for the same broadcasting facility in Brockton, M.A. Following a hearing, the Communications Commission granted the Cur-Nan application, noting in its decision that "the programs plans of Cur-Nan Company stand cut as superior in that they provide for a maximum limitation on commercial programs" the limit being set at 60 per cent of the station's total broadcasting time. The opinion continued, "Cur-Nan Company is committed to reserving at least twice as much sustaining time as Bay State Beacon, with which to achieve overall balance of program subject matter".

Bay State Beacon appealed the decision. In December, 1948, the U.S. Court of Appeals for the District of Columbia upheld the Commission's action, stating that the test applied by the Commission was "public convenience, interest or necessity", and that the Commission had found substantial evidence that the Cur-Nan Co. had a "more realistic approach to the needs of the community to be served" than had its rival, Bay State Beacon.

--12 F.C.C. 567 (1948), 171 F. 2d 826 (D.C. Cir. 1948), 4 R.R. 2109 (1948).

C-80 Kentucky Broadcasting Corp. vs. F.C.C.

Station WINN of Louisville, K.Y., filed application in 1947 for a tranfer of assignment to the 1080 kc frequency with an increase in power; application for the same facilities was also filed by Mid-American Broadcasting Corp., which proposed to build a new station. In an October, 1947 decision the FCC gave the frequency to Mid-American, noting that the Mid-American promise of extensive local programming was preferred over the

program service proposed by WINN. The opinion also commented on the past programming activities of WINN, noting that the station had carried very few sustaining programs; that during March, 1946 the station had carried only one local sustaining program a day over the period from 5 a.m. to 6 p.m., with this program only five minutes in length. The Commission also commented on the fact that WINN carried an unusually heavy schedule of sponsored religious programs.

Owners of WINN appealed to the courts. In April, 1949 the U.S. Court of Appeals for the District of Columbia upheld the FCC action, stating that the Commission was "completely correct" in favoring Mid-American on the basis of the "far superior local program service" that company would provide.

--12 F.C.C. 282, 3 R.R. 1547 (1947), 174 F 2d 38 (D.C. Cir. 1949), 4 R.R. 2126 (1949).

C-81 Bremer Broadcasting Corp. vs. North Jersey Broadcasting Co.

Station WAAT in Paterson, N.J., featured programs of "hillbilly" music. Three of the station's programs, representing a total of 33 hours of broadcasting per week, made use of the word "Frolic" in their titles. In 1949, a WAAT "personality" was employed by a rival station, WPAT, also of Paterson, which immediately featured him as the master of ceremonies of a new program called "Dave Miller's Frolic". Owners of WAAT asked the New Jersey courts to prohibit the use of the world "Frolic" in the new program's title, claiming that the word had become so closely identified with WAAT that its use by another station would deprive WAAT of a valuable business asset.

In December, 1949, the New Jersey Superior Court issued the injunction demanded, restraining the rival station from the use of the word "Frolic" in the title of its program.

--N.J. Superior Ct., Essex County, Docket C-793-49 (1949).

C-82 Johnston Broadcasting Co. vs. F.C.C.

Two Alabama stations, WTNB of Birmingham and WJLD of Bessemer, made application for increases in power and assignment to the 850 kc frequency. Following a hearing, the FCC in December, 1947 awarded the facility to WTNB--in part at least on the basis of the comparative program plans submitted by the two applicants. Johnston Broadcasting Co., the unsuccessful applicant, appealed to federal courts to have the award to WJLD set aside on the grounds that in considering comparative program plans of the rival applicants the Commission had engaged in program censorship.

The Court of Appeals for the District of Columbia in a May, 1949 decision nedied that consideration of program plans of the applicants by the FCC constituted censorship in violation of the provisions of the Communications Act. The Court held that in passing on competitive applications, it is the obligation of the FCC to take into account all material differences between the applicants, including the type of programs which each applicant proposes to broadcast.

The Court did, however, find that the WTNB application had been improperly prepared, and ordered the Commission to rehear the case. The Commission held a second hearing, again awarding the facility to WTNB.

--3 R.R. 1784 (1947), 175 F. 2d 351 (D.C. Cir. 1949) 4 R.R. 2138 (1949).

C-83 Peterson vs. KMTR Radio Corp.

Joseph Peterson, professional swimmer in the Buster Crabbe Aquacade, filed suit for damages against TV station KLAC-TV of Los Angeles, owned by the KMTR Radio Corp. His charge was that the station had made a motion picture film of his Aquacade act and had broadcast it over television for profit--which he charged was an invasion of his privacy. In a 1949 decision, the California Superior Court of Los Angeles County dismissed the charges, holding that "a performer in a public show where other persons attend thereby waives his right of privacy as far as that performance is concerned."

The Court also ruled that in the absence of specific reservation with respect to broadcasting rights in the contract between an entertainer and his employer, television rights for paid performances belong to the employer or promoter; consequently there was no violation of Peterson's property rights by the broadcast.

--L.A. Superior Ct., Docket 55755 (1949).

C-84 Opinion of Editorializing by Broadcasters (Second Mayflower Opinion).

In its decision in the Mayflower case in 1941, the FCC took the position that a broadcasting licensee has no right to present editorial opinion over his own station--a position widely criticized in newspapers and magazines, as well as by broadcasters, as a possible violation of the right of freedom of speech. In 1949, the Commission reversed its stand with respect to editorializing by broadcasters. In a memorandum opinion released in June, 1949, the Commission discussed in detail the obligations of a licensee to provide "balance" in discussions of important public issues, and to insure equality of opportunity for the presentation of all sides of any public question at issue.

The statement concluded that under the circumstances, "overt licensee editorializing, within reasonable limits and subject to the general requirements of fairness detailed above, is not contrary to the public interest."

This statement, usually referred to as the "second Mayflower"--from the point of view of the Commission--"legalized" the presentation of editorial opinion by a licensee or his employee over facilities of his station, but specifically on condition that the station's facilities are also made available to spokesmen for opposing points of view.

--13 F.C.C. 1246, 1 R.R. 991, (1949).

C-85 New Jersey Council of Christian Churches decision.

The ultra-fundamentalist New Jersey Council of Christian Churches, headed by the Rev. Carl McIntire, protested the granting of license renewal to station WCAM of Camden, N.J., charging that the station had refused to renew its contract for the sale of time to the Council, and that it claimed the right to censor the materials broadcast by the group on free time. The Council contended that it was entitled to "equal opportunity" with other religious groups to broadcast its programs over the station's facilities. In a memorandum opinion issued in October, 1949, the Communicaions Commission stated that if a licensee provides a reasonable amount of sustaining time for religious purposes, a decision to to sell additional time commercially "is clearly within the area of discretion in which licensees are free to make decisions concerning the operation of their stations." Furthermore, the Commission could see nothing wrong in the station's restricting the use of free radio time to the purpose for which it was

granted, or in "refusing to allow any of the participants" in religious programs "to make attacks on other church groups or to indulge in name calling."

--5 R.R. 1014 (1949).

C-86 Mansfield Journal Co. vs. F.C.C.

In 1947 the Mansfield Journal of Mansfield, Ohio, owned by Samuel A. and Isadore Horvitz, applied for authorizations for both an AM and an FM radio station to be constructed in Mansfield. Because of charges made against the newspaper, a hearing was ordered on the application. Evidence alleged that the newspaper had "harrassed local merchants" to prevent their purchasing of advertising time on existing radio stations in the area, had attempted to force advertisers to sign exclusive advertising contracts, had refused to sell space to some advertisers who were already advertising over near-by stations, and had refused to publish the program log of the existing station in Mansfield. Applicants stated at the hearing that if granted a license, they would publish the program log of their own station but not those of other stations in the area.

In a decision made final in July, 1948, the FCC refused to grant the Journal's application, stating the "diversification of the control of the media of communication and the avoidance of monopoly" were considerations which must be upheld in the granting of licenses to stations.

The Horvitz brothers appealed to the courts, charging that in considering newspaper advertising practices, the Commission had exceeded its authority and had violated their freedom of the press. The U.S. Court of Appeals for the District of Columbia in January, 1959 upheld the action of the Commission, stating that since Congress had intended that there be competition in broadcasting, "monopoly in mass communication of news and broadcast licenses, the FCC had a right to consider monopolistic practices, and that such consideration by the FCC was not in violation of freedom of the press.

--13 F.C.C. 23, 229 (1948), 3 R.R. 2014 (1948), 180 F. 2d 28 (D.C. Cir. 1950), 5 R.R. 2074 (1950).

C-87 Regents of Georgia vs. Carroll.

In 1943, the Regents of the Georgia School of Technology, licensee of station WGST in Atlanta, contracted with Southern Broadcasting Stations, Inc. to manage and operate the station for a percentage of the station's earnings. In 1945, the FCC held that such a contract constituted an illegal transfer of control, sufficient to bar renewal of the station's license as long as the contract was in effect. The Regents consequently cancelled the contract, after which license renewal was granted by the FCC.

Southern, however, brought suit in Georgia state courts for breach of contract; in 1949, the Georgia Supreme Court ruled in favor of Southern, and awarded 155 thousand dollars in damages. The Regents appealed this decision to the United States Supreme Court, which in February, 1950 affirmed the verdict of the Georgia state court. In its opinion the United States Supreme Court stated that the FCC has the right to impose upon a licensee the conditions which must be met before license is renewed, but that the need of meeting such conditions cannot nullify or lesson the licensee's legal obligations to a third party when those obligations are set forth in a written contract. At the same time, the

Court stated that the judgment of a state court cannot be allowed to undermine the efforts of the FCC to enforce the provisions of the Communications Act.

In other words, the licensee was obligated to meet the requirements of the FCC, but was also legally liable to damages for the cancellation of a written contract, even if the contract had to be cancelled to meet the requirements for license renewal.

--3 R.R. 45 (1945), 338 U.S. 586, 5 R.R. 2083 (1950).

C-88 Voice of Cullman decision.

The Communications Commission late in 1949 granted a construction permit for a new station in Cullman, Al. Licensee of WKUL, already operating in Cullman, petitioned for reconsideration, charging that there was not enough advertising revenue available to support two stations, and that establishment of a second station would lead to a degrading of service and possibly to bankruptcy of both stations and loss of service entirely to listeners in the area.

The Commission denied the protest of Cullman Broadcasting, owner of WKUL, and affirmed its grant of authorization to the new company, Voice of Cullman, stating that it did not believe that

> The results of establishing two stations in an area which allegedly can support only one can be foreseen. One station may rapidly drive the other out of business; both stations may survive either by attracting additional revenue or by reducing expenses without necessarily degrading their program service, since quality of service cannot be measured by cost alone. . . . Against speculative injury to the public interest as a result of competition we must weigh the very real and permanent injury to the public which would result from restriction of competition. . . . The Commission has determined that, as a matter of policy, the possible results of competition will be disregarded in passing on applications for new broadcast stations.

The FCC position was later modified as a result of the Court's decision in the West Georgia case; in several decisions in the early 1960s the Commission took results of competition strongly into consideration.

--6 R.R. 164 (1950).

C-89 O'Brien vs. Columbia Broadcasting System.

In a 1942 CBS network broadcast of "Melody Ranch", starring Gene Autry, a dramatization was presented of an actual Air Force rescue which took place off the coast of Alaska in December, 1941. Army Air Force Col. Frank L. O'Brien, "hero" of the rescue, brought suit for damages against CBS, charging that in order to build up the part played by Autry, O'Brien's part in the rescue was made to seem inferior and O'Brien himself was represented as being "cowardly and incompetent" in the dramatization. A Federal district court in Chicago held that the dramatization was an invasion of O'Brien's privacy, and awarded $7,500 in damages.

--Variety, March 8, 1950.

C-90 New Broadcasting Co. decision.

During January, 1950, station WLIB of New York City broadcast a series of editorial programs advocating Congressional enactment of a national Fair

Employment Practices Act, but aired no programs presenting an opposing point of view. In response to an inquiry from the FCC, Morris S. Novik, manager of the station, said that the station had received several hundred letters upholding the station's editorial position, but had received no requests for time for presentation of a reply to the editorials.

In a letter to the station in April, 1959, the Commission held that it is not enough for a station to be willing to make time available for opposing views, but that if it editorializes, it has "an affirmative duty to seek out and encourage" the broadcasting of such opposing views. The FCC's "seek out" mandate was applied only to replies to editorials presented by the station; it did not indicate or imply that a similar obligations might exist when the station merely carries a program in which individuals not connected with the station express one-sided views relating to controversial issues.

The requirement of "seeking out" opposing points of view was emphasized in all FCC letters written to stations dealing with responsibilities relating to editorializing until the middle of 1959. However, in a letter to WNOE-TV in July, 1959 and in subsequent letters, use of the expression "seek out" was dropped, and stations warned that they have a "duty to aid and encourage opposing views" if they editorialize.

--6 R.R. 258 (1950).

C-91 Screen Test vs. American Broadcasting Co.

During the winter of 1943-44, Robert Monroe and LathamOwens broadcast a package radio program which they owned under the title, "Screen Test." The program was carried by the Mutual Broadcasting System, and was not aired after 1944. In 1948 a package television program owned by Lester Lewis was carried on the ABC television network under the title "Hollywood Screen Test." Monroe and Owens brought suit for damages against Lewis and the network in New York state courts, contending that the title "Screen Test" had become so well known as to amount to a "practical trademark," and that Lewis's title amounted to an infringement on the plantiffs' property rights. The New York state court in a decision in the Spring of 1950 dismissed the action, holding that non-use of the title between 1944 and 1948 constituted an abandonment of any rights to the title the plaintiffs might have acquired through its use prior to 1944.

--97 N.Y.S. 2d 372 (1950).

C-92 Detroit Evening News Assn. decision.

During a United Auto Workers strike against the Chrysler company in 1950, the union attempted to buy time on station WWJ in Detroit to present the "union point of view" on the issues involved in the strike. The station refused to sell time but offered to provide time without charge in a weekly series continuing as long as the strike lasted, with the provision that the union and the Chrysler company would use the time jointly for a two-sided presentation. The company refused the offer. The union thereupon complained to the FCC, which on April 21, 1950 wrote a letter to the station condemning the position it had taken, and stating that if the licensee had decided that the subject was of sufficient interest to receive broadcast attention, it is obviously not in the public interest to allow representatives of one point of view to exercise a veto power over the entire presentation.

The Commission's opinion is, of course, directly in line with that taken in the WHKC case in upholding use of one-sided presentations on

In granting renewal to the CBS key station in New York a year after the Dewey talk, however, the Commission commented on the Fitzgerald protest and the CBS denial of time to reply to the Dewey report. The FCC statement, released in July, 1950, said that the Commission recognized that "public officials may be permitted to use radio facilities to report on their stewardship, and the mere claim that the subject is political does not automatically require that the opposite political party be given equal facilities for reply."

--6 R.R. 543 (1950).

C-96 Port Frere Broadcasting Co. decision.

In a 1949 hearing on license renewal of station WTUX Wilmington, De., it was established that the station broadcast a six-hour program each day featuring racetrack information from several major tracks, giving betting odds, track conditions and names of jockeys, and also giving results of races within four or five minutes of their completion. The station had a contract with a racing "tip sheet" to provide advance information about races that would be of special interest to those who wished to place bets on races. Wilmington police testified that illegal bookmaking establishments in the area depended on the WTUX program for information on winners of races.

As a result, the FCC in October, 1950 ordered the station's license revoked, holding that the carrying of a six-hour racetrack program each day resulted in "program imbalance," and that giving race results over the air almost immediately after the running of each race aided illegal gambling.

The licensee of the station, Port Frere Broadcasting Co., petitioned for a rehearing, contending that numerous other stations, including some in the Wilmington area, were broadcasting similar racetrack programs without objection from the FCC. Pending further investigation, the Commission allowed WTUX to remain on the air on a temporary license basis. Early in 1951, the FCC sent a questionnaire to all licensed stations inquiring into their practices with respect to racetrack programs, with the result that 16 additional stations were put on temporary license.

As these stations filed with the Commission agreements not to broadcast racetrack programs which included materials of the types to which the Commission had objected in the WTUX case, they were restored to regular license status. In addition, the Commission withdrew its revocation order against WTUX and restored it to regular license in June, 1952, on its direct promise not to carry objectionable racetrack programs in the future.

--F.C.C. Memo 45663 (1950), 5 R.R. 1137 (1952).

C-97 Sharkey vs. National Broadcasting Co.

In 1950, Jack Sharkey, former heavyweight boxing champion, brought suit for damages against the National Broadcasting Co. and sponsors of the "Greatest Fights" series, charging that the broadcasting of a film of a fight in which he had participated several years eariler was an invasion of his privacy.

When NBC filed a motion for dismissal of the suit, the motion was rejected by the U.S. District Court for the Southern District of New York. In its rejection of the NBC motion the Court did not pass on Sharkey's right to damages; it held, however, that nothing in the complaint supported the NBC contention that the broadcast of the film on television was "merely dissemination of news;" it further ruled that Sharkey as a former

paid time as opposed to a policy of presenting controversial discussion only on a two-sided basis, and on sustaining time.

--6 R.R. 282 (1950).

C-93 Stanley vs. Columbia Broadcasting System.

During 1948, Jack Stanley submitted to the Columbia Broadcasting System a proposal for a program to be titled "Preview Parade," which called for radio presentation of adaptations of scenarios submitted to motion picture companies to serve as the basis of motion pictures. Stanley's proposal included the use of a prominent motion picture figure to serve as "host" of the radio series. It also called for listeners to the radio program to be invited to send in their opinions of each show broadcast as the possible basis of a feature motion picture, and their suggestions for its casting as a motion picture, with a cash prize awarded for the best suggestion submitted each week. CBS rejected Stanley's proposal, but later in the same year put on the air a program titled "Hollywood Preview" which included every one of the elements in the format that Stanley had suggested.

Stanley brought suit against CBS, charging "piracy" of his idea and format. In July, 1950 the California Supreme Court awarded $35,000 in damages to Stanley, holding that while there is nothing new or novel in any of the elements included in the Stanley format, the combination of those various elements in the idea or format for a single radio program makes that combination "new and novel," and one in which its author has certain rights of ownership.

--221 P. 2d 73 (Cal. S. Ct. 1950).

C-94 Massachusetts Universalist Convention vs. Holdreth & Rogers Co.

When the Massachusetts Universalist Convention contracted with radio station WSAW in Lawrence, Ma., for the broadcast of a weekly series of religious programs, the contract included a clause giving the station the right to reject programs considered unsuitable. The script for the program submitted for broadcast on Easter Sunday 1949 questioned the divinity of Christ and the credibility of the story of the Resurrection. The station accordingly refused to broadcast that program.

The Universalists asked the federal district court in Boston for an injunction requiring the station to broadcast the same script; since it was too late for broadcast on Easter in 1949, they asked that the station be required to broadcast the program on Easter Sunday in 1950. When the district court refused to issue the injunction, the Universalists appealed to the federal circuit court of appeals for Massachusetts, which in a decision in July, 1950 affirmed the decision of the Federal district court, restating the district court's opinion that "a licensee is obliged to reserve to himself the final decision as to what programs will best serve the public interest."

--183 F. 2d 497 (1st Cir. 1950), 5 R.R. 2073 (1950).

C-95 Paul E. Fitzpatrick decision.

Paul E. Fitzpatrick, New York Democratic chairman, complained to the FCC that CBS had carried over a state-wide network a "Report to the People" by New York Gov. Thomas E. Dewey; that the "report" was in reality a political speech. But when Fitzpatrick had asked the network for equal time on the same stations, CBS refused to grant it arguing that Dewey had spoken in his capacity as chief executive of the state. The FCC asked CBS to file a statement of its position, but took no further action at the time.

professional boxer had not so completely lost his right of privacy as to have lost the right to challenge the unauthorized use of his name and picture for advertising purposes.

In 1956, in the Ettore case, a similar court ruling was upheld by the United States Supreme Court.

--93 F. Supp. 986 (S.D.N.Y. 1950).

C-98 DuMont Laboratories vs. Carroll.

In January, 1949, the Pennsylvania State Board of Film Censorship, authorized by state law to pass in advance on films shown in motion picture theaters, adopted a regulation requiring all films which were to be shown on television by Pennsylvania television stations first to be submitted to the Board for review. Suit was filed in a federal district court for Eastern Pennsylvania by the five television stations then operating in the state, to determine the legality of the Board's requirement. In October, 1949, the Court ruled that the Censorship Board's order was illegal. Since television was interstate in its nature and subject only to federal regulation, it was not within the jurisdiction of a state agency.

The Board appealed this decision to the 3rd U.S. Circuit Court of Appeals, which in 1950 upheld the ruling of the lower court. The decision of the Court of Appeals stated that "television broadcasting is in interstate commerce; this is inherent in its very nature. . . . Congress has occupied fully the field of television regulation, and that field is no longer open to the states."

The Board of Censorship appealed to the United States Supreme Court, which in February, 1951 refused to review the case.

--86 F. Supp. 813 (E.D. Pa. 1949), 184 F. 2d 153 (1950), 6 R.R. 2045 (1950), 340 U.S. 939, cert. den. (1951).

C-99 Alberty vs. FTC.

Alberty, an ad agency was charged by the FTC with disseminating false drug advertisements amounting to "unfair and deceptive acts or practices in commerce." The Commission claimed the drug has no beneficial effect upon the blood except in cases of simple iron-deficiency anemia and that there are many causes of run-down conditions and lack of energy which will not be beneficially affected by the drug. The Commission required that the advertiser tell the public that his product is more frequently valueless than it is valuable.

The Court of Appeals ruled that the Commission went too far when it attempted to require the advertiser of a drug admittedly beneficial in one ailment to state affirmatively that there are other ailments not reached. The Court modified the order of the FTC but upheld it.

--44 F.T.C. 475 (1948), 182 F. 2d (C.D. Cir. 1950), 340 U.S. 818 cert. den. (1950), 47 F.T.C. 705 (1950).

C-100 Felix vs. Westinghouse.

Late in October, 1949, radio stations KYW, WFIL and WCAU of Philadelphia all broadcast a transcribed political talk by William F. Meade, chairman of the Republican Central Committee of Philadelphia. In the talk, statements were made implying Communist leanings on the part of David H. Felix, Democratic candidate for a municipal office. Felix brought suit for damages against each of the three stations in the federal

district court for Eastern Pennsylvania, charging that he had been libelled in the broadcasts.

The defendant stations contended that they could not be held liable, since Section 315 of the Communications Act prohibits censorship of a political speech by the licensee of a broadcasting station. The district court upheld the stations' contention and dismissed the suit, finding that "if a candidate for office who authorizes another to make an address in the furtherance of his campaign for office does not thereby 'use' the station within the meaning of Section 315 of the Communications Act, the purpose of the Section fails."

Felix appealed to the 3rd U.S. Circuit Court of Appeals, which in December, 1950 reversed the decision of the lower court. The Court of Appeals held that

> The language of Section 315 itself and its legislative history compel the conclusion that the section applies only to the use of a broadcasting station by a candidate personally, and that it does not apply to the use of such station by other persons speaking in the interest or support of a candidate [emphasis added].

On the basis of this interpretation, the stations would not have been barred by law from censoring the talk given by non-candidate Meade and removing the defamatory material.

The stations involved appealed to the United States Supreme Court, which in April, 1951 refused to review the case. The interpretation of Section 315 provided by the Court of Appeals stood.

This is the important "precedent" case in defining, for the first time, the meaning of "use of a station by a qualified candidate" in Section 315 of the Communications Act. On the basis of the Court of Appeals decision, only an actual qualified candidate, personally appearing on the station, is accorded the right of "equal opportunity" and freedom from censorship. Non-candidates do not enjoy these rights.

--89 F. Supp. 740 (E.D. Pa. 1950), 6 R.R. 2014 (1950), 186 F.2d 1 (3rd Cir. 1950), 341 U.S. 909, cert. den. (1951).

C-101 Scripps-Howard Radio vs. F.C.C.

Following a comparative hearing on the applications of Cleveland Broadcasting and Scripps-Howard Radio, owned by the Scripps-Howard newspaper chain, for a new standard-band station in Cleveland, Ohio, the Communications Commission granted the application of the non-newspaper group. One issue given considerable weight in the Commission's ruling was the desirability of diversification of control of agencies of mass communication.

Scripps-Howard appealed to the courts. In 1951, the U.S. Court of Appeals for the District of Columbia upheld the FCC's ruling that ownership of a newspaper in the area to be served was a factor to be considered in making a choice between two applicants. The court noted that

> In Associated Press vs. United States, ... the Supreme Court said that "the widest possible dissemination of information from diverse and antagonistic sources is essential to the public welfare." . . . In considering the public interest the Commission is well within the law when, in choosing between two applicants, it attaches emphasis to the fact that one, in contrast with the other,

> is disassociated from existing media of mass communication in the area affected. . . . Where one applicant is free of association with the existing media of communication and the other is not, the Commission, in the interest of competition and consequent diversity. . . may let its judgment be influenced favorably toward the applicant whose situation promises to promote diversity.

Scripps-Howard appealed to the United States Supreme Court, which refused to review the lower court's decision.

--4 R.R. 525 (1949), 189 F. 2d 677 (D.C. Cir. 1951), 342 U.S. 830, cert. den. (1951).

C-102 Hearst Radio, Inc. decision.

In the FCC's "Blue Book," released in March, 1946, one of the stations cited for unsatisfactory programming and for failure to carry out promises made in license application was 50 kw. WBAL in Baltimore, owned by Hearst Radio. The station was already on temporary license because of program shortcomings. In September, 1946, newspaper columists Drew Pearson and Robert Allen filed application with the Commission for a new station which would use the same facilities previously assigned to WBAL. A hearing on the new application and on license renewal for WBAL was held in the winter of 1947-48; from evidence presented it was found that WBAL had greatly improved its program service following release of the "Blue Book," and had corrected the shortcomings to which the FCC had referred in that publication. However, no action was taken on either the Pearson-Allen application or on WBAL's application for license renewal. WBAL remained on the air on a temporary license until the spring of 1951, when the Commission by a 3-2 vote renewed the WBAL license and denied the application of Pearson and Allen, stating in its opinion that "WBAL has made a practical demonstration of its ability to render a well-rounded program presentation covering the needs of its service area. . . . While the proposed programs of the contesting applicant are meritorious, we must prefer WBAL on the basis of its actual performance."

This is one of the few cases in which a new applicant has filed application for the use of facilities already used by a licensee, where a grant of the new application would necessarily force the station of the existing licensee off the air.

--6 R.R. 944 (1951).

C-103 Independent Broadcasting Co. vs. F.C.C.

In October, 1946, the FCC granted application of Rev. J. Harold Smith for a construction permit for a new radio station in Knoxville, Tn.; the station went on the air with temporary authorization in July, 1947. The following month the Commission announced that a hearing would be required before a regular license was issued. In the hearing, held in October, 1947, various facts were brought out which bore on the "qualifications" of Smith to be a station licensee: that in his application he had failed to mention that he held a substantial ownership interest in a Mexican border station; that at various times in the past he had bought time on stations in South Carolina and Tennessee for religious programs on which he had made such bitter and vicious attacks on other religious faiths that the stations had refused to sell him further time; that he was the owner of a publication in which similar attacks were made on other religious groups and in which he had urged the public to boycott advertisers whose products were sold over stations which had refused to sell him time; that he was, in

the words of the Commission report, "a religious rackotear" and a "fomenter of racial disturbances" who used in his broadcasts on other stations "descriptive language and epithets which are exceedingly vituperative, extremely vindictive, unfair, unjust and abusive."

Although the hearing was held in October, 1947, no final action was taken on grant of a permanent license until August, 1949, at which time the Commission refused to grant Smith a license, and ordered the station off the air.

Smith appealed to the courts, the station remaining on the air on temporary authorization pending decision on his appeal. The U.S. Court of Appeals for the District of Columbia upheld the Commission's ruling in an October, 1951 decision; when Smith carried the case to the United States Supreme Court, the Suprmeme Court in October, 1952 refused to review the lower court's decision. The FCC thereupon ordered the station off the air in November, 1952.

--6 R.R. 383 (1950), 193 F. 2d 900 (D.C. Cir. 1951), 344 U.S. 837, cert. den. (1952).

C-104 Station WLRD decision.

In 1951, WLRD, an FM station in Miami, Fl., proposed to provide a "continuous music" service to restaurants and other business establishments which would pay the station a monthly fee and in return be allowed to present over loud-speakers in their establishments a program of uninterrupted music, without commercial announcements and without even the usual station identification announcements.

In a letter written to the station the Commission refused to give its approval to the proposal, holding that the providing of such service on a contract basis would not make it possible for the station to change its programming at will, and consequently would constitute a partial surrender of "control" by the licensee over its operations; that since subscribers to the service would in effect be sponsors of the station's programs, failure to identify them as sponsors and failure to give required station identification over the air would violate the identification provisions of the Communications Act.

Seven years later, the FCC issued regulations permitting FM stations to provide a similar type of service--but with the stipulation that the service was not a part of the required number of hours a week of "broadcasting," and was itself not "broadcasting," but a type of "special auxiliary service" based on special authorization from the Commission.

--7 R.R. 66 (1951).

C-105 Socialist Labor Party of America decision.

Arnold Peterson, national secretary of the Socialist Labor party, complained to the FCC that during the 1950 election campaign, station WHBC of Canton, Ohio, had refused to sell time to the presidential candidate of the party. Following an investigation, the Commission in November, 1951 sent a letter to Peterson giving its ruling: that "equal time" provisions of the Communications Act apply only to qualified candidates; that the candidate of the Socialist Labor party was not listed on the official ballot on the state of Ohio, and that writing in of his name would have invalidated the ballot. Consequently, the candidate was not, in Ohio, a "duly qualified" candidate, so that the station was within its rights in refusing to provide time.

--7 R.R. 766 (1951).

C-106 Bride and Groom decision.

From 1945 to 1950, the program "Bride and Groom" was broadcast five days a week on a national radio network; beginning in 1950 it was presented as a network television program. During the winter of 1950-51 a similar program, involving the telecasting in each day's program of an actual wedding, was presented locally on television station KLAC-TV in Los Angeles, under the title, "Wedding Bells." Producers of the "Bride and Groom" program brought suit in California Superior Court in Los Angeles, charging that the idea and format of "Bride and Groom" had been substantially reproduced in the KLAC-TV program without authorization by or compensation to the "Bride and Groom" producers-owners. In a July, 1951 decision, a jury awarded damages in the amount of $800,000 to the plaintiffs (who later accepted a settlement of $50,000 from KLAC-TV in place of the amount of the jury award, to avoid an appeal of the decision), and the court issued a permanent injunction forbidding further broadcasts of "Wedding Bells."

--Variety, July, 25, 1951.

C-107 WDSU Broadcasting Corp. decision.

Following the FCC's 1948 "Port Huron" opinion a federal court in Texas held in a late-1948 decision that it doubted whether the Commission actually had intended its opinion on censorship of talks by candidates to be binding on stations. The Court suggested that the FCC may have issued its opinion only as a method of inducing Congress to pass legislation which would clarify the "no-censorship" provisions of Section 315 of the Communications Act. The Court's decision left very much in doubt the actual status of stations which might continue to delete defamatory materials from talks by candidates for office.

In 1950 complaints were filed with the FCC that station WDSU in New Orleans had required candidates to submit advance scripts of their broadcasts to permit the station to delete libelous or defamatory materials. The Commission took advantage of the opportunity provided to clarify its position; in a November, 1951 decision it granted license renewal to WDSU, since it believed that the station had acted in good faith in requiring the elimination of defamatory materials from the talks by candidates it had presented. However, the Commission stated that in the future, it would not condone the refusal by any station to sell time to a candidate unless the candidate would agree to submit an advance script and to change portions of its contents as demanded by the station. "From now on," said the Commission, licensees would be expected to abide strictly by the wording given concerning censorship of candidates in the Communications Act.

--7 R.R. 769 (1951).

C-108 Frances S. Richards.

When early in 1948, two employees of the news department of KMPC, Hollywood, were discharged by the station, they retaliated by charging publicly that G.A. Richards, the owner of the station, had given them written instructions consistently to "slant" the news materials they presented on the air in such a way as to create public opposition to the "New Deal," the Roosevelt family, and to Communists and Jews. On the basis of these charges, complaints were filed by James Roosevelt, the American Jewish Congress, the California state organization of the CIO, and other organizations, opposing the granting of license renewal to the station. In May, 1948, the FCC placed KMPC and two other Richards-owned stations, WGAR in Cleveland and WJR in Detroit, on temporary license, pending results of a hearing to

determine whether Richards had the character qualifications required of a licensee of a broadcasting station.

Due to the illness first of Richards himself and later of the hearing examiner assigned to the case, the hearing did not get under way until March, 1950. The hearing continued over a period of 114 hearing days until December, 1950, with 275 witnesses appearing and 18,000 pages of testimony taken. Trade papers estimated that the hearings cost Richards not less than two million dollars in providing exhibits and testimony, in travel expenses and in attorneys' fees.

Although the specific charge against Ricchards was the alleged slanting of news at his order, one issue given importance was the fitness of Richards to be a licensee, in view of his alleged anti-Semetic bias and his violent opposition to "liberal" political philosophies. It was on the basis of the latter issue that WGAR and WJR were brought into the pictures; no charges were made that "news slanting" had taken place on either of those stations.

Before the Commission had arrived at a final decision in the matter, Richards died. His widow, Frances S. Richards, filed a formal statement with the FCC station that in the future there would be no "news slanting" on any of the three Richards stations. On the basis of her statement, the licenses of the three stations were renewed in November, 1951 with no decision rendered by the Commission on the original question of the fitness of Richards to be a licensee of a broadcasting station.

--7 R.R. 788(1951).

C-109 Yates vs. Associated Broadcasters.

In 1951 Mrs. Oleta Yates, qualified as a non-partisan candidate for election to the San Francisco Board of Supervisors, contrated with station KSFO in San Francisco for a 15-minute program, paying for the time in advance. Prior to the date of the broadcast Mrs. Yates was arrested by Federal authorities as one of the West Coast leaders of the Communisty party, and confined in jail awaiting trial on charges of conspiracy. However, two days before the scheduled broadcast, Mrs. Yates submitted the required advance script, one for a dramatic sketch, and one which had been written in part by her. The station, which before her arrest had not known of Mrs. Yates's Communist affiliation, cancelled the program.

Mrs. Yates appealed to the federal district court for the northern district of California for an injunction compelling the station to carry the broadcast. The station admitted that if Mrs. Yates had been able to appear in person, it would have been obligated to broadcast her program. However, since the script called for a dramatic sketch in which Mrs. Yates was not to appear, and since the station's policies forbade the broadcasting of political dramatizations, it was justified in cancelling the program.

The court, however, upheld the Yates contention and ordered the station to fulfill its contract, holding that since Mrs. Yates had collaborated in writing the script, its presentation would constitute "use" of the station by a candidate, as covered in Section 315 of the Communications Act.

This is the only known instance of a court giving this interpretation to "use" of a station by a candidate. The US Court of Appeals in the Felix case in Philadelphia a few months earlier, and the FCC in numerous opinions since that time, have held that to "use" a station the candidate must appear in person. Possibly the existence of a contract may have played a part in the court's decision.

--7 R.R. 2088 (1951).

C-110 Lorain Journal Co. vs. United States.

In 1950, station WEOL of Elyria, Ohio, asked the federal district court for Northern Ohio for an injunction restraining the Lorain Journal, in Lorain, Ohio (adjoining Elyria) from refusing to carry newspaper advertising for persons who bought time on the radio station. The station charged that the newspaper was attempting to drive the station out of business, and that its actions were "unfair competition" in violation of federal anti-trust laws. The court granted the injunction, whereupon the Journal appealed to the US Supreme Court, charging that the injunction violated the guarantee of "freedom of the press," as provided in the First Amendment. The Supreme Court upheld the action of the lower court, rejecting in a 1951 decision the newspaper's contention that "freedom of the press" was violated by an injunction intended to prevent the use of unfair competitive methods by the newspaper.

--92 F. Supp. 794 (N.D. Ohio, 1950), 6 R.R. 2037 (1950), 342 U.S. 143 (1951), 7 R.R. 2078 (1951).

C-111 1952 Public Service Programming action.

In January, 1952, the Communications Commission refused to grant regular license renewal to 26 of the 78 television stations licenses for which expired during that month, placing the 26 on temporary license basis. No reason was given for the FCC's action. However, a check made by a trade paper showed that none of the 26 stations carried any religious programs on a sustaining basis, and that very few had any education programs. Most of the stations took immediate steps to schedule more "public service" programs--sustaining religious programs and educational programs in particular. Apparently their programming improvements satisfied the FCC, for all 26 were restored to regular license basis in April, 1952, three months after the Commission's original action.

--Broadcasting-Telecasting, Feb. 4, 1952, p. 23.

C-112 WMCA, Inc. decision.

In September, 1951, Eric Haas, qualified Socialist candidate for the office of President of the New York City Council, contracted with station WMCA in New York City for a series of six political speeches. Five of the six talks were presented. But when the script for the final talk was submitted, the station cancelled that broadcast on the grounds that the script made no mention of the candidate's qualifications or his candidacy and dealt solely with the ideologies of Socialism. Haas registered protest with the FCC; in May, 1952, the Commission, in granting regular license renewal to WMCA, reprimanded the station for having violated the provisions of Section 315 of the Communications Act. Said the Commission:

> A station, having had made facilities available to a qualified candidate, cannot condition the use of broadcast time to exclude the advancement of party doctrine as a method by which the candidate may elect to pursue that office. . . . The candidate cannot (be) disqualified for refusing to meet the station licensee's standard for orthodox political speeches. . . . Accepting the station's contention would permit the broadcaster to determine how a broadcaster should campaign.
>
> --7 R.R. 1132 (1952).

C-113 Radio Station KGNS decision.

While a member of the U.S. Senate, William F. Knowland of California prepared a once-a-week transcribed "report" to his constituents, telling of the activities of Congress; pressings were provided to radio stations throughout California. One of the stations carrying the Knowland transcribed "reports" was KGNS, Hanford, Calif. After Knowland filed notice on March 5, 1952 of his intention to run for reelection, KGNS continued for some weeks to broadcast the "reports." However, when Congressman Clinton D. McKinnon applied to the station for "equal time" as a rival candidate with Knowland for Republican nomination for the Senate, the station asked the FCC for a ruling as to its obligations. The Commission, in a letter written in May, 1952, stated that any broadcast "report" made by Senator Knowland after his formal announcement of his intention to run for the Republican nomination was a speech by a candidate, and that the station was obligated to give any other candidate for the nomination as much time as Knowland had been given for these "reports" after his March 5 announcement. The contention that the Knowland broadcasts were not "political" was immaterial.

At the time of the KGNS inquiry, a station was required to provide the same amount of "equal time" to a candidate as the total amount provided for his rival--even if the demand for equal time was made only two or three days before the election. Late in July, 1959, the Commission amended its rules to provide that a request for "equal time" must be made within one week of the date of the opponent's broadcast to be "balanced." The effect is that the "equal time" must be provided only for broadcasts made during the previous week.

--7 R.R. 1130 (1952).

C-114 In reAmendment of Commission's Rules and Regulations.

In 1952 television station WKIM-TV of Lansing, Mi., wished to pick up and rebroadcast certain programs carried by WWJ-TV in Detroit--primarily network programs. However, the Detroit station refused to give its permission. WJIM-TV raised with the Commission the question of whether, in the case of network programs, the "originating station" referred to in section 325 of the Communications Act was the station first producing a network program, or the station over whose facilities the program was broadcast. To clarify this matter of definition, the Commission, in a Report and Order in May, 1952, gave notice of a proposed amendment to its rules, defining an "originating station" as "the station whose signal is received and transmitted, either simultaneously or at a later date."

In the same order, the Commission stated that the Communications Act does not confer upon an "originating station" an arbitrary right to refuse consent for a rebroadcast:

> A refusal either by a network affiliate or by a non-network station, to permit a rebroadcast when based upon no reason at all, or upon unreasonable grounds, may well constitute conduct going to the qualifications of a licensee to operate in the public interest.
>
> --1 R. R. 91:1131 (1952), Docket 9808, May, 14, 1952.

C-115 Columbia Broadcasting System, Inc. decision.

During the pre-convention period in the Spring of 1952, the Columbia Broadcasting System presented a series of network television broadcasts under the title "Presidential Timber" in which leading candidates for the Democratic and Republican presidential nominations were allowed to present

their views, a 30-minute program being devoted to each individual candidate's presentation. In May, shortly before the end of the series, William R. Schneider, a St. Louis attorney, filed a complaint with the FCC that CBS had refused to give him time for a broadcast in the series, although he was an avowed candidate for the Republican presidential nomination. In response to an inquiry from the FCC, CBS stated that Schneider could hardly be considered a "serious" candidate, since his name had been entered in only the New Hampshire presidential preference primaries, since he had waged no active campaign and since in the primary already held he had received less than 1 percent of the total Republican vote cast.

The Commission held, however,in a letter written to CBS late in May, 1952, that, as an announced candidate, Schneider was entitled to the same treatment given other candidates, and that "stations cannot decide for themselves what may be the practical chances of a candidate's nomination or election." Accordingly, CBS made time available for a special broadcast a week before the opening of the Republican national convention, in which Schneider presented his views--as a candidate for the Republican nomination.

--7 R.R. 1189 (1952).

C-116 Progressive Party decision.

In the summer of 1952, the national networks carried the Republican and Democratic national conventions in their entirety, including the acceptance speeches of the party nominees, Dwight D. Eisenhower and Adlai Stevenson. Leaders of the Progressive Party complained to the FCC that the networks had made no plans to cover the convention of their party. In a letter made public July 3, 1952, the Commission advised the Progressive Party officials that Section 315 applies only to candidates for public office, and does not deal with broadcasts of political conventions. However, the letter stated that the "acceptance speeches of the candidates themselves" are "Speeches by candidates" as provided for in Section 315 of the Communications Act, and that as a result, a broadcaster who makes time available for an acceptance speech by one candidate is under a "firm obligation" to make equal opportunities available to all other legally qualified candidates for the same office.

Networks accordingly arranged to carry the acceptance speech of the Progressive Party nominee. However, at the time of the convention, Vincent Hallinan, who received the Progressive nomination, was in jail serving a sentence for contempt of court; since he could not appear in person, his acceptance speech was in fact delivered by his wife, so that the networks actually were under no legal obligation to carry the speech.

--7 R.R. 1300 (1952).

C-117 Wagner vs. Sally Rand Finkelstein.

Suit for damages was brought by Wagner against (Sally Rand) Finkelstein and the National Broadcasting Co. in the Federal district court for the northern district of Illinois, the plaintiff alleging that he had been defamed in an ad libbed statement by Sally Rand in the course of an interview carried in an NBC program. The Court eliminated NBC from the action, ruling that for the plaintiff to have a claim against the network, it was necessary for him to establish that the network and its employees had not exercised "due care." The court also noted that while the complaint charged that NBC had shown "malice"and had acted "with sinister desire and intent," the same complaint had stated that the program announcer had attempted to prevent the utterance of the defamatory words and had immediately

disclaimed them. In the circumstances, neither negligence nor malice had been proved, and the action against NBC was dismissed.

--8 R.R. 2016 (1952).

C-118 Letter to H. A. Rosenberg.

H. A. Rosenberg, evidently a candidate for office who had come into conflict with the policies regarding political broadcasts of an unnamed radio station in Louisville, Kentucky, wrote to the Communications Commission asking for a ruling on several specific points, three of which had not been previously ruled upon by the Commission. In a letter addressed to Rosenberg on July 9, 1952, the Commission held:

As to right of a station to require a candidate to submit an advance script: "It has always been our judgment. . . that a licensee may request that the candidate submit beforehand a copy of the script for his proposed broadcast, provided that the practice is uniformly applied to all candidates for the same office, using the station's facilities."

As to the station's right to refuse to allow a candidate to speak extemporaneously, rather than reading from a script, the letter said that the station "may proscribe the right of the candidate to speak extemporaneously," if all candidates are treated alike.

And as to the station's right to require the candidate to record his proposed broadcast in advance, at his own expense, such a requirement is also considered a matter of the "licensee's own discretion, so long at it. . . is applied uniformly without discimination between candidates for the same office." The Commission's letter noted that as to the ownership of such a recording after its use, it could make no ruling, since the FCC has no authority over determination of ownership of materials.

--July 9, 1952; 11 R.R. 236 (1952).

C-119 Opinions of the Committee on Professional Ethics and Grievance, American Bar Assn.

The Committee on Professional Ethics of the American Bar Association adopted amendments in September, 1952 to its Judicial Canon 35 which specifically banned, as unethical, the televising of the actual proceedings of any court. In various opinions since 1932 the Committee had discouraged the broadcasting, by radio, of court proceedings as tending to "advance the personal ambitions and increase the popularity" of the judge. In 1937, the original Canon 35 was adopted, condemning the broadcasting by radio or the taking of photographs in a courtroom. In the form it appears following the 1952 amendment relating to television, Canon 35 reads, in part, as follows:

"Proceedings in court should be conducted with fitting dignity and decorum. The taking of photographs in the court room, during sessions of the court or recesses between sessions, and the broadcasting or televising of court proceedings are calculated to detract from the essential dignity of the proceedings, distract the witness in giving his testimony degrade the court and create misconceptions with respect thereto, in the mind of the public, and should not be permitted."

--ABA, Code of Professional Responsibility and Code of Judicial Conduct, p. 59c (1972).

C-120 Gautier vs. Pro-Football, Inc.

Gautier, a professional entertainer, was employed by the management of a professional football team to present his entertainment act between the halves of a professional football game. The management of the team also

arranged for a television broadcast of the game, the broadcast including the between-halves entertainment. Gautier brought suit in a New York state district court, charging that the use of his "picture" on a television program constituted "use of his photograph for advertising," specifically prohibited under the New York state Civil Rights Act. The lower court ruled for the plaintiff; on appeal, the Appellate Division reversed the district court's decision. Gautier in turn took the case to the state Court of Appeals, which in a 1952 decision held that there was no use of the plaintiff's picture for advertising purposes, as charged, Even though Gautier's image was used on the television broadcast, and the television program was sponsored, said the court, "the entire program was not thereby constituted a solicitation for patronage. Unless plaintiff's name or picture were in some way connected with the commercial itself, the mere fact of sponsorship of the telecast would not, in our opinion, suffice to violate the statute in this respect."
--304 N.Y. 354, 107 N.E. 2d 485, 278 A.D. 431, 279 A.D. 559, 198 Misc. 860, 199 Misc. 598 (1952).

C-121 United States vs. Kleinman, United States vs. Moran.

When the Senate Crime Investigating Committee headed by Senator Estes Kefauver was conducting hearings in various cities in 1951, practically all of the hearings were broadcast over a nation-wide television network. Introduction of television cameras special lights, etc., into chambers in which hearings were held created a new legal problem; attorneys for some of the unwilling witnesses advised their clients to refuse to testify as long as the cameras were in the courtroom.

One such witness, James J. Carroll, St. Louis "betting commissioner," refused to testify on the grounds that the use of television while he was on the stand would be an invasion of his "constitutional" right of privacy. A compromise was worked out, however, under which a camera was focussed on Carroll's hands--but never his face--while his testimony was being given. But other witness refused to testify at all; such witnesses were cited for "contempt of the Senate." Cases against some of these, and against some witnesses accused of perjury, were prosecuted in federal courts.

Two other witnesses, Morris Kleinman and Louis Roghkopf, who had refused to testify and were charged with contempt of the Senate were tried in a federal district court in Washington, D.C. In October, 1952 the court dismissed the charges against both, noting that at the hearing, in close proximity to the witnesses called upon to testify there were a number of television cameras, newsreel cameras, news photographers with flashbulbs, and radio microphones; that the hearing room was crowded with spectators standing along the walls. Consequently, the Court believed that "the concentration of all these elements seems to me necessarily so to disturb and distract any witness that he might say something that next week he will realized was erroneous, and the mistake could get him into trouble all over again."

On the other hand, another federal court reached quite a different conclusion in a case involving Moran, who testified at the Kefauver hearings but was charged with having perjured himself in his testimony. This case, heard by the federal court of appeals for the second circuit, rejected Moran's contention that because of the presence of radio and television equipment, the hearing lacked "proper decorum" and consequently was not a "proper tribunal." The Court held that the hearing "was not so lacking in decorum because of the microphones, television cameras and photographers,

that it cannot be regarded as a competent tribunal."
--107 F. Supp. 407 (D.D.C. 1952), 194 F. 2d 623 (D.C. Cir. 1952), 197 F. 2d 237 (2d Cir. 1952), 343 U.S. 965, cert. den. (1952).

C-122 Belt vs. Hamilton National Bank.

Belt, an advertising man, submitted the idea and format of a proposed program involving a "talent competition" among children from various public schools, to the Hamilton National Bank in Washington, D.C. Officials of the bank liked the program, and authorized Belt to develop it; when approval from school authorities was not immediately forthcoming, however, the bank cancelled its arrangement with Belt. But some time later, the school officials did indicate their approval; the bank went ahead with the program, but used another advertising agency, so that Belt was not included in the arrangement.

Belt brought suit for damages in the Federal district court for the District of Columbia; the court awarded the damages asked for, holding that a person could have a legally protectable right in an idea even though it was neither patentable nor subject to copyright, provided that it had been reduced to concrete detailed form and was in some way novel. The decision was in line with the position taken by state courts in various states; however, this is perhaps the only instance in which the principle of property rights in the format of a program has been upheld in a federal court.
--108 F. Supp 689 (D.D.C. 1952), 8 R.R. 2046 (1952), aff'd. 210 F. 2d (D.C. cir. 1953).

C-123 Loeb vs. Turner.

Station KRIZ, in Phoenix, Arizona, contracted for "exclusive rights to broadcast" descriptions of stock-car races on a Phoenix speedway. The operator of KLJF, in Dallas, Texas, desired to broadcast descriptions of certain races in which Dallas drivers were to participate. He accordingly arranged for a station staff member to go to Phoenix, listen to the KRIZ broadcasts, and transmit a summary of the information provided by KRIZ to studios of his own station by long-distance telephone. On the basis of information so provided, a KLIF announcer--with the aid of background sound effects--"recreated" the races in broadcasts over KLIF. The Phoenix station brought suit in Texas state courts for damages, claiming that the KLIF recreations were "unfair competition." The Texas Court of Appeals refused to award the damages sought, pointing out that the two stations were nearly a thousand miles apart, that neither could be heard in the area served by the other, and that the actual happenings of each day--including sports events--become part of the facts of history immediately upon their happening, so that news of such events cannot become the subject of property rights held exclusively by anyone. In the circumstances, there was no "unfair competition," and KRIZ was not entitled to damages.
--257 S.W. 2d 800 (Texas, 1953), 9 R.R. 2018 (1953).

C-124 Carneval vs. William Morris Agency.

Carneval, the plaintiff, charged that he had submitted an idea and format for a radio program with the title "American Sweepstakes" to a New York advertising agency. The agency rejected his submission, but at a later time another advertising agency had inaugurated the network "Double or Nothing" program which included many of the elements that were part of the "American Sweepstakes" format which Carneval had developed. As a result he

brought suit for damages against both advertising agencies, the sponsor of the "Double or Nothing" program, and the network on which the program was carried. The New York Supreme Court (equivalent to a district court in most states) dismissed the complaint, holding that to recover damages the plaintiff must show not only that he had created a new, novel and unique idea or combination of ideas and expressed the idea or combination of ideas in concrete form--as a program format--but also that he had disclosed the idea and format to the alleged user in a "confidential relationship," that is on the basis of a contractural provision protecting him against the disclosure of the idea to others, to whom it had not been formally submitted. An unsolicited submission of an idea or combination of ideas, disclosed by the developer of an idea to a possible buyer without a contractual arrangement that the submission is on a confidential basis, cannot be a basis for recovery of damages if the idea or parts of the idea are used by another individual or company.

--124 N.Y.S. 2d 319 (1953).

C-125 International Boxing Corp. vs. Wodaam Corp.

The International Boxing Corp., promoter of the heavyweight championship fight between Rocky Marciano and Roland LaStarza in September, 1953, sold exclusive "broadcasting" rights to the fight to Theater Network Television, which fed wire-transmitted television pictures of the fight to some 45 theaters to which admission was charged. No actual "broadcast" of the fight, either by television or by radio, was permitted under the terms of the contract. However, a few days before the fight station WOV in New York City announced that it would "monitor" the pictures of the fight carried on the screen in one of the theaters, and from these pictures present, over radio, a blow-by-blow description of the fight for its listeners. The International Boxing organization applied to the New York State Supreme Court in New York City for an injunction to prevent the station from broadcasting the "recreation" it had announced. The Court granted the injunction, on the grounds that the proposed WOV action would be a "misappropriation" of the property of another. However, it held that since the promoter was permitting wire services to transmit to subscribers a summary of the action at the end of each round, station WOV should be within its rights if it broadcast a similar "news summary" at the conclusion of each round, summarizing what had taken place during that round--but with the information taken from the news reports transmitted by the wire services, rather than from the television screens in theaters.

In effect, this did permit the station to broadcast a sort of "re-creation" of the fight, but one taken only from the news provided by news services, and delayed for at least three minutes, of course making clear that the material broadcast was not an actual blow-by-blow description from ringside, but a series of round-by-round "news broadcasts" of the fight. On this basis, WOV and a number of other Eastern radio stations did broadcast "round-by-round" summaries of the fight.

--9 R.R. 2050 (1953).

C-126 Chaplin vs. National Broadcasting Co.

Hy Gardner, a newspaper and radio "gossip columnist," included as a part of his regular NBC radio program a recording of a telephone conversation between himself and Charlie Chaplin and also a similar recording of a telephone conversation between himself and Chaplin's butler. Chaplin brought suit for damages against NBC, charging that his right of privacy had been

invaded by the use of his name on the air and by the recording and broadcasting of the two telephone conversations. His contention was that the programs were provided completely for entertainment and not for the information of listeners; consequently they were presented "for commercial purposes" rather than for the reporting of information of legitimate public interest. The state Supreme Court for the southern district of New York rejected this contention, holding that since Chaplin was an object of legitimate public interest, the broadcasts were informational, and comparable to broadcasts of news, and therefore not broadcasts in which Chaplin's name and telephone conversation had been used "for the purposes of trade" within the meaning of the New York state Civil Rights Law.

--9 R.R. 2051 (1953).

C-127 Liberty Broadcasting System vs. National League Baseball Club of Boston.

From 1946 until 1951, Gordon McClendon, licensee of station KELP in El Paso, Texas, and of KLIF in Dallas, and also major owner of the then-functioning Liberty Broadcasting System network, provided elaborate "re-creations" of major league baseball games to stations affiliated with the network, based on news reports received over Western Union wires. McClendon paid the baseball clubs involved for rights to the materials used. However, when the two major leagues adopted rules prohibiting broadcasts of major-league games in areas in which minor-league baseball games were being played, the Liberty network, which had depended heavily on its baseball broadcasts, was forced into bankruptcy. McClendon asked the federal district court for the Northern District of Illinois for an injunction to prohibit the ball clubs from interfering with the transmission of the games. The court, in 1952, refused to grant the injunction, holding that since the ball clubs had a property right in games played in their parks, they also had the right to stipulate what persons might make use of the Western Union news reports concerning the games.

McClendon continued to broadcast the recreations of major-league baseball games without authorization from the baseball clubs involved over his stations in El Paso and Dallas. In August, 1953, the St. Louis Cardinals and two other major-league clubs petitioned the FCC to issue a "cease and desist" order to McClendon. In March, 1954, the Communications Commission ruled that it had no such power since the prohibition of unauthorized "re-broadcasts" in the Communications Act did not cover "recreations." The Commission stated further that the decision of the courts in the case of Loeb v. Turner seemed to indicate that no question of "unfair competition" was involved, and that nothing in the record indicated that action should be taken by the Commission against the two McClendon stations. McClendon accordingly continued his unauthorized "recreations" of major league baseball games.

After the demise of the Liberty network in 1951, McClendon brought suit for damages in the amount of $12,000,000 against the two major baseball leagues, charging that the action of the leagues had forced the network into bankruptcy. No court decision was made in the case; however, in 1955, the defendant clubs made an out-of-court settlement under which McClendon was reportedly paid $200,000 to drop the suit.

--7 R.R. 2164 (1952), 10 R.R. 279 (1954).

C-128 F.C.C. vs. American Broadcasting Co.

The Communications Commission has frequently been called upon to decide what constitues a lottery. Often the basis for such decisions was

the opinion rendered by the U.S. Supreme Court in the case of Public Clearing House v. Coyne in 1904, that for a "gift enterprise" to be classified as a lottery, it must meet all three of the following specific tests: first, a prize must be given to the winning contestant; second, selection of the winner must be made on a basis of chance; and third, to become eligible to win the prize contestants must provide some sort of consideration. However, the Court's decision did not specifically define "consideration."

In 1949, the Commission ruled in a case involving station WARL in Arlington, Va., that a program in which prizes were given to listeners reached by telephone called for "consideration" on the part of the listeners. Questions asked of listeners were so difficult that they could be correctly answered only if the listener had previously been listening to the station, when answers to the questions to be asked were broadcast by the station. In the opinion of the FCC, the requirement of listening to the station was "consideration."

About the same time, complaints were received by the Commission that numerous other "telephone quiz" programs broadcast by stations or carried on national radio networks--"Stop the Music" among them--were lotteries, since participants called on the telephone were selected by chance, a prize was given, and to participate, a contestant was forced to listen to the program, which on the basis of the Commission's WARL ruling was consideration.

To clarify and formalize the problem of lotteries, the Commission in August, 1949 announced a proposed regulation dealing with lotteries, in which "consideration" was defined to include any requirement that a participant was forced to listen to a particular broadcast program at a given time, or to answer a telephone call in some prescribed manner. Three networks--ABC, CBS and NBC--filed suits in Federal courts challenging the regulation as an illegal form of program censorship attempted by the FCC. In February, 1953, the federal district court for the southern district of New York, in the action brought by the American Broadcasting Co., declared the proposed FCC lottery regulations invalid, since they gave too broad an interpretation of "consideration" in a lottery.

The Commission appealed this ruling to the U.S. Supreme Court, which in April, 1954 upheld the lower court's decision. The Supreme Court stated that "to be eligible for a prize on the give-away programs involved here not a single home contestant is required to purchase anything or pay an admission price or leave his home to visit the promoter's place of business," and commented that the Commission's interpretation was decidedly broader than that used by either the Post Office Department or the Department of Justice. The Court believed that payment of money in any way would constitute "consideration," but it held that the term had to be very narrowly interpreted.

Since the Supreme Court's decision blocked the Commission's adoption of the proposed lottery regulations, the FCC revised its proposal to conform to the Court's opinion. "Consideration" would generally be held to be limited to money or at least, a "thing of value." However, the Court's use of the expression, "leave his home to visit the promoter's place of business" may create some question as to whether the required calling at a sponsor's store to secure an "entry blank" might not also be interpreted as a form of "consideration."

--110 F. Supp. 374 (S.D.N.Y. 1953), 347 U.S. 284 (1954), 194 U.S. 497 (1904).

C-129 Rogers vs. Republic Pictures.

Both Gene Autry and Roy Rogers were under contract to Republic

Pictures; each man was starred in numerous theatrical "cowboy" films. With the advent of television, both men set up independent production units to produce films intended only for TV use, and in which they were the featured actors. When Republic Pictures sought to release its stock of theatrical feature films and shorts for television use, Autry and Rogers filed separate suits asking courts to restrain Republic. In 1951, the federal court for the Southern district of California granted the injunction sought by Rogers, on the basis of a clause in the contract between Rogers and Republic providing that the name, voice or likeness of Rogers could not be used by Republic for advertising, without his express consent. The following year, however, the same court refused Autry's similar request for an injunction, the terms of the Autry contract being somewhat different than those in Republic's contract with Rogers. Both district court decisions were appealed, the first by the motion picture company, and the second by Autry.

In June, 1954, the U.S. Court of Appeals in San Francisco ruled in each case in favor of the motion picture producing concern. The Court held that Republic, since it had produced the films, was the owner of the films and had full rights over their release for use on television in their original theatrical form, with however the provision that no "cutting" or "doctoring" of the films could be done which in any way suggest that the cowboy stars had endorsed any specific commercial product. The Court ruled that the clause in the Rogers' contract did not cover the showing of the films without endorsement, even though programs on which the films were to be shown were commercially sponsored.

Both Autry and Rogers appealed the appeals court decision to the U.S. Supreme Court, which in October, 1954 refused to review the lower court's decision.

--7 R.R. 2072, 2130 (1952), 213 F. 2d 662, 667 (9th Cir. 1954), 348 U.S. 858 cert. den. (1954).

C-130 Bernstein vs. National Broadcasting Co.

Charles Bernstein, tried for murder, convicted and sentenced to be executed, was ultimately proved innocent through the efforts of a newspaper reporter, and released. In 1952, the Bernstein story was made the basis of a dramatic broadcast on "The Big Story" on the NBC television network, but with fictitious names used for all characters appearing with the exception of the newspaper reporter. Bernstein, at the time a government employee living in Washington, brought suit for $1 million against NBC on grounds that the broadcast was an invasion of his privacy; his attorneys argued that since more than eight years had elapsed since Bernstein was "in the public gaze," he had regained a private status such as to make his privacy legally protectable.

The U.S. District Court for the District of Columbia ruled for the defendant. The court agreed that the law would not permit the unwarranted revival by publication of the past mistakes of the wrong-doer in such a manner as to identify him with his old crime and hold him up to public scorn; however, in the "Big Story" broadcast, Bernstein had not been identified by name. In addition, it was the Court's opinion that a criminal proceeding which had been widely publicized and with elements of popular appeal did not lose its status as "a matter of legitimate public interest," even after the lapse of eight years, and hence its dramatization, in a reasonable manner, must be permitted.

--129 F. Supp. (D.D.C. 1954), 232 F.2d 369, affm'd (D.C.Cir. 1956), cert. den. (1959).

C-131 Use of Broadcast Facilities by Candidates for Public Office.

The Federal Register for Sept. 14, 1954, carried a lengthy statement by the Communications Commission interpreting the rights and obligations with respect to political broadcasts as covered in Section 315 of the Communications Act. A question-and-answer form was used, with interpretations of some 54 points. Among interpretations given which are of greatest importance are the following, (language used in the summary is not that used by the Commission):

The rights conferred by Section 315 with respect to equal time or equal only to qualified candidates--not to political parties or to individuals speaking in behalf of candidates.

A candidate may not claim "equal opportunities" on the basis of use of a station by an individual not himself a candidate.

The section does not provide for "equal opportunities" for discussions of public issues to be voted on in an election.

If a candidate himself appears on a broadcast program, his appearance constitutes "use of the facilities of a station," entitling opposing candidates for the same office to equal time; the occasion for his appearance or the nature of the subject about which he speaks has no bearing on the situation--if he appears, he "uses" the station.

Whether a candidate is to be considered a "legally qualified" candidate is determined by the laws of the state in which the election is to be held. In some states, an individual becomes a candidate immediately upon announcement of his candidacy, while in others, he cannot be considered "qualified" until he has filed required forms or paid required fees provided by state law. In general, a candidate is considered "qualified" if he can be voted for in the state or district in which the election is held, and is eligible to serve in the office for which he is a candidate, if elected.

A candidate may be "qualified" even if his name does not appear on the ballot, if state laws permit him to be voted for by write-in.

The practical chances of a candidate winning an election have no bearing on his rights as outlined in Section 315.

A person may be considered a legally qualified candidate for nomination for the Presidency or Vice-Presidency of the United States by a party convention even if he has not entered primaries in any state, attempted to get delegates pledged to support him, or even announced his willingness to be nominated by the convention, since he could be nominated without meeting any of these requirements. The question of whether or not a person is a bona fide candidate for nomination must be determined by the facts in each case, of course taking into consideration the efforts he actually has made to secure delegates.

A station may make reasonable requirements as to the bona fide nature of the candidacy of any person claiming to be a candidate.

Section 315 is applicable to both primary and general elections, and to elections at the local, county, state or national level; it also applied to candidates for nomination by party conventions.

A station may make time available to candidates for one office, and refuse to make time available for candidates for another office; it may make time available for candidates of one party for nomination, but refuse to make time available to candidates for nomination by another political party.

The station may make time available to candidates for nomination by one party in a primary, but refuse to make time available for the

candidate of the opposing party in the general election which follows. Primaries and general elections are separate "elections;" the station is obligated only to make time available on the same basis for all qualified candidates for the same office in the same election.

In providing "equal opportunities" for opposing candidates, quality of time provided as well as quantity of time must be taken into consideration. However, a station is not obligated to make available exactly the same time for all opposing candidates.

A station may not refuse to provide "equal" time, or time of equal quality, on the grounds that such time could not be made available without cancelling commercially sponsored programs.

If one candidate buys more time than his opponent can afford, the second candidate can find no relief in Section 315; the section does not require a station to provide equal time, but equal opportunity, to opposing candidates.

If a candidate is allowed to appear, without cost to him, on a program sponsored by a commercial advertiser, it is the obligation of the station to provide equal time to opposing candidates for the same office, also without cost to them.

If the time is provided for a candidate, the candidate is not required to use the time so provided to talk about his candidacy; he may use the time as he individually thinks best.

A station may require a candidate to submit an advance script; it may also require the candidate to record his proposed broadcast in advance, at his own expense provided in each case that the same requirements are imposed upon all candidates for the same office, and that the station does not attempt to censor the material included in the advance script.

A station charging a higher rate for national than for local advertising may not impose the higher national rates for time upon candidates for local office.

A candidate for office is entitled to receive the same quality discounts as are given commercial advertisers using the same amounts of time.

--19 Fed. Reg. 5948, 11 R.R. 1507 (1954).

C-132 United States vs. United Automobile Workers.

During the 1954 political campaign, Guy Dunn, news commentator on WJBK-TV in Detroit, whose broadcasts were sponsored by the United Auto Workers, invited a number of Democratic candidates for federal and state office to appear on his program, while failing to extend the same provilege to their Republican opponents. When the Republican organization complained to the FCC, the Commission in a letter to the station ruled that it was the station's responsibility to provide equal time, on a free basis, to those Republican candidates whose opponents had appeared on the labor union-sponsored series.

Later, the U.S. Department of Justice brought an action against the UAW-CIO in the federal district court in Detroit, charging that the union's action in spending nearly $6,000 for time on which political candidates appeared was a violation of the federal Corrupt Practices Act. In February, 1956, the District Court dismissed the charge; the Department of Justice then appealed to the U.S. Supreme Court, which in March, 1957 reversed the lower court's decision, stating that use of union dues "to sponsor television broadcasts designed to influence the electorate to select certain

candidates for Congress . . constituted 'an expenditure in connection with a federal election.'"

--138 F. Supp. 53 (D.C. Mich., 1956), 352 U.S. 567 (1957).

C-133 National Exhibition Co. vs. Fass.

Martin Fass, operating in New York City, listened to broadcasts of New York Giants baseball games provided by a New York radio station, and "fed" the play-by-play information by telegraph wire to a number of radio stations in other parts of the United States, where the material was used for re-creation of the games reported on the air. In 1954, the New York Giants baseball club applied to a state court for an injunction restraining Fass from continuing his unauthorized activities. Fass's attorneys argued that once the information concerning the games had been broadcast, it had been "published in interstate commerce," and like other news which had been published, was in the public domain. The New York Supreme Court, however, ruled that the baseball club did not surrender its property rights in the news, and that notice of its retention of such rights was printed on tickets for the games, was stated in its contracts with broadcasting stations, and was announced in authorized broadcasts. Accordingly, the Court's decision was that Fass had been appropriating information that was the property of the ball club, and the injunction ordering Fass to discontinue his operations, was granted.

--143 N.Y.S. 2d 767 (1955).

C-134 WKRG-TV, Inc. Decision.

In a comparative hearing on applications of WKRG-TV, Inc., and Mobile Television, for a new television station on Channel 5 in Mobile, Ala., Mobile Television claimed superiority in proposed program service on the basis that WKRG-TV indicated that it would carry commercially-sponsored religious programs in addition to religious programs on a sustaining basis, while Mobile Television's application stated that it would provide a "balanced" religious program offering on a sustaining basis, but would not sell time for religion. The Commission gave no weight to this contention, stating that "commercially sponsored religious programs are not inherently objectionable or against the public interest, and an applicant will not be penalized merely because it contemplates such programs." The Commission's decision gave the disputed channel to WKRG-TV, Inc.

--10 R.R. 225 (1955).

C-135 Jacova vs. Southern Radio and Television Co.

In a television news film of a gambling raid on a hotel in Miami Beach, Fla., John Jacova was shown in the hotel lobby being questioned by police. Jacova brought suit for damages against WTVJ (TV), the station which put the news film on the air, charging that the broadcast was an invasion of his privacy and that his identification before the public as an alleged gambler had resulted in injuries to his business. The Florida state court ruled for the defendant; when Jacova appealed, the state Supreme Court upheld the verdict of the lower court. The Supreme Court held that since the picture did not depict Jacova as a gambler, the station had a right to publish his picture as a participant in a newsworthy event. "Where one, willingly or not, becomes an actor in an occurrence of public and general interest, he emerges from his seclusion, and it is not an invasion of his privacy to publish his picture with an account of such occurrence."

--83 So. 2d 34 (Fla. 1955).

C-136 Illinois-Wisconsin Overcommercialization Decision.

When licenses of radio stations in Illinois and Wisconsin expired in November, 1955, regular license renewal was denied by the FCC to 17 stations in the two states; these stations were placed on a temporary license basis pending further investigation of their program operations. Letters were sent to licensees of these stations asking for an explanation of alleged over-commercialization and of lack of balance between commercial and sustaining programs in the stations' schedules. Apparently the explanations provided were satisfactory or the Commission was willing to accept station promises to correct the shortcomings alleged; in any case, all of the 17 stations were returned to regular license status six months later, in May, 1956.

Presumably the Commission used these stations as object-lessons for stations in other states which would be asking for license renewal at a later date.

--Broadcasting-Telecasting, Nov. 28, 1955.

C-137 Community Broadcasting Service, Inc. Decision.

Hearing was ordered by the FCC on license renewal of station WWBZ of Vineland, N.J., on the basis of unsatisfactory programming. Evidence presented indicated that the station carried regular daily broadcasts of horse racing results which were "unquestionably helpful and beneficial to persons engaged in unlawful gambling activities," and that the station's over-all programming was lacking in balance, as indicated by the fact that the station had broadcast only an hour of educational programming during the entire twenty-four months of 1953 and 1954. At the hearing, however, the station operator gave no indications that improvements would be made in the station's programming, and announced that the station would continue its racetracks broadcasts. Only after the hearing examiner's recommendation was made public that the station's license not be renewed did the station make substantial modifications in its racetrack program operations.

In a formal decision in November, 1955, the Commission refused to renew the station's license, and gave the owners 60 days to take the station off the air. Later the FCC granted an extension of this "grace" period. During this period, the station did substantially improve its programming; as a result, in October, 1956, the FCC rescinded its revocation order and allowed the station to continue its operations.

--13 R.R. 179 (1953), 22 F.C.C. 1957, 14 R.R. 1215 (1956).

C-138 Ettore vs. Philco Corp.

In 1936, heavyweight boxer Al Ettore lost a boxing match with Joe Louis. When a film of the fight was shown in the "Greatest Fights of the Century" network television program, Ettore brought suit against the Philco Corp., owner of WPTZ (TV) one of the stations which carried the program, and against the program's sponsor and the sponsor's advertising agency. He charged that the film had been used on television without his authorization and that its showing had damaged his reputation, since in the cutting of the film to meet the requirements of a 15-minute program portions of the fight in which Ettore had made an unusually good showing had been omitted. In 1954, a federal district court dismissed the complaint, on grounds that Ettore had authorized the original filming of the fight and had been paid for this authorization by the film company.

Ettore appealed; in a January, 1956 decision, the U.S. Court of Appeals in Philadelphia reserved the decision of the lower court, agreeing with Ettore. The court held that the fact that Ettore had engaged in a

public performance did not mean that he had lost all rights of privacy, after the newsworthy event in which he had engaged had passed from the status of being "news." The defendants appealed this decision to the U.S. Supreme Court, which in 1956 refused to review the appellate court's decision.

--229 F. 2d 481 (3d cir. 1956), 351 U.S. 926, cert. den. (1956).

C-139 McClatchy Broadcasting Co. vs. F.C.C.

In a comparative hearing on application for use of television channel 10 in Sacramento, Ca., the competing applicants were McClatchy Broadcasting Co., operator of 50-kw radio station KFBK in Sacramento and of four other AM stations in cities within a radius of 200 to 250 miles of Sacramento, and owned by a newspaper company operating the only daily newspaper in Sacramento as well as newspapers in Fresno and Modesto, and Sacramento Telecasters, whose owners had no broadcasting or newspaper interests. The hearing examiner's decision recommended granting the facility to McClatchy, which had an unusual record of excellence in the programming and other operations of its radio stations.

The Commission, however, ignored the hearing examiner's recommendations and awarded the facility to Sacramento Telecasters, solely--at least that is the impression given in the published decision--on the basis of "diversity of control over media of mass communications." The Commission's decision included the following:

> The facts of this case boil down to a comparison of an applicant with an excellent record of past performance with all the attendant advantages that accrue, and on the other hand, an applicant without a record of past performance, but affording assurance that its operation will be in the public interest. . . . The superiority McClatchy has demonstrated with respect to certain factors does not outweigh the comparative advantages adhering to Telecasters because of its freedom from ties with other radio, newspaper and television interests in Sacramento as well as throughout the Central Valley. Telecasters will bring a new view and another directly competitive service to the area which will not be just further extension of an existing service.

McClatchy appealed the FCC's decision to the U.S. Court of Appeals for the District of Columbia, which in January, 1956 upheld the Commission's decision, ruling that "the Commission is entitled to consider diversification to control of communications," and to allow this consideration to "turn the balance, if it concludes that it is proper to do so." This decision was appealed to the U.S. Supreme Court, which in March, 1957 refused to review the case.

In earlier decisions on competitive applications, the Commission had indicated that "a preference" might be given on candidate over another on the basis of "diversification of control over media of mass communications;" the McClatchy decision is the first in which an applicant with strong superiority in nearly every other respect was denied a grant in favor of that applicant's competitor solely on the basis of ownership of other agencies of communications--newspapers and radio stations.

--9 R.R. 1190 (1954), 239 F. 2d 15 (D.C. cir. (1956), 353 U.S. 918, cert. den. (1957).

C-140 Lar Daly Letter.

Following President Dwight Eisenhower's broadcast on February 29, 1956 in which Eisenhower announced his availability and candidacy for nomination by the 1956 Republican national convention, Lar Daly, representing himself as the "American First" candidate for the Republican presidential nomination, wrote letters to the three national television networks and the four national radio networks demanding "equal time." The various networks refused to provide time; Daly thereupon appealed to the FCC. The Commission, in a letter to Daly dated April 11, 1956, ruled that since Daly had not made an "equivocal showing that he was a legally qualified candidate," he was not entitled to have equal time with President Eisenhower.

--23 Fed. Reg. 7818 (1958).

C-141 United States vs. Storer Broadcasting Co.

In 1953, the Communications Commission announced a proposed regulation which would limit the number of television stations licensed to a single owner to five; it had earlier promulgated similar regulations placing limits on the number of AM or FM radio stations which might be owned by a single licensee. At the same time, the FCC dismissed without hearing the application of the Storer Broadcasting Co. for a new TV station in Miami, Fl., since Storer was already the licensee of five television stations.

Storer appealed to the U.S. Court of Appeals for the District of Columbia, challenging the legality of the FCC's multiple ownership rules. The Court, in a February, 1955 decision, declared that the FCC's regulations were invalid. The Court's reasoning was that the fixing by the Commission of an arbitrary number of stations as the greatest number which could be licensed to a single owner "implies that there can never be an instance in which the public interest would be served by granting an additional license to an owner" who already had the maximum number of stations.

The Commission appealed the decision to the U.S. Supreme Court, which in May, 1956 reversed the ruling of the lower court. The Supreme Court stated that "the growing complexity of our economy has induced Congress to place regulation of businesses like communications in specialized agencies," and to give these agencies broad powers. "Courts are slow to interfere" with decisions of these regulatory agencies "when their conclusions are reconcilable with statutory directions. We think the multiple ownership rules, as adopted" by the FCC "are reconcilable with the Communications Act as a whole."

--220 F. 2d 204 (1955), 351 U.S. 192 (1956).

C-142 Columbia Broadcasting System Decision.

On October 31, 1956, exactly six days prior to the date of the 1956 presidential election, President Dwight D. Eisenhower, Republican candidate for reelection, broadcast a 15-minute talk alerting the American people to the seriousness of the crisis in the Mideast created by the invasion of Egypt by Isreali, British and French troops. The talk was carried on a sustaining basis by all national radio and television networks. The talk was not political, but it was a talk by a candidate for office--though he was at the same time President of the United States.

His Democratic opponent, Adlai Stevenson, immediately demanded equal time on a free basis from the networks; so did several of the minor-party candidates. The networks asked the FCC for a ruling on the issue; the FCC refused to give an immediate answer, stating that the issue was so complicated that it called for careful study. With no FCC ruling, the networks

granted Stevenson's request and gave him free network time on the evening of Nov. 1; they also made free time available to minor-party candidates.

After the Stevenson reply had been given, the FCC made its ruling, in letters sent to the networks. The Commission held that in his message on the crisis, Eisenhower had spoken in his capacity as President, not in his capacity as a candidate. Consequently, "we do not believe that when Congress enacted Section 315 it intended to grant equal time to all presidential candidates when the President uses the air lanes in reporting to the nation on an international crisis." The FCC's view, then, was that stations and networks were under no legal obligation to make free time available to candidates of other political parties.

--14 R.R. 720 (1956).

C-143 Kansas City Star vs. United States.

Section 313 of the Communications Act provides that a federal court which finds the licensee of a radio station guilty of unlawful restraint of trade may, in addition to other penalties, order that the license of the station be revoked. In 1953, the Department of Justice filled an anti-trust suit against the Kansas City Star, only daily newspaper in Kansas City, Mo., and licensee of WDAF--radio and WDAF-TV in Kansas City, charging that the newspaper had threatened to refuse to carry advertising for local merchants who advertised in other newspapers or on other broadcasting stations in the area. In February, 1955, the newspaper was found guilty in a federal district court of violation of federal anti-trust laws; when appeal was taken to the federal court of appeals in St. Louis, the decision of the lower court was affirmed. The Star appealed to the U.S. Supreme Court, which in the summer of 1957 refused to review the decision of the lower courts.

Penalty assessed against the Star included a fine against the newspaper and a smaller fine to be paid by its advertising manager; in addition, the newspaper was forced to sign a consent decree agreeing to divest itself of its broadcasting station holdings. In conformity with this agreement, the Star-owned stations, were sold for a reported $7,600,000 to National Theaters, Inc., in December, 1957.

--240 F. 2d 643 (8th Cir. 1957), 354 U.S. 923 cert. den (1957).

C-144 Allen H. Blondy Decision.

In 1957, a Detroit television station broadcast a short newsfilm showing a number of judges being given the oath of office, among them Davenport, who was taking office on an interim appointment was one of 21 qualified candidates for a judgeship in a coming election. Davenport's opponent in the election, Allen H. Blondy, demanded equal time from the station' on being refused, he complained to the FCC. The Commission, in a letter to Blondy in February, 1957, refused to take action, saying that "the facts clearly show that the candidate in no way, directly or indirectly, initiated either the filming or the presentation of the event, and that the broadcast was nothing more than a routine newscast of the station in its exercise of its judgment as to news-worthy events."

The Commission's ruling in the Blondy case was directly contradicted in its action in the Lar Daly case in Chicago a little over two years earlier.

--Feb. 5, 1957, Dpb. Not. 416000.

C-145 Southeastern Enterprises Decision.

In April, 1955, the FCC granted, without hearing, a construction permit for a new AM radio station, WCLE, to be located in Cleveland, Tenn., a

town of some 12,000 population. Protest of the grant was filed by Robert Rounsaville, owner of WBAC, the existing station in the same community. His contention was that the amount of business available was not enough to allow two stations to survive, but if both did survive, the quality of service that either could render would be "so degraded as to be against public interest, convenience and necessity." On basis of the protest, the FCC postponed the effective date of the WCLE construction permit, and ordered a hearing on the grant.

Following the hearing, the Commission issued its final decision in March, 1957, reaffirming its authorization for the second station, WCLE. In its decision the FCC stated that it "took this opportunity to disclaim any power to consider the effects of legal competition" on existing stations in passing upon applications for new broadcasting facilities. In the Commission's language,

> Congress had decided that free competition shall prevail in the broadcast industry. . . . Congress having decided that free competition is a good thing, it is not for us to decide otherwise. . . . The erection of a fence around the industry to keep out new owners is wholly repugant to the policy which underlies our anti-trust legislation.
>
> --22 F.C.C. 605 (1957), 13 R.R. 139 (1957).

C-146 Caples Co. vs. United States

The syndicated give-away game, "Play Marko," carried on a number of television stations, made it necessary for participants to call at the sponsor's place of business to secure a "bingo-type" card on which answers might be recorded; then numbers chosen by lot were read over the air, and the first participant to complete his card was awarded a prize. In 1956, in a letter to KTLA (TV) in Los Angeles, the FCC stated that the program was probably a lottery. The Caples Co., syndicator of the program, asked the FCC for a definite ruling. In a letter written to the company in May, 1956, the Commission held that the requirement of calling at the sponsor's place of business constituted "consideration," and that this, in combination with the admittedly provided elements of prize and chance, made the program an illegal lottery.

The Caples Co. appealed to the federal court of appeals for the District of Columbia which, in a decision in March, 1975, disagreed with the opinion of the FCC. The Court stated that it would be "stretching the statue to the breaking point to give it an interpretation that would make such a program a crime."

--13 R.R. 1154 (1956), 243 F. 2d 232 (D.C. Cir. 1957).

C-147 Parker vs. Columbia Broadcasting Co.

On May 19, 1957, in a "Mike Wallace Interviews" program on the ABC-TV network, Mickey Cohen, an ex-convict, made charges concerning the effectiveness of law enforcement in Los Angeles, in particular reflecting on the honesty and integrity of Los Angeles Police Chief William H. Parker and Captain James Hamilton of the intelligence squad, mentioned specifically by name. The program, completely ad lib and unrehearsed, was carried "live" in Eastern and Central time zones, but was also kinescoped and rebroadcast at a later hour over the network's West Coast facilities.

Although Oliver Treyz, ABC-TV vice president, appeared on the Wallace program the following week and formally apologized for the Cohen statement,

Parker and Hamilton filed suits for $2,000,000 and $1,000,000 damages, respectively in the California Superior Court in Los Angeles, charging that they had been "libeled and slandered" on the network program. Defendants named were the network, the program's sponsor, and the sponsor's advertising agency, as well as Wallace and Cohen. Early in January, 1958, the suits were settled out of court with $45,975 paid to Parker and $22,987 going to Hamilton.

Although the defamation was ad libbed by a person not an employee of the network, the possibility of a "due care" defense was destroyed by the fact that the network had kinescoped the program and provided it to its West Coast stations--carried it over the ABC-owned station in Los Angeles--at a later time.

--Broadcasting-Telecasting, May 20, 1957, August 26, 1957, p. 50, January 6, 1958, p. 43.

C-148 Columbus Dispatch, Inc., Decision.

Edward O. Lamb, owner of two newspapers and licensee of WICU (TV) in Erie, Pa., and of AM radio stations in four cities, was an attorney specializing in serving as counsel to labor organizationa and defending union members accused of various crimes; he was also a prominent Democratic politician. In 1954 a hearing was ordered on renewal of his license for WICU (TV) on basis of accusations that in connection with applications for a television station in Columbus, Ohio, in 1948, Lamb had filled a sworn affidavit that he was not and never had been a member of the Communist party, although in fact--according to the accusation--he had been a party member from 1944 to 1948.

No evidence was introduced in the hearing directly supporting the charge of Communist party membership; newspapers at the time carried stories indicating that the major witness FCC investigators had planned to present on this issue had "recanted" on testimony to be given, prior to the hearing. The Broadcast Bureau showed that during the 1930s Lamb had traveled extensively in Russia; that he had written a book dealing with the "planned economic system" in use in Russia which in the opinion of some readers advocated the Russian system; that he had written a number of magazine articles in the late 1930s extoling the activities of leaders of the "working class movement" which had been published in Communist magazines or had been used as Communist propaganda; that he was a member of or had contributed funds to a number of Communist-front organizations, including the American League against War and Fascism and the International Labor Defense, his name appearing in the list of officers on letterheads of some of these organizations, in the period between 1941 and 1944.

Lamb, on his part, charged that the hearing was politically motivated, and that investigators working for the FCC had publicly stated that they were "out to get" him, and to take the broadcasting stations away from him. He denied that his book on the Russian economic system in any way advocated or supported that system he said it was merely descriptive and expository in character. With respect to magazine articles, he denied having written for publication in any Communist periodical, although he conceded that some of his articles might have been reprinted by such periodicals without his knowledge. He contended that he had no recollection of having any official connection with any Communist controlled or Communist-front organization; that as a labor attorney, he probably had defended workers who were members of such organizations and had contributed money to the defense funds of union members accused of labor agitation, but that he had not knowingly been

a member of or connected with any Communist-dominated organization. Finally, he again testified that he was not and never been a member of the Communist party.

The Commission, in a 1957 decision, found that the charges made against Lamb had not been supported and that there was no evidence that Lamb had been guilty of misrepresentation in his applications for licenses; accordingly, the WICU (TV) license was renewed.

--22 F.C.C. 1369, 13 R.R. 237 (1957).

C-149 Van Curler vs. F.C.C.

Television station WTRI (TV) went on the air on channel 35 in Albany, N.Y. in January, 1954, with a CBS affiliation. When Hyman Rosenblum, owner of WROW-TV, also in Albany, arranged for sale of his station to a group headed by Lowell Thomas, CBS radio news commentator, the licensee of WTRI (TV) protested to the FCC, charging that since Thomas was so closely identified with CBS, the transfer of ownership of WROW-TV to the Thomas group would mean that WTRI (TV) would lose its CBS affiliation. The Commission denied the WTRI (TV) petition, and approved the WROW-TV transfer of ownership. Van Curler Broadcasting Corp., licensee of WTRI, appealed to a federal court, which upheld the Commission's action. The Commission's final decision on the transfer was not released until 1957. In granting final approval to the purchase of WROW-TV by the Thomas group (the CBS affiliation having in the meantime been transferred from WTRI to WROW TV), the Commission stated that:

> The CBS decision to change affiliates was a legitimate exercise of business judgment, and was not the outcome of a conspiracy or an act in restraint of trade. As to Hudson Valley, the evidence shows that it was operating at a loss and that its management believed that the situation could be corrected if it could secure affiliation with the CBS network. The fact that it was aware that if it were successful in its endeavor, WTRI would lose its CBS affiliation does not make its negotiation of a CBS affiliation arrangement a violation of the anti-trust statues. The Commission has no jurisdiction to say that in the field of visual broadcasting, enjoyment of a network affiliation shall be a protected monopoly.
>
> --225 F. 2d 223 (D.C. Cir. 1955), 22 F.C.C. 1432 (1957).

C-150 Wyatt Earp Enterprises vs. Sackman, Inc.

Following the success of the "Wyatt Earp" television series, the producing company, Wyatt Earp Enterprises, licensed a number of concerns to make use of the Wyatt Earp name on merchandise which they produced. Other firms made use of the Wyatt Earp name on merchandise which they manufactured and distributed, without securing permission from Wyatt Earp Enterprises. Accordingly, Wyatt Earp Enterprises appealed to courts for injunctions prohibiting the use of the Wyatt Earp name on such merchandise. In January, 1958, the federal district court for the Southern District of New York issued preliminary injunctions against Sackman Brothers, manufacturers of play suits, and the Leslie Henry Co., manufacturer of toy guns and holsters. During the same month, the New York Supreme Court issued a permanent restraining order against the Triboro Hat Corp., which was making Wyatt Earp hats. The opinions noted that $3 million had been spent in the production or more than 100 telefilms in the "Earp" series, and that a similar

amount had been spent by sponsors for network time. As a result, although Wyatt Earp, as a real character, might be considered as being in the public domain, whatever commercial values lay in the name were the result solely of the television program, and were the property of the producing company, Wyatt Earp Enterprises.

--157 F. Supp. 621 (S.D.N.Y., 1958).

C-151 Federal Broadcasting System vs. F.C.C.

In 1953, the Communications Commission authorized two applicants, WHEC Inc. and Veterans Broadcasting Co., to construct television stations which would share time on channel 10 in Rochester, N.Y. Federal Broadcasting System, a losing applicant which was licensee of radio station WSAY in Rochester, protested the grant on the basis that the radio stations owned by the successful TV applicants, WHEC and WVET, had refused to grant WSAY blanket authority to rebroadcast sponsored programs carried by the other two stations. The Commission refused to act on the protest, whereupon Federal appealed to federal courts; in 1955, the Court of Appeals for the District of Columbia ruled that the FCC should not have ruled on the Federal protest without a public hearing. The Commission accordingly held a public hearing on the protest in March, 1956. Following the hearing and oral arguments several months later, the FCC again rejected the protest of Federal, and reaffirmed its grant of the TV facilities to WHEC and Veterans.

Basis of the WSAY protest was the Commission's ruling in May, 1952 that "unreasonable" refusal of permission to rebroadcast might be considered as conduct contrary to public interest. In the Rochester case, however, the FCC found tht WSAY, in requesting permission to rebroadcast programs of WHEC and WVET, had asked for blanket authorization to rebroadcast any or all sponsored programs carried by each of the stations, rather than for permission to rebroadcast specific programs of unusual public value; that WSAY apparently had planned to rebroadcast the programs of the other stations simultaneously with the original broadcasts, and in the same primary agrea; that WSAY had not indicated willingness to defray any part of the costs of the programs to the originating stations; that no sponsor or other person with an interest in any program involved had requested that any rebroadcasts be made over WSAY; and finally, that there was no indication that WHEC and WVET had acted in collusion in refusing the blanket rebroadcasting authorizations sought by WSAY.

Following release of the Commission's opinion in March, 1958, licensee of WSAY asked for a rehearing of its protest; the WSAY petition was denied and the grants to the two television station applicants reaffirmed by the FCC in February, 1959.

--9 R.R. 174 (1953), 225 F. 2d 560 (D.C. Cir. 1955), 350 U.S. 923 cert. den. (1955), 24 F.C.C. 147 (1958), 14 R.R. 150 (1959), 270 F. 2d 914 (D.C. Cir. 1959).

C-152 Benny vs. Loew's, Inc.

In 1953, Jack Benny produced a filmed program for his CBS television series which was a burlesque of the melodrama "Gaslight," which had previously been presented both on the stage and in motion pictures. Prior to the broadcast of the Benny version, Metro-Goldwyn-Meyer, owner of the play's copyright, applied to the federal district court in Los Angeles for an injunction restraining Benny and CBS from using the Benny parody, contending that if the play were used on television in burlesqued form, possibilities of the use of a "straight" version on television would be destroyed. The

district court in a 1955 decision grantedthe injunction, holding that the Benny burlesque was an infringement on copyright, since the burlesqued version had taken a substantial amount of material from the original version, and that the principle of "fair comment"--under which excerpts from copyrighted materials may be used by reviewers and others--did not extend to the wholesale use of material taken from a copyrighted play.

Benny appealed the district court's decision to the federal court of appeals, which in 1956 affirmed the verdict of the lower court. The U.S. Supreme Court in 1958, by a 4 to 4 vote, refused to reverse the findings of the lower courts.

After this decision, Benny bought television rights to the play, and his burlesqued version, filmed in 1953, was presented over the CBS television in January, 1959.

--131 F. Supp. 165 (D. Cal. 1955), 239 F. 2d 532 (9th Cir. 1956), 356 U.S. 43 (1958), reh. den. 356 U.S. 934 (1958).

C-153 Georgia Letters.

When radio stations in Georgia came up for license renewal April 1, 1958, 10 of the 11 AM stations operating in Atlanta--all of them "news and music" stations--were refused regular license renewal and placed on temporary license. Letters sent to the stations by the Commission indicated that license renewal had been denied because their program schedules consisted almost entirely of recorded music, and included almost no programs of an educational, agricultural, discussion or "talk" nature.

Two or three of the stations were restored to regular license later in 1958--presumably after changes had been made in their over-all program offerings; at least 7 were kept on a temporary license basis until the summer of 1959.

--Broadcasting, April 4, 1958, p. 61, and July 7, 1958, p. 10.

C-154 Alabama Broadcasting System, Inc. Decision.

During the spring of 1958, a number of television stations throughout the country broadcast editorials opposing the authorization by the Communications Commission of any system of "pay television," in which facilities of television broadcasting stations would be used to supply programs to listeners on the basis of a separate fee charged for each program received. The Skiatron Television and Electronics Corp., one of the firms most active in supporting pay-TV, filed a formal complaint with the FCC charging that the national television networks and many stations were presenting unfair and biased discussions of the pay-TV questions.

Among other stations whose activities were protested by Skiatron was WABT(TV) in Birmingham, Ala., which presented an anti-pay-TV editorial on one of its news programs and also presented a "forum discussion" of the issue, using its own employees to support the pay-TV point of view--but failed to offer time to any known advocate of the pay-TV system to reply to its anti-pay-TV editorials. On the basis of the Skiatron charges, the Commission put WABT(TV) and radio stations WAPI and WAFM(FM) on temporary licenses--all three were owned by a single licensee, the Alabama Broadcasting System--pending an investigation. In June, 1958, the stations were restored to regular license basis, but the Commission stated that the failure of WABT(TV) to offer its facilities to a known proponent of pay-TV while broadcasting editorials opposing the plan was not in harmony with the

Commission's standards with respect to editorializing.

The Commission also sent letters to WBT-TV in Charlotte, N.C., and to WBTW(TV) in Florence, S.C., taking these stations to task for presenting anti-pay-TV editorials without providing fair opportunity for a presentation of views favoring the system.

--17 R.R. 273 (1958).

C-155 Carroll Broadcasting Co. vs. F.C.C.

In 1957, the Communications Commission granted the application of the West Georgia Broadcasting Co. for a new 500-watt radio station to operate in Bremen, Ga., with a population of only 2,300. Grant was made over the protest of the Carroll Broadcasting Co., operator of a 250-watt station, WLBB, in Carrollton, Ga., with a population of 8,600 and only 12 miles from Bremen. Carroll appealed the FCC action to the U.S. Court of Appeals for the District of Columbia, contending that the possible revenues from advertising in the area were not enough to allow both stations to exist.

On the basis of the Supreme Court's decision in the Sanders Brothers case, the Commission had consistently refused to consider possible economic injury to existing stations in passing on applications for new facilities. In the Sanders case, the point at issue was injury to the station and its licensee. In the West Georgia case, however, the court looked at the Commission's grant of authorization for a new station from a different point of view--that of possible injury to the quality of the service provided for listeners. And in a decision handed down in July, 1958, the court of appeals remanded the case to the FCC for further consideration, holding that in passing on applications for new broadcasting facilities it is the duty of the Commission

> to consider whether the economic effect of a second license in the area would be to damage or destroy service to an extent inconsistent with the public interest. . . . Whether a station makes $5,000, $10,000 or $50,000 is a matter in which the public has no interest as long as service is not adversely affected. But if the situation in a given area is such that available revenue will not support good service in more than one station, the public interest may well be in the licensing of one rather than two stations.

The FCC reexamined the situation in the light of the Court's order. However, the FCC's position was that in any protest, the burden of proof lies with the protesting individual or company, and that in this case, it was necessary for the Carroll Co. to prove that two stations could not survive and provide good service in the area. And, as the Court had pointed out, "the burden of proof was a heavy one." After a rehearing, the Commission rejected the Carroll protest, and reaffirmed its authorization to the West Georgia company.

Both the FCC and the broadcasting industry were unhappy over the court's decision. For the FCC, the precedent meant that the "economic injury" issue might be raised as a basis of protest of almost any grant made, forcing the FCC's investigations to be carried into the business activities of existing stations. For the broadcasting industry, the fact that the Court had virtually demanded investigations both of chances of business success of new applicants and the business operations of existing licensees, expanded the areas of "interest," at least, of the FCC, where the industry felt such activities should be curtailed or prohibited.

--23 F.C.C. 255 (1957), 258 F. 2d 440 (D.C. Cir. 1958), 27 F.C.C. 161 (1959).

C-156 WGH Decision.

At various times, radio stations have been put on temporary license basis by the FCC because of "program imbalance." One case in which action of the Commission can be completely traced is that of WGH, Norfolk, Va., licensed to Hampton Roads Broadcasting Co. WGH, operating as a news-and-music station, made routine application for license renewal to become effective October 1, 1957. Instead, the station was put on temporary license. In December, 1957, a letter was sent to the station raising questions concerning its over-all program schedule. As a result, WGH made a number of changes in its programming, including the addition of some educational programs and of a public affairs discussion program.

The changes, however, did not satisfy the Commission. In July, 1958 the station was notified that a hearing on license renewal would be necessary to determine why, in its programming, the station had failed to conform to promises made in earlier applications. Following receipt of this letter the management of the station made substantial changes in its program operation, and filed a revised application for license renewal which included the following promises concerning future programming by the station:

--A limit of 1,000 commercial spot announcements in any one week.
--Not more than three commercial spot announcements in any one 14 1/2 minute period of programming, with no announcement more than 60 seconds in length.
--Not more than 75 per cent of the station's total broadcasting hours to be commercial; also, at least one sustaining period--length not specified--to be included in every hour of broadcasting.
--Employment of a full-time public service director devoted to development of educational and discussion programs and programs presented in cooperation with local community groups.
--Enlargement of the station's news department, and installation of two remote pickup points to aid in news coverage.
--Increase in number of station employees from 33 to 41 persons, with most of the additional personnel to be used in the program department.

On the basis of the station's promises in its revised application, and of the changes already effected in the station's program, the Commission granted the station regular license renewal in the spring of 1959.

--Broadcasting, April, 1958, p. 61; July 7, 1958, p. 10; also letter summarizing the case sent to its clients by a firm of Washington attorneys.

C-157 Lamb vs. Sutton.

During the 1954 political campaign, Pat Sutton, candidate for the U.S. Senate, presented a "talkathon" political broadcast over facilities of WSM and of WLAC in Nashville, Tenn. In the course of his broadcast, Sutton referred to Edward O. Lamb, attorney and newspaper publisher in Toledo, Oh., and licensee of two television and four radio stations, as a "known Communist," and also stated that the FCC "took his (Lamb's) radio and television stations away from him."

Lamb brought suit against Sutton and the two stations for one million dollars in federal district court in Nashville, charging that he had been libelled by Sutton. In April, 1958, a jury rendered a verdict in favor of Lamb, awarding damages totalling $25,000. The Court, however, ordered a new trial. Following the second trial the Court ruled in July, 1958 that the stations were not liable for damages. The Court held that although

> no express provision in the section (315 of the Communications Act) grants immunity to a licensee, it would appear that such immunity is necessarily implied. . . . If the licensee is deprived of all right to delete any portions of the material to be broadcast by a political candidate, it logically follows that it was the intent of Congress to immunize the licensee from liability for defamation for remarks made by such candidate while using its facilities.

This decision went considerably further than that in the WMCA case in 1942; in addition, it marks the first time than an "immunity" ruling was given by a federal court.

--164 F. Supp. 928 (M.D. Tenn. 1958), aff'm 274 F. 2d 705 (6th Cir. 1960), 363 U.S. 830 cert. den. (1960).

C-158 In re TelePrompTer.

The TelePrompTer Company bought exclusive rights to "reproduce" the Floyd Patterson-Roy Harris heavyweight fight on August 18, 1958, planning to present a non-broadcast large-screen theater telecast of the fight throughout the country, and of course anxious at all costs to prevent a "live" broadcast on either radio or television. Prior to the date of the fight, radio stations WINS, WOR and WOV in New York City announced that they would present blow-by-blow recreations, based on the round-by-round summaries of the progress of the fight provided by press associations which would have correspondents present at ringside. TelePrompTer applied to the New York Supreme Court (equivalent to a district court in most other states) for an order restraining the stations from broadcasting any fight summaries during the time the fight was in progress.

The Court refused to grant the injunction on the basis asked, stating that

> the plaintiff has put at the disposal of national press associates all the facilities necessary to enable them to transmit instantaneous reports of the bout to thousands of newspapers. Once there has been a public dedication of news, radio broadcasters have the same rights of dissemination of news as do newspapers. Such rights do not extend to a blow-by-blow description of the fight, nor to a broadcast of the bout phrased in the present tense. . . . The motion for an injunction is granted solely to the extent of restraining defendants of the boxing match, phrased in the present tense."

The stations broadcast "summaries of the progress of the fight" at the end of each round, but stayed strictly within the limits imposed by the Court.

--Broadcasting, August, 25, 1958, p. 60.

C-159 KSTP, Inc. Decision.

During March, 1958, the Labor-Management Committee of the U.S. Senate conducted hearings on various labor disputes, among them the strike of the United Auto Workers against the Kohler Co. of Sheboygan, Wi.--a strike marked by a great degree of violence. The hearings were broadcast live by station WTTG(TV) in Washington, D.C., owned by the Metropolitan Broadcasting Co.; in addition, kinescoped films of excerpts from the accounts of violence in the Kohler strike were distributed by Metropolitan to a number of television stations, some of which used the filmed materials as a separate special program while others used portions of the material in regular news broadcasts.

In April, 1958, the AFL-CIO complained to the FCC that costs of providing the Kohler strike hearings kinescopes were paid by the National Association of Manufacturers, but that the stations which broadcast the kinescoped materials had failed to identify NAM as the agency supplying the films, as required in Paragraph 73.654 (now 73.1212(d)) of the FCC's rules. On the basis of the labor protest, the FCC in June, 1958 sent letters to 27 television stations, asking them to explain their failure properly to properly identify the source of the filmed materials. In addition, in September, 1958, when stations in Ohio and Michigan came up for license renewal, the Commission in granting renewals to four stations owned by the Storer Broadcasting Co., and the Westinghouse Broadcasting Co., took the stations strongly to task for their failure to comply with the regulation, stating that the stations' conduct "fell substantially short of that required of a broadcast licensee," and in relation to the explanation given by Storer and Westinghouse that they had not known that the material had been paid for by the National Association of Manufacturers, that "the highest degree of diligence" must be exercised by stations to determine "the actual source of all materials involving public issues."

--17 R.R. 553 (1953), 17 R.R. 556a (1958), 17 R.R. 556 d (1958).

C-160 D. L. Grace Decision.

When J. E. Garner, staff newscaster for radio station KFPW in Ft. Smith, Ark., became a candidate for reelection to the state legislature, his opponent, D. L. Grace, waited until Garner had appeared in a number of news programs on the station, and then asked the FCC for a ruling on his rights to equal time (in 1958, the 1959 amendments to the Communications Act exclusing appearances on news programs from "equal time" provisions of Section 315 had of course not yet been adopted). In particular, he asked whether he could claim time equal to all of that used by Garner following his announcement of candidacy, and whether he could send a spokesman to appear in his place on the "equal time" provided, instead of appearing himself. The FCC staff issued a ruling which said that Grace, since entitled to the time, could use it in any manner he saw fit, including uses which in whole or in part involved turing the microphone over to authorized spokesmen for the candidate.

The National Association of Broadcasters protested this ruling. In October, 1958 the Commission, by unanimous vote, reversed the staff ruling, holding that when a candidate avails himself of the right to equal opportunity, he is limited to personal use of the station's facilities. In addition, he may not "store up" time, demanding an amount of time late in the campaign to equal the total use of a station's facilities weeks or months earlier. Both rulings are repeated in the FCC's 1958 Political Interpretations.

--Variety, October 8th 1958, p. 25; Letter to D. L. Grace, July 3, 1958; also D. L. Grace, 17 R.R. 697 (1958).

C-161 Use of Broadcast Facilities by Candidates for Public Office.

On October 1, 1958 the FCC released a Public Notice providing interpretations of various portions of Section 315 of the Communications Act and of the Commission's own rules and regulations relating to political broadcasts. This set of interpretations included 61 items, repeating the 42 items

given in the 1954 interpretations, and 19 that were new. Among the more important of the new interpretations were the following:

If a station owner, a station employee, or an advertiser using the station's facilities makes any appearance on the station after having qualified as a candidate, the provisions of Section 315 apply.

If film clips showing a legally qualified candidate as one of a group involved in official ceremonies are included in a televised newscast, and the newscaster mentions the candidate and others involved in the ceremonies by name, this is not a "use" of the station under Section 315, since the candidate did not initiate the broadcast of the event and the broadcast was nothing more than routine news coverage.

The name of a candidate does not have to appear on the ballot for the candidate to be legally qualified, if under state laws he may be voted for by write-in, or if electors pledged to him may be voted for by write-in or otherwise. However, the mere fact that a candidate may be voted for and that he has publicly announced his candidacy does not necessarily entitle him to time; a station may make reasonable requirements of proof of the bona fide nature of his candidacy.

Ruling of a state attorney general or other appropriate state official on whether a candidate is or is not qualified under local laws, will be considered decisive, in absence of a court ruling to the contrary.

If a station offers free time to opposing candidates and one declines to make use of the free time, the others are not foreclosed from availing themselves of the offer.

If a station invites opposing candidates to appear on a debate-type program, format of which is specified by the station with no restrictions being placed on what issues or other matters may be discussed, and one candidate refuses while the other appears, the station is under no obligation to provide further "equal opportunity" to the first candidate, as far as this particular appearance of his opponent is concerned.

If a station provides facilities "beyond the use of a microphone" for one candidate, it must provide similar facilities to other qualified candidates for the same office.

The provision in Section 315 that rates charged candidates "shall not exceed the charges for comparable use" of a station for other purposes applies only to broadcasts by candidates; the section makes no stipulation as to rates which may be charged for political use of the station by non-candidates.

Although a station may not charge its national rate (presumably higher) for use of time by candidates for local offices, the question of whether a candidate for Congress from an election district covering a substantial area is to be charged national or local rates will depend on the criteria used by the station in distinguishing between "local" and "national" advertisers.

If a candidate is himself the licensee of a station, it is entirely proper for him to pay for any time ue uses on that station, so that time provided his opponent will also be on a paid basis.

--F.C.C. Public Notice 58-963, 17 R.R. 1711 (1958).

C-162 Functional Music, Inc. vs. F.C.C.

Although FCC regulations permitted FM stations to provide a "functional music" service to restaurants, stores, etc., by multiplexing--at the same time a regular broadcasting service was being provided by the same station--the

Commission's position has always been that such a service could not be considered "broadcasting." In 1955, the Commission announced proposed rulemaking which would definitely prohibit the simplexing of functional music by FM stations. To block the adoption of such a rule, FM station WFMF in Chicago appealed to the federal Court of Appeals for the District of Columbia. The Court in a 1958 decision held that the Commission's ruling that functional music operations were "non-broadcasting" in nature is not supported by the Communications Act. "Program specialization is not necessarily determinative" of whether programs are intended to be received by the public, said the Court. "Broadcasting remains broadcasting even though a segment of those receiving the broadcast signal are equipped to delete a portion of the signal"; and furthermore the type of programming provided "can be, and is, of interest to the general radio audience."

The Commission appealed the decision to the U.S. Sumpreme Court, which late in 1959 refused to review the case.

The functional music operation objected to involved supplying a program service to banks, restaurants, offices, stores and other places of business, in which the "subscribing" business concerns pay a monthly fee covering rental of receiving sets with automatically switch off all spoken materials (commercials, chain breaks, etc.) and switch back on when the playing of music is resumed, so that a "background-type music service" is provided. The Commission's 1955 regulation, held illegal by the Court, would have permitted this type of service--but only as "special subsidiary communications" granted special authorization by the Commission, and over and above a required 36-hours per week of regular broadcasting.

--11 R.R. 1590 (1955), 274 F. 2d 543 (D.C. Cir. 1958), 361 U.S. 813 cert. den. (1959).

C-163 Television Quiz Fixing Investigations.

During the winter of 1957-58, quiz programs providing unusually large cash prizes for contestants became an extremely important type of television network program. The more important programs of this type were included in network schedules for the 1958-59 season. In August, 1958, however, the Colgate Company, sponsor of the CBS daytime quiz program "Dotto" and of the NBC Tuesday evening program of the same name, announced that its sponsorship of the two programs had been cancelled. CBS immediately announced that the program would no longer be carried on its network. Although no reasons were given, industry rumors were that a disgruntaled contestant on the "Dotto" show claimed that the program was "rigged;" that in his own case, producers of the program had paid a rival contestant to allow another to win.

The situation naturally cast a cloud on the integrity of all of the big-money quiz programs. At first, the networks attempted to keep successful programs on the air by taking over production from the packagers who had originally produced the shows; later, as ratings dropped, practically all of the big-money quiz shows were dropped from net work schedules. Meantime, a probe of quiz show "fixing" charges was inaugurated by a New York grand jury. The probe continued into the spring of 1959, with more than 200 witnesses heard--producers of the various quiz programs, network officials, and large numbers of contestants on the shows, in particular those who had won large sums of money. The grand jury's report, completed in June, 1959, was not released by the judge of General Sessions in charge. During the winter of 1959, the Legislative Oversight Committee of the U.S. House of Representatives also conducted an investigation, calling many of the same witnesses who had appeared before the grand jury. In the House committee

hearings, producers of some programs--Daniel Enright, of Barry and Enright, package producers of "Twenty-One" among them--admitted that they had "rigged" programs to heighten dramatic values for listeners and Herbert Stempel, who had won $49,000 on the "Twenty-One" program, testified that he had been instructed to lose to Charles Van Doren, who in turn admitted that he had received coaching in advance both on answers to questions to be asked and on "how to act before the cameras." Among quiz programs most strongly implicated were "Twenty-One," "Dotto," and "Tic-Tac-Dough"; less positive evidence was provided concerning any possible "fixing" of "The $64,000 Challenge," and "The Big Surprise."

The result of the quiz-program scandals was the almost complete disappearance of big-money quiz programs from evening network schedules. Of seven such evening programs in April, 1958, only two were still scheduled in April, 1959, "Name That Tune" and "The Price is Right," neither of which was in any way involved in the scandals. Of daytime quiz programs, where prizes were far smaller, only "Dotto" was dropped; the "fixing" evidently did not extend to those programs.

In January, 1962, 18 quiz show winners--among them Charles Van Doren, Elfrida Van Nordroff and Henry Bloomgarden, who won a combinted total of $448,000 on the "Twenty-One" program during 1956-57, entered pleas of guilty to second degree perjury for testimony given before the New York grand jury hearing in the fall of 1958. All were given suspended sentences. The actual "rigging" of the programs was not, in itself, a direct violation of any statutes.

--Broadcasting, August 25, 1958, p. 64, October 20, 1958, p. 76; and October 19, 1959, p. 82; Variety, October 7, 1959, p. 1; Broadcasting, January 22, 1962, p. 64.

C-164 Walter T. Gaines Decision.

In July, 1957, Walter T. Gaines was granted a construction permit for a new AM radio station to operate in Amsterdam, N.Y. Following the grant, a rival station in the same area, for which Gaines formerly had been general manager, protested the Commission's action. In a hearing which followed, evidence indicated that Gaines, as manager of the other station, had failed to report rebroadcast of programs of an Albany station to the FCC, had caused to be "faded out" portions of a political talk by a candidate to which Gaines had objected, and had instructed station employees to falsify operating logs. The Commission held that these past activities reflected adversely on the applicant's character; as a result, the construction permit issued Gaines was revoked in December, 1958.

--25 F.C.C. 1387 (1958).

C-165 United States vs. Philadelphia Radio and Television Broadcasters Association.

In 1952, the ten radio stations which were members of the Philadelphia Radio and Television Broadcasters Assoc. adopted a "code of fair practices," which bound association members not to deviate from published rate-card rates, give secret rebates to advertisers, or enter into special agreements to provide special services to some advertisers not afforded to all using facilities of the same station. In the spring of 1956, the several stations sent a joint telegram to a Chicago advertising agency, announcing their firm resolution not to depart from their published rates. In June, 1956 the ten stations were indicted by a federal grand jury in Philadelphia charging violation of the anti-trust laws. When the case came to trial in June, 1957, nine of the

stations (charges against the tenth had been dismissed) entered pleas of nolo contendere, making no defense against the Department of Justice's charges. Presiding Judge Allen K. Grim of the U.S. District Court for the Eastern District of Pennsylvania said, "I think no moral terpitude is involved in this case. What was done by the men in this case was done in what they believed to be in the best interests of their employers and of the public. . . . I doubt seriously if these defandants are guilty. Nevertheless I shall accept the pleas which have been offered and the suggestions of the government as to sentence."

The Court's actual decision was not announced until December, 1958, finding the nine stations (KYW, WCAU, WDAS, WFIL, WDAS, WHAT, WIBG, WIP, and WPEN) guilty and assessing a fine of $1,000 against each; in addition, the association was fined $5,000.

--18 R.R. 2009 (1958).

C-166 "Preparation H" and NAB TV Code.

The National Association of Broadcasters adopted a Television Code of Good Practice and set up a Code compliance agency in 1952; members of the NAB paid an annual fee to the Code organization, and in return were permitted to display the Code seal, certifying that they were members of the organization in good standing. Not all of the television-station members of NAB, or course, elected to subscribe to the Code; most of the major stations in the country did, however, join the organization and agree to conform to Code standards.

A full-time paid director was employed in 1952 to supervise Code operations, and was given a small investigative staff; major "authority" in the organization, however, rested from the beginning with a Code Review Board made up of five members elected from subscribers to the Code. This board supplied interpretations, and could "certify" offenders to the NAB Television Board, which in turn could revoke the offenders' membership.

The Television Code faced its greatest crisis when during 1958-59, the Ted Bates advertising agency placed with a number of TV stations "spot" advertising in behalf of Preparation H, a hemorrhoid remedy, and a product which had been advertised in such publications as McCalls, the Saturday Evening Post, Parents' Magazine, Cosmopolitan and Life, as well as in more than 1,200 newspapers. The Code Board of the NAB held that the Television advertising copy was offensive, and ruled that the commercials should not be carried by subscribers to the Television Code. The Bates agency had announced that 142 television stations had accepted Preparation H advertising, including about 75 TV code subscribers; of the 75, seven cancelled the advertising prior to the Code Board's ruling.

Following the notices of the Code Board's disapproval, additional stations cancelled the account. Others, objecting to the Code Board's "interference," sent in notices of their withdrawal from the Code subscribing group. In a meeting of the Television Code Review Board in April, 1959, eight non-conforming stations were cited for violation of Code provisions, and a few days later had their Code memberships cancelled by the NAB Television Board. Later, 13 additional stations had Code memberships taken away. As far as is known, the other offending stations dropped the objectionable advertising and retained their status as Code subscribers.

--Broadcasting, April 27, 1959, p. 31; Variety, June, 24, 1959, p. 79.

C-167 CATV Inquiry of 1959.

By the winter of 1958-59, approximately 600 different Community Antenna Television systems were in operation in the United States. The CATV operators erected tall antennas in small communities usually at a considerable distance from markets with television stations, picked up signals of television stations--without bothering to secure approval of the stations whose programs were received--and distributed the programs by wire or coaxial cable to subscribers who paid the CATV systems a monthly fee for service. Often CATVs were set up in small cities having only one TV station. Subscribers to the CATV service could get programs from outside communities, and had a choice of programs of all three networks, instead of being dependent on the service given by the local TV station. Operators of TV stations complained to the FCC; the Commission accordingly conducted an investigation of the status of CATVs and their effects on operations of TV stations. In April, 1959, the FCC issued its report holding that the Communications Act gave it no power whatever to regulate operations of CATV systems; that CATVs were not "common carriers" of the type described in the Act; that they were not engaged in "broadcasting" or in the transmission of radio signals; that distribution of programs by CATV systems could not be defined as "rebroadcasting"; and that the Act gives the Commission no authority to regulate such systems simply because they have an economic effect on licensed TV stations.

--26 F.C.C. 403 (1959).

C-168 United States vs. Hintz.

Edward A. Hintz, a former Illinois banker who had been involved in the Orville Hodge banking scandal in Illinois, was called as a witness at a hearing before the Senate Banking and Currency Committee in October, 1956. Hintz refused to testify before the Committee on the grounds that his rights and privileges were invaded because of the presence of TV cameras in the hearing room. He was cited for contempt of Congress.

In a decision handed down in June, 1959, the U.S. District Court for Northern Illinois found Hintz guilty of contempt of Congress. The Court held that "the court had no right to tell Congress how to conduct its hearings. If cameras are permitted by a Congressional committee, no witness has the right to refuse to testify for that reason."

--193 F. Supp. 325 (N.D. Ill. 1961).

C-169 Bradbury vs. Columbia Broadcasting System.

Plaintiff Ray Bradbury, science fiction writer, sought to recover damages from CBS when "A Sound of Different Drummers" was televised October 3, 1957 on Playhouse 90. The show included material from two of his copyrighted works "The Fireman" published in Galaxy and later expanded into a copyrighted book titled "Farenheit 451."

The Court held that

> Upon any work, and especially upon a play, a great number of patterns of increasing generality will fit equally well. . . but there is a point in this series of abstractions where they are no longer protected, since otherwise the playright could prevent the use of his ideas, to which, apart from their expression, his property is never extended.

The court "propounded" two questions: (1) did defendants actually use plaintiff's play, and (2) if so, was there a fair use. Fair use is defined as copying the theme or ideas rather than their expression.

> As a result of these decisions, if there is access, the probability that the similarities are the result of copying, intentional or unintentional, is so high that there is only one pertinent question: are there similarities of matters which justify the infringement claimed? Was there a piracy of copyrightable play as shown by similarities of locale, characters, and incidents? We hold the answer should be in the negative. . . We conclude, therefore, that the. . . play does not infringe, in whole or in part, Bradbury's works and that no plagiarism has been shown.
>
> --174 F. Supp. 733 (S.D. Calif. 1959).

C-170 Farmers' Union vs. WDAY.

During the political campaign of 1956, A. C. Townley, independent candidate for election to the U.S. Senate from North Dakota, demanded "equal opportunities: for a political speech on station WDAY-TV in Fargo, N.C., which sold time to other candidates for election to the Senate. In spite of the fact that Townley was considered as "having no chance" in the election (actually he received only 937 votes out of a total of 244,161 votes cast for Senatorial candidates), the station sold him the time, and on October 29 presented a filmed Townley political speech which was carried by the TV station three times during the day. The speech was a violent attack on the Farmers' Educational and Cooperative Union of America--as well as on Townley's two regular-party opponents--including charges that the Farmers' Union was a Communist organization.

In January, 1957, Farmers' Union brought suit for libel damages against Townley and against WDAY-TV in a North Dakota state court; in May, 1957, the court dismissed the suit against the station, though allowing the charges against Townley to stand. When Farmers' Union appealed the lower court's action with respect to WDAY-TV, the North Dakota Supreme Court upheld the decision of the lower court, stating in April, 1958 that a broadcasting station cannot be held liable for defamatory statements made over its facilities by a candidate for office whose speech is broadcast in accordance with federal law, when that federal law provides that the talk by the candidate may not be censored.

The court's decision was appealed to the U.S. Supreme Court, which on June 29, 1959, by a 5 to 4 decision, ruled in favor of the television station. The majority held that when Congress inserted the "no censorship of candidate's speeches" clause in the Communications Act, it meant the section to be interpreted in a very literal way; that Congress sought to encourage "broadcasting stations to make their facilities available to candidates for office without discimination" and also to insure "that when broadcasting, these candidates were not to be hampered by censorship of the issues they could discuss." The decision concluded that Section 315 of the Communications Act must confer immunity from libel actions to stations; otherwise it "would sanction the unconscionable result of permitting civil and perhaps criminal liability to be imposed for the very conduct the statute demands of the licensee."

Although in earlier cases state courts have held that broadcasters are not liable for defamatory broadcasts by candidates, and in at least one case a similar ruling was made by a federal court, the WDAY-TV case was the first in which station immunity in such situations was upheld by the U.S. Supreme Court.

--89 N.W. 2d 102 (N.D. 1958), 360 U.S. 525 (1959).

C-171 Lar Daly Decision.

Prior to the Chicago mayoralty election in February, 1959, news programs on WBBM-TV and several other Chicago TV stations included news clips relating to various activities--mostly non-political--of Mayor Richard J. Daley, Democratic candidate for reelection. Lar Daly, perennial "fringe" candidate for various offices and now a candidate for the Democratic nomination for mayor of Chicago, demanded "equal time," was refused. Daly thereupon appealed to the FCC.

On Feb. 18, six days before the primary election, the FCC by a 4 to 3 vote ruled that Daly was entitled to time on each station equal to that used for newsfilm appearances of Mayor Daley, a decision contrary to the Blondy decision two years earlier. The four commercial TV stations gave Daly the time, but CBS filed vigorous protest with the FCC, contending that the appearances of Major Daley in bona fide news programs did not constitute "use" of the station by a candidate. The U.S. Attorney General William P. Rogers, also filed a memorandum with the Commission asking it to reverse its ruling. The Commission, however, refused to modify its position. In a letter to CBS In June, 1959, the FCC quoted the language of Section 315 of the Communications Act, and stated that "it is evident from its working that Section 315 contains no exceptions to its requirements,: and that those who asked that exceptions be made had the burden of establishing that in adopting Section 315, Congress had intended that such exceptions be made. In the failure of CBS and others who had protested the decision to show that Congress did have such intentions, the Commission maintained its earlier position that appearance of a candidate in a news film broadcast by a station constituted "use" of that station by the candidate, entitling qualified rival candidates to equal time.

Early in September, 1959, Congress passed an amendment to the Communications Act which stated specifically that appearances of candidates on "bona fide" news programs were not to be considered as "use" of a station by such candidates. This of course reversed the position taken by the FCC in its Lar Daly decision.

--18 R.R. 238 (1959), 26 F.C.C. 715 (1959).

C-172 Political Rules Amendments of 1959.

On July 29, 1959, the Communications Commission announced modification of its political regulations (Sections 73.120, 73.290 and 73.657 for AM, FM and TV respectively) by adding two new sub-sections, "e" and "f," to provide that any request by a candidate for "equal time" must be submitted to the licensee within one week of the day when use by the opposing candidate occurred, and also that whenever a candidate requests "equal time," he has the burden of proving that both he and his opponent are legally qualified candidates for the same office.

The amendments were made effective Aug. 10, 1959.

--F.C.C. Public Notice 59-797, July 31, 1959.

C-173 Stone vs. Goodson.

In 1952, Sid Stone submitted a prospectus of a television program to Mark Goodson and Bill Todman, television program packagers, on the basis of an agreement that payment of $500 per week was to be paid to Stone by the agency if the program idea submitted was used. Later Goodson & Todman produced a program series called "The Price is Right," in which substantial elements of the format submitted by Stone were incorporated; however, Stone received no credit and no payments. Stone brought suit in the New York

Supreme Court demanding an accounting, payment of back royalties, and a requirement that future royalties be paid if the "Price is Right" program was presented. In July, 1959, the Court rendered a verdict in favor of Stone, and ordered Goodson and Todman to pay Stone $50,000 in back royalties, as well as the agreed-upon royalties on future broadcasts of "The Price is Right."

--17 Misx. 2d 652, 188 N.Y.S. 2d 660 (1959), 9 A.D. 2d 646, 191 N.Y.S. 2d 394 (rev'd) (1959), 200 N.Y.S. 2d 627, 167 N.E. 2d 328 affm'd (1960).

C-174 WNOE-TV Letter.

In 1950, in a ruling on editorial practices of station WLIB in New York, the FCC held that if a station editorializes, it is the station's duty to "seek out" advocates of the point of view opposing that presented by the station, and to provide time to those with such opposing views to reply to the editorials presented. According to a statement made by Commissioner Frederick W. Ford in Montreal on Oct. 6, 1960, the "seek out" language was used in all Commission letters to stations which editorialized until late July, 1959.

First use of a somewhat softer statement of the editorializing licensee's requirement was contained in a letter written to KNOE-TV of Monroe, La., on July 29, 1959. In this letter, the Commission stated with respect to editorializing that "the licensee must follow a reasonable standard of fairness in the presentation of the issues in the controversy and . . has an affirmativ duty to aid and encourage the broadcast of opposing views by responsible persons" (emphasis added). According to Commissioner Ford, the WNOE-TV language was used in letters on editorializing after the end of July, 1959.

--17 R.R. 482 (1959).

C-175 "Teaser" Advertisement Order.

During 1959, advertising agencies for certain national sponsors proposed to make use of "teaser" advertising in behalf of some of their clients--announcements of the type, "listen at 12:00 o'clock noon tomorrow for the most important bargain news in this station's history," but with name of the sponsor omitted. The National Association of Broadcasters requested the Communications Commission to make a ruling permitting stations to carry such announcements. The Commission, in September, 1959, refused the NAB request, calling attention to the language of Section 317 of the Communications Act which states explicitly that all material broadcast for which money, service or any other valuable consideration is paid, directly or indirectly, "shall, at the time the same is broadcast, be announced as paid for or furnished. . . by such person."

--18 R.R. 1860 (1959).

C-176 United States vs. RCA.

In 1956, the Department of Justice brought an anti-trust action against the National Broadcasting Co. in the U.S. District Court in Eastern Pennsylvania. Basis of the civil suit was the "trade" of stations between NBC and the Westinghouse Broadcasting Co. by which NBC acquired the Westinghouse radio and TV stations in Philadelphia in exchange for NBC's stations in Cleveland, Ohio, plus a cash payment of $3,000,000. Westinghouse charged that NBC forced the exchange by a threat to withdraw the NBC affiliation from the Westinghouse stations.

In September, 1959, NBC signed a consent decree issued by the Court with approval of the Department of Justice, in which NBC agreed to divest itself of its two Philadelphia stations and in addition not to attempt to acquire any other broadcasting stations in any of the eight largest markets in the United States without prior approval of the Department of Justice. NBC further agreed not to add any additional stations to its list of stations for which the network serves as a station representative concern, without prior approval of the Department of Justice.

According to trade papers, NBC executives said they agreed to the decree because the Justice Department was determined to make the case a test case in the field monopoly. In the event that NBC were to be found violating anti-trust law, the Court could, according to provisions of the Communications Act, order revocation of the license of any or all of NBC's radio and television stations. Even though network executives felt that NBC had a strong case, the risk of carrying the trial to its conclusion was too great, and NBC preferred to accept the relatively milder penalty provided in the consent decree.

--186 F. Supp. 776 (E.D. Pa. 1960), 364 U.S. 518 app. dis. (1960).

C-177 Letter to Metropolitan Broadcasting Corp.

The Metropolitan Broadcasting Co., licensee of WITG(TV) in Washington and WNEW-TV in New York City, applied to the FCC for permission to purchase three additional stations: KOVR-TV in Stockton, Calif.; WTVH(TV) in Peoria; and WIP-radio in Philadelphia.

The Commission approved the transfer, but in a letter to the broadcasting company gave notice to the industry that it planned to apply a stronger set of tests with respect to the handling of controversial issues by stations. Attention was called to the action of WITG(TV) in preparing and distributing to stations, with the cooperation of the National Association of Manufacturers, kinescopes of the Senate hearing dealing with labor violence in the Kohler strike in Sheboygan, Wi.; also to the presentation by both WITG(TV) and WNEW-TV of a program titled "Special Report on Labor Corruption" in which a WITG(TV) employee interviewed several U.S. senators who supported enactment of a labor bill then before Congress. Both actions had been the subject of complaints registered with the Commission by the AFL-CIO. In the case of "Special Report," a private showing of the filmed program was arranged for union leaders prior to the broadcast, but no request had been made by labor representatives for time for a reply.

The Commission's letter stated that Metropolitan's action with respect to "Special Report" was not enough; that the station had the duty of presenting opposing views, whether requested by union representatives or not. The Commission held that it is not enough merely to accede to requests to dispute positions taken by others in broadcasts, but that the station was expected to "seek out" and present opposing views without waiting for requests that time be provided for presentation of such views.

Since its action in the WLIB case in 1950, the Commission has applied the "seek out" formula with respect to answers to station editorials; this, however, is apparently the first instance of its use in a station in which the position with respect to a controverial issue was taken by outside speakers.

--19 R.R. 602 (1959).

C-178 FTC Visual Deception Complaints.

During the autumn of 1959, the Federal Trade Commission began carefully checking visual demonstrations in television commercials, with the result that by February, 1960 some 35 such commercials had been singled out for further investigation, and public complaints filed against six major advertisers:

Aluminum Company of America for commercials showing differences in the appearances of two hams, one of which had been wrapped in Alcoa Wrap, the other in a competitive product. The FTC charged that a less attractive appearing ham had deliberately been selected to be wrapped in the competitive brand of aluminum foil.

Brown and Williamson, for claims concerning the filtering qualities of the "millicel super filter" used in Life cigarettes.

Colgate-Palmolive, for its Colgate Rapid Shave commercial purportedly showing the "shaving" of sandpaper after application of the shaving cream, when in reality sand-coated glass was substituted for sandpaper in the commercial.

Colgate-Palmolive, also, for its "plate-glass-protection" claims for Colgate Dental Cream containing "Guardol"; the FTC charged that use of the dental cream in no way provided a protective coating over teeth paralleling the sheet of plate glass used in the commercial.

Lever Brothers, for its "smoke machine" commercial used to demonstrate the effectiveness of Pepsodent Toothpaste in removing smoke stains from pieces of enamel or glass.

Libbey-Owens-Ford Glass, and General Motors, for visual demonstrations of the "no distortion" qualities of glass used in windows of General Motors cars. The Commission found that the motion pictures used in the commercials of scenes presumably taken through the glass windows of cars were actually taken with the glass completely removed.

Standard Brands for its commercials showing drops of moisture representing "flavor gems" on Blue Bonnet margarine and on butter. The FTC's investigators found that the "flavor gems" actually were drops of glycerine.

Advertisers had for years followed the practice of "touching up" products when photographed for use in magazines, particularly when use of color was required, without complaint from the Trade Commission. For advertisers using television, the question seemed to be where the line might be drawn between such "touching up" and what would be definite misrepresentation. FTC Chairman, Earl W. Kintner was reported by Broadcasting to have stated that the FTC has no interest in advertising in which no material deception is practiced; that it is not opposed to the use of aids to make the product look or act as it should. The Trade Commission, however, will look twice at aids or gimmicks that make the product look or act better than it actually is, or make a competitor's product look worse.

--Broadcasting, Feb. 22, 1960, p. 34.

C-179 Sponsorship Identification of Broadcast Materials Decision.

Investigations by Congressional committees of "fraudulent practices" in broadcasting--the quiz scandals, "rigging" of television commercials, and the like--resulted in a vigorous crack-down by the Communications Commission on the practice of radio stations of allowing disk jockeys and other station employees to accept "payola"--under-the-table payments in cash, services or merchandise for the playing of records provided by certain record companies. In December, 1959, the FCC sent an inquiry to every AM, FM and TV station--educational stations included--asking them what payments or gifts

had been received by the station or by any of its employees during the preceding year from record companies or other non-advertisers, and also asking what specific steps had been taken by the station to prevent acceptance of "payola" by employees. In addition, the Commission shelved license renewal applications of all stations accused of being involved in the practice, or of having employees so involved, allowing them to remain on temporary license until further investigation could be made. Reports to the FCC by the Federal Trade Commission indicated that not less than 200 stations were known to be involved.

In February, 1960, the House Legislative Oversight Committee conducted hearings on the prevalence of "payola" in the broadcasting industry. One result, possibly of the hearings, was that in March, 1960, the Commission sent letters to four stations in the Boston area--WHIL, WILD, WMEX and WORL--all of which had figured prominently in the Oversight Committee's hearings, asking them to "show cause" why their licenses should not be revoked. The "show-cause" letters called attention to program shortcomings on the part of three of the stations: WHIL was devoting a considerable proportion of its time to broadcast of racetrack programs; WILD carried no agricultural or educational programs and no programs of a public service nature; and WMEX carried no agricultural, educational or talk programs, and gave almost no time to religious programs. However, all four stations were asked whether they had "engaged in activities beraing adversely on (the licensee's) character qualifications," and whether they had "misrepresented to the Commission the facts" about the use of "payola by employees" or was lacking in candor in replying to the questionnaire about payola. The stations were kept on temporary license over a considerable period; however, no actual revocation hearings were held.

On March 16, 1960, the Commission took more far-reaching action. In a public notice, copies of which were mailed to all stations, the FCC interpreted Section 317 of the Communications Act--the section requiring identification on the air of materials for which any "valuable consideration" is received by the station--as applying to records provided to stations by record companies without charge. The Commission therefore held that if records donated to a station are put on the air, they must be announced as having been provided on a free basis, with the name of the donor given. Similarly, if prizes used on quiz programs have been donated, the same type of identification had to be given on the air. The public notice did not refer to payola as such; obviously, however, if an employee--and consequently agent--of a station received pay for broadcasting a particular record, that record was technically "sponsored," even if the money given for its use was not turned over to the station. Consequently, an on-the-air announcement would be called for, to conform with the Commission's ruling.

The March 16 notice occasioned much concern on the part of broadcasters, especially those whose record libraries might include hundreds of records supplied by record companies without charge, but a decidedly larger number which had been purchased but with no information in the files to identify which had been provided on a free basis, and which had been purchased. In addition, the Commission's notice did not state whether the "free record" identification notice had to be made separately for each "free record played, or whether use of a blanket announcement several times a day would satisfy the FCC's requirements.

Early in September, 1960, Congress amended Section 317 of the Communications Act to provide that no identification need be made of any "service or property furnished without charge or at a nominal charge for use on. . . a

broadcast, unless it is to be furnished in consideration for an identification in a broadcast of any person, product, service, trademark or brand name beyond an identification reasonably related to the use of such service or property on the broadcast." The Communications Commission accordingly withdrew its order of March 16.

The September amendment also added a new section to the Communications Act--Section 508--specifically making the giving or the acceptance of "payola" a crime punishable by a fine, for each violation, of not more than $10,000 or by imprisonment of not more than one year, or both.

In addition to FCC actions against "payola," the state of New York brought actions against a number of New York City disk jockeys, including Alan Freed, formerly with WINS in New York, for violation of a provision of state law that makes commercial bribery a misdemeanor. And during the winter of 1961-62, nearly 20 well-known large-city disk jockeys were indicted by Federal grand juries on charges of failure to report "payola" payments they had received during 1957, 1958 and 1959, in filing Federal income tax returns.

--19 R.R. 1969 (1960).

C-180 Bingham vs. F.C.C.

In September, 1959, Congress amended Section 315 of the Communications Act to provide that an appearance of a candidate on a "bona fide news program" is not "use of a station" by that candidate, entitling his opponents to equal time. In February, 1960, the FCC made its first ruling on the interpretation of the amended section. Jack Woods, an employee of KWTX and KWTX-TV in Waco, Texas, where he presented a daily weather program, announced himself as a candidate for the Democratic nomination for the state legislature from his district. Following his announcement, he continued to present his daily weather program over the two stations. His opponent for the nomination, William H. Bingham, demanded equal time on the radio and television station. The manager of the station asked the FCC for a ruling. The Commission held that weather reports are "bona fide news programs"; consequently the appearance of Woods on such programs did not entitle his opponent to equal time, since news programs had been specifically exempted by the 1959 amendment to the section.

Bingham appealed to the U.S. Court of Appeals in New Orleans. The Court, in a decision rendered April 19, 1960, confirmed the FCC decision, ruling that under the amended section, Woods had appeared on a regular news program and Bingham, consequently, was not entitled to equal time.

--19 R.R. 1075, 2068 (1960).

C-181 Letter to William S. Freed.

From 1958 to 1960, Charles J. Whiston, county sheriff in Morgantown, W.Va., presented a five-minute daily report on activities of the sherrif's office over facilities of radio station WCLG in Morgantown. Each report was concluded with a "thought for the day." In October, 1959, Whiston announced that he would seek the Republican nomination for Congress in the primaries to be held in May, 1960. In April, 1960, Stanley R. Cox, also candidate for the Republican Congressional nomination from the same district, demanded equal time from the station. When the station refused to make the time available, Cox complained to the FCC, noting in particular the "thought for the day" in Whiston's reports.

The Commission in a letter to the manager of the station late in April, 1960 ruled that the "thought for the day" appeared to be editorial comment, and that on this basis the program was not one of the type which Congress had

intended to be exempt from the equal time provisions of Section 315. Consequently, the Commission's decision was that the station was obligated to provide equal time to Cox.

--19 R.R. 1391 (1960).

C-182 Z-Bar Net, Inc. vs. Helena Television.

Z-Bar Net, Inc., was the owner of KXLF-TV, in Butte, Mont. and KXLJ-TV, Helena, a satellite which duplicated the programming of KXLF-TV. Also located in Helena was a community antenna system, owned by Helena Television, which picked up on its antenna and supplied to subscribers programs of KFBB-TV in Great Falls, among others. The Great Falls station at times rebroadcast, with consent of the originating station, programs of KXLF-TV. Consequently those KXLF-TV programs were carried on the Helena CATV system, in direct competition with the satellite television station. Owners of KXLF-TV brought suit in a Montana state district court to prevent use of its programs by the Helena CATV system. The court ruled against the television station, holding that the "plaintiffs have no property interest by copyright or otherwise in any programs broadcast" by KXLF-TV; that by broadcasting a program, and consequently the pick-up of those programs by the CATV system and their distribution to subscribers, even in competition with the plaintiff's satellite stations in Helena, was not a violation of any of the plaintiff's rights.

--20 R.R. 204 (1960).

C-183 KTNT-TV vs. Columbia Broadcasting System.

From the time the station went on the air in 1953, KTNT-TV, Tacoma, was the CBS affiliate in the Seattle-Tacoma market. In 1958, when a new station KIRO-TV, went on the air in Seattle, CBS cancelled its KTNT-TV affiliation and entered into an affiliation agreement with KIRO-TV. KTNT-TV consequently filed suit against CBS and KIRO-TV for damages in the amount of $15,000,000 charging that the defandants had a secret understanding before KIRO-TV went on the air, and that their action violated anti-trust provisions of the Clayton Act, under which, in a civil action, an injured party may be entitled to triple damages. CBS in the spring of 1960 offered a motion in the Federal district court for dismissal of the charges, which the court refused in April, 1960. In May, 1960, six weeks before the case was scheduled to come to trial in the U.S. District Court in Tacoma, CBS announced that the case had been settled out of court. The network agreed to pay KTNT-TV $400,000 as a cash settlement to defray legal costs and other costs incurred by the station; in addition, as of June, 1960, the network's affiliation with KTNT-TV was reinstated, although the affiliation arrangement with KIRO-TV was continued.

The agreement provided that network advertisers could have their programs carried over both stations at a combined hourly base rate of $1,300, or over either of the two, selected by the advertiser, at an hourly rate of $1,000. Both stations were VHFs, serving substantially the same area.

--Broadcasting, May 30, 1960, p. 34.

C-184 Mile High Stations, Inc., Decision.

In September, 1959, the owner of another station in Denver charged to the FCC that Royce Johnson, a disk jockey employed by KIMN in Denver, had frequently used "smutty and suggestive" language and material on his program, often in conversations with local high school girls who were guests on the show. Following an investigation, which included listening to tapes of offensive broadcasts provided by the complaining station operator, the

Commission sent a letter to KIMN requiring the station to "show cause" why its license should not be revoked, and ordering a hearing on license revocation.

The licensee-general manager of KIMN stated that he had been unaware of what he termed the "infrequent" offenses of his employee, whom he had immediately discharged. He promised the Commission that he would check programs broadcast more closely in the future. In June, 1960, the Commission, acting on a petition from the station that the "show cause" order be reconsidered, cancelled its order for a hearing on revocation and instead issued a cease and desist order which was agreed to by the station. Revocation proceedings were accordingly dropped, and in November, the station was granted regular license renewal.

--28 F.C.C. 795, 20 R.R. 345 (1960).

C-185 Little Rock Television Stations Letters.

In July, 1960, the head of the Republican political organization in Little Rock, Ark., complained to the Communications Commission that the three television station in Little Rock, KARK(TV), KATV(TV) and KTHV(TV), which had carried network broadcasts from the Democratic National Convention in full, were planning to provide no coverage of the Republican National Convention on its opening night, but had instead scheduled paid political broadcasts in behalf of candidates in the state Democratic primary election, which was to be held on the following day. The Commission, by 4-to-3 vote--four Republicans favoring three Democrats opposing--authorized the sending of identical telegrams to the three TV stations asking for a "full statement" as to reasons for their failure to carry the convention broadcast. After receipt of replying telegrams which explained that the convention conflicted with time committed to local candidates in many cases weeks earlier, the Commission majority notified the station that "it appears" that their failure to carry the Republican network coverage was in violation of the "fairness" provision of Section 315 of the Communications Act.

The action against the Little Rock stations was the first taken by the FCC since the adoption of the "fairness" amendment in 1959, as part of the amendment to Section 315 which exempted news broadcasts from equal time provisions of the section. The portion of the section involved states that broadcasters must "afford reasonable opportunity for the discussion of conflicting views on issues of public interest." The Commission's telegrams to the stations stated that "requirements of local political elections are recognized, however, it does not appear from facts available that a reasonable effort has been made also to meet the fairness provisions of Section 315."

As a result of the FCC action, two of the Little Rock stations cancelled their planned primary election return coverage for Tuesday night, in favor of the network coverage of the Republican convention. The third station carried the convention until 7:15 p.m., Little Rock time, and then switched to election returns.

--Broadcasting, August 1, 1960, p. 64.

C-186 Public Service Television vs. F.C.C.

In February, 1957, following a comparative hearing on qualifications of four applicants, the Communications Commission granted the application of Public Service Television, a subsidiary of National Airlines, for use of the Channel 10 television facility in Miami, Fla. Following hearings by the House

Legislative Oversight Committee on "ex parte" contacts of applicants with members of the Commission in which evidence indicated that there were more than casual relationships between a special attorney employed to represent Public Service Broadcasters during the Channel 10 comparative hearing and Commissioner Richard A. Mack (who was forced to resign from the Commission and was later indicted for criminal conspiracy on the basis of facts brought out in the Oversight Committee hearings), WKAT, Inc., one of the losing applicants for the Miami channel, appealed the FCC's Public Service grant to the Court of Appeals of the District of Columbia, which in a decision in April, 1958 remanded the Channel 10 case to the Communications Commission for rehearing, especially on the charges of ex parte contacts.

The FCC appointed to preside over the hearing a special hearing examiner, Judge Horace Stern, former Chief Justice of the Pennsylvania Supreme Court. Judge Stern was also asked to investigate charges of possible misconduct in the grant of Channel 5 in Boston to the Boston Herald-Traveler. Following hearings, Judge Stern found that no evidence had been presented of behind-the-scenes representations in the Boston case, and recommended that no penalties be exacted against the Herald-Traveler. In the Miami case, however, Judge Stern's findings were that both National Airlines (in behalf of its subsidiary, Public Service Television) and WKAT had made improper off-the-record contacts with Commissioner Mack, and that activities of a third applicant, North Dade Video, had been "imprudent" in that the applicant had engaged the services of a former member of the Communications Commission and former congressman to try to persuade Congress to pass legislation prohibiting an airline from owning a television station.

On the basis of the examiner's findings, the Commission, in a decision in July, 1960 revoked the license of Public Service Television and at the same time disqualified both WKAT and North Dade Video, stating its opinion that "the misconduct" of all three applicants "reflects so adversely upon their character as to demonstrate that they lack the qualifications" of a broadcast licensee. The Commission awarded the Channel 10 facility to the L. B. Wilson Co., owner of 50-kw AM station WCKY in Cincinnati--the only one of the original applicants for the Miami TV channel against which no evidence was found of attempting to use improper influence. The Commission's award to Wilson, however, carried the stipulation that the license would expire at the end of a six month period, after which presumably other applicants might be considered comparatively with Wilson.

The Commission's revocation of the WPST-TV license was appealed by Public Service Television to the U.S. Court of Appeals for the District of Columbia, which upheld the action of the Commission. Public Service next appealed to the United States Supreme Court, which in October, 1961, refused to review the lower court's decision. Following the final court action, the Commission renewed its order taking Public Service Television off the air and granting the facility to Wilson.

--22 F.C.C. 117 (1957), 29 F.C.C. 219 (1960), 258 F. 2d 418 (D.C. Cir. 1958), 368 U.S. 841 cert. den. (1961).

C-187 F.C.C. Programming Policy Statement.

In July, 1960, the Federal Communications Commission adopted a policy on programming in which it justified and delimited its authority in the area of programming and presented certain guidelines with respect to programming. Although the Commission does not conceive that it "is barred by the Constitution or by statute from exercising any responsibility with respect to

programming," it readily concedes that it is "precluded from examining a program for taste or content, unless the recognized exceptions to censorship apply: for example, obscenity, profanity, indecency, programs inciting to riot, programs designed or inducing toward the commission of crime, lotteries, etc."

In conjunction with these authorities and limitations, the Commission offered the following guidelines for broadcast licensees:

> Broadcasting licensees must assume responsibility for all material which is broadcast through their facilities. This includes all programs and advertising material which they present to the public. With respect to advertising material the licensee has additional responsibility to take all reasonable measures to eliminate any false, misleading, or deceptive matter and to avoid abuses with respect to the total amount of time devoted to advertising continuity as well as the frequency with which regular programs are interrupted for advertising messages. This duty is personal to the licensee and may not be delegated. He is obligated to bring his positive responsibility affirmatively to bear upon all who have a hand in providing broadcast matter for transmission through his facilities so as to assure the discharge of his duty to provide acceptable program schedule consonant with operating in the public interest in his community and to provide programming to meet those needs and interests This again, is a duty personal to the licensee and may not be avoided by delegation of the the responsibility to others.
>
> Although the individual station licensee continues to bear legal responsibility for all matter broadcast over his facilities, the structure of broadcasting, as developed in practical operation, is such - especially in television - that, in reality, the station licensee has little part in the creation, production, selection, and control of network program offerings. Licensees place "practical reliance" on networks for the selection and supervision of network programs which, of course, are the principal broadcast fare of the vast majority of television stations throughout the country.
>
> In the fulfillment of his obligation the broadcaster should consider the tastes, needs and desires of the public he is licensed to serve in developing his programming and should exercise conscientious efforts not only to ascertain them but also to carry them out as well as he reasonably can. He should reasonably attempt to meet all such needs and interests on an equitable basis. Particular areas of interest and types of appropriate service may, of course, differ from community to community, and from time to time. However, the Commission does expect its broadcast licensees to take the necessary steps to inform themselves of the real needs and interests of the areas they serve and to provide programming which, in fact, constitutes a diligent effort, in good faith, to provide for those needs and interests.

The major elements usually necessary to meet the public interest, needs and desires of the community in which the station is located as developed by the industry, and recognized by the Commission, have included:
(1) Opportunity of Local Self-Expression,
(2) The Development and use of Local Talent,
(3) Programs for Children,
(4) Religious Programs,
(5) Educational Programs,
(6) Public Affairs Programs,
(7) Editorialization by Licensees,
(8) Political Broadcasts,
(9) Agriculture Programs,
(10) News Programs,
(11) Weather and Market Reports,
(12) Sports Programs,
(13) Service to Minority Groups, and
(14) Entertainment Programming.

The elements set out above are neither all-embracing nor constant. We re-emphasize that they do not serve and have never been intended as a rigid mold or fixed formula for station operations. The ascertainment of the needed elements of the broadcast matter to be provided by a particular licensee for the audience he is obligated to serve remains primarily the function of the licensee. His honest and prudent judgements will be accorded great weight by the Commission. Indeed, any other course would tend to substitute the judgement of the Commission for that of the licensee.

The programs provided first by "chains" of stations and then by networks have always been recognized by this Commission as of great value to the station licensee in providing a well-rounded community service. The importance of network programs need not be re-emphasized as they have constituted an integral part of the well-rounded program service provided by the broadcast business in most communities.

Our own observations and the testimony in this inquiry have persuaded us that there is not public interest basis for distinguishing between sustaining and commercially sponsored programs in evaluating station performance. However, this does not relieve the station from responsibility for retaining the flexibility to accomodate public needs.
--F.C.C. Statement on Programming, July, 1960.

C-188 Arnold Peterson Letter.
Following the national political conventions of 1960, Arnold Peterson, secretary of the Socialist Labor Party, requested "equal time" for a spokesman

of that party, on national radio and TV networks. When time was refused, he complained to the FCC, which rejected his complaint on the basis of the Senate Joint Resolution signed Aug. 24, 1960, exempting broadcasters from "equal time" provisions of Section 315 with respect to candidates for the Presidency and Vice-Presidency during the 1960 campaign.

Not discouraged, Peterson tried again, stating in his letter to the Commission that the NBC and CBS networks had granted almost unlimited time to spokesmen for the two major political parties to permit them to present their respective points of view with respect to major political issues, but had refused the Socialist Labor Party's "reasonable request" for time to present its opposing views. This, according to Peterson, was in violation of the provisions of the 1959 amendment to Section 315 of the Communications Act that broadcasters should afford reasonable opportunity for the discussion of conflicting views on issues of public interest. The Commission did not accept the Peterson contention. In a letter written to Peterson in October, 1960, the Commission said that unlike the situation regarding candidates, who by Section 315 must be afforded equal opportunity, the question of the fairness of broadcasters in providing "reasonable time" for discussion of public issues is one "of reasonableness of the station's action, not whether actual equality has been achieved."

Then quoting from its ruling in its 1949 "Report on Editorializing by Broadcast Licensees," the Commission said that "the licensee will be called upon in each case to exercise his best judgment and good sense in determining what subjects shall be considered, . . . the different shades of opinion to be presented, and the spokesmen for each point of view." In other words, the Commission held that the handling of discussions of public issues was a matter left to the discretion of the broadcaster.

The Commission's letter also noted that the censorship provisions of Section 326 of the Act prohibit the Commission from directing a licensee to carry or to refrain from carrying any particular program. Consequently, the Peterson complaint was rejected.

--Letter to Arnold Peterson, Oct. 26, 1960.

C-189 Supplement to Use of Broadcast Facilities by Candidates for Public Office (Rev.).

Following the precedents set in 1954 and 1958, the Communications Commission, in September, 1960, released additional interpretations of Section 315 of the Communications Act--especially as amended in 1959--and of its own rules and regulations concerning political broadcasts. The Commission's Public Notice called attention to the amendments of September, 1959 to Section 315 of the Act, exempting appearances of candidates on certain types of news programs from "equal opportunity" requirements of the section, and also to Senate Joint Resolution 207, waiving provisions of Section 315 relating to equal time with respect to candidates for the presidency and vice presidency during the 1960 compaign. Attention was also called to the 1959 amendments to the FCC's political rules dealing with requests for "equal time" by candidates, and with the burden of proof placed on candidates making such requests to prove his "legal qualifications."

The interpretations themselves dealt with seven situations:

--Held that the following are "bona fide news programs" appearances upon which by candidates do not entitle opponents to "equal time":

--A local weekly interview program, on one broadcast of which three candidates for election as mayor appeared, candidates in each case of established political parties.
--A daily weather broadcast in which a candidate, also a regular station employee, was the "weathercaster," not identified on the program by name or as a candidate.
--Network programs of the type of Meet the Press or Face the Nation, regularly scheduled, and consisting of questions asked by news men and answered by featured guests, and on which candidates for Presidential nomination had appeared.
--Programs of the type of NBC's "Today," regularly scheduled and emphasizing news coverage, news documentaries, and on-the-spot coverage of news events, on which a candidate for office was interviewed.
--A network broadcast, not part of a regular series, providing special news coverage of a press conference by a candidate when the broadcast itself was not arranged by the candidate.
--Held that the following are NOT programs of the type exempted, as news programs, from "equal opportunities" provisions of Section 315:
--A program presented daily by a local office holder, now a candidate for election to another office, reporting on activities of office currently held, but including a personal "Thought for the Day."
--A network variety program (actually, the Jack Paar show) on which a candidate for the Democratic Presidential nomination had appeared in a half-hour interview.

The candidate demanding equal time in the last-named situation--Lar Daly--established that he was a "bona fide" candidate by producing evidence that his name was on Democratic presidential primary ballots in two states.

The 1960 interpretations dealt with no areas other than what constitutes a "bona fide news program," as referred to in the 1959 amendments to Section 315 of the Communications Act.

--20 R.R. 1564 (1960).

C-190 Canfield vs. Columbia Broadcasting System.

"The Verdict is Yours," CBS daytime courtroom drama series, was the program involved in a $3,750,000 plagiarism suit brought in the Los Angeles Superior Court by Homer Canfield, Ludwig H. Gerber and John E. Miller against the Columbia Broadcasting System and packager Frank Cooper. The plaintiffs claimed that they had originated a program uisng a courtroom format and had submitted it to CBS in 1954 on the basis of a verbal contract with the network concerning its possible use. Three years later, CBS had inagurated its "Verdict is Yours" series, with very similar format. Consequently, the plaintiffs charged plagiarism and violation of implied and express contract.

Packager Cooper testified that the "Verdict" format was based on an earlier Chicago originated show called "They Stand Accused" carried on the CBS network several years before the plaintiffs had submitted their program proposal. The network introduced testimony--including the showing of kinescopes of actual programs--showing that the use of televised courtroom drama went back to 1948. In the circumstances, it could not be claimed that any property rights in the idea or format of courtroom drama could be held by the plaintiffs; the jury accordingly held for the defendants.

--Broadcasting, Nov. 7, 1960, p. 56.

C-191 Roger Kent Decision.

On October 20, 1960, President Eisenhower made a speech before the Commonwealth Club in San Francisco of a presumably non-political character. In the speech, he made no reference to the Republican or Democratic presidential candidate by name, but did give stress to the seriousness of world problems and the need for capability and experience on the part of the person who would have to deal with them as president. Roger Kent, state Democratic chairman, demanded equal time from the stations which had carried the speech: KCBS-radio, KGO-radio, KGO-TV, and KPIX(TV), and KRON(TV). When the stations refused to provide the time, Kent complained to the Commission, asking that the stations be required to provide the time, sought on the basis of the "fairness" provision in Section 315, which stated that broadcasters should afford reasonable opportunity for discussion of conflicting views.

The FCC sent letters of inquiry to the stations involved, which replied that their broadcast of the Eisenhower speech was news coverage, and that Eisenhower himself had termed the speech as non-political.

The Commission, accordingly, took the same general position as in the Socialist Labor request for time a short time earlier. In a telegram to Kent, the FCC stated that the appearance of Eisenhower did not require the invoking of "equal time" provisions of Section 315, since Eisenhower was not a candidate. The Commission's statement continued that while broadcasters have a responsibility to present all sides of a controversial issue, this responsibility

> does not mean that any particular person or persons have the right to advance these viewpoints on the station involved. The question whether other available. . . individuals might be appropriate spokesmen for the particular points of view is a matter for the exercise of reasonable discretion by the station. It is not the Commission's policy, . . to direct a station to discuss specific issues or to provide its facilities to specific individuals.
>
> --20 R.R. 867 (1960).

C-192 United Broadcasting Co. Decision.

Following the adoption by Congress in August, 1960 of an amendment to the Communications Act authorizing the FCC to renew station licenses for periods shorter than the usual three years, and the Commission's November, 1960 adoption of rules relating to the issuing of such short-term licenses, the Commission in December, 1960 made its first use of its new powers by issuing license renewals for only 15 months to five radio and TV stations owned by the United Broadcasting Co., a company wholly owned by Richard Eaton. Stations affected were WMUR-TV, Manchester, N.H.; WANT, Richard, Va.; WFAN(FM), Washington, D.C.; WINX, Rockville, Md.; and WSID in Baltimore. Three months later, a sixth Eaton station, WOOK in Washington, D.C., was similarly given short-term license renewal so that licenses of all six of the Eaton-owned stations would come up for renewal at the same time. Basis of the Commission's action was that it had found that Eaton was not giving enough "personal supervision" to the operation of his stations.

During the first nine months of 1961, an additional 12 stations were given short-term renewals on Commission findings of various shortcomings in their applying for license renewal.

--20 R.R. 1074 (1960).

C-193 William Emert Decision.

In February, 1961, the FCC granted license renewal for only 14 months--to April 1, 1962--to radio station WPHB, in Phillipsburg, Pa., owned by Rev. William Emert. The FCC said the renewal was granted "on the basis of corrective action reported by the licensee as a result of complaints about broadcast attacks on various individuals and groups," the latter presumably religious groups. The licensee was reminded, the Commission said, "about broadcasters' responsibility for community service and obligations in the matter of editorializing."

--Television Digest, Feb. 20, 1961, p. 15.

C-194 WAOK Decision.

Letters were sent by the Communications Commission to WAOK, Atlanta, and WRMA, Montgomery, ordering the stations to "show cause" why cease-and-desist orders should not be issued requiring the stations to discontinue the practice of accepting money from record distributors for the playing of certain records on the air. The two stations, both with the same owners and under common management, were the only ones which had admitted, in the FCC's "payola" investigation, that the stations themselves, rather than employees, had received such money.

The two stations informed the Commission that the practice had been discontinued several months earlier. On their acceptance of the FCC's cease-and-desist orders, the Commission dropped its action against both in February, 1961.

--Television Digest, Feb. 20, 1961, p. 2.

C-195 Bench and Bar Appearance ABA Opinion.

Beginning in the autumn of 1958, an increasing number of programs recreating or simulating the trial of cases in the courtroom appeared on television network schedules and on stations throughout the country. Sometimes judges or local attorneys appeared "as themselves" on such programs. As a result of criticisms of the practice, the Committee on Professional Ethics of the American Bar Association released an opinion in April 1961, holding such appearances a violation of professional ethics. Language was as follows:

> It is the opinion of this Committee that
>
> 1) Appearances of judges on commercial programs simulating or recreating judicial proceedings in courts or other tribunals, even though they be not identified as judges or by name, is a violation of the Canons of Judicial Ethics.
>
> 2) Where lawyers appear on commercial programs as actors or performers, whether in the roles of judges or lawyers or otherwise, but are not identified as lawyers either generally or individually, such participation is not improper. Their names may also properly appear as members of the cast under such circumstances.
>
> 3) In the case of programs produced, sponsored, or supported and assisted by Bar Associations, simulating or creating judicial proceedings in courts or other tribunals, designed and used as public information programs, lawyers or judges may properly appear in the roles of judges or lawyers, and may be identified as such and by name.

4) No lawyer or judge should appear in any program, commercial or otherwise, unless it is made clear that such program is not an actual trial or proceeding but is a dramatization, unless such program conforms to the proper standards of the Bench and Bar in their participating in judicial or other proceedings.

5) In the case of continuing educational or public information programs, such as the panel or interview type, sponsored or supported or assisted by Bar Associations or affiliated groups, or those non-commercial programs of this type produced by the television and broadcasting companies, designed and used as public information programs, lawyers and judges may properly appear and be identified as such, either generally or individually, provided always that such programs conform to the proper standards of the Bench and Bar.

The Committee's opinion made it clear that paragraphs 1 through 4 above deal solely with appearances by lawyers and judges in simulated or recreated judicial proceedings, and do not restrict appearances of lawyers or judges on programs involving discussions of public issues.

--Appearances of Attorneys and Judges on Broadcast Programs, Opinion 298, Committee on Professional Ethics, American Bar Association, April 15, 1961.

C-197 Suburban Broadcasters vs. F.C.C.

Application was made by Suburban Broadcasters for authorization for a new FM radio station to operate with 1 kw power in Elizabeth, N.J. On the basis of complaints of possible interference to WNEW(FM) in New York City, operating on an adjacent channel, a hearing on the application was ordered by the FCC in December, 1959, the Commission itself designating the issues to be covered in the hearing. One of these issues dealt with the proposed programming of the Suburban station, since the application provided for programming identical with that of a station applied for by two of the owners of Suburban, in Alameda, Calif. The hearing examiner's report, issued in October, 1960, found that construction of the station would not cause serious interference to the FM station in New York, but did comment adversely with respect to the proposed Suburban programming, particularly in view of the Commission's statement of policy concerning programming, released July 29, 1960 which proposed--though not in form of an order--that future applications contain "documented program submissions prepared as the result of assiduous planning and consultation covering two main areas: first, a canvass of the listening public who will receive the signal; . . . second, consultation with leaders in community life." Suburban, of course, had done neither type of research into program needs of the community. However, since the Commission's July, 1960 statement was simply a proposal relating to possible future requirements on licensees, the examiner recommended grant of the Suburban applications. The Commission itself did not agree. In a final decision in June, 1961, the FCC held that it is not enough for an applicant to "bring a first transmission service" to a community; it must meet the needs of that community. And since

> communities may differ, and so may their needs, an applicant has the responsibility of ascertaining his community's needs and of programming to meet those needs. . . . Suburban's principals made no inquiry into the characteristics of Elizabeth or its particular programming needs; (its) program proposals were drawn up on the basis of the apparent belief--

ADDENDA

C-196 Crowell-Collier Broadcasting Company Decision

Amendments to the Communications Act which became effective in September, 1960 empowered the Communications Commission to levy fines of $1,000 per day, with maximum not exceeding $10,000, against licensees which repeatedly failed to observe the rules or the orders of the Commission. First use of this power was made by the Commission in the spring of 1961, when it gave written notice to KDWB of Minneapolis-St. Paul, MN, owned by Crowell-Collier Broadcasting Company, that it had levied a "forfeiture" (fine) of $10,000 against the station for "willfully and repeatedly" violating provisions of the station's license with respect to use of night-time power and directional antenna patterns.

The station, acquired by Crowell-Collier in August, 1959, was licensed to operate with power of 5kw during the daytime and 500w at night. A commission engineer inspecting the station in January, 1961 found that it was operating from midnight to 4 a.m. using the power and the directional antenna pattern authorized for daytime use. On basis of the FCC rules, the station was given 30 days to reply to the "forfeiture" notice. On receipt of the licensee's explanation that its understanding was the reduced power requirement did not apply after midnight, the amount of the fine was reduced to $2,500.

--21 R.R. 921 (1961)

unsubstantiated by inquiry--that Elizabeth's needs duplicated those of Alameda, Calif., or Berwyn, Ill.

Since Suburban's program proposals were not "designed" to serve the needs of Elizabeth, the Suburban application was denied in a decision adopted in June, 1961.

Suburban Broadcasters took the FCC decision through the appellate courts. In March, 1962, the Court of Appeals in the District of Columbia unanimously upheld the FCC decision. The court turned down both major arguments by the applicant: that the FCC does not have the statutory authority to require a survey of the community, and that in doing so the Commission violated the First Amendment. Likewise, in October, 1962, the Supreme Court upheld the right of the FCC to require applicants to survey program needs of the communities involved.

--30 F.C.C. 1021, 20 R.R. 951 (1961), 302 F. 2d 191, 371 U.S. 821 (1962).

C-198 Intermountain Broadcasting Co. vs. Idaho Microwave, Inc.

The three commercial television stations in Salt Lake City, Utah, KSL-TV, KTVT(TV), and KUTH(TV), initiated a proceeding against Cable Vision, Inc., a CATV system operating in Twin Falls, Idaho, and Microwave, Inc., a microwave system which picked up signals of the Salt Lake TV stations and delivered them to Cable Vision, asking a court order to prevent the CATV and the microwave transmission system from using programs broadcast by the television stations without their permission. One factor in their court action was the fact that all three stations fed programs to KLIX-TV, a television station in Twin Falls, which paid them from $4 to $5 an hour for permission to rebroadcast the programs. The stations held, consequently, that the two defendants were guilty of unfair competition in their use--without permission or compensation--of programs for which KLIX-TV was paying the originating stations. They based their case on a 1918 Supreme Court ruling in the case of Associated Press vs. International News Service, which held that INS was guilty of unfair competition when it picked up and distributed news originally gathered by the Associated Press.

The U.S. District Court for the District of Idaho, however refused to grant relief to the television stations. The Court refused to find any parallel between the Associated Press case and the situation on which the TV station's action was based. It stated that

> the stations are in the business of selling their broadcasting time to sponsors to whom they look for profits; they do not charge the public for their broadcasts which are beamed indiscriminately and without charge through the air to any and all reception sets of the public as may be equipped to receive them.

As to property rights of the originating stations in programs broadcast, the court had this to say:

> A TV station has no property right in its broadcasts, aside from such program content as might be protectable under statutory or common-law copyright which is infringed by action of the CATV system. The fact that the station had negotiated an agreement with another station covering rebroadcasting of its programs does not show the existence of a property right. Section 325(2) of the Communications Act requires consent of the originating station only where rebroadcasting is involved.

The court, consequently, denied the application for an injunction. --196 F. Supp. 315, (D. Idaho 1961).

C-199 KORD, Inc. Decision.

License renewal application of radio station KORD, Pasco (a suburb of Seattle), Wa., was set for hearing by the FCC in March, 1961, for failure to program the station in accordance with promises made when the station was first granted a license to broadcast in 1956. In the original application, KORD promised that of its total time, 6 percent would be devoted to local live programs, and an additional 10 percent to talks, educational programs, and other "miscellaneous" local programs. The applicant also promised a limit of 700 commercial spot announcements a week. However, the report for the "composite week" in the 1960 renewal application showed no local live programs, no educational programs, and no talks--and a total of 1631 commercials a week. In reply to a letter of inquiry sent by the FCC in September, 1960, the station's licensee stated that it had been unable to find dependable sources for the promised talk, educational and agricultural programs, and that the increase in number of commercials simply reflected an upturn in the local economy. The order for a hearing was the result.

Following notice of the required hearing, KORD substantially modified its renewal application and also modified its programming to bring it more closely in line with original promises. Recognizing the improvements made, the Commission in July, 1961 cancelled the order for hearing, and granted the station renewal of license--but on a short-term basis, for a period of only 12 months.

In granting the renewal, the Commission stated that the KORD situation was "one of general importance in the broadcast field," and that it would be unfair to single out one licensee for punishment, as a result of the agency's own change in policy, when many other stations were equally guilty. Consequently, a copy of the KORD order was sent to all broadcast licensees so that they "will have an opportunity to understand and comply with" the Commission's strengthened policy on proposed vs. actual programming. The FCC opinion included the following:

> By issuing this opinion, we make clear to broadcasters the seriousness of the proposals made by them in the application form. The Commission relies upon these proposals in making the statutory finding that a grant of the application would be in the public interest. The proposals, we stress, cannot be disregarded by the licensee, without adequate and appropriate representations as to change in the needs of the community. . . . The proposals made are not binding to the last decimal point; . . . we recognize fully that the public interest vis-a-vis a programming format in a particular community is not a fixed, immutable concept. On the contrary, we hope and expect the licensee to be responsive to the changing needs of the community. For this reason, we have . . . prescribed that applicants shall notify the Commission as to significant changes in overall broadcast operations. But all this does not mean that the representations can be disregarded without adequate justification. They are serious representations as to the applicant's policy. . . and the Commission takes them seriously. . . . What we require is . . . a good faith effort; the applicant must

> conscientiously seek to carry out those proposals that he found, and finds, serve the public interest needs of his community.
> --31 F.C.C. 85, 21 R.R. 781 (1961).

C-200 WHAS-TV Decision.

Television station WHAS-TV, owned by the Louisville, Ky, Courier-Journal applied to the FCC in 1957 for authority to change its transmitter to a new site and replace its existing 600-foot antenna tower with one nearly 1,800 feet in height. The station's engineering exhibit indicated that the change would increase the station's grade A coverage from an area of 3,700 square miles to one of 10,766 square miles. Because of possible increase in hazard for airplanes, the Commission ordered a hearing on the application; the examiner was also instructed to inquire into the effects the change would have on UHF television stations located in Lexington, Ky, 70 miles east of Louisville.

The change in transmitter location would move the station's tower 12 miles closer to Lexington, and would result in WHAS-TV providing grade a coverage to all of the county in which Lexington is located. After hearing testimony concerning the economic problems of the two UHF stations in Lexington, the examiner concluded that "a grant (of the WHAS-TV application) would adversely affect the ability of these stations to obtain national advertising. . . , Whether either or both of the UHF stations will survive the impact of (such) a grant cannot be predicted."

Although one factor in the matter was opposition to use of such a tall tower by the Federal Aviation Authority, the FCC's final decision was made largely on the basis of the effect the new transmitter location would have on the UHF stations operating in Lexington. The Commission denied the application, stating that

> It can be concluded with reasonable certainty that if the application is granted, WLEX-TV and WKYT(TV) will suffer immediate and permanent economic loss. While economic loss suffered by a broadcast station need not inevitably result in harm to the public, such would surely be the result here. . . . Economic loss would almost inevitably be translated into loss by the public of locally oriented program of an outlet for self-expression and local advertising. Patently, such would not serve the public interest.

In 1963, WHAS-TV was given permission to construct a new tower, but one less than 1,000 feet high, and at a site no closer to Lexington than the old one.

--31 F.C.C. 273, 21 R.R. 929 (1961).

C-201 Indianapolis Broadcasting, Inc. Decision.

Following a comparative hearing involving four applicants in 1957, the Communications Commission granted the application of the Crosley Broadcasting Co. to construct a television station using Channel 13 in Indianapolis. The original vote of the Commission was 3 to 3, Commissioner T.A.M. Craven, who earlier in private engineering practice had done some work for one of the applicants, abstaining. However, on advice from the chief counsel of the F.C.C. that he was qualified and that it was his duty to vote to break the tie, he voted for the Crosley application.

One of the losing applicants, WIBC, appealed the grant to the U.S. Court of Appeals of the District of Columbia, on grounds that Craven had voted

without having heard oral arguments. The Court in June, 1958 upheld the WIBC contention, and vacated the grant to Crosley, remanding the case to the FCC for reconsideration. After reviewing evidence presented in the 1957 hearing, the Commission voted 4 to 2, in October 1961, to award the facility to WIBC.

Of unusual interest with respect to the two FCC rulings--both based on the evidence presented in the 1957 hearing--was that both were based largely on the issue of "diversification" in ownership of media of mass communications. In the 1957 decision, the FCC opinion emphasized that the owners of WIBC, a 50 kw radio station in Indianapolis, also owned a one-third interest in the Indianapolis Star and News, local newspapers. Consequently, a grant to WIBC would result in "concentration of control of media" in the local area. In the 1961 decision, emphasis was given to the fact that Crosley was the licensee of 50 kw WLW-radio and of television stations in Cincinnati, Dayton and Columbus, all within a radius of 200 miles of Indianapolis. The grant accordingly went to WIBC to avoid "concentration" of control of media on a regional, rather than a local, basis.

Also playing a part in the decision were changes that had taken place between 1957 and 1961 in membership of the Commission. Commissioner Craven did not participate in the 1961 decision; none of the three other supporters of the Crosley grant in 1957 were still Commission members in 1961.

During the court tests and reconsideration by the FCC, Crosley continued to operate WLWI(TV) on temporary authorization. Following the 1961 ruling, Crosley filed petition for reconsideration, and while the petition awaited FCC consideration, Crosley arranged the sale of its station in Atlanta, Ga., WLWA, to WIBC's owners, for $3,300,000 and applied to the Commission for approval of the sale. At the same time, WIBC dismissed its application for the Indianapolis channel. In September, 1962, the Commission by 4 to 3 vote approved the WLWA purchase arrangement, and a month later accepted the WIBC application for dismissal of its claim to Channel 13 in Indianapolis. At the same time, the Commission finalized the grant of the facility to Crosley, giving the Crosley station regular license status.

--22 F.C.C. 421 (1957), 31 F.C.C. 835, 22 R.R. 425 (1961).

C-202 Mississippi-Arkansas Broadcasting Co. Decision.

Radio station WESY in Leland, Miss., found itself in difficulties with the FCC when its license came up for renewal in June, 1961. In its original application in 1957, the station made the usual promises with respect to agricultural and educational programs, discussions of public issues, and talks; it also estimated the use of 450 commercial spots per week--on the basis of an average of 86 hours a week on the air, since the station was licensed as a daytimer. Reports for the composite week submitted with the renewal application, however, showed no time devoted to agriculture, to education, to public discussions or to talks, and a total of 1,212 commercial announcements actually broadcast, or an average of nearly 15 commercial spots per hour of broadcasting time. Under pressure from the FCC, the station amended its renewal application to provide for a maximum of 14 spots in any one hour, and promised to improve its operation with respect to talks, discussions, and informative programs. In October, 1961, the Commission granted license renewal, but on a one-year basis; in the renewal, the Commission stated that 14 spots per hour still raises the question of excessive program interruptions, contrary to the public interest.

--22 R.R. 305 (1961).

C-203 Dixie Radio, Inc. Decision.

One principle evident in the Communications Commission's granting of licenses since its inception and particularly since 1945 has been that the greater the number of stations providing signals in any given area, the greater the degree to which the "public interest" is served. Consequently, grants of authorizations of new stations have been practically automatic, if the applicantion is neither competitive or opposed by existing stations.

A conspicuous exception to the Commission's regular practice was provided in the case of Dixie Radio, Inc., applicant for a new standard-band radio station to be located in Brunswick, Ga.--a city with a population of about 18,000 in 1950, which already had two fulltime local stations and whose residents were served by the signals of 15 additional stations. In an initial decision announced in October, 1961, the Commission's hearing examiner denied the Dixie application, partly on the grounds that 11.7 per cent of Dixie's normally protected contour would receive objectionable interference, when according to FCC rules not more than 10 per cent was normally permitted, but also because in its application Dixie had failed to establish the need for a third station in Brunswick.

--22 R.R. 345 (1961).

C-204 Middle South Broadcasting Co. Decision.

Engineer employees of station WOGA, Chattanooga, who were members of IBEW, went on strike against the station in January, 1960, picketing the station and also an automobile agency in Chattanooga from which some WOGA programs were originated. In addition, the striking engineers mailed and distributed printed handbills urging the public not to patronize merchants who advertised on the station. The station filed charges against the union with the National Labor Relations Board, claiming that the union was engaging in unfair labor practices on the basis of the 1959 Landrum-Griffith Act which prohibits secondary boycotts in labor disputes.

Following an NLRB hearing, the hearing examiner upheld the station's claim that the picketing of the automobile firm and the distribution of handbills was a violation of the prohibition against secondary boycotts--the handbills urged patrons to boycott business establishments doing business with the station, rather than taking action directed at the station itself which of course was a party to the strike. The examiner's opinion had a precedent decision, in which the agency by a 4 to 1 vote had ruled that urging the public not to buy from those advertising on a station was a secondary boycott, prohibited by the Landrum-Griffith act.

The National Labor Relations Board, however, reversed the decision of its examiner in the WOGA case, upholding action of the union as legal. Basis of the NLRB's November, 1961 decision was that the Landrum-Griffith Act expressly permits a union to "publicize" its dispute with an employer, and to attempt to persuade the public, by picketing or otherwise, not to buy the products of an employer with which it is in dispute. The radio station, by adding its labor, capital and service to a product manufactured by someone else, becomes one of the producers of the product, rather than merely an agency which carries advertising for the producer of the product. With the station a sort of joint-producer with every business establishment whose products or services it advertises, distribution of the leaflets was a primary, rather than secondary, boycott, aimed at the station itself. As to the picketing of the auto firm, presence of the station's remote equipment made the auto company merely an extension of the stations' main studios.

--133 N.L.R.B. 165 (1961).

C-205 Carter Mt. Transmission Co. vs. F.C.C.

In its "Inquiry into the Impact of Community Antenna Systems" in 1959, the FCC ruled that it had no legal jurisdiction over CATV systems, since they did not engage in broadcasting and since the wire service they provided was not interstate. The Commission was aware, however, of the economic problems faced by small-market television stations which found themselves in competition with CATV stations located in the same markets. And although the Commission could assert no jurisdiction over CATV systems themselves, it did have legal jurisdiction over interstate microwave relay facilities, which in some cases contracted with CATV systems to deliver signals of large-city television stations to CATVs in communities 100 miles to 300 miles away.

In 1961, Carter Mountain Transmission Corp. applied to the FCC for permission to expand its microwave facilities to enable it to deliver TV programs from Denver stations to CATV systems in Lander, Riverton and Thermopolis, Wy. Application was opposed by KWRB-TV, a television station in Riverton. Following a hearing, the hearing examiner's initial decision proposed to grant the application of the microwave company. However, in a decision in February, 1962, the Communications Commission set aside the recommendations of the hearing examiner, and denied the microwave application. The FCC believed that

> a grant of the (microwave) application would permit the rendition of better service by the CATV, but at the expense of destroying the local (television) station and its rural coverage. The CATV would permit the urban areas a choice of coverage, but the local station, especially in this case of a single-station market, serves a wider area. . . . We do not agree that we are powerless to prevent the demise of the local TV station, and the eventual loss of service to a substantial population.

The microwave company appealed the Commission's decision to the United States Court of Appeals for the District of Columbia, which upheld the FCC position. When appeal was made to the U.S. Supreme Court, the court denied certiorari, refusing to review the lower court's decision.

--32 F.C.C. 459 (1962), 321 F. 2d 359 (D.C. Cir. 1963), 375 U.S. 951 cert. den. (1963).

C-206 Westinghouse Electric Co. Decision.

During 1960, charges were filed in federal courts against the Westinghouse Electric Co. and other manufacturers of electrical equipment, by the Department of Justice, which produced evidence that the defendant companies had entered into a conspiracy to fix and maintain prices, in violation of federal anti-trust laws. Top Westinghouse officials maintained that they had no knowledge of the illegal actions of which various minor officials of the company might be guilty. However, in February, 1961, both Westinghouse and General Electric, the two companies with broadcasting station holdings, signed consent decrees also provided for the levying of a fine of $372,500 against Westinghouse and of $437,500 against General Electric; in addition, fines and other penalties were assessed against the individual employees who had been directly involved in the price-fixing arrangements.

Section 313 of the Communications Act provides that a federal court which finds any licensee of a broadcasting company guilty of anti-trust violations may, in addition to other penalties, revoke the license of the station or stations owned by the licensee. In addition, Section 313 instructs the Commission to refuse to grant a license to any person whose license for another station had been revoked by a court under provisions of Section 313.

Of course, the federal court under the direction of which the Westinghouse consent decree was signed had not revoked the licenses of the Westinghouse station; in fact, technically Westinghouse Electric was not "found guilty" since the consent decree was signed before the conclusions of the trial. However, the virtual admission of guilt by the Westinghouse Electric Co. did raise serious questions about the future of licenses for stations operated by the electric company's subsidiary, the Westinghouse Broadcasting Co. As licenses of Westinghouse stations expired, no renewals were granted. The various stations remained on temporary license status until the Commission could make a decision on the entire problem.

Late in February, 1962, the Commission, by a 4 to 3 vote, granted license renewal to all of the Westinghouse-owned stations. Two of the dissenting commissioners, including Chairman Newton Minow, voted for one-year license renewals; the remaining commissioner opposed granting renewal without a hearing. All of the commission members were agreed that the broadcasting record of the Westinghouse Broadcasting Co's stations was "superior and uncommon;" the majority felt that the unusually good broadcasting record of the Westinghouse stations was enough to overbalance the unsatisfactory anti-trust record of the parent Westhnghouse Electric Co.

The Commision, however, took no action on renwal of the General Electric radio and television stations, WGY and WRGB(TV) in Schenectady. These stations were licensed directly to General Electric, with no subsidiary operating company involved. Early in 1963 the FCC asked the company whether changes had been made in corporate structure "to assure proper discharge of the responsibility of top management for operation of the broadcasting stations in the public interest." The Commission said it was still not satisfied that the Company's organizational structure was such as to assure proper operation of the radio and television stations.

--Variety, Feb. 15, 1961; Television Digest, March 5, 1962; Broadcasting, Jan. 21, 1963.

C-207 Eleven Ten Broadcasting Co. vs. F.C.C.

When radio station KRLA in Los Angeles was sold in May, 1959, its new owner, Donald Cooke, then living in New York City, sent his brother, Jack Cooke, a Canadian citizen with broadcasting experience on Canadian stations, to Los Angeles to supervise operations of the newly-acquired station. The new owner planned later to move to the location of the station to assure personal management. In the interim, Jack Cooke, as program director, instituted a "top forty" program format. By way of promotion to advertise the changed format, Cooke instituted a series of "give-away" contests on the station; for 48 hours straight in September, 1959, the station carried nothing but live or taped contest spots.

One contest instituted was a "Find Perry Allen" contest, with a reward of $10,000 to the first person to find and identify Allen, a disk jockey being imported from Buffalo. The amount of the reward was reduced every day; after several days an employee of another station in the area claimed the reward. Allen was at the time actually still working on the Buffalo station, and had not yet arrived in Los Angeles at all, although taped segments prepared by Allen were broadcast at frequent intervals over KRLA, giving "clues" as to places where he might presumably be found in the Los Angeles area. Another contest called for a grand prize of $50,000 for the person who located a "golden key," which had not even been concealed while the contest was in progress.

Hearing on renewal of the KRLA license was held in November, 1960; the hearing examiner held that the station's licensee was guilty of illegally "transferring control", that the station was guilty of fraud in the conduct of its promotional contests; and that the station's program logs had been altered with intent to deceive the FCC. Although the examiner recommended a short-term license renewal, the Communications Commission in its final decision took stronger action. Although it did not believe that "transfer of control" had been established, it did find that the licensee had been negligent or worse; on the basis of this finding, and the station's guilt on the two counts, the FCC in March, 1962 refused to grant license renewal, and ordered the station off the air.

The Commission's action was appealed. However, the Court of Appeals of the District of Columbia unanimously supported the Commission's refusal to renew the KRLA license, and the U.S. Supreme Court refused to review the lower court's decision. In a last effort to save something from the situation, the licensee proposed to the Commission in December, 1963 that the station's facilities be transferred to a new nonprofit corporation headed by Dr. Frank C. Baxter and Dr. Kenneth Harwood of the University of Southern California, which would assume the station's debts and operate the station, with profits to be devoted to the support of the proposed UHF non-commercial television station requested by the Community Television Corp. of Southern California.

The proposal was turned down by the FCC on the ground that Mr. Cooke has no license to transfer. Cooke did manage to keep KRLA on the air through a series of stays and extensions, pending judicial review and commission consideration of various pleadings.

In July, 1964, Oak Knoll Broadcasting Corp., a non-profit educational organization and a subsidiary of the Broadcasting Foundation, won a grant from the FCC for an interim operation on the facilities of KRLA. The interim operation would begin Aug. 1, 1969, the day KRLA was to go off the air. During the interim, the FCC said it would process and hold hearings on 19 applications for a permanent license on the KRLA facility. The Commission estimated that their hearings would last three years.

--32 F.C.C. 706 (1962), 33 F.C.C. 92 (1962), 25 R.R. 2128a (1963), 320 F. 2d (D.C.Cir. 1963), 375 U.S. 904 cert. den. (1963).

C-208 Poller vs. Columbia Broadcasting System.

WCAN(TV) was a UHF station operating in Milwaukee, Wi., at a time when WTMJ-TV was the only VHF station in the market. WCAN(TV) had an affiliation arrangement with the Columbia Broadcasting System, and for a time operated successfully. However, in 1954, CBS purchased another UHF station in the market, and cancelled its affiliation contract with WCAN(TV), which lacking network affiliation was ultimately forced to leave the air.

Lou Poller, 95 per cent owner of WCAN(TV) brought suit in a federal court against CBS, charging that his station had been the victim of a conspiracy in violation of anti-trust laws. When the decision in lower courts went against him, Poller appealed to the U.S. Supreme Court which in February, 1962 reaffirmed the verdict of the lower court, stating that Poller had presented no evidence that showed that CBS had violated federal anti-trust laws.

--20 R.R. 2099 (1960), 174 F. Supp. 802 (D.D.C. 1959), 284 F. 2d 599 (D.C. Cir. 1960), 368 U.S. 464 rev'd for other reasons (1962).

C-209 KDAY Decision.

The Federal Communications Commission in April, 1962 assessed a fine of $5,000 against station KDAY, in Santa Monica, Calif., for broadcasting over a three-week period in May, 1961, a series of 3-second spots, "Remember June 25," designated to advertise a teenage record hop to be held on that date, without providing the sponsor identification required by Section 317 of the Communications Act.

This was the second time that a fine was levied against a station by the Commission, and the first such fine for a program violation. The FCC was given authority to levy fines for violations of rules by a 1960 amendment to the Act of 1934. Other but smaller fines were levied against a number of other stations during the following year for various types of violations--mostly technical.

--Broadcasting, April 16, 1962, p. 56.

C-210 Letter to George P. Mahoney.

Early in April, 1962, George P. Mahoney, Democratic gubernatorial candidate in Maryland, complained to the Federal Communications Commission that WBAL-TV in Baltimore had refused to carry a scheduled Mahoney-for-Governor telecast set for airing April 4, 1962. The station refused to run the taped show on the grounds that it included statements made by non-candidates that were probably libelous and defamatory. The other two television stations in Baltimore similarly refused to carry the program, which included interviews with five persons who, according to Mahoney, had lost money in closures of building and loan associations.

A few days previously, Mahoney had been made the defendant in a $500,000 defamation suit on the basis of a television program broadcast by WMAR-TV in which the candidate made remarks about potential losses to savings depositors and promised a law with "teeth" in it.

The Commission, in a letter to the chairman of a committee supporting Mahoney, said that decisions to carry or not to carry such programs are up to the stations involved, and that Section 315 does not prohibit a station from censoring statements made by non-candidates, but that Section 326 of the Communications Act does prohibit the Commission from ordering a station to carry any specific program.

--Broadcasting, April 30, 1962, p. 52.

C-211 F.C.C. Public Notice.

In May, 1962, the Federal Communications Commission made public an order declaring a partial "freeze" on acceptance of applications for standard broadcasting stations. The Commission stated that no major changes in rules relating to AM station assignments had been made since the close of World War II, while the number of stations authorized had increased from 955 to more than 3,800.

Pre-war radio, according to the FCC report, had three deficiencies; lack of local outlets in many communities of substantial size, absence of competing local facilities in many communities which did have outlets, and existence of substantial "white" areas receiving no service at all, in many sections of the country. Since the war the first two shortcomings had been largely corrected, but at the cost of protection of signals of many stations from co-channel and adjacent-channel interference.

Consequently, the Commission believed that there was a need for a reexamination of the standards employed in assigning new stations or in allowing increases in power for existing stations. Until such an examination

could be made, and new rules promungated, the Commission announced that with certain exceptions, no new applications would be received for new Class I, Class III, or Class IV stations or for improved station facilities; however, the Commission would continue to receive applications for new Class IIa stations, and for increases in power for Class IV local stations.

--F.C.C. Public Notice 62-516, May 10, 1962.

C-212 CBS Network Compensation Plan.

In the spring of 1961, at a time when the Federal Communications Commission was considering the outlawing of network "option time," the Columbia Broadcasting System announced a new plan for the compensation of stations affiliated with its television network, to become effective in May, 1961. The new plan provided for pay to affiliates for use of their time for commercial programs on a sliding scale, with the amount of compensation given for each hour increasing as the number of evening commercial network hours increased in each four-week period.

In October, 1961, the Communications Commission notified CBS that it had questions concerning the legality of the compensation plan. In April of 1962, the Department of Justice filed suit against CBS, charging that its new arrangement with affiliates was in violation of anti-trust laws. Two months later, in June, 1962, the Federal Communications Commission said:

> the effect of the CBS plan is clearly to hinder a station from clearing time for other network and non-network programs, and that it penalizes a station for so doing. In effect, the network is withholding a part of the compensation which the station could expect to receive under prior contracts until the substantial number of clearances desired by CBS have occurred. . . . Accordingly, we hold that the CBS clearance incentive plan and affiliation contracts negotiated persuant to the plan constitute a violation of Sec. 73.658(a) of our Rules, prohibiting the exclusive affiliation of stations.

--23 R.R. 769 (1961), 24 R.R. 513 (1962).

C-213 Bush-Fekete v. Columbia Broadcasting System.

Lazlo Bush-Fekete brought suit in a California state court against Columbia Broadcasting System, charging that the network had unfairly appropriated and broadcast portions of an article, "The Last Four Days of Mussolini," that he had written and was published in 1949 by Life Magazine. The material was submitted to CBS for possible use, and was rejected by the network.. However, a Playhouse 90 program, "The Killers of Mussolini," was later presented by the network which included materials taken from the Bush-Fekete article.

Following a jury trial, the Los Angeles Superior Court ruled that CBS had plagiarized the Bush-Fekete material, and awarded the writer damages totalling $50,000.

--Broadcasting, June 25, 1962, p. 76.

C-214 Palmetto Broadcasting Co. Decision.

In March, 1961, license renewal for WDKD, a 5 kw. daytime radio station in Kingstree, S.C., was set for hearing because of alleged off-color materials presented in programs on the station. At the hearing, held two months later, testimony was introduced to the effect that "Uncle Charlie" Walker, for eight years a disk-jockey on the station, had continually used off-color and smutty

language in his broadcasts. Among witnesses who testified to that effect were two local ministers, two local bankers, a former 50 per cent owner of the station, several former station employees, local sponsors who had cancelled advertising on the Walker program, and the former president of the South Carolina Broadcasters' Association. Their testimony was supported by tapes of actual Walker broadcasts.

Station owner E. G. Robinson, Jr., testified that he had no knowledge of the off-color broadcasts, and had heard no complaints--this in spite of testimony of various witnesses that they had registered objections about the program with him, and the fact that Robinson himself testified that he had talked with Walker on several occasions warning him about materials he had used on the air.

The hearing examiner, in a report released in December, 1961, recommended that the station's license not be renewed, not only because of the nature of Walker's broadcasts, but also because of Robinson's "lack of candor" and misrepresentation of facts. The examiner also called attention to advertising excesses and to the station's failure to fulfill its responsibilities in many areas of community needs. Robinson appealed to the FCC for a review of the examiner's decision; the Commission, on July 25, 1962, upheld the examiner's opinion and ordered the station off the air.

Robinson next appealed to the U.S. Court of Appeals for the District of Columbia which upheld the FCC action in a decision handed down in March, 1964. The court said, in part,

> We intimate no views on whether the Commission could be denied the application if Robinson had been truthful. . . We hold that Robinson's willingness to deceive the Commission justified its conclusion that he did not possess the requisite qualifications to be a licensee.

One judge concluded his concurring opinion by stating that in his judgment, a denial of license renewal because of the station's broadcast of obscene, indecent and profane language could not properly be called program censorship. In his opinion, "freedom of speech does not legalize using the public airways to peddle filth."

Walker himself was prosecuted in a U.S. District Court for broadcasting obscene and indecent language in violation of Section 1464 of the U.S. Criminal code, convicted, and sentenced to a five-year term in a federal penitentiary; the sentence, however, was suspended, and Walker placed on probation.

--33 F.C.C. 250, 23 R.R. 483 (1962).

C-215 Boucher vs. WIS-TV.

Dean Boucher, while an employee of WIS-TV, in Columbia, S.C., created a unique "villain" character which he portrayed in a children's program broadcast by the station--the character of J. P. Sidewinder, a cloaked, mustachioed, cane-wielding scoundrel. When Boucher left WIS-TV and was employed by WCCA-TV, another station in the same community, he used the same character in programs presented on that station; however, WIS-TV also continued to use the Sidewinder character in its children's programs, with another employee in the role.

In 1961, Boucher brought suit against WIS-TV, asking that the station be restrained from using the Sidewinder character, and also asking $10,000 in damages for the station's unauthorized use of the character he had created. WIS-TV filed a counder-suit for the same amount, claiming ownership of the

title and characterization.

The South Carolina state court handed down a Solomon's verdict, holding that since the Sidewinder character was created by Boucher while he was an employee of WIS-TV the station was the legal owner and was entitled to the use of the character under a state law stating that "where an employee creates something as part of the duties of his employment, the thing created is the property of the employer." However, because of Boucher's long-standing personal association with the character, Boucher should have the personal right to continue to portray the character, although he could not transfer that right to others. No damages were awarded to either side, and following the decision, Sidewinder characters continued to be used on both stations.

--Broadcasting, Aug. 20, 1962, p. 76.

C-216 WKY-TV Decision.

During 1962, a number of TV stations applying for license renewal received letters from the staff of the Federal Communications Commission raising exhibits, and suggesting that without such sustaining programs the stations' schedules lacked the "flexibility" needed to meet the needs of the public. These letters apparently had not been approved by the Commissioners themselves.

One recipient of such a letter was WKY-TV, Oklahoma City, after application had been filed for license renewal in the summer of 1962. The staff letter noted that during the preceding three years, 94 per cent of the station's programming between 6 p.m. and 11 p.m. had been commercial, as had 87 per cent of all daytime programming. The evening schedule included a half hour of news at 6 p.m., and another half hour of news, weather and sports at 10 p.m., "with the rest of the time devoted to network and recorded entertainment." As a result, WKY-TV was invited "to explain how its programming was designed to serve the particular needs and interests" of the local community.

In reply, WKY-TV pointed out that during 1961 it had on at least 21 occasions preempted network programs in prime time to carry local programs, many of them sustaining. As to proportions of commercial time, the station argued that "there is no public basis for distinguishing between sustaining and commercially sponsored programs in evaluating station performance," and questioned whether time of day during which programs of certain types were scheduled was a criterion of service to the public. The station's management flatly refused to make any changes in the program plans submitted with its renewal application, stating that it was the function of the licensee to use his own best judgment concerning the needs of listeners and how best to meet them.

On August 1, 1962, license renewal was granted to WKY-TV by the full Commission, on recommendation of the Broadcast Bureau, and with no question raised concerning the station's proposed program schedule.

--Broadcasting, Dec. 3, 1962, p. 29.

C-217 Goodwill Stations, Inc. Decision.

For five years WJR broadcast the regular speeches at the Economic Club of Detroit's luncheons. The speeches occasionally were replaced by debates on controversial issues. WJR played no part in the selection, production, or content of the program. On Oct. 8, 1962, WJR carried a debate between John Swainson, Democratic incumbent, and Republican challenger George Romney, both candidates for governor. The next day James Sim, Socialist Labor Party candidate for governon requested equal time.

WJR, in a request for an FCC ruling, said it did not think it was responsible to present Sims's viewpoint since the debate constituted a bona fide news event. But the FCC ruled in favor of Sims, holding that the fact a political debate took place was a larger consideration than the newscast nature of the program.

--F.C.C. 362 (1962).

C-218 Cable Vision, Inc. vs. KUTV, Inc.

From the time Cable Vision, Inc., installed a CATV operation in Twin Falls, Idaho, the CATV company and television stations in the area waged a continuing war over the CATV system's unauthorized use of programs which the television stations had broadcast. In 1961, KSL(TV), KUTV(TV) and KTVT(TV), all in Salt Lake City, had brought suit against Cable Vision and Microwave, Inc., a relay system which fed Salt Lake station signals to the Twin Falls CATV operation, seeking to prevent their use of the stations' programs. In turn, Cable Vision brought suit in a federal court charging these three and eleven other TV stations in the area with conspiracy to monopolize television in Twin Falls, in violation of federal anti-trust laws.

Still another action was brought by KLIX, Inc., licensee of KMTV(TV), the only television station operating in Twin Falls, KMTV(TV) had no wire connection by which it could receive network programs. It was, however, affiliated with all three networks, and picked up signals of Salt Lake City stations and rebroadcast certain network programs carried by those stations. The station charged that Cable Vision, by carrying programs of Salt Lake City stations at the same time they were broadcast by KMTV(TV) was infringing illegally on the contracts the television station had with the networks and with film syndication companies, which gave the station the exclusive rights to the first runs of such programs in the Twin Falls area.

The U.S. District Court for the Southern District of Idaho upheld the KMTV(TV) contention, and in August, 1962 issued an injunction restraining the CATV company from bringing to Twin Falls for showing over its facilities, any programs from Salt Lake stations which were also carried by KMTV(TV). However, the order was vacated on appeal.

--211 F. Supp. 47 (S.D. Idaho, 1962), 335 F. 2d vac. and rem. (9th cir. 1964), 379 U.S. 989 cert. den. (1965).

C-219 WHDH, Inc. Decision.

Following a comparative hearing involving four applicants for television Channel 5 in Boston, the Federal Communications Commission in April, 1957 awarded the facility to WHDH, Inc., owned by publishers of the Boston Herald-Traveler. Two of the losing applicants challenged the award of a federal court. At the same time, charges were made in a hearing of the Legislative Oversight Committee of the U.S. house of Representatives that both WHDH and one other applicant for the Boston channel had engaged in ex parte contacts with the then F.C.C. Chairman George C. McConnaughey. On the basis of these contacts, the U.S. Court of Appeals in 1958 remanded the Channel 5 case to the FCC for further inquiry into facts not included in the original record.

On the basis of the hearing which followed the special hearing examiner ruled that the ex parte contacts had not been improper. However, in November, 1960 the Commission adopted a resolution requesting the Court of Appeals, which had retained jurisdiction, to remand the entire case to the

FCC for reconsideration and final action. The Court accepted the recommendation, and returned jurisdiction to the Commission; the FCC thereafter set aside the grant to WHDH and announced that all four parties to the original application would be given opportunity to file new briefs and to present oral argument. Oral arguments were heard in October, 1961.

In a decision adopted in September, 1962, the Commission found that while the comparative position of WHDH had been weakened by evidence of the ex parte contacts, WHDH had still made the strongest showing and remained the most desirable of the applicants. The decision accordingly awarded the facility to WHDH, which had been operating for approximately five years under various temporary authorizations, and granted WHDH a regular license. However, the license was issued for a period of only four months, with the understanding that at the end of the period, the Commission would consider other applications along with WHDH's application for license renewal.

The matter of ex parte contacts has been a factor in causing Commission reconsideration of several television grants. Such reconsiderations, in cases other than the one noted above, has resulted in the disqualification of successful applicants in the Miami Channel 10 case in the Miami Channel 7 case, and in the Orlando (Florida) Channel 9 case. In another case, involving Channel 12 in Jacksonville, reconsideration of the original grant resulted in disqualification of the two losing applicants, with the original successful applicant retaining the facility, as in the Boston Channel 5 situation.

--29 F.C.C. 204 (1957), 33 F.C.C. 449 (1962).

C-220 Raleigh-Durham Broadcasting Co. Decision.

When radio station WSHE, in Raleigh, N.C., was purchased in 1962 by the Raleigh-Durham Broadcasting Co., the new owners changed the call letters of the station to WLLE (with FCC approval), and planned to offer a new type of programming aimed at the black audience in the Raleigh area. As a promotional device and to publicize the new call letters, the station on its first day of operation under the new ownership devoted the entire day to the repetitious playing of a single phonograph record, "Lost," with insertions between playing of that record of what was described as "discordant sounds" and "smutty" remarks.

As a result of complaints from listeners in the area, the FCC made an investigation, and in September, 1962, seven months after the WLLE "first day" activity, sent a letter to all station licensees which called attention to the WLLE opening-day program pattern, and warned stations that the fact that the objectionable materials used by WLLE were broadcast for only one day did not justify their use by the station. The Commission stated that it had no wish to "stultify exhuberance" on the part of the licensees, but that the WLLE actions did not qualify "either as inventive or as in the public interest."

--24 R.R. 221 (1962).

C-221 Great Western Broadcasting Corp. vs. N.L.R.B.

In connection with a strike called against television station KXTV(TV) in Sacramento, Calif., licensed to the Great Western Broadcasting Corp., by members of AFTRA and of the engineering union NABET, union members were charged with unfair labor practices under the Landrum-Griffith act which prohibits secondary boycotts. Specifically, members of the two striking

unions had circulated handbills urging the public not to patronize local automobile dealers who advertised over the television station. When the matter was carried to the National Labor Relations Board, the Board upheld the actions of the union, on grounds that the television station was not simply a "carrier" of advertising, but by adding its labor and service to a product advertised by someone else, it became one of the producers of that product.

Great Western appealed the Labor Relations Board's decision to the U.S. Court of Appeals in San Francisco. In a decision handed down in November, 1962, the Court reversed the ruling of the National Labor Relations Board, rejecting the Board's definition of "producer." On the line of reasoning used, said the Court, one is led "to the remarkable conclusion that a television station can be a producer of automobiles, gasoline and beer." The case was remanded to the NLRB for reconsideration.

--214 F. Supp. 173 (S.D. Cal. 1963), 356 F. 2d 434 (9th Cir 1966), 394 U.S. 1002 cert. den. (1969).

C-222 Loew's, Inc. vs. United States.

In 1960, U.S. District Court held that six distributors of pre-1948 motion picture features were engaging in tie-in sales which forced television stations to take films they did not want in order to get the features they wished to run. One station, according to evidence presented, had to accept a total of 700 pictures to have the right to use the 500 of that number it wanted; another was forced to contract for a number of foreign-language films to get certain American-made features it wished to broadcast.

The film distributors involved were Loew's, handling MGM films; Associated Artists, distributing Warner Brothers pictures; Screen Gems, which is distributing agent for Columbia; National Telefilm Associates, handling 20th Century-Fox pictures; C & C Super Corp., handling RKO films, and United Artists, distributors for various independent producers.

The lower court's decision that the booking companies violated the Sherman Anti-Trust Act was appealed to the U.S. Supreme Court. In November, 1962, the Court ruled unanimously that the six defendants violated the anti-trust act when they forced television stations to take packages of films containing pictures they didn't want. Effect of the Court's ruling is to require film distributors to sell films to television on an individual film basis, where television stations wish to buy single films. Although sales of films in packages is not prohibited, there must not be an unreasonable price differential between what is charged for individual films and what is charged for the same films when included in such a package.

--24 R.R. 2032 (1962), 371 U.S. 38 (1962).

C-223 F.T.C. vs. Colgate-Palmolive.

During 1959 and 1960 the Federal Trade Commission carried on a vigorous investigation of the manner in which visual materials were presented in television commercial announcements, and issued cease-and-desist orders against some concerns which in the Commission's opinion made use of deceptive practices. One of the concerns against which such an order was issued was Colgate-Palmolive for advertising of Colgate Rapid Shave. The advertisement objected to featured the "sandpaper test"; presumably a sheet of sandpaper was covered with Colgate Rapid Shave Cream, and then shaved. Basis of FTC complaint was that instead of actual sandpaper being used; grains of sand were fastened to plexiglass so that what the viewer of the commerical saw was "not real."

However, Colgate-Palmolive took the case to court. In November, 1962 the U.S. Court of Appeals in Boston set aside the Federal Trade Commission's "sandpaper" order, which prohibited use of all "mock-ups" in television advertising. The Court accepted Colgate-Palmolive's contention that when photographed on television, actual sandpaper looked like ordinary paper--so substitution was made necessary by the limitations of photography. The Court stated that "of course we agree with the Commission that there is misrepresentation of a sort in any substitution case, but we are unable to see how a viewer is misled in any material way if the only untruth is one the sole purpose of which is to compensate for deficiencies in the photographic process." The Court also held that the order by the Trade Commission banning any use of "mock-ups" was too broad; that only if the intent of substitution was to deceive the listener could "mock-ups" be considered objectionable.

The Federal Trade Commission revised its order against Colgate-Palmolive, prohibiting only use of a visual test or demonstration as proof of a claim made for a product when the visual demonstration does not constitute actual proof because a substitute material is used, or the use of claims that an advertised product has qualities or merits it does not actually possess.

The Supreme Court agreed with the FTC's contention that even if an advertiser has himself conducted a test, experiment or demonstration which he honestly believes will prove a certain point, he may not convey to viewers the false impression that they are seeing the actual demonstration for themselves when they are not because of the undisclosed use of mock-ups. The Supreme Court said the undisclosed use of plexiglass was a material deceptive practice and reversed the judgment of the Court of Appeals.

--310 F. 2d 89 (D.C. Cir 1962), 380 U.S. 374 (1965).

C-224 "Let's Go to the Races" Decision.

A syndicated television give-away program, "Let's Go to the Races," was developed by Walter Schwimmer in 1961 and offered to stations throughout the country. The program was a half-hour show, featuring five horse races filmed at various tracks during preceding months. Prior to each broadcast, viewers picked up cards from local merchants giving various numbers for each race, and the viewer whose card had numbers corresponding to those of the winning horses in the program won a jackpot merchandise prize.

One television station, WDXI-TV in Jackson, Tn., requested a ruling from the F.C.C. as to whether the program constituted an illegal lottery. The Commission, in a letter sent to the station in April, 1962, refused to give such a ruling, stating that giving an opinion on the program's merits in advance of broadcast might constitute censorship or prior restraint on the part of the FCC, and in addition noting that it is the responsibility of the licensee to make decisions as to the propriety or good taste of programs considered.

The station asked the Commission to reconsider. The FCC again refused to issue a declaratory ruling on the program. However, the agency noted that the courts have already decided that a give-away program cannot be held to be a lottery unless a consideration or payment by the viewer is involved, and that there is no consideration--and consequently no lottery--when free contest entry blanks are involved. As a result, said the Commission, no declaratory ruling on the program was necessary.

While not mentioned in the FCC reply to the station, the element of

consideration would be present if viewers were required to make a purchase from a sponsor in order to obtain contest blanks to be used in the program.
--Broadcasting, April 16, 1962, p. 60, and Dec. 10, 1962, p. 110.

C-225 Loyola University of the South Decision.
In passing on the license renewal application of WWL-TV, a commercial station owned by Loyola University of the South in New Orleans, the FCC took occasion to emphasize its ruling in the KORD case that stations were expected in their programming operations to live up to promises made in license applications.

The Commission found that WWL-TV's programming, as represented by the programs broadcast during the composite week, fell short by a considerable margin of what had been promised at the time of a previous license renewal application three years earlier, and that improvements in programming had been instituted only after the Commission had raised questions concerning the station's performance in a letter written in September, 1961. The Commission granted license renewal, but for only one year instead of for the regular three-year period, stating that "programming proposals (in an application) cannot be disregarded by a licensee, without appropriate representations as to changes in the needs of the community."

In connection with the Commission's consideration of the station's renewal, Local 175 of the American Federation of Musicians filed a petition with the FCC opposing the granting of renewal to WWL-TV on the grounds that the station had failed to provide "local live" musical programs in the amount promised in the previous application. In a letter to the attorney for the union, the Commission stated that it was unable to find that the union was a "party at interest," but that before granting the one-year renewal the FCC had considered all elements in the station's programming.
--24 R.R. 766 (1962).

C-226 Claremont Television, Inc. Decision.
In November, 1962, Claremont Television, Inc., filed applications for construction permits for four VHF translator stations to be located in Claremont, N.H. The translators would pick up and rebroadcast signals of four regular television stations.

A petition opposing the Claremont grants was filed by Bellows Falls Cable Corp., operator of a CATV system in Claremont with approximately 2,000 subscribers. Bellows Falls argued that the translator stations would cause interference with signals of out-of-town television stations and make it impossible for the CATV system to receive those signals for distribution over its wire connections to its subscribers.

The F.C.C. held that the basic issue involved was whether the operator of a CATV system could claim protection, under FCC rules, from interference that would injure its reception of broadcast television signals. The Commission held that its rules concerning translators were meant to protect individual listeners' reception of programs, and since the CATV operation was not a "listener," it had no claim to any special privileges under FCC rules. In any case, if the CATV operator found that interference did occur, there was nothing in the FCC's rules to prevent it from moving its antenna site.

Authorization for construction of the translator stations was granted by the Commission in January, 1963.
--24 R.R. 805 (1963).

C-227 Triangle Publications, Inc. Decision.

On Nov. 12, 1962, the American Broadcasting Co. presented on their Howard K. Smith television series a documentary titled, "The Political Obituary of Richard Nixon," which included an appearance by convicted perjurer Alger Hiss. Some ABC affiliates, advised that the Hiss appearance would be a part of the program, refused to broadcast the Smith documentary; among them was station WFIL-TV in Philadelphia, which also deleted news relating to the documentary from certain news broadcasts. Some 2,000 letters were sent to the FCC praising or condemning the program; in addition, 35 listeners in the Philadelphia area complained of the WFIL-TV action in not carrying the broadcast. As a result of these complaints, the FCC directed an inquiry to Triangle Publications, licensee of the station, concerning the station's action.

In reply to the Commission's letter, Triangle stated that in its judgment "the use on television of a man convicted of perjury in a trial involving treason was in bad taste" and that its deletion of items from news programs reflected its desire not to show indirectly what it was unwilling to show directly.

The Commission, in letters written to the complaining listeners, stated that the station was entirely within its rights in refusing to carry the program, and that there was no indication that "deletion by the licensee of certain references to the program was a deliberate attempt to distort the news."

--Broadcasting, Feb. 25, 1963, p. 42.

C-228 Pape Television Co. Decision.

In March, 1963, Pape Television Co., operator of WALA-TV in Mobile, Ala., was issued a "show-cause" order by the FCC demanding that the station show cause why its license should not be revoked. Basis of the order were charges that representatives of the station had demanded sums of money from an engineering firm engaged in special work for the city of Mobile to refrain from launching editorial attacks against the firm. Pape TV was also alleged to have told a candidate for sheriff of Mobile County in 1962 that unless he used WALA-TV exclusively in his campaign for election, the station would work for his defeat.

However, no hearing on the charges was held in response to the order. Chief owner of the licensee company, W. O. Pape, had been the victim of a stroke in 1955. During 1962 and early 1963, he had been unable to devote any attention to affairs of the station; and presumably the incidents occurred without his knowledge or consent. In addition, in February, 1963, prior to the time the "show-cause" order was issued, Pape Television had applied for voluntary transfer of control from the incapacitated Mr. Pape to four trustees who, with the Commission's approval, would operate the station. In view of the physical condition of the owner of the company and of his inability to exercise supervision, and of the steps being taken to correct this shortcoming, charges against the station were dropped without hearing.

--25 R.R. 60, 642 (1963).

C-229 Cullman Broadcasting Co. Decision.

The syndicated program "Life Line" presents analyses and sometimes editorial evaluations of various public issues. During the summer of 1963, the program was carried on about 325 radio stations throughout the country,

most often on a sponsored basis. In three broadcasts in July, 1962, the speaker on the program advised listeners to write to their senators to urge them to vote against ratification of the Nuclear Test Ban Treaty. An organization favoring the treaty--the Citizens Committee for a Nuclear Test Ban Treaty--wrote to each of the stations carrying the program, offering to supply them with a 15-minute taped program presenting the other side of the question, and reminding the stations of the FCC's requirement that stations broadcasting one side of a controversial issue must offer spokesmen for other responsible groups similar opportunities for the expression of contrasting viewpoints.

Many stations carried the Citizens Committee program. One station, WKUL, in Cullman, Ala., asked the Communications Commission for a ruling on its responsibilities--whether, in view of the fact that "Life Line" was carried on a sponsored basis, the station was under any obligation to provide free time for the Citizens Committee program.

The Commission replied by letter, that when a licensee permits one side of an issue such as the test ban treaty to be presented over its facilities, "he must afford reasonable opportunity for the presentation of contrasting views by spokesmen for other responsible groups." While no single person or organization is entitled as a matter of right to make a reply--except in the case of personal attacks--the Commission held that if the licensee has presented one side of a controversial issue on a sponsored program, "he cannot reject a presentation" of the other side "and thus leave the public uninformed," simply "on the ground that he cannot obtain paid sponsorship for that presentation."

This is one of the most extreme interpretations of the "fairness" doctrine given by the Commission, and one which was the subject of a great deal of criticism by broadcasters.

--25 R.R. 895 (1963).

C-230 Carol Music, Inc. Decision.

On the basis of charges brought against the station, Chicago station WCLM(FM) was scheduled for hearing in 1963. Following the hearing, in September, 1963, the hearing examiner recommended that the station's license should be revoked on the grounds that, among other things, the station had used its multiplexing facility to provide illegal bookmakers with prompt results of horse races. The station was also charged with failure to maintain balanced programming on its main channel, as promised in its application.

The hearing disclosed that when application for the special authorization was filed, the licensee had proposed to use its multiplexing facility to provide a store-casting service. However, an organization called Newsplex, Inc., had used the facility to broadcast horse race results which were received by bookmakers on special equipment rented from Newsplex. In addition, evidence was presented to show that law enforcement officials had not only seized Newsplex equipment in raids on bookmaking joints, but had discussed the problem created by Newsplex with station officials.

The hearing examiner recommended deletion of the station's license, as well as cancellation of the special multiplexing authorization.

--25 R.R. 895 (1963).

C-231 KWK Radio, Inc. Decision.

In November, 1960, a "show-cause" order was issued by the FCC ordering a hearing on revocation of the license of station KWK in St. Louis as a

result of several promotion contests conducted by the station during the preceding summer. Following postponements, the hearing was held in September, 1961 and January, 1962; testimony at the hearing revealed that in "treasure hunt" contests, the "treasure" was not hid until shortly before the end of the announced "hunt" period, and that in a series of "Bonus Club" contests in which the "lucky winner" was required to telephone the station within 60 seconds of the time the winning number was read on the air, the telephone line to be used was frequently busy when the winner attempted to call, preventing him from winning the announced prize.

The hearing examiner's report, issued in September, 1962, recommended that the "show cause" order be dismissed and the case against the radio station dropped. However, the FCC felt differently. It held that the willful misconduct of the licensee that had resulted in frauds upon the public was a violation of terms of the station's license, and in an order released in May, 1963, the station's license was revoked. The station petitioned for reconsideration, but in an opinion and order dated Oct. 31, 1963, the Commission reaffirmed its action against the station, and ordered the station off the air.

--34 R.C.C. 1039, 25 R.R. 577 (1963), 35 F.C.C. 561, 1 R.R. 2d 457 (1963).

C-232 Head vs. New Mexico Board of Examiners.

A New Mexico state law prohibits certain types of advertising by optometrists. Abner Roberts, an optometrist living in Texas just across the border from New Mexico inserted advertising in a newspaper in Jobbs, N.M., owned by Agnes K. Head. Roberts arranged for advertising announcements over radio station KHOB, also located in Hobbs, that were in violation of the standards laid down in the New Mexico state law. Although the law restrained activities of optometrists, rather than of advertising media, the State Board of Examiners in Optometry of New Mexico asked a state court for an injunction to restrain the newspaper and the radio station from carrying the Roberts advertising material. The Court issued the injunction, whereupon the owners of the newspaper and of the radio station appealed to the New Mexico Supreme Court, which in 1962 upheld the decision of the lower court.

Since a question of interstate commerce was involved--the radio station's signal being interstate by definition, and the newspaper having circulation which crossed state lines--the newspaper and radio station appealed the state court's decision to the U.S. Supreme Court, charging that the court's order was a restraint upon interstate commerce.

In a decision handed down in June, 1963, the U.S. Supreme Court affirmed the verdict of the New Mexico Supreme Court, holding that the state court and state legislature retained jurisdiction over advertising, even though that advertising might be distributed on an interstate basis. The Supreme Court said--

> Without doubt, the appellants are engaged in interstate commerce and the injunction in the case has unquestionably imposed some restraint upon that commerce. But these facts alone do not add up to an unconstitutional burden upon that commerce. . . The constitution, when conferring upon Congress the regulation of commerce, never intended to cut the states off from legislating on all subjects relating to the health, life and safety of their citizens, though the legislation might indirectly affect the commerce of the country.

--23 R.R. 2042 (1962), 25 R.R. 2087 (1962), 374 U.S. 424 (1962).

C-233 Nappier vs. Jefferson Standard Life Insurance Co.

In 1961, two young women traveled through rural areas in South Carolina presenting a puppet show to give health information to children; the car in which they traveled carried identification of the puppet show. In November, the two were victims of a criminal assault in a motel and their car was stolen. When the car was located the following day, it was photographed by news photographers of television station WBTW(TV) in Florence, S.C., and photographs of the car were used in the station's news program in connection with the account of the crime, although the names of the two women were not mentioned, in compliance with provisions of a South Carolina statute which prohibits publication of names of victims in rape cases.

However, the two women filed actions against the station, charging that the television station had invaded their privacy by publicizing the attack and using pictures on the air of the readily identifiable car. The complaint stated that although names had not been given in the station's news programs, the two plaintiffs were so widely known as being associated with the puppet show that was identified that they were readily recognized as being the victims of the vicious attack. When the question was raised in the U.S. Circuit Court of Appeals as to whether the station had violated the privacy of the two victims, the Court ruled that the plaintiffs had a cause of action and that in the context of the case the word "name" in the South Carolina statute should be read as being the equivalent of "identity."

--322 F. 2d 502 (4rh Cir. 1963).

C-234 Purcell vs. Westinghouse Broadcasting Co.

On March 20, 1955, radio station KYW, a Westinghouse Broadcasting Co. station at the time located in Philadelphia, broadcast a documentary program titled, "Tow a Crooked Mile" dealing with an alleged "racket" in the towing of disabled automobiles. The documentary was based largely on evidence presented before a local magistrate in trails of several companies and individuals accused of violating a local towing ordinance which required the licensing of the towing business. One of the defendants, Purcell, had appeared in court two weeks prior to the day on which the broadcast went on the air, had been found guilty by the court and had been fined $500 for violation of the ordinance. A part of the documentary dealt with charges made against Purcell by witnesses, and his name and place of business were clearly identified in the program. The program was summed up with a statement that Purcell had been fined $500 and was being held in $1000 bail for the grand jury on "other counts."

However, prior to the date of the broadcast, Purcell had filed an appeal from the lower court's decision. In September, 1955 the lower court's decision was reversed in the state court of appeals, which ordered Purcell's conviction to be struck from the record. In the meantime, too, the grand jury's hearing resulted in no further action being taken against Purcell.

Purcell brought suit for libel and slander against the Westinghouse, charging that he had been defamed and his reputation damaged by the station's broadcast. Following a jury trial, the court ruled in favor of the plaintiff, and ordered damages totalling $60,000 to be paid by the station.

The station appealed the lower court's verdict to the Pennsylvania Supreme Court, which in December, 1963 upheld the decision of the lower court, although reducing damages to $40,000.

--411 Pa. 167, 191 A. 2d 662 (1963).

C-235 Advertising on Standard, FM and Television Broadcasting Stations.

In May, 1963, the FCC proposed rules placing definite limits on time devoted to commercials on radio and television stations. The maximum limits proposed were those provided in the codes of the National Association of Broadcasters and were far from restrictive. For television, the rule would limit time used for commercials in prime time to 10 minutes and 20 seconds in any one hour. For radio, advertising announcements were not to exceed an average of 14 minutes per hour, computed on a weekly basis, with not more than 18 minutes of advertising in any one hour.

Broadcasters objected strongly to the proposed rules--less to the specific limits proposed than to the underlying principle of FCC regulation of business practices of stations. In addition, a measure was introduced in Congress which passed the House of Representatives by an overwhelming vote, which would prohibit the Commission from attemtping to interfere with the business operations of broadcasting stations. While the bill was not taken up in the Senate during that session of Congress, the House action was a strong indication of the sentiment of the nation's lawmakers.

Consequently, on Jan. 15, 1964, the Commission issued a release titled, "Advertising on Standard, FM and Television Broadcasting Stations" stating that it had "found adoption of specific rules limiting the commercial content of broadcasts not appropriate at this time." However, the release reasserted the legal authority of the FCC to impose such limits.

The Commission emphasized that while it was dropping efforts to impose specific limits on advertising through the adoption of formal rules, it would still concern itself with problems of over-commercialization in dealing with grants of licenses. The Commission stated that

> we will give close attention to the subject of commercial activities of broadcasting stations and applicants on a case-to-case basis (and) continue to require applicants to state their policies with regard to the number and frequency of commercial announcements, as well as their past performance in these areas. These will be considered in our overall evaluation of station performance.
>
> --36 F.C.C. 45 (1964).

C-236 WMOZ, Inc. Decision.

In July, 1961, renewal application of WMOZ, daytime-only station in Mobile, Ala., was designated for hearing largely on the basis of programming and number of spot announcements broadcast. Hearings were held during the following December. Evidence at the hearing indicated that there were wide discrepancies between the number of spot announcements reported during the "composite week" in documents accompanying renewal application and the number of announcements listed in the station's actual logs. Dates in each case were one week earlier and one week later than those making up the composite week. Total spots reported for the "composite week" were 808, and average number of spots per week for other dates were 1,535, with as many as 359 spots carried in a single day on some of the dates not reported.

Comparison of logs submitted to the Commission, and authenticated logs for the same days, showed similar veriations. The authenticated log for one date, for example, showing 13 announcements in the period from 5:30 a.m. to 6:00 a.m., while the log submitted to the Commission showed only six announcements in the same period. Testimony by station employees indicated that Edwin H. Estes, manager of the station, had caused employees to sign fraudulent logs showing programs broadcast and announcements carried.

The hearing examiner recommended that the station license not be renewed and also that the license of station WPFA, Pensacola, Fla., wholly-owned by Edwin H. Estes, be revoked. On Jan. 29, 1964, following a review of the case by the entire Commission, the decision of the examiner was affirmed WMOZ was denied license renewal, and the license of WPFA was revoked.

During 1962 and 1963, at least 15 stations lost their licenses for false statements in applications, unauthorized transfers of control, or repeated violations of FCC rules.

--36 F.C.C. 202, 1 R.R. 2d 801 (1964).

C-237 New York Times vs. Sullivan.

On March 29, 1960, the New York Times carried an advertisement sponsored by a civil rights organization that strongly condemned alleged "police-state" conditions in Montgomery, Ala., where integration demonstrations were creating national news. Although he was not specifically named in the advertisement, Montgomery Police Commissioner L. B. Sullivan won a $600,000 judgment after a Montgomery County jury trial in which Sullivan alledged he had been libeled by statements in a full-page advertisement in The Times critical of police actions in Montgomery.

Sullivan, according to Alabama libel statutes, was not required to show actual damages to his reputation, and therefore collected punitive damages assessed against the New York Times. On certiorari, the U.S. Supreme Court reversed the state supreme court.

Justice Brennan, writing one of the most important decisions in First Amendment history, held that the Alabama damages rule was "constitutionally deficient for failure to provide the safeguards for freedom of speech and of the press that are required by the First and Fourteenth Amendments in a libel action brought by a public official against critics of his offical conduct."

Brennan said the Alabama judgment was contrary to a "profound national commitment to the principle that debate on public issues should be uninhibited, robust, and wide-open." He announced a precedent-setting national rule prohibiting "a public official from recovering damages for a defamatory falsehood relating to his official conduct unless he proves that the statement was made with 'actual malice'--that is, with knowledge that it was false or with reckless disregard of whether it was false or not."

The federal rule became known as the "New York Times Rule," and guided all libel actions by public officials for nearly a decade. Essentially, it means that falsehoods concerning any public official's actions in his official capacity (not his private life) were protected by the First Amendment. Public figures such as movie stars and athletes were also assumed to fall within the definition of a public official. Plaintiffs were faced with the almost impossible task of demonstrating to a court that newsmen disseminated the libels "with calculated forethought."

--376 J.S. 254 (1964).

C-238 Mid-Florida Television Corp. Decision.

Complaints were filed with the F.C.C. regarding the operation of Mid-Florida Television Corp. Complaints stated that Mid-Florida had been unfair in treatment of controversial issues, especially in editorials. The Commission said Mid-Florida acted in good faith and praised it for its coverage. However, the F.C.C. said a station must make a positive effort to contact opposite points of view. Simply providing a copy of the editorial was not sufficient. The F.C.C. held that the Fairness Doctrine was not so well known that persons receiving a copy of the editorial know they are being offered a chance to respond, and indicated that a specific statement of that fact needed to be made.

--40 F.C.C. 620 (1964).

C-239 Pacifica Foundation Decision.

In 1959, station KPFK(FM), Los Angeles, was placed on a temporary license basis after complaints that obscene material had been presented on the station's programs. The Pacifica Foundation operated KPFK(FM), KPFA(FM), KPFA(FM) in Berkeley, Calif., and WBAI(FM) in New York City, all on a subscription basis; in 1963 the Los Angeles station had approximately 9,000 subscribers who paid $12 a year each to support the station's operations. As licenses of other two stations came up for renewal, they too were placed on temporaries, awaiting disposition of the charges against KPFK(FM). Meantime, other difficulties were confronting the Foundation. The Senate Internal Security Subcommittee was inquiring in January, 1963 as to possible "Communist infiltration," and the FCC was investigating solicitation of funds from possibly undesirable sources.

In January, 1964, the Communications Commission released its findings. Various programs had been broadcast which had been subjects of complaint, including the reading, by its author, of a poem including improper "four-letter words;" a broadcast of a play, "The Zoo Story," by Edward Albee; and a round-table discussion in which eight homosexuals discussed their attitudes and problems. The Commission held that it was not concerned with individual programs in considering behavior of stations but rather the overall programming provided, and that the use of a small number of possibly objectionable programs over a period of four years did not indicate a "substantial pattern" of objectionable operation.

As to the "communist infiltration" issue, the Commission found that there was no evidence to link any of the principals of the Foundation with the Communist party; that while a woman who identified herself as a "spokesman" for the party had frequently appeared on the station's schedules, the station had also carried broadcasts by representatives of the John Birch Society.

Since the Commission found no evidence of serious shortcomings on the part of the Pacifica Foundation, licenses of all three of the Foundation's were renewed.

--36 F.C.C.C 147, 1 R.R. 2d 747 (1964).

C-240 CBS vs. Documentaries Unlimited.

When Documentaries Unlimited, Inc., prepared a memorial album dedicated to the late President John F. Kennedy, it included in the album an excerpt of a radio report by CBS news reported Allen Jackson concerning the assassination, without authorization from CBS.

CBS brought suit in a New York state court asking for an injunction

restraining the record firm from making further sales of the album and also for an accounting of profits from the sale of the album upon which a demand for damages could be based. The Court issued the injunction and ordered an accounting made, stating that the significant element was that Mr. Jackson's "voice and style of talking, which in his profession is the foundation and source of employment and income, were appropriated by the defendant without his consent."

Therefore, the Court held that the defendant's action was a "clear case of appropriation for commercial profit of another's property right."

--42 Misc. 2d 723, 726, 248 N.Y.S. 2d 809 (1964).

C-241 Fourth Notice of Proposed Rule Making.

In May, 1964, the F.C.C. released a "Fourth Notice of Further Proposed Rule Making: relating to forms to be used by applicants for licenses for new stations or for license renewal. A digest of, and excerpts from, the programming section of the proposed form are given below.

First the Commission called attention to portions of its policy statement of July 29, 1960 with respect to the importance of ascertaining and meeting the "needs of the community served." In part, the quoted material read as follows:

> We do not intend to guide the licensee along the path of programming; on the contrary, the licensee must find his own path with the guidance of those whom his station is to serve. . . What we propose is documented program submissions as the result of assiduous planning and consultation covering two main areas: first, a canvass of the listening public who receive the signal and who constitute a definite public interest figure; second, consultation with leaders in community life--public officials, educators, religious (groups), the entertainment media, agriculture, business, labor, professional and eleemosynary organizations, and others who bespeak the interests which make up the community... The major elements usually necessary to meet the public interest, needs and desires of the community . . . as recognized by the Commission have included: (1) opportunity for local self-expression, (2) the development and use of local talent, (3) programs for children, (4) religious programs, (5) educational programs, (6) public affairs programs, (7) editorialization by licensees, (8) political broadcasts, (9) agricultural programs, (10) news programs, (11) weather and market reports, (12) sports programs, (13) service to minority groups, (14) entertainment programming.

The proposed license application form for television asked the applicant to indicate the "areas, other than principal community of assignment, considered as (the station's) areas of principal attention"--in other words, the size of the total area to be served. In addition, the following information was requested, relating to the television station's past or future programming; the order used in this report is not identical with the order used in the proposed form:

Survey of community needs. Emphasized was the "obligation of the applicant. . . to make a positive, diligent and continuing effort to ascertain, within the previous six months, the tastes, needs and interest of the public. . . and to meet those needs and interest." Completion of this

portion of the application requires "first, a canvass of the listening public who will receive the signal and second, consultation with leaders in community life."

The applicant is required to submit an exhibit describing in detail the efforts of the applicant to ascertain from civic leaders and other members of the viewing public the needs and interests for broadcast service. In addition, the applicant would be required to list the names and positions of persons in each of eleven categories - the listening public, public officials, educators, religious groups, entertaining media, agricultural organizations, business organizations, labor organizations, charitable groups, professional associations, and others - with whom a representative of the station conferred, and the general types of program services which were suggested.

Plans to meet community needs. Next, the applicant was to outline the elements of program service judged by the applicant as "necessary or desirable reasonably to serve the program needs," and to evaluate the relative importance to be given each in designing the station's program structure.

This, according to the proposed application form, was to be followed with an actual list of regularly scheduled programs to be "broadcast during the coming year to meet the interests determined" as a result of the applicant's survey of community needs. To be given for each program would be a statement of which "needs" the program would meet, and of which groups consulted indicated a need for such a program.

Past programming record. Next, the applicant for license renewal is asked to indicate the station's weekly hours of operation, and operating hours on weekdays, Saturdays and Sundays.

Then, an exhibit is called for which would list and describe all "local" and all "exchange" programs (the latter is a program originated by another station, and previously broadcast by that station - but not a syndicated program) which were carried during the "composite week" during each year of the past three years (the new form would require information for a "composite week" for each year covered by the license for which renewal is sought). Description would include classification of the program by type, whether it was intended for children, in what way community leaders or representatives of groups participated, and to what extent the program made use of local talent. This listing would include all programs, entertainment as well as those "serving local needs."

In addition, an exhibit is called for listing all network programs not in the category of entertainment or sports, which the station carried during the "composite week" of each of the three preceding years, with each program classified. A third exhibit would include a list of all syndicated programs carried by the station during any of the three composite weeks--programs not in the field of entertainment or sports--and a similar assignment of each program to a proper classification.

Another question calls for a compilation of the amount of time, in hours of local, exchange, network and transcribed (recorded) programs listed in separately, in each section of the day, which would fall into the category of entertainment and sports, or that of news, or that of "all other programs."

These several detailed exhibits would indicate very clearly just what and how many programs the station had devoted, each year, to each of the types of material listed by the Commission as "essential to serving the

public interest."

Handling of public issues. In one section, the applicant is asked to name for each year of the license period, "the problems which in the applicant's opinion were of greatest public importance in the community served," and then to describe all programs broadcast during that year--other than news broadcasts--which would have the effect of enlightening the public concerning those problems.

Public service announcements. In this field, the applicant is asked to state the number of network, and the number of local public service announcements included in the station's schedule during the "composite week" for each year, and to list the agencies or causes on whose behalf such announcements were presented.

Commercial practices. Applicant for renewal is asked first to provide a breakdown showing, for each of the three "composite weeks" the number of hours and minutes of (a) "commercial matter"--commercial announcements plus announcements of coming commercial programs--and (b) of public service announcements, as compared with total hours on the air during the week. Separate breakdowns must be provided for the period between 6 p.m. and 11 p.m., and for the "total week." The question also calls for a percentage figure showing proportions of commercial matter to all broadcast time.

Next, the applicant is asked to report, for each "composite week," the total number of 60-minute periods his station was on the air and the number of such 60-minute periods in which "commercial matter" appeared, but did not exceed a total of 8 minutes of the 60, the number in which commercial matter was more than 8 minutes but not more than 12 minutes, the number of periods with more than 12 minutes of commercial matter but not more than 16 1/2 minutes, and the number of minutes in which commercial matter exceeded 16 1/2 minutes.

The applicant is also expected to report the number of 60-minute segments during each "composite week" in which entertainment or similar material contained no interruptions by commercial material, the number with from one to four interruptions, the number with five to eight interruptions, the number with eight to 12 interruptions, and the number of 60-minute periods with more than 12 interruptions each.

If the number of interruptions, or the proportion of time devoted to commercial matter, exceeded what was promised in the last preceding license renewal application, the applicant is again asked to explain reasons, in detail.

(Note that in the proposed application form the television applicant is not asked what proportion of his total program time is "commercial" sponsored or participating but what proportion of total broadcasting time consists of definite commercial materials, and also, the number of 60-minute periods per week with an excessive quantity of commercial material or an excessive number of interruption of entertainment materials by commercials.)

Promises for the coming license period. With respect to sections dealing with (a) plans to meet community needs, with (b) overall programming, with (c) handling of public issues, with (d) carrying public service announcements, and with (e) all aspects of commercial practices, the applicant is asked specifically to outline his plans for the coming year and coming license period what kind of programs he intends to provide, his plans with respect to each type of program on the Commission's list of categories, his policies with respect to providing discussions of current public issues, the

minimum number of public service announcements he expects to provide each week, and the maximum number and maximum total proportion of time to be devoted to commercial announcements, both within each or any one 60-minute segment of time and during the entire broadcasting week.

General station policies. Finally, in the area of programming, the applicant is asked whether or not he has "established policies with respect to programming and advertising standards" - either as developed by the station, or contained in an industry code and to supply a copy of the standards followed.

In addition, he is asked to outline the practices and procedures used to insure that materials carried conform to the standards laid down this applying to network, syndicated recorded or "exchange" programs, as well as to programs originated locally.

Specifically, the applicant must state his policies with respect to carrying desirable programs "even if sponsorship is not available or appropriate," and to the preempting of regularly scheduled programs to present special programs, presumably of local origin. In each case, he is to give examples (possibly of what he has previously done) illustrating the application of such policies.

He is asked, too, to outline the policies followed to keep networks, sponsors, program producers, and the like, informed with respect to his analysis of the needs and interests of listeners in his community--and also to describe in detail, in a separate exhibit, procedures followed in giving effect to suggestions or complaints from the public, including illustrative examples of where such complaints, in the past, have resulted in changes or in the initiation of new local programs.

--F.C.C. Public Notice 64-385 (1964).

C-242 F.C.C. vs. Schreiber.

On Oct. 17, 1960 at a public hearing in Los Angeles, Taft B. Schreiber, a vice president of the Music Corporation of America, Inc. (MCA), one of the largest packagers and producers of network television programs, refused to produce certain documents for the F.C.C. hearing examiner. Schreiber asked for confidential treatment for the documents feeling that they might disclose trade secrets to his company's competitors. However, the examiner found the material to be of relevance to the FCC and rejected the claim that the information should be received in confidence. MCA appealed to the Commission, which upheld its hearing examiner's decision and ordered Schreiber to produce the documents. When Schreiber refused, the F.C.C. petitioned a District Court for Southern California to enforce its order. The Court, however, ruled that the materials should be held in confidence until the F.C.C. could show good cause for the public release of the information.

On May 24, 1965 the U.S. Supreme Court reversed the decision and upheld the F.C.C.'s position, noting that the Commission's rule requiring public disclosure except where the proponents of a request for confidential treatment have demonstrated that the public interest, proper dispatch of business, or the ends of justice would be served by non-public sessions, was well within the Commission's statutory authority. The Supreme Court also found that the Commission did not abuse its discretion in applying this rule.

--381 U.S. 279 (1965).

C-243 WMAY Decision.

In March, 1965, Springfield, Ill., asked the FCC for a declaratory ruling on whether the equal-time law would apply to the broadcasts of its news director, Robert Brown, a candidate for the local school board. Previous Commission rulings had indicated that the 1959 amendments to political rules exempting news programs, news interviews, news documentaries, and on-the-air spot coverage of news events, would apply also to newscasters who were potential candidates. The FCC, however, said that it had re-examined the question of the applicability of the 1959 amendments, and concluded that their main purpose "was to allow greater freedom to the broadcaster in reporting news to the public." The FCC said the 1959 amendments did not deal with the question of whether the appearance of a station employee who becomes a candidate should be exempted on a news show when he announces the news. Conversely, the FCC decided that "the appearance of an employee candidate as a newscaster would be 'use' under the equal-time law." The Commission recommended that broadcast newscasters planning to run for political office should either transfer to off-air duties during the campaign or face the possibility of running up an equal-time obligation for his employer. The FCC was careful to indicate that there could be cases in which the appearance of a candidate newscaster might be exempt. In a letter to WMAY, the Commission stated that the decision is "limited strictly to the facts" presented by WMAY. Mr. Brown had been identified on the air up to the date of his candidacy and he prepared as well as broadcast the news.

--3 F.C.C. 2d 472, 4 R.R. 2d 849 (1965).

C-244 Estes vs. Texas

Billy Sol Estes was convicted of fraud in a Texas district court, which was upheld by the Texas Supreme Court. The pretrial hearings were covered live on both radio and television. A number of cameramen were in the courtroom throughout the hearings.

Sol Estes appealed to the U.S. Supreme Court, claiming that the presence of cameras in the courtroom had caused such confusion that the defendant was unable to receive the benefit of a fair trial, guaranteed by the Sixth Amendment and "due process of law," guaranteed by the Fourteenth Amendment. Estes maintained that he had received so much publicity that the courtroom had been filled with curiosity seekers and newsmen. His attempt to have electronic equipment removed from the courtroom was unsuccessful.

The Supreme Court ruled that a jury may be prejudiced, the public may become unduly interested, and the defendant may be put under excessive pressure when camera facilities enter the court.

The Court ruled that the day might arrive when the technology of camera equipment would become so far advanced that it would create no distraction, but until that day arrived cameras would be barred from courtrooms. Today, with the benefit of the advanced technology, about half the states are experimenting with still and film cameras in the courtrooms.

--381 U.S. 532 (1965).

C-245 Maritote vs. Desilu Productions, Inc.

The widow and son of Al Capone claimed their privacy was invaded by such TV programs as "The Untouchables," which depicted more than 100 fictitious Capone crimes of violence in six seasons. The Capone family sued Desilu

Productions, Inc., CBS, and Westinghouse Electric Corp. for damages. Both the federal district court in Chicago and the 7th U.S. Circuit Court of Appeals ruled that the right of privacy is personal and cannot be asserted by the next of kin.

"Comment, fictionalization and even distortion of a dead man's career do not invade the privacy of his offspring or friends, if they are not mentioned therein."

--345 F. 2d 418 (7th Cir. 1965), 382 U.S. 883 cert. den. (1965).

C-246 Fraudulent Billing Practices Memo.

Since 1962, the FCC was concerned with fraudulent billing practices. On October 20, 1965, the FCC voted a rule prohibiting licensees from knowingly issuing bills falsely stating the amount charged for advertising time. In a separate notice, the FCC emphasized that licensees should use reasonable diligence to prevent employees from engaging in fraudulent billing practices.

The rule is aimed at situations in which stations issue advertisers or agencies two bills, one for the correct amount and one for a higher amount. The inflated one is sent to a national advertiser for reimbursement or used for inflated agency commissions.

The rule permitted the FCC to impose fines for the double billing.

--F.C.C. #15396, 65-11518, 65-11521 (1965).

C-247 United States vs. WHAS, Inc.

On April 29, 1963, WHAS-TV, Louisville, Ky., broadcast a political program called "The Chandler Years in Review." The program clearly was designed to support the candidacy of Edward Breathitt and to discredit "Happy" Chandler in the Democratic primary campaign for governor. WHAS did not announce that the program was in the interest of Breathitt's candidacy, although the sponsor, The Committee for Good Government, was identified. The program was under the control of a local advertising agency.

The FCC found WHAS guilty of "willful violation" of FCC rules by not identifying the "true sponsors" and fined the station $1,000. The U.S. District Court, however, reversed the FCC's decision because (1) the station had dealt with an established and responsible advertising agency and was not required independently to investigate the sponsor further; and (2) FCC rules do not require disclosure of the name of the candidate as the sponsor.

--253 F. Supp. 603 (W.D. 1966), 385 F. 2d 784 aff'm (1967).

C-248 F.C.C. Statement on Comparative Hearings.

On July 28, 1965, the Federal Communications Commission released a policy statement setting forth factors that it would consider in choosing among applicants in comparative hearings. The statement is important in that it highlights some of the major concerns of the FCC not only in granting new licenses but, by implications, inrenewing old ones.

Stating that the two primary criteria for selecting a license would be (a) the best practicable service to the public; and (b) a maximum diffusion of control of the media of mass communications, the Commission commented on several factors that would be significant in these two general areas:

1. Diversification of control of the media of mass communications. The significance of diversification, it was announced, would be determined

by the degree of interest in other stations or media by the applicant. Control of large interests elsewhere in the same state or region could be more significant in some instances than control of a small medium of expression (such as a weekly newspaper) in the same community. The commission said that it would consider interests in existing media of mass communications to be more significant in (1) the degree that they move towards complete ownership and control; (2) the degree that the existing media are in, or close to, the community being applied for; (3) degree of significance in terms of numbers and size (the area covered, circulation, size of audience, etc.); 4) degree of significance in terms of regional or national coverage; (5) and degree of significance with respect to other media in their respective localities.

2. Full-time participation in station operation by owners.
The Commission announced that it is "inherently desirable that legal responsibility and day-to-day performance be closely associated." Full-time participation was deemed of particular importance, and the extent to which an owner moves away from full time would result in a corresponding drop credit given. Experience in broadcasting, past participation in civic affairs and local residence were mentioned as factors to be weighted in choosing among applicants.

3. Proposed program service.
Re-affirming its policies and guidelines on programming as set forth in "Report and State of Policy Re: en banc Programming Inquiry," the commission also emphasized that an applicant should survey the needs of his community, and should show how his programming will meet those needs. "Decisional significance," said the Commission, "will be accorded only to material and substantial differences between applicants' proposed program plans."

4. Past broadcasting record.
"This factor," said the FCC, "includes past ownership internship and significant participation in a broadcast station by one with an ownership interest." It was announced that a past record within the bounds of average performance will be disregarded, since average future performance is expected. Continuing, The Commission said:

> Thus, we are not interested in the fact of past ownership per se and will not give a preference because one applicant has owned stations in the past and the other has not. We are interested in records, which, because either unusually good or unusually poor, give some indication of unusual performance in the future.

5. Efficient use of frequency.
In effect, this requirement is related to superior technical operation. If the engineering systems of one applicant is superior to those of other applicants, this fact will be considered in determining which of the applicants should be preferred.

6. Character.
The Communications Act makes character a relevant consideration in the issuance of a license. (See Section 308 (b), 47 U.S.C. 308 (b). "Significant character deficiencies," The FCC affirmed, "any warrant disqualification."

--July 28, 1965.

C-249 Weaver vs. Jordan.

Subscription Television Inc. (STV) was incorporated in California in 1963. At that time, STV began selling subscriptions to establish a pay

television programming service for the residents of Los Angeles County and its environs. To combat STV's activities, the Theater Owners of Southern California through their Committee to Keep Television Free circulated a petition asking that pay TV be outlawed in the state of California. Sufficient signatures were gathered and the petition Proposition 15 passed by a 2-1 margin, outlawing pay TV in California.

Legal action was undertaken by STV in the California Supreme Court to reverse Proposition 15. On March 2, 1966 the Court declared Proposition 15 unconstitutional because it abridged freedom of speech protected by the First and Fourteenth Amendments of the U.S. Constitution. It amounts to total censorship. Pay TV does not represent a clear and present danger to public welfare.

--64 Cal. 2.d 235, 49 Cal. Rptr. 537, 411 P. 2d 289 (1966), 385 U.S. 844 cert. den. (1966), 430 F. 2d 957 (9th Cir. 1970), 576 F. 2d 230 (9th Cir. 1978).

C-250 Sheppard vs. Maxwell.

On July 4, 1954, Dr. Sam Sheppard's wife was brutally stabbed to death in her bedroom. Officials soon suspected Sheppard, a well-known Cleveland physician who was arrested July 30 and indicted August 17. The melodramatic flavor of the case attracted nationwide attention with hundreds of newsmen closely following the case. Cleveland newspapers especially disseminated prejudicial pretrial publicity, making the empanelling of an impartial jury nearly impossible. The trial itself was a circus. Newsmen virtually controlled the courtroom, intimidating witnesses, making celebrities out of jurors, heating up the re-election campaigns of the presiding judge and prosecutor, listening in on conferences between Sheppard and his attorney--in short, disrupting the orderly administration of justice.

Jurors were not sequestered by the trial court. Although they were occasionally cautioned not to expose themselves to the publicity, they were not prohibited from doing so. They were suquestered during their deliberations on the verdict, but they were often in telephone contact with friends and relatives. They voted to convict Sheppard.

F. Lee Baily, Sheppard's flamboyant attorney, tried several unsuccessful state and federal appeals before the U.S. Supreme Court in 1966 finally reversed the convication, condemning the activities of the news media, court officials and the judge. The Court held that Sheppard was not afforded a fair trial guaranteed by the Sixth Amendment of the U.S. Constitution, made applicable to the states by the Fourteenth Amendment.

Although Justice Clark, writing for the majority, said the press must be provided the widest possible latitude in reporting matters of public interest, the media could not violate the right of fair trial. The Court ruled that the trial judge could have exercised several rules to supervise courtroom conduct. The number of newsmen in the courtroom could have been limited, the witnesses could have been insulated, and court officials could have controlled the release of information to the press. Sheppard eventually was freed, but his life was ruined. After spending 12 years in prison, he became a professional wrestler, was remarried and divorced, and shortly thereafter was killed in a motorcycle accident. The murder remained unsolved.

--384 U.S. 333 (1966).

C-251 J. B. Williams Co. vs. F.T.C.

J. B. Williams is engaged in the sale and distribution of Geritol liquid and Geritol tablets. The FCC ordered that Geritol advertising expressly be limited to those persons whose symptons are due to an existing deficiency of one or more of the vitamins contained in the preparation. Geritol ads must affirmatively disclose the negative fact that a great majority of persons who experience certain symptoms do not have a vitamin or iron deficiency, the FCC ruled.

The Federal Court of Appeals upheld the FTC's findings that the Geritol advertisements created a false and misleading impression on the public and let the order stand.

--381 F. 2d 884 (6th Cir. 1967).

C-252 Time, Inc. vs. Hill.

Hill and his family were held hostage in 1952 in their home by escaped convicts and ultimately were released unharmed without any violence having occurred. They later moved, and Hill discouraged further publicity which had in the past caused involuntary notoriety. A novel and a play were written about incidents similar to the Hill story, but involving violence. Life magazine published an account of the play, relating it to the Hill incident. The play was described as a re-enactment, and used illustrations and photographs of scenes staged in the former Hill residence. Alleging that the Life article gave the knowingly false impression that the play depicted the Hill incident, Hill sued for damages under the New York civil rights statute providing a cause for action by a person whose name or picture invades his privacy.

The Supreme Court stated that the First Amendment protects the press from suits of invasion of privacy concerning the private lives of newsworthy persons unless there is proof of malice, deliberate falsehood, or reckless disregard of the truth.

The case was set aside and remanded for further proceedings and no judgment was made.

--385 U.S. 374 (1967).

C-253 American Broadcasting Companies Network Proposal.

On Jan. 1, 1966 ABC proposed four networks to supply programs to four specialized audiences. In so doing these program feeds would go to as many as four stations in one market. ABC raised the question of whether this would be contrary to FCC rules dating back to 1941, and to 1943 when NBC Red and Blue networks were separated. In replying the FCC observed that network radio had drastically changed since 1943. "Of most significance is the fact that networks no longer dominate the radio field economically,. . . as a program source, . . . as they once or as they continue to do in television. Nor do they have the same dominant bargaining position with respect to their affiliates." These changes towards specialized and local format weaken the network position. Because of these changes the FCC eventually granted ABC's request and noted three areas of consideration:

1. Overlap of a network's programs by two or more stations invokes the dual network rule, but the Commission granted a one-year waiver for "Breakfast Club" which was to be delay broadcast at the same time as news on other ABC networks. Overlap (in time) would also be permitted in the case of grave national issues covered on ABC. ABC took steps to minimize overlap

and while the overlap did violate a law the FCC felt the minimal departure was justified because the new concept appeared to be in the public interest. A one-year experiment was allowed.

2. The four program services would not violate the cross ownership of interest among two stations in competition as argued by those who opposed the ABC plan. While more than one station in a market would receive the ABC programs, ABC did not own tow stations in the same market. There was no common control because ABC did not dictate which programs were carried by a given station.

3. ABC, to satisfy other requirements, had to require each station not to delay broadcast a program without written consent. This, some felt, was undue control of programming, but the FCC found the station still had to decide whether it would air the program.

To, the FCC, ABC's plan was acceptable because there was little overlap. Further, the plan showed ABC was attuned to the needs of modern radio.

--12 RR 72 (1967).

C-254 McCarthy vs. F.C.C.

Following a practice that began in 1962 with a year-end interview with President Kennedy, the three major TV networks on Dec. 19, 1967 carried a joint hour-long interview with President Johnson. Sen. Eugene McCarthy who had prior to that broadcast announced his own candidacy for the Democratic Party's presidential nomination, requested "equal time" on the grounds that President Johnson was a legally qualified candidate for the same nomination within the intent of Sec. 315.

The FCC denied McCarthy's request. The ruling was based on the commission's regulations interpreting Section 315 as applying only to legally qualified persons who had, among other things, publicly announced their candidacies. Johnson, who had not so declared, therefore was not a legally qualified candidate.

--390 F. 2d 471 (D.C. Cir. 1968).

C-255 Southwestern Cable Co. vs. Midwest Television, Inc.

Midwest TV, Inc., on behalf of its San Diego station, KFMB-TV, filed a petition for special relief from signal importation of Los Angeles TV stations. Midwest alleged that local CATV systems were adversely affecting KFMB and other existing and potential San Diego VHF and UHF stations. Midwest sought a rule confining carriage of Los Angeles signals. The FCC restricted the expansion of local CATV systems' service into areas in which they were not operating on Feb. 15, 1966, pending hearings. The Court of Appeals held the FCC was without jurisdiction to issue restricting orders on CATV systems in a locality. Section 154 and 303 of the Communications Act limits the FCC's power.

The Supreme Court reversed the Court of Appeals decision and upheld the FCC. The Court held that the FCC jurisdiction over "all interstate and foreign communication by wire or radio. . .", extends to CATV whether microwave or not and that the order restricting the expansion of the San Diego CATV system's carriage of Los Angeles signals pending hearings is within the FCC's authority.

--392 U.S. 157 (1968).

C-256 Fortnightly vs. United Artists.

United Artists Television entered into contracts with five television stations and granted limited licenses to show its motion pictures. The

license specifically limited showings to the broadcasters' facilities and made it clear that it did not include CATV systems. Fortnightly, a cable system sent signals from the five stations that were licensed in Pittsburgh, Pa., Steubenville, Ohio, and Wheeling, W. Va., into its subscribers' homes, located in Clarksburg and Fairmount, W. Va. The 2nd Circuit Court of Appeals held that the CATV operator had violated the Copyright Act by the transmission. Since CATV systems contribute to the viewing of TV programs by transmitting signals to its subscribers, the Court concluded that they result in a public performance of copyrighted programs.

The Supreme Court reversed both the District and Circuit Court decisions, and held that there was not a performance withing the meaning of the Copyright Act. Resorting to the older test of broadcasting, the Court found: "Broadcasters perform. Viewers do not perform. . . While both broadcaster and viewer play crucial roles in the total television process, a line is drawn between them. One is treated as an active performer, the other a passive beneficiary. When CATV is considered in this framework, we conclude that it falls on the viewers' side of the line." The Supreme Court thus reverted to the logical definition of "performance" and referred to the CATV system as a substitute for an antenna.

--392 U.S. 390 (1968).

C-257 Banzhaf vs. F.C.C.

In December of 1966, John F. Banzhaf III, one of the major backers of the anti-smoking campaign, asked WCBS-TV, New York City, for free time in which anti-smokers might respond to the pro-smoking views implicit in cigarette commercials.

WCBS-TV refused the time, saying that they had run several news and information programs about the controversy. Further, five public service announcements from the American Cancer Society had been run free in the past few months.

Banzhaf filed a complaint with the FCC (9 F.C.C. 2d 921 (1967)). After testimony from both parties, the Commission affirmed the complaint and ordered WCBS-TV to furnish the time. The Commission said that time did not have to be furnished on a one-for-one basis and amount of time was up to the broadcaster, as long as he reached a fair balance for both sides of view.

The FCC was attacked by all sides as the case sent to the U.S. Court of Appeals. Benzhaf, and other groups, wanted "equal" time on a one-for-one basis. WCBS-TV and others contended that FCC jurisdiction was precluded by the Cigarette Labeling and Advertising Act of 1965.

Neither side got the decision they hoped for. The court said:

> Cigarette Labeling Act of 1965 does not constitute congressional preemption of field of regulation addressed to health problem posed by cigarette smoking and does not deny FCC authority to require radio and television stations which carry cigarette advertising to devote significant amount of broadcast time to presenting case against cigarette smoking.

Concerning the one-for-one equal time complaint, the Court ruled that a one-for-one ratio is an "unnecessary intrusion upon licensees' discretion." The stations were required to furnish only a fair amount of time so that the viewpoints of ainti-smokers could be heard by the public.

--405 F. 2d 1082 (D.C. Dir 1968), 396 U.S. 842 cert. den. (1969).

C-258 WHDH, Inc. Decision.

WHDH-TV, owned by the Boston Herald-Traveler Corp., was granted a construction permit for channel 5 in the Boston area in 1957. In 1962 its license was renewed for four months over two other competing companies. When renewal came up again, WHDH found three other competing applicants Charles River Civic Television, Inc.; Boston Broadcasters, Inc. (BBI); and Greater Boston TV co., Inc.

After lengthy litigation concerning the first renewal and the death of the owner of the Boston Herald-Traveler Corp., the affair finally reached a competitive hearing. Greater Boston TV had been disqualified from participating due to the lack of a suitable antenna site.

The FCC Examiner recommended that the WHDH license be renewed due to the licensee's good past performance. But the FCC decided that it was time to strictly apply the criteria set forth in the "Policy Statement on Comparative Broadcast Hearings." particularly the diversification and past performance sections.

The decision stated:

> In our judgment, the Examiner's approach to this proceeding places an extraordinary and improper burden upon new applicants who wish to demonstrate that their proposals, when considered on a comparative basis, would better serve the public interest.

The decision clearly reaffirmed the criteria of past performance as set out in the Policy Statement:

> As the Policy Statement indicates, a past record within the bounds of average performance will be disregarded, since average future performance is expected; and emphasis will be given to records which, because they are either quite good or very poor, give some indication of unusual performance in the future. Thus, while a renewal applicant must literally run on his record and such record is the best indication of its future performance, that record is meaningful in the comparative context only of it exceeds the bounds of average performance. We believe that this approach is sound, for otherwise new applicants competing with a renewal applicant would be placed at a disadvantage if the renewal applicant entered the contest with a build-in lead arising from the fact that it has a record as an operating station. More importantly, the public interest is better served when the foundations for determining the best practicable service, as between a renewal and new applicant, are more nearly equal at their outset.

In supporting the diversification criteria of the Policy Statement, the FCC said, "the widest possible dissemination of the information from diverse and antagonistic sources is in the public interest." Consequently WHDH lost the license which was granted to BBI.

In his concurring statement, Commissioner Nicholas Johnson was the decision as a major step away from concentrated ownership to local ownership.

Cases are overruled where licensees with substantial media concentrations were able to retain their licenses under a renewal comparative challenge. The door is thus opened for local citizens to challenge media giants in their local community at renewal time with some hope of success where previously the only response had been a blind reaffirmation of the present license holder.

--16 F.C.C. 2d 1 ((1969).

C-259 United Medical Laboratories vs. CBS.

This case involved a CBS investigation broadcast over radio and television in June, 1965 of mail-order laboratories. CBS reported that 22 such laboratories made widespread errors in test reports. The CBS broadcasts raised questions of whether those tests could be accurate when drug samples are sent through the mail and warned that errors could endanger the lives of patients. The results of the investigation were broadcast on the "CBS Evening News", and on the radio program "The World Tonight."

United Medical Laboratories, and Oregon mail-order lab, filed a $10.1 million suit against CBS, commentator Walter Cronkite and producer Jay McMullen, claiming to have been libeled because the CBS broadcast implied that testing inaccuracies were typical of all mail-order firms. The firm cited a $100,000 drop in business volume, lapse of pending business-contract negotiations, and expressions of concern by clients as evidence that it had been damaged by the broadcast--although, United insisted, it had never sent test samples to CBS in connection with the broadcasts. An Oregon district court denied the suit on the ground that no specific libel against United, as distinct from "class"libel, could be demonstrated. The 9th Circuit Court of Appeals of San Francisco, agreed because no actual malice had been shown. Because of the "profound, public-interest considerations involved," the Court feld that First Amendment immunity from libel charges could be extended to disclosure and discussion of professional practices in the public health area.

--404 F. 2d 706 (9th Cir. 1968), 394 U.S. 921 cert. den. (1969).

C-260 National Association of Theatre Owners vs. F.C.C.

On Dec. 12, 1968, the FCC issued its Fourth Report reaffirming its authority to license and regulate subscription television. The National Association of Theatre Owners and Joint Committee Against Toll TV took the report to court trying to kill pay TV since it posed a financial threat to the film industry.

The U.S. Court of Appeals, D.C. circuit, ruled that the Communications Act of 1934 was a broad grant of federal licensing authority for the FCC. By licensing Muzak and other background music companies, the FCC and the courts had already upheld the authority of the Commission.

The Court also ruled that the Act of 1934 did not preclude rate regulation of broadcasting. It was pointed out that in the Congressional debate on radio regulation in the late 1920's, Congress did not put in a clause preventing rates from being charged for general broadcasting, since that would be government intervention in private business.

Finally, the Court said that the FCC does not have to step in and regulate rates in broadcasting until the Commission feels that the present rate system has been abused.

--420 F. 2d 194 (D.C. Cir. 1969), 397 U.S. 922 cert. den. (1970).

C-261 Joseph vs. F.C.C.

On Nov. 6, 1967, WGN Continental FM Broadcasting Co., filed with the FCC for approval to buy WFMT-FM in Chicago. On March 27, 1968 the FCC approved the transaction without a hearing.

Meanwhile, Mrs. Burton Joseph, Mrs. Robin DeGrazia and others formed the Citizens' Committee to Save WFMT-FM. The station was a "good" music

station. And, the citizens were afraid that the new owners would change the format.

The Committee sent a letter to the Commission urging them to hold a hearing. On March 26, one day before the Commission action, the group filed a motion for a public hearing. For reasons unknown, the motion did not reach the attention of the Commission before the sale was approved. After the approval, the FCC treated it as a petition for reconsideration. On April 4, the Committee received notice that their petition had been denied, and they sought relief in the courts.

The FCC argued that the case should be thrown out because Mrs. DeGrazia did not have standing as a representative of the listening public.

The Court ruled Mrs. DeGrazia was entitled to consideration as a representative of the listening public. They said that any listening member's gripes should be an indication to the Commission of the possibility that the transaction would not be in the public interest. Any individual complaints should be considered even if the case had been previously settled. The Court held:

> When there is no hearing at which the full facts are brought out, promoting confidence that all relevant facts and aspects have been considered and that the public interest would be served by the grant, when the affirmative (sic) finding of public interest required by Congress does not appear expressly, when there is no opinion or other statement providing a reasoned application of articulated standards to the facts of the case, and when the Commission has at least some concern that under today's conditions the public interest requires a strict approach, there exists a combination of danger signals that cannot be ignored or bypassed.
>
> The case was sent back to the FCC for further proceedings.
>
> --404 F. 2d (D.C. Cir. 1968).

C-262 Red Lion vs. F.C.C.

On Nov. 27, 1964, WGCB AM-FM carried a program by the Rev. Billy James Hargis. Hargis discussed a book by Fred J. Cook entitled Goldwater Extremist on the Right. After hearing the broadcast, Cook charged that he had personally attacked, and he demanded equal time on the station. The station, owned by the Rev. John Norris, offered to sell him time or he he pleaded poverty, to give him free time for the broadcast. Mr. Cook insisted that he was entitled to free time. Norris refused and Cook filed a complaint with the FCC. The FCC informed WGCB that a broadcaster must afford free time to someone who has been under personal attack. The FCC sent a letter to WGCB instructing the station to provide the time. SGCB refused and filed suit against the FCC arguing that letters from the FCC to licensees are not orders in the legal sense.

The U.S. Court of Appeals initially ruled in favor WGCB, citing the conflict between the FCC's rule Sec. 1.2 and Sec. 5(d) of the Administrative Procedure Act. But on March 13, 1967, the Court of Appeals reversed itself en banc upon argument by the Government that the FCC rule used here, which permits it to issue "a declaratory ruling terminating a controversy or removing uncertainty" was in fact justified by the Administrative Procedure Act.

This decision was unacceptable to WGCB and to the Television News Directors Association, which joined in the appeal to the Supreme Court.

On June 9, 1969, The Supreme Court handed down a far-reaching decision in favor of the FCC. The Supreme Court said that the fairness doctrine and the Commission's rules on personal attacks and political editorials are authorized by the Congress, enhance the freedoms of speech and press protected by the First Amendment and are valid and constitutional. The Court ruled:

> There is nothing in the First Amendment which prevents the government from requiring a licensee to share his frequency with others and to conduct himself as a proxy or fiduciary with obligations to be presentative of his community and which would otherwise, by necessity, be barred from the airwaves. . . . It is the right of the viewers and listeners, not the right of the broadcasters which is paramount.
>
> --395 U.S. 367 (1969).

C-263 WORZ vs. F.C.C.

Mid-Florida Television Corp. was granted a construction permit for Channel 9 in Orlando, Fla. Because of ex parte activities on the part of the other applicants for the Channel 9 license, the construction permit to Mid-Florida was withdrawn in 1958. The FCC sought competing applicants for interim operation of Channel 9 without success. Consequently, Mid-Florida was allowed interim operation until Dec. 1958.

On Jan. 7, 1959, the U.S. Court of Appeals for the District of Columbia ordered the FCC to seek competitive applicants for Channel 9.

In a reapplication, Consolidated Nine, Inc. was granted interim authority to operate a television station on Channel 9 in Orlando. Consolidated Nine was required to retain the present staff, assume the existing union contract, use a new high tower and maintain the distriction of profits.

--7 F.C.C. 2d 801 (1958), 323 F. 2d 618 (D.C. Cir. 1958), 376 U.S. 914 cert. den. (1964), 345 F. 2d 85 (D.C. Cir. 1965), 382 U.S. 893 cert. den. (1965).

C-264 WBRE-TV, Inc. Decision.

WBRE-TV Wilkes Barre, Pa.; WNEP-TV Scranton, Pa.; and WMUU Greenville, S.C.,; were fined by the FCC for lottery infractions before the Commission had issued its public notice concerning interpretations of the lottery statutes. WNEP-TV and WBRE-TV ran ads to promote Vaughn's Bread. Chances were available on the inside of the bread wrappers. But, chances were available only a one-to-a-customer basis to non-purchasers. Both stations were fined $2,000 for running the ads. WMUU ran ads for a Pepsi-Cola promotion that had chances on the inside of the bottle caps. The station was fined $1,000. The FCC contended that the promotion was a lottery since chances were not available to non-purchasers at the retail outlets.

Since these fines were imposed before the Public Notice had clarified the new lottery interpretations, the Commission decided to return the fines. In the case of WBRE-TV, the Commission stated:

> We note that there have been no prior Commission or judicial decisions to this effect which would have enabled the licensee to reasonably anticipate such a construction of Section 1304 (U.S.C.). Therefore, we feel that under these circumstances, it would be inappropriate to hold the licensee liable for forfeiture on this ground.
>
> --16 R.R. 2d 507, 512, 517 (1969).

C-265 Applicability of Lottery Statute to Certain Contests and Merchandise Sales Promotions.

A rash of chance promotions prompted the Commission to issue a Public Notice clarifying its interpretation of Section 1304 (U.S.C.) dealing with lotteries. The main points of the notice are:

1. In promotions where some chances can be obtained by the purchase of a product, "free" chances must be available to non-purchasers at the retail outlets. Having them available at the plant and from the route salesman is not enough.

2. The sponsor should have enough chances that everyone may obtain them.

3. Non-purchasers must have an equal chance as purchasers. Therefore, chances cannot be limited to one to a customer for non-purchasers. If this is not the case, consideration is present since purchasers have a greater number of chances to win.

4. Any announcements of a promotional scheme which depends upon the reasonably equal availability of free chances should adequately describe the availability of such free chances and the locations, time and manner in which they may be obtained. Such cryptic messages as "No purchase necessary" or "Nothing to buy" do not meet this requirement.

--16 R.R. 2d 1559 (1969).

C-266 Letter to Nicholas Zapple.

In response to a request for a ruling, the FCC in a letter to Nicholas Zapple spelled out a more liberal interpretation of Section 315. Under this ruling, if time is sold or given to a spokesman or "supporter" of a political candidate, the station must provide "equal opportunity to spokesmen or supporters for all other candidates for that office. Therefore, barring unusual circumstances, it would not be reasonable for a licensee to refuse to sell time to a spokesman for or supporters of another candidate comparable to that previously bought by the first candidate.

If candidate A bought time, the authorized spokesmen or those associated with candidate B must also purchase time. A mere criticism does not constitute a personal attack within the meaning of the rules. The FCC said no requirement is imposed mandating any given political office be granted time.

In this ruling the commissioners made a logical bridge between the "fairness" and "political candidate" provisions of Section 315.

--23 F.C.C. 2d 707 (1970).

C-267 George Walker Decision.

An application for review was filed against WTAR-TV, Norfolk, Va., for failure to broadcast the issue of the constitutionality of the procedure proposed for the revision of the Virginia Constitution. The complaint stated that the issue was both important and controversial and that for WTAR-TV not to air programming concerned with this issue was a violation of the Fairness Doctrine.

The FCC ruled that whether a particular issue is controversial and of public importance, traditionally as a metter of sound policy, has been a judgment to be made by the licensee. The Commission's role is to determine, upon appropriate request, whether a licensee has abused its discretion by acting either unreasonably or in bad faith.

--20 R.R. 2d 264 (1970).

C-268 Committee for the Fair Broadcasting of Controversial Issues.

The Committee for the Fair Broadcasting of Controversial Issues filed a complaint against stations WTIC and WCBS-TV for violation of Section 315 and the Fairness Doctrine. Both stations allegedly failed "to afford a fair and reasonable opportunity for the balanced presentation of the contrary views when the President of the U.S. addresses the nation on TV on the Administration's Policies in Southeast Asia. In response, WCBS and WTIC said they had fairly and fully covered the Vietman War.

The FCC stated that the licensee, in applying the Fairness Doctrine, is called upon to make reasonable judgments in good faith on the fact of each situation as to whether a controversial issue of public importance is involved, as to what viewpoints have been or should be presented, and as to the format and spokesmen to present the views. The Fairness Doctrine does not require equality but reasonableness.

--25 F.C.C. 2d 283 (1970); 19 RR 2d 1103 (1970).

C-269 Citizens Committee vs. F.C.C.

The Citizens Committee case concerned the efforts of a group of Atlanta citizens who were fighting to retain the "classical music" format of radio station WGKA against an assignment of the station's license to a group of broadcasters who wanted to change to a popular and light classical format. The license was granted and the Citizen Group appealed to the U.S. Court of Appeals. The Court reversed the FCC's order approving the transfer and program format change, stating that a significant minority of Atlanta listeners had voiced opposition to the change and that WGKA was the only station in Atlanta that programmed classical music.

--436 F. 2d 263 (D.C. Dir. 1970).

C-270 ITT Continental Baking Company, Inc. Decision.

The FTC claimed that the ITT Continental Baking Co. and Ted Bates & Co. used advertisements for Profile bread which the Commission felt to be false and misleading. ITT argued Profile bread is lower in calories than ordinary bread, and changing the usual diet by consuming two slices of Profile before lunch and dinner will result in a loss of body weight without rigorous adherence to a reduced calorie diet. The Commission, however, claimed Profile Bread is not of special and significant value for use in weight control diets, and ordered a cease and desist order to ITT and Ted Bates.

--79 F.T.C. 248 (1971).

C-271 Charles Norman vs. CBS.

Charles Norman wrote and published a biography of Ezra Pound, a public figure and poet. In February and March of 1966, defendant Chodorov prepared, and CBS telecast, a three part television program entitled, "In Search of Ezra Pound." Norman sued for alleged copyright infringement of his book. In support, he set forth 148 specific items of alleged infringement, and claimed that substantial sequences of his material had been lifted by defendants.

The Court held that "fair use" is a privilege in that others may use copyrighted material in a reasonable manner without the copyright owner's consent, not withstanding the monopoly granted to the owner.

The Court also said that similarities alone in copying of materials does not constitute copyright violations, material composed of historical

facts or in public domain are not copyrightable, and the burden of proof is on the plaintiff.

--333 F. Supp. 788 (S.D.N.Y. 1971).

C-272 Mt. Mansfield Television, Inc. vs. F.C.C.

Mt. Mansfield, all the U.S. networks, and several other broadcasting interests filed a petition for review to the Court of Appeals. The FCC adopted prime time access, financial interest, and syndication rules for network television broadcasting. The petitioners claimed that the rules were in violation of the First Amendment guarantee of freedom of speech and that the rules were too arbitrary and too broad. The principal contention was that the prime time rule constituted a direct restraint on speech.

The Court hpheld the FCC and denied the petitions for review. The Court said that the rules did not violate the First Amendment because broadcasting was unique and required rules different from those applicable to other media.

--442 F. 2d 470 (S.D.N.Y. 1971).

C-273 Rosenbloom vs. Metromedia.

WIP, owned by Metromedia, broadcast some news stories involving George Rosenbloom, a merchant of obscene publications in Philadelphia. Rosenbloom was arrested by police, and some of his materials were seized. Rosenbloom filed a civil suit against the police for the raid. Later, Rosenbloom was acquitted of the criminal charges. He filed a civil libel suit against WIP, alleging his reputation had been damaged by the radio news reports that incorrectly described his activities as criminal. A U.S. District Court jury awarded damages to Rosenbloom, but the U.S. Court of Appeals for the 3rd Circuit reversed the judgment. On certiorari, the U.S. Supreme Court in a plurality decision upheld the Court of Appeals, apparently expanding the meaning of "public official" used in the New York Times vs. Sullivan case to include "public figures." This is one in a series of decisions that brought unelected officials and figures within the group that had to prove "actual malice," "reckless disregard for the truth," or "calculated falsehood" on the part of the newsmen to establish a case for libel.

--403 U.S. 29 (1971).

C-274 Citizen's Communications Center vs. F.C.C.

The Citizen's Communication Center challenged the legality of the Policy Statement on Comparative Hearings Involving Regular Renewal Applicants. The disputed Commission policy is that, in a hearing between an incumbant applying for renewal of his radio/television license, and a mutually exclusive applicant, the incumbant shall obtain a controlling preference by demonstrating substantial past performance without serious deficiencies. Petitioners claimed that this is unlawful under Sec. 309 (e) of the Act of 1934. The 1970 policy statement was also attacked by the center on the grounds that it was adopted in disregard of the Administrative Procedures and that it restricted and chilled the exercise of rights protected by the First Amendment. The FCC took the position that the policy statement of 1970 is a lawful exercise of the Commission's authority.

The U.S. Court of Appeals found that the 1970 Policy Statement did violate the Act of 1934 as interpreted by the Supreme Court. Furthermore, the Court found "by depriving competing applicants of their right to a full

comparative hearing on the merits of their own application and by severly limiting the importance of other comparative criteria, the Commission has made the cost of processing a competing application prohibitive, when measured by the challengers very minimal chances of success."
--447 F. 2d 1201 (D.C. Cir. 1971).

C-275 Branzburg vs. Hayes*
*Decided together with In re Pappas and U.S. vs. Caldwell

On November 15, 1969, the Louisville, Ky. Courier-Journal carried a story under Branzburg's by-line describing in detail his observations of two young men synthesizing hashish from marihuana, an activity which they claimed would earn them about $5,000 in three weeks. The article stated that petitioner had promised not to reveal the identify of the two hashish makers. Branzburg was supoenaed by the Jefferson County grand jury; he appeared, but refused to identify the individuals he had seen possessing marihuana or the persons he had seen making hashish. A state trial court ordered Branzburg to answer the questions and rejected his contention that the Kentucky reporters' privilege statute, the First Amendment to the U.S. Constitution or sections of the Kentucky Constitution authorized his refusal to answer.

In re Pappas, Pappas was a television newsman-photographer working in Providence, Rhode Island for a New Bedford, Mass. television station, was called to New Bedford on July 30, 1970 to report on civil disorders there which involved fires and other turmoil. Pappas was able to gain admission to a Black Panther headquarters where he recorded and photographed a prepared statement. As a condidtion of entry, Pappas agreed not to disclose anything he saw or heard inside the store. Two months later Pappas was summoned before the County Grand Jury and appeared, answered questions as to his name, address, employment, and what he had seen and heard outside Panther headquarters, but refused to answer any questions about what had taken place inside, claiming that the First Amendment afforded him a privilege to protect confidential informants and their information.

U.S. vs. Caldwell arose from subpoenas issued by a federal grand jury to respondent Earl Caldwell, a reporter for the New York Times assigned to cover the Black Panther Party and other militant groups. A subpoena was served on Caldwell ordering him to appear to testify before the grand jury. Caldwell and the Times moved to quash on the ground that the unlimited breadth of the subpoenas and the fact that Caldwell would have to appear in secret before the grand jury would destroy his working relationship with the Black Panther Party and "suppress vital First Amendment freedoms."

Branzburg, Pappas and Caldwell's claims may be simply put: that to gather news it is often necessary to agree either not to identify the source of information published, or to publish only part of the facts revealed, or both; that if the reporter is nevertheless forced to reveal these confidences to a grand jury, the source so identified and other confidential sources of other reporters will be measurably deterred from furnishing publishable information, all to the detriment of the free flow of information protected by the First Amendment.

In Branzburg (and Pappas and Caldwell) the Supreme Court held that there was no intrusion upon speech or assembly, no prior restraint or restriction on what the press may publish, and no express or implied command that the press publish what it prefers to withhold. The use of confidential sources by the press is not forbidden or restricted; reporters remain free

to seek news from any source by means within the law. No attempt is made to require the press to publish its sources of information or indiscriminately to disclose them on request. The sole issue, the Court held, was the obligation gation of reporters to respond to grand jury subpoenas as other citizens do and to answer questions relevant to an investigation into the commission of crime. They said that the First Amendment did not invalidate every incidental burdening of the press that may result from the enforcement of civil or criminal statutes of general applicability, and held that because the grand jury's task is to inquire into the existence of possible criminal conduct and to return only well-founded indictments, its investigative powers are necessarily broad.

They stated "Until now the only testimonial privilege for unofficial witnesses that is rooted in the Federal Constitution is the Fifth Amendment privilege against compelled self-incrimination. We are asked to create another by interpreting the First Amendment to grant newsmen a testimonial privilege that other citizens do not enjoy. This we decline to do."

--408 U.S. 665 (1972).

C-276 United States vs. Midwest Video Corp.

The FCC promulgated a rule that "no CATV system having 3,500 or more subscribers shall carry the signal of any television broadcast station unless they system also operates to a significant extent as a local outlet by cablecasting (i.e., originating programs) and has available facilities for local production and presentation of programs other than automated services." Upon challenge of Midwest Video Corp., an operator of CATV systems subject to the new requirement, the Court of Appeals set aside the regulation on the grounds that the FCC had no authority to issue it. The U.S. Supreme Court reversed the decision.

The Court held that the rule was within the FCC's statutory authority to regulate CATV at least to the extent "reasonably ancillary to the effective performance of the Commission's various responsibilities for regulation of television broadcasting."

"In the light of the record in this case, there is substantial evidence that the rule, with its 3,500 standard and as it is applied under FCC guidelines for waiver on a showing of financial hardship, will promote the public interest within the meaning of the Communications Act of 1934."

Chief Justice Warren Burger wrote for the majority that until Congress acts to deal with the problems brought about by the emergence of CATV, the FCC should be allowed wide latitude.

--406 U.S. 649 (1972).

C-277 Summa Corp. Decision.

Walter Baring was a legally qualified candidate in the Sept. 5, 1972 Nevada primary election seeking the Democratic nomination for the state's at-large congressional seat. "The Volunteers for Congressional Baring" was legally constituted as Baring's campaign committee and authorized to purchase political advertising on behalf of his candiacy. The Committee requested a five minute political program on KLAS, only to be informed that the station had adopted a policy of not selling any political time exceeding 60 seconds, except between the hours of 1:30 a.m. and 6 a.m.

The FCC stated that the KLAS policy necessarily limits such candidates to a one minute spot announcement in time periods during which a significant audience would be listening or viewing and discuss their

candidates only during the hours when the vast majority of the potential voting audience is asleep. The Commission ruled that KLAS did not act reasonably in affording federal candidates access to station facilities and failure to comply with Sec. 312 (a) (7).

--28 R.R. 2d 768 (1973).

C-278 Availability of Network Programming Time to Members of Congress.

Fourteen members of Congress filed a complaint against the three national television networks allegedly for refusing to sell the complaintants one and one-half hours of prime time to "inform the public about and seek public guidance with respect to contemplated congressional action concerning American involvement in the Indochina war" and thereby "present a contrasting view to that of the Administration."

The FCC felt that due to the number of congressmen, it would be impossible for the licensees to afford time needed to air all the views on controversial issues. The FCC said it would rely on the constraints of the Fairness Doctrine and the journalistic discretion of licensees to insure that the public is adequately informed on issues of national importance and the views of elected officials on such issues.

--26 R.R. 2d 845 (1973).

C-279 CBS vs. Democratic National Committee.

In 1970 the Democratic National Committee (DNC) and the Business Executives Move for Peace (BEM) filed a complaint with the Commission charging that radio station WTOP, Washington, D.C. had refused to sell them time to broadcast a series of one-minute spot announcements expressing BEM's views on Vietnam. WTOP, in common with many broadcasters, followed a policy of refusing to sell time for spot announcements to individual groups who wished to expound their views on controversial issues. WTOP took the position that since it presented full and fair coverage of important public issues, including the Vietnam conflict, it was justified in refusing to accept editorial advertisements. WTOP also showed evidence that they had previously aired views on Vietnam on numerous occasions. BEM challenged the fairness of WTOP's coverage of criticism of that policy, but it presented no evidence in support of that claim. The Supreme Court upheld the FCC ruling saying that WTOP had not violated the First Amendment providing that the station provided an overall balance.

--412 U.S. 94 (1973).

C-280 Lakewood Broadcasting Service, Inc. vs. FCC.

KBTR(AM), wholly owned by the late John Mullins since 1961, is a 5 kilowatt station providing service to the Denver Metropolitan area. In 1967 the station adopted an "all news" format, the first to do so in that market. The station received heavy TV and print promotion but suffered losses that totaled $500,000. The station was then sold to Mission Denver Co. Mission Denver wished to change formats from "all news" to "country and western." The petitioners sought a hearing on the public interest ramification of abandoning the unique "all news" format. The Commission in a thorough decision rejected the contention that a hearing was required and adjudged that the public interest would best be served by granting KTRB's application. The decision was upheld by the U.S. Court of Appeals for the

District of Columbia.
--478 F. 2d 919 (D.C. Cir. 1973)

C-281 Goodson-Todman Enterprises, Ltd. vs. Kellogg Co.

Goodson-Todman productions claimed to be the copyright proprietor of a television game show, "To Tell the Truth." The defendant, Kellogg Co. and its ad agency, the Leo Burnett Co, produced a television commerical entitled "Know Your Tiger" in which panelists ask questions of three "Tony the Tigers."

A U.S. District Court dismissed the case, holding that there was no substantial similarity between any protected expressions in Goodson-Todman's work and Burnett's television commercial, and that no infringement had occurred. Ideas are not copyrightable, although expressions of ideas do receive such protection, the Court said. The 9th Circuit Court of Appeals reversed,ruling that an "expression of that idea" is a close enough question so that summary dismissal shouldn't have been granted.
--513 F. 2d 913 (9th Cir. 1975).

C-282 Yale Broadcasting Co. vs. F.C.C.

In the 1960's and 1970's the Commission received complaints from the public about stations running certain drug-oriented songs. In response, the FCC issued a notice, stating that broadcasting is in the public interest and stations should make reasonable effort to determine if the records and other materials aired meet the public interest. Confusion ensued so the FCC issued another order stating that the Commission was not prohibiting the playing of drug-oriented songs, no reprisals would be taken against stations who aired the songs, and it was the station's responsibility to know the content of records and make judgment regarding the wisdom of playing them.

Yale Broadcasting Co. petitioned the Commission saying that the notice and order issued by the FCC was an infringement of the First Amendment. A federal appeals court ruled in favor of the Commission stating it is the public responsibility of a licensee to have knowledge of the content of its programming and on this knowledge, to evaluate the desirability of broadcasting certain drug-oriented material, as to the public interest, convenience, and necessity.
--26 R.R. 2d 383 (1973), 478 F. 2d 594 (D.C. Cir. 1973), 414 U.S. 914 cert. den. (1973).

C-283 Fischer vs. Dan.

Stewart Dan, newscaster, and Roland Barnes, cameraman for WGR-TV in Buffalo, N.Y. were permitted access into Attica prison during the time of the riots there. Dan interviewed several of the inmates in a blockhouse shortly before two of those interviewed were killed by other inmates. A grand jury summoned Dan and Barnes to testify concerning the information they had obtained in the interviews as well as which individuals they had seen in the blockhouse before the killings.

Dan refused to testify on the grounds that Section 79-h of the New York Civil Rights Law and the First Amendment to the United States Constitution protected them from disclosing any news or the source of any such news coming into their possession in the course of gathering or obtaining news in their professional capacity at WGR-TV.

The New York Supreme Court, which heard arguments, held that although

they had the privilege of refusing to divulge the identity of any informant who had supplied them with information, the newsmen's privilege did not permit them to refuse to testify before the grand jury concerning the events which they personally observed, including the identities of the other inmates. They said "The holding of the Kentucky Court of Appeals (Branzburg vs. Hayes, supra, 408 U.S. 665) should be followed in the case at bar. We find no merit in appellants' further contention that the provisions of the First Amendment. . . exempt them from testifying before the grand jury.' The Constitution does not, as it never has, exempt the newsman from performing the citizen's normal duty of appearing and furnishing information relevant to the grand jury's task'"

--342 N.Y.S. 2d 731 (1973).

C-284 Berry vs. National Broadcasting Co.

In 1967, an Indian university student, Thomas White Hawk, brutally killed a jeweler in South Dakota. White Hawk was sentenced to death, but the sentence later was commuted. Two years later Baxter Berry shot and killed an Indian, Norman Little Brave in South Dakota. Berry claimed self-defense and was found not guilty. Press reports associated the two cases. On Tuesday, Dec. 2, 1969, NBC ran a film entitled, "Between Two Rivers" aimed at showing the cultural problems of the American Indian caught between the "two rivers" of culture. Twenty-two minutes were devoted to an emotional presentation of Thomas White Hawk, followed by a three minute segment on the Baxter Berry shooting, trial and verdict. Berry sued, claiming he was subjected to abuse and annoyance as a result of the program and received $25,000 from a U.S. District Court. The 8th Circuit Court of Appeals reversed the decision, stating that the media may, without liability, give publicity to facts concerning a person which place him in a false light. In an invasion of privacy suit claiming false light, one must establish malice in order to recover.

--480 F. 2d 428 (8th Cir. 1973), 418 U.S. 911 pet. den. (1974).

C-285 WESH Decisions.

Halifax Cable TV, Inc. operated cable systems in several Florida cities. Among the stations carried on the systems was WESH-TV, Channel 2 (NBC), Daytona Beach. Cowels Flordia, the licensee of WESH-TV, objected to the FCC to the continued carriage of two distant network stations by Halifax, WTLV (NBC) and WJXT (CBS), Jacksonville, Fla., on Halifax's Daytona Beach Shores, Ponce Inlet, and Volusia County systems, because neither signal was significantly viewed in the county of the systems and neither was the nearest available network station. Halifax had been authorized to carry both stations on each of its six systems prior to March 31, 1972, and the FCC permitted them to continue their carriage as "grandfathered" signals pursuant to Section 76.65 of the FCC Rules.

On July 2, 1973, Flagler Cable Co. filed for FCC permission to add WTLV and WJKS-TV to its system. Section 76.63 does not permit the additions, but Flagler requested a waiver to add the signals in light of special provisions of Section 76.7. WESH-TV, Daytona Beach, one of the stations carried on the Flagler Cable system, filed an objection to the application.

Cowels Florida, the licensee of WESH-TV, argued that Section 76.63 does not provide for carriage of either of the proposed additions, and a grant of the application would prejudice WESH-TV in the Daytona Beach market.

Neither Flagler Cable nor Cowles Florida brought up the earlier case involving WESH-TV objecting to the carriage of WTLV by the Halifax Cable System (1973). Consequently, the FCC upheld the grandfathering provision of Section 76.65 of the Rules which states:

> If a cable television system in a community is authorized to carry signals, either by virtue of specific Commission authorization or otherwise, any other cable system already operating or subsequently commencing operations in the same community may carry the same signals.

The Commission found WJKS-TV and WTLV-TV in Flagler Beach to be grandfathered under Section 76.65, thus affirming in two instances the grandfathering clause in cable regulations.

--41 F.C.C. 2d 887 (1973), 46 F.C.C. 517 (1974).

C-286 Teleprompter Corp. vs. Columbia Broadcasting System.

Cable industry growth made possible CATV systems which provided locally produced programs, advertising and interconnections with other cable systems. Corporations such as Teleprompter were so successful with these profit-making innovations that broadcasters felt the time had come for the government to recognize cable systems as broadcasters, competing at the same level, and no longer exempt from copyright infringement. CBS program producers hoped to reverse the decision in Fortnightly vs. United Artists when they sued in federal district court for compensation for their copyrighted programs retransmitted by cable systems. The District Court dismissed the complaint, citing Fortnightly, but the Court of Appeals distinguished protected systems with retransmission from nearby broadcasting stations and unprotected systems with retransmission of "distant" signals which enabled them to chose from a variety of programming to present to their subscribers. Teleprompter, the Appeals Court held, fell into the latter category and was ordered to pay the CBS producers.

The U.S. Supreme Court reversed the Appeals Court, noting the apparent advancement in the science of cablecasting, but reiterating its stand that it was Congress's duty, not the Court's, to amend the Communications Act if disparity existed.

--415 U.S. 394 (1974).

C-287 Paulsen vs. F.C.C.

In January, 1972, Pat Paulsen, a professional entertainer and comedian, declared himself a serious candidate for the Republican nomination for U.S. President. He was legally qualified and initiated an active campaign. Paulsen had been employed by Walt Disney Productions, Inc. to perform in an episode of the TV series, "The Mouse Factory." Because the episode was soon to be released to TV stations, the producer sought a declaratory ruling from the Broadcast Bureau of the F.C.C. regarding obligations of TV stations that broadcast this show to give "equal opportunities: to other candidates pursuant to Section 315. The Broadcast Bureau ruled that any national television appearances by Paulsen would impose an equal opportunities obligation upon broadcast licensees. Paulsen requested a review of this ruling. The FCC agreed with the Broadcast Bureau stating that any appearance by a political candidate during an election constitutes "use of broadcast facilities" and requires equal opportunities.

--29 R.R. 2d 854 (1974).

C-288 Gertz vs. Robert Welch.

In the most significant libel ruling since New York Times vs. Sullivan, the U.S. Supreme Court held that an attorney representing a criminal defendant was neither a public official nor a public figure and was not required to demonstrate actual malice in a defamation action against a right-wing organization's newsletter. Gertz, a prominent Chicago attorney, was accused of being, among other things, a Communist because of a suit brought by his client against the Chicago police department. Justice Powell, speaking for the majority, said:

> In some instances an individual may achieve such pervasive fame or notoriety that he becomes a public figure for all purposes and in all contexts. More commonly, an individual voluntarily injects himself or is drawn into a particular public controversy and thereby becomes a public figure for a limited range of issues. . . . Absent clear evidence of general fame or notoriety in the community, and pervasive involvement in the affairs of society an individual should not be deemed a public personality for all aspects of his life. It is preferable to reduce the public-figure question to a more meaningful context by looking to the nature and extent of an individual's participation in the particular controversy giving rise to the defamation.

Evidently activism in community and professional affairs was not enough to give Gertz "general fame or notoriety," now required under the revised New York Times Rule. The media regarded the Gertz decision as a dangerous precedent because of the new ambiguity surrounding who constitutes a public official or figure and because they no longer enjoyed the full protection thought afforded by New York Times vs. Sullivan.

--418 U.S. 323 (1974).

C-289 Cox Broadcasting Co. vs. Cohn.

In 1971, Martin Cohn's 17-year-old daughter was raped and murdered. Six youths were later indicted. In the course of proceedings, a reporter for WSB-TV, learned the name of the victim from examing indictments made available to him. The name of the victim and the indictments were public records. Later that day, he broadcast a story naming the victim of the crime, and it was repeated the following day. In May, 1972, Cohn brought action based on a state statute against Cox Broadcasting Corp. claiming that his right to privacy had been invaded by the TV broadcasts giving the name of his deceased daughter.

The Supreme Court ruled in favor of Cox, stating that states may not under the First and Fourteenth Amendments impose restrictions on the gathering of news information or other proceedings which are open and available to public inspection.

--420 U.S. 469 (1974).

C-290 Miami Herald Publishing Co. vs. Tornillo.

In 1972, Pat Tornillo, a candidate for the Florida House of Representatives was the object of a critical editorial in the Miami Herald. In response to the editorial, Tornillo under an old state "access" law, demanded that the newspaper print verbatum his replies. The Herald refused. The case went to a state circuit court which ruled in favor of the Herald. The Florida Supreme Court reversed the decision. In 1974, the U.S. Supreme

Court unaminously ruled in favor of the newspaper holding that the First Amendment bars a state from requiring a newspaper to print the reply of a candidate for public office whose personal character has been criticized by that newspaper's editorials.

--418 U.S. 241 (1974).

C-291 Illinois Citizens Committee for Broadcasting.

Station WGLD-FM, owned by Sonderling Broadcasting Corp., Oak Park, Il., was one of a number of broadcast stations which had been using a format sometimes called "topless radio," which involved an announcer taking calls from the audience and discussing sexual topics. The program on WGLD-FM was called "Femme Forum" and ran from 10 a.m. to 3 p.m., Monday through Friday.

Acting on numerous complaints, the FCC investigated, finding the station guilty of violating Section 1454 of Title 18 of the U.S. Code. The FCC fined the station $2,000.

Sonderling refused the FCC's offer to appeal and paid the fine, claiming it could not afford the cost of the appeal.

--31 R.R. 2d 1523 (1974).

C-292 National Broadcasting Co. vs. F.C.C.

On Sept. 12, 1972, NBC broadcast a documentary entitled "Pensions the Broken Promise." narrated by Edwin Newman. In November, Accuracy in Media (AIM) filed a complaint with the FCC charging NBC had presented a one-sided picture of pension plans.

The program studies non paying private pension plans. Its particular focus was the tragic cases of aging workers who were left, at the end of a life of labor, devoid of pensions, without time to develop new pension rights, and on occasion without adequate income. The FCC required NBC to provide time for portrayal of alternate viewpoints. NBC protested that the FCC overstepped its authority.

The Court held that the Commission misapplied the fairness doctrine. The determination of the controversial issue presented, as well as the decision as to the number of views to be presented and the manner in which they are portrayed, is one initially for the licensee, who has latitude to make all pertinent judgments and is not to be overturned unless he forsakes the standards of reasonableness and good faith.

--362 F. 2d 946 (D.C. Cir. 1974).

C-293 1974 Interpretation of F.C.C.'s Political Rules.

The FCC received a number of inquiries and complaints concerning the obligations of licensees under Sections 312 (a) (7) and 315 of the Communications Act with respect to a political candidate's right to use broadcast facilities and the time limitations which a licensee may impose on that right. The Commission said that a licensee may not deny access by candidates for federal office to prime time or arbitrarily deny candidates the right to purchase spot announcements of certain lengths

As amended, Section 312 provides in pertinent part:

(a) The Commission may revoke any station license or construction permit

(7) For willful or repeated failure to allow reasonable access to or permit purchase of reasonable amounts of time for the use of a broadcasting

station by a candidate for Federal elective office on behalf of his candidacy. . . .

The FCC said that a licensee should not adopt a rigid policy of refusing to sell or give prime-time programming to legally qualified candidates for federal elective office.

Some candidates complained they couldn't buy same length spots as other advertisers. "Such a disparity in treatment is not in accord with the purpose of the statute," the FCC said.

--47 F.C.C. 2d 516 (1974).

C-294 Morrisseau vs. Mt. Mansfield Television.

Morrisseau, the plaintiff, claimed in a federal suit that political primary campaigns are controversial per se and having once agreed to accept an announcement in support of one candidate, a station must provide some amount of "balancing" exposure to candidates for the same office who cannot afford television time. Morrisseau suggested that one remedy would be to offer free time to all candidates.

A U.S. District Court cited CBS vs. Democratic National Committee and held that there is "not a common carrier right of access imposed on broadcasters" to carry all viewpoints. The Court also refused to impose a temporary restraining order against the station since Morrisseau failed to prove he would suffer irreparable harm. It held that campaign fund-raising is a normal part of the political adversary process which, although it may need remedy, did not guarantee equal support to all primary contenders.

--380 F. Supp. 512 (D. Vt. 1974).

C-295 National Cable Television Association, Inc. vs. U.S.

The Independent Offices Appropriation Act of 1952 authorized each federal agency to prescribe by regulation "fair" fees for the agency's services. The FCC, in revising fees imposed upon community antenna television (CATV) systems, retained filing fees and added an annual fee for each CATV system at the rate of 30¢ per subscriber, concluding that this fee would approximate the "value to the recipient" used in the Act. The National Cable Television Association appealed the FCC fee decision to the Court of Appeals, which approved the FCC action. The U.S. Supreme Court reversed the Act authorizing the imposition of a "fee," which connotes a "benfit" of "value to the recipient," the Court said. But the Act's phraseology which if read literally would enable the agency to make assessments or tax levies. CATV would be paying not only for the benefits they received, but, contrary to the Act's objectives, would also be paying for the protective services the FCC renders to the public. The Court ordered the FCC to reappraise the annual fee. "It is not enough to figure the total cost (direct and indirect) to the FCC for operating a CATV supervision unit and then to contrive a formula reimbursing the FCC for that amount, since some of such costs certainly insured to the public's benefit and should not have been included in the fee imposed upon the CATV's," the Court said.

--415 U.S. 336 (1974).

C-296 Henderson All-channel Cablevision, Inc.

A "Request for Declaratory Ruling" was prompted by two incidents which occurred at Henderson, Ky. on Nov. 9 and 16, 1974. On each of those dates, WTVW, the ABC affiliate normally carried by Henderson Cablevision broadcast an ABC regional football game involving the Big Ten Conference.

Simultaneously ABC also televised several other regional football games, including games involving the University of Kentucky. Cablevision carried the games involving the University of Kentucky which were broadcast by WBKO, Bowling Green, Ky.

Cablevision contended that since the University of Kentucky games were offered by ABC but were not cleared by WTVM, the cable system was entitled to carry a station such as WBKO, which had cleared the programming in question. Cablevision also pointed to the great interest of Henderson cable television subscribers in the activities of their home state's university.

The FCC rejected Cablevision's contention that the local affiliate was never given the opportunity to broadcast the Kentucky game. Section 76.61(e) (2) was never intended to provide cable systems with a means to gain additional network service in those situations where a network broadcast several regional sporting events at the same time.

The FCC did not foreclose the possibility that a cable system could be authorized to carry a program of special importance to its subscribers if the public interest would be served thereby, treating those programs on an ad hoc basis.

--33 R.R. 2d 1183 (1975).

C-297 WANV, Inc. Decision.

Louis Hausrath, in a letter complained to the Commission about the unfairness of the broadcast practices of radio station WANV. Hausrath stated that four days prior to the councilmanic election in Waynesboro, Va., WANV, in a station editorial, discussed the candidates' positions with regard to the issues surrounging the campaign and that on that same date, WANV sent a letter inviting Hausrath to appear on WANV. The letter said "You and Mr. Rhodes are entitled to reply to this editorial provided that the replies are based solely on the subject matter discussed." Hausrath stated that he accepted this opportunity, but that after he had taped his response to the editorial, WANV apparently advised Rhodes of the substance of the complainant's reply. Rhodes' rebuttal immediately followed the broadcast of Hausrath's reply on May 5, 1974, and Rhodes' comments seemed to represent "a WANV solicited response to (his) response," Hausrath complained.

WANV said Hausrath had been allowed to present "new matter" during his reply but that it is not censorship to arrange topics to be presented during limited time available.

The Broadcast Bureau found that WANV restricted the use of its facilities by candidates for public office to a specific subject matter in apparent violation of Section 315(a) and that by affording the candidate the opportunity to obtain his opponent's comments, it discriminated against a candidate for public office in violation of Section 73.120(c) (2) of the Commission's rules.

The FCC found against WANV and fined the station $2,000.

--33 R.R. 2d 1403 (1975).

C-298 Davey Johnson Decision.

The Commission responded to a letter of complaint filed by Davey Johnson concerning the apparent refusal of radio station KHEP, Phoenix, Ariz., to afford him the opportunity to present an opposing viewpoint to that of the "preachers of christianity" that have appeared on that station.

He stated that individuals speaking over the station's facilities presented the teachings of Christianity and "challenge any other philosopher to disprove their allegations, and many more controversial views are expressed challenging an opposing viewpoint." Johnson claimed that he was "a recognized Philosopher of ascetic religion with such as opposing viewpoint."

The Commission held that there was no substantial questions in this country concerning the merits of religion and it does not hold that the fairness doctrine is applicable to the broadcast of church services, devotions, prayers, religious music or other material of this nature. To the extent, however, that any program, regardless of label, deals with a controversial issue of public importance, the fairness doctrine applies. However, since there was no specific information concerning the alleged controversial issue there was no way to judge whether the licensee had programmed to provide differing opinions. The Commission dismissed the complaint.

--34 R.R. 2d 939 (1975).

C-299 United Television Co., Inc. Decision.

Mutually exclusive applications were filed by United Broadcasting Co. for renewal of the license for WOOK, Washington, D.C. and by Washington Community Broadcasting Co. for a new construction permit for a standard broadcast station on the same frequency. An administrative law judge found for Community citing United's history of violations. In an appeal the Commission pointed to WOOK's broadcast announcements which advertised articles such as "conquer roots," "money-drawing roots," and "spiritual baths," or which offered three-digit scripture references to be used for "financial blessings," and the possibility that WOOK broadcast announcements concerning a lottery.

The Commission held that the three-digit "scripture references" were thinly disguised numbers tips. It said:

> We find little merit in United's further arguments that it was acting in good faith, victimized by clever subterfuges of the broadcasting ministers, and unaware of the signifance or meaning of the broadcasts. While United claims it did not know or have notice that the ministers using its facilities were broadcasting numbers references until June 23, 1969, when Community filed a petition to enlarge issues, the record establishes that United had notice of various broadcasts which should have alerted it to the possibility of wrongdoing and prompted it to conduct an investigation.
>
> --34 R.R. 2d 1465 (1975).

C-300 Aspen Institute Decision.

The Commission received petitions filed by Mr. Douglas Cater, director of the Aspen Institute Program on Communications and Society, and by CBS. Both petitions raised questions concerning the application of the provisions of Section 315 of the Communications Act.

Aspen sought revision or clarification of the Commission's policies concerning the applicability of the 1959 Amendments to Section 315 to joint appearances of political candidates. They urged that two revisions would enable broadcasters to "more effectively and fully . . . inform the American people on important political races and issues" and to "make the Bicentennial a model political broadcast year."

> As Aspen points out, and after thorough review we are compelled to agree, the Commission's earlier decisions are based on what now appears to be an incorrect reading of the legislative history of the newscast exemptions and subsequent related Congressional action. Our conclusion that the debates were not exempt rested on language in a House Report of August 6, 1959, which indicated that in order for on-the-spot coverage to be exempt the appearance of the candidates would have to be "incidental to" the coverage of a separate news event. . . It was obvious, of course, that in a debate between two candidates the appearance of neither could be deemed to be incidental to the news event. Indeed, the appearance of the candidates would naturally be the central focus of the event. The problem with this reasoning is that it is based on a report of a bill which was not enacted into law."

The Commission overruled its prior decisions in the Goodwill Stations and NBC cases, and said that in the future it would interpret Section 315(a)(4) of the Act so as to exempt from the equal time requirements of Section 315 debates between candidates as "on-the-spot coverage of bona fide news events." At the same time, the Commission overruled that part of its decision in CBS which relied on Goodwill and NBC. Thus, press conferences of the President and all other candidates for political office broadcast live and in their entirety qualify for exemption under Section 315(a)(4).

--35 R.R. 2d 49 (1975).

C-301 Radio Station WANV, Inc. Decision.

The FCC responded to a letter of inquiry from WANV, Wanesboro, Va. which proposed to offer time for a debate to be used by the only two opposing candidates for a particular seat in the Virginia State Senate.

The Commission said that once the licensee has determined a joint appearance by all opposing candidates will serve the interests of the public by informing them about differing viewpoints on the major campaign issues, and after it has consulted with the candidates, should those candidates decide that it is in their best interests to accept such an invitation to appear on that particular forum and thus waive their right to determine, each for himself, the form of their appearance, such a broadcast would comply fully with Section 315(a). However, where a candidate rejects such a proposal, and his opponents accepted and appeared, the licensee would be obligated to grant a request for equal opportunities by such candidates in absence of a specific waiver of his Section 315 rights.

--35 R.R. 2d 617 (1975).

C-302 Letter to Mayor Harvey Stone.

In a letter addressed to Mayor Harvey Stone of Louisville, Ky. the FCC noted that the Mayor had issued an order prohibiting possession, and thus use, of radio transmitters in some areas of Louisville. It said: The regulation of radio in the United States has been reserved by the Federal Government and is administered by the Federal Communications Commission under the Communications Act of 1934, as amended. Your orders appear to be in conflict with the provisions of the Communications Act and therefore improper."

Section 2(2) of the Act clearly states that the Commission's power extends to licensing and regulating of all non-government radio stations Only the President, under very specific national emergency circumstances,

may waive provisions of the Communications Act."
--35 R.R. 2d 845 (1975).

C-303 Ascertainment Guidelines for renewal applicants.
In response to pressure from broadcasters to revise the procedures set forth following the Suburban Decision, the FCC developed some new guidelines for ascertainment of community problems by commercial broadcast renewal applicants. Specifically the requirement for compilation of a compositional survey was eliminated, and instead licensees were required to maintain, in their public files, a listing of demographic aspects of the city of license. A list of structural and institutional elements common to most communities was set forth. A licensee must interview leaders from each of the elements on the checklist unless it can show that an element is not present in its community. A reasonable number of leader interviews for cities under 25,000 is 60; 25,000 to 50,000 is 100; 50,000 to 200,000 is 140; 200,000 to 500,000 is 180; and over 500,000 is 220. Up to 50 per cent of the leader interviews may be conducted by non-management level employees under proper supervision. All stations located in communities under 10,000, and not located within a Standard Metropolitan Statistical Area were experimentally exempted from Commission inquiry into the manner in which they became aware of community problems.
--35 R.R. 2d 1555 (1975).

C-304 Twentieth Century Music Corp. vs. Aiken.
Twentieth Century Music's copyrighted songs were received on the radio in Aiken's food shop from a local broadcasting station, which was licensed by the American Society of Composers, Authors and Publishers (ASCAP) to perform the songs. But, Aiken had no such license. Twentieth Century Music sued Aiken for copyright infringement. A U.S. District Court granted awards, but a Court of Appeals reversed the ruling, holding that Aiken did not infringe the exclusive right under the Copyright Act. The radio reception did not constitute a "performance" of the copyrighted songs. To hold that Aiken "performed" the copyrighted works would obviously result in a wholly unenforceable regime of copyright law, and would also be highly inequitable, since (short of keeping his radio turned off) one in Aiken's position would be unable to protect himself from infringement liability. Such a ruling, moreover, would authorize the sale of an untold number of licenses for what is basically a single rendition of a copyrighted work. Such an interpretation would thus conflict with the balanced purpose of the Copyright Act of assuring the composer an adequate return for the value of his composition while at the same time protecting the public from oppressive monopolies. The Supreme Court affirmed the ruling of the Court of Appeals.
--422 U.S. 151 (1975).

C-305 Nebraska Press Association vs. Stuart.
Erwin C. Simants was accused of slaying six persons in Southerland, Nebr. Simant's attorney asked Judge Stuart to prohibit the news media from making public, in advance of the trial, accounts of the defendant's confession or any information strongly indicating his guilt. Stuart issued a "gag" order which remained in effect for two and one-half months.
On certiorari, the U.S. Supreme Court ruled that the order violated the First Amendment's guarantee of free press where the record did not show

that alternatives to a prior restraint on the news media would not have sufficiently mitigated the adverse effects of pretrial publicity as as to make prior restraint unnecessary. The Court concluded that the restraining order would not serve its intended purpose. The Court also held that the order prohibiting reporting or commentary on judicial proceedings held in public was clearly invalid, and that to the extent to which it prohibited publication based on information gained from other sources, the heavy burden imposed as a condition to securing a prior restraint was not met.

--427 U.S. 539 (1976).

C-306 AFTRA vs. NAB.

An action was brought by the American Federation of Television and Radio Artists, against the National Association of Broadcasters on behalf of 15 AFTRA members who have appeared as program hosts on television programs directed at children. The complaint alleged that the NAB combined with its members to restrain trade in violation of the Sherman Act by stating a rule which prevents hosts of children's television programs from delivering commercial messages on or adjacent to these programs.

The NAB responded that the "rule is a reasonable rule of conduct regarding good practice by its members in the public interest and is not a violation of the antitrust laws."

> The FCC concluded that the Provision of NAB's Television Code which prevents hosts of or characters in children's television programs from delivering commercial messages on or adjacent to the programs, and compliance therewith, does not operate as an unreasonable restraint on the ability of the hosts and actors to freely obtain employment for the delivery of commercials in violation of Section 1 of the Sherman Act.

The rule resulted from a bona fide concern on the part of various groups and the FCC, regarding fair and ethical methods to be used in television advertising directed to children.

--407 F. Supp. 900 (S.D.N.Y. 1976).

C-307 WGN Continental Broadcasting Co. Decision.

The "President Ford Committee" filed a complaint with the FCC against WGN and WGN-TV in Chicago. The complaint alleged that "the WGN stations refuse to accept political broadcast advertising of less than five minutes in duration. The Senate Committee on Commerce stated that the intention of the "lowest unit charge" provision of Section 315(b) was to "place the candidate on a par with a station's most favored advertiser."

WGN responded that it had a "long standing policy" of not selling time for political spot announcements and that the language of 315(b) only required "that IF a station makes available spot announcement time...the lowest unit time (must be) made available to political candidates.

The FCC replied:

> With respect to a station's policy of refusing to sell time periods shorter than five minutes to candidates, the Commission finds no reason to conclude that in enacting Section 312(a)(7) of the Communications Act Congress intended to vest in licensees the power to supplant a candidate's determination that his political interests would best be served by the purchase of spot announcements rather than of broadcasts of five minutes in

duration. It is a denial of "reasonable access," within the meaning of Section 312(2)(7), for a licensee to refuse to sell spot announcements to a candidate for federal elective office where the licensee has determined to sell broadcast time to such candidates. Of equal importance, Section 315(b)(1) mandates this conclusion. Congress stated intention in enacting the "lowest unit charge" provision was to "place the candidate on par with a broadcast station's most favored commercial advertiser." If a licensee sells spot time to commercial advertisers, it would be contrary to Congress' intent to refuse to sell spot time to candidates.

Along with the Summa Corp. decision, the FCC has spelled out the obligation of stations to acquiesce to candidates on the issue requested times, formats and similar matters.

--58 F.C.C. 2d 1142, 36 R.R. 2d 865 (1976).

C-308 Chisholm vs. F.C.C.

Congresswoman Shirley Chisholm, the Democratic National Committee, and the National Organization for Women requested the FCC to review the position it had taken in response to a petition filed by the Aspen Institute Program on Communications and Society in 1975. In the preceding decade the Commission had taken the position that debates were not bona fide news events. In the Aspen finding it reversed its position.

In the petition the FCC again examined the principles involved and concluded that

Debates between qualified political candidates initiated by nonbroadcast entities (nonstudio debates) and candidates' press conferences will be exempt from the equal time requirements of Section 315, provided they are covered live, based upon the good faith determination of licensees that they are "bone fide news events" worthy of presentation, and provided further that there is no evidence of broadcaster favoritism.

Nothing in the language of Section 315(a) (4) indicated that political debates or press conferences could not be considered "news events" worthy of coverage. On the contrary, the inherent newsworthiness of speeches and debates seemed no greater or less than that of "political conventions and activities related thereto." events expressly within the scope of the exemption.

--538 F. 2d 349 (D.C. Cir. 1976), 429 U.S. 890 cert. den. (1976).

C-309 Fraudulent Billing Public Notice.

Some licensees used a sales practice consisting of the sale of "packages" of a fixed number of commercial announcements to be broadcast over an established period of time for a set price, which included a bonus of an all-expense paid vacation. The FCC said the practice violates the fraudulent billing rule if invoices are issued to local advertisers that involve cooperatively advertised products and which omit any reference to the bonus received by the local advertiser. The invoice

violates the rule since, by not reflecting the bonus, it contains false information concerning the amount actually charged.
--39 R.R. 2d 419 (1976).

C-310 Virginia State Board of Pharmacy vs. Virginia Citizens Consumer Council.

The Virginia Citizens Council sued the Virginia State Board of Pharmacy challenging the validity under the First and Fourteenth Amendments of a Virginia statute declaring it unprofessional conduct for a licensed pharmacist to advertise the prices of prescription drugs. A three-judge District Court declared the statute void and enjoined the Virginia State Board of Pharmacy from enforcing it. The U.S. Supreme Court agreed, holding that any First Amendment protection enjoyed by advertisers seeking to disseminate prescription drug price information is also enjoyed by the Virginia Citizens Consumer Council as recipients of such information. "Commerical speech" is not wholly outside the protection of the First and Fourteenth Amendments, and the Virginia statute therefore was invalid. That the advertiser's interest in a commercial advertisement is purely economic does not disqualify him from protection under the First and Fourteenth Amendments. The ban on advertising prescription drug prices cannot be justified on the basis of the state's interest in maintaining the professionalism of its licensed pharmacists; the state is free to require whatever professional standards it wishes of its pharmacists, and may subsidize them or protect them from competition in other ways. But the state may not do so by keeping the public in ignorance of the lawful terms that competing pharmacists are offering. Whatever may be the bounds of time, place, and manner restrictions on commercial speech, they plainly were exceeded by the Virginia statute, which singles out speech of a particular content and seeks to prevent its dissemination completely. No claim was made that the prohibited prescription drug advertisements were false, misleading, or proposed illegal transactions. A state may not suppress the dissemination of concededly truthful information about entirely lawful activities, fearful of that information's effect upon its disseminators and its recipients.
--425 U.S. 748 (1976).

C-311 Time, Inc. vs. Firestone.

Mary Alice Firestone filed in Palm Beach, Fla., for a separation from her industrial tycoon husband, Russell, who, in turn, counterfiled for divorce on grounds of extreme cruelty and adultery. After a long and messy trial and after much publicity, a circuit court judge granted the divorce on grounds of "marital discord." Time magazine under the erroneous impression that the divorce was granted on grounds of extreme cruelty and adultery, published an item in its "Milestones" section stating such. Mrs. Firestone, despite the fact she was on Palm Beach's social register, maintained a clipping service and conducted press conferences throughout the ordeal, sued for libel, claiming she was neither a public official nor a public figure and was not required to demonstrate actual malice under guidelines of New York Times vs. Sullivan. The defamation case eventually reached the U.S. Supreme Court, which ruled in Mrs. Firestone's favor. Citing Gertz vs. Robert Welch, Justice Rehnquist for the majority held that Mrs. Firestone was not a public figure and was not required to show actual malice in a libel action against a

magazine that reported allegedly damaging information reflecting negatively on her reputation. Coupled with Gertz, the Firestone case marked a reduction in protection from libel actions for the mass media.

--424 U.S. 448 (1976).

C-312 Home Box Office vs. F.C.C.

When the FCC adopted pay cablecasting rules in 1970, a portion of the rules (see Sec. 76.225 CFR Title 47, 1977) imposed severe restrictions on CATV's ability to present feature films, sports programs and advertising. Home Box Office appealed these rules. The U.S. Court of Appeals struck down the FCC's rules. The Court held that the FCC failed to establish on the record its authority to promulgate pay cablecasting rules.

At a minimum, the FCC was required to demonstrate that the objectives to be achieved by regulating cable television were also objectives for which the agency could legitimately regulate the broadcast media. The Commission had to state the harm which its regulations sought to remedy and the reasons for supposing that this harm existed.

The First Amendment theory esposed in National Broadcasting Co. and Red Lion could not be directly applied to cable television since an essential precondition of the theory--physical interference and scarcity of spectrum space requiring an umpiring role for government--was absent. poused Scarcity which is the result solely of economic conditions was insufficient to justify even limited government intrusion into the First Amendment rights of the conventional press, and there was nothing in the record to suggest a constitutional distinction between cable television and newspapers on this point.

> We...(conclude) that the Commission has not put itself in a position to know whether the alleged siphoning phenomenon is a real or merely a fanciful threat to those not served by cable. Instead, the Commission has indulged in speculation and innuendo.
>
> --567 F.2d 9 (D.C. Cir. 1977).

C-313 New Jersey Public Broadcasting Authority Decision.

On the morning of July 1, 1977 a debate took place between Gov. Byrne and Sen. Bateman of New Jersey, candidates for governor and opponents of Dr. Donato, also a candidate for governor. The debate was video-taped and broadcast at 8 p.m. and rebroadcast on July 3. The station held that both broadcasts were exempt from the equal opportunities requirement as on-the-spot coverage of a bona fide news event, and that the rebroadcast was exempt because of the following special circumstances: The people and events involved were at the time of the rebroadcast in virtually the same posture as when the events occurred; no other television station had broadcast the debate in its entirety, so that members of the public who had not had an opprotunity to view the earlier broadcast had not been provided with any other opportunity to view the debate; and the station felt an especially strong responsibility to provide comprehensive, locally oriented programming because of the dearth of local television service to New Jersey. "We have indicated...our belief that such broadcast fell within the Commission's interpretation of 'on-the-spot coverage of a bone fide news event'" the station said.

The broadcast bureau responded that the meaning of that term would be

lost if a licensee were permitted to rebroadcast a debate without equal opportunity obligations merely because some viewers may not have had an opportunity to view the original broadcast. While the original program was an immediate coverage of a news event, the second broadcast became merely a platform for the two candidates once again to present their views to the voting public. They are, of course, entitled to do so, and a licensee has every right to broadcast the program, but opposing candidates must be given equal opportunity.

--41 R.R.2d 681 (1977).

C-314 Sponsorship Identification by U.S. Government Agencies.

In a 1977 letter to the two departments, the FCC ruled that the Department of Defense and U.S. Postal Service may not omit the "paid for" or "sponsored by" announcements in broadcast materials prepared for radio and TV use.

The FCC said Sec. 73.1212(f) of the rules provided for an abbreviated type of announcement in certain cases, reading, in pertinent part, as follows:

> In the case of broadcast matter advertising commercial products or services, an announcement stating the sponsor's corporate or trade name, or the name of the sponsor's product when it is clear that the name of the product constitutes a sponsorship identification, shall be deemed sufficient for the purpose of this section.

In its letter to the Postal Service, the FCC said:

> It is apparent that most of the functions which you now perform were formerly performed by the Post Office Department as a public service of the government. It appears that the announcements would be addressed to this service, and thus by the very nature of the subject matter, the announcements would seem to be public service announcements. As such, the public would not know that they are sponsored.

--41 R.R. 2d 877, 881 (1977).

C-315 United States vs. Simpson.

Defendant Simpson used the citizens band radio transmitter in his home to broadcast explicit references to sexual activities, descriptions of sexual and exretory organs, and abusive epithets directed to other radio operators. His broadcasts were received not only on citizens band radio but on AM radio, television, and telephones. He was charged with violating 18 USC Section 1464, which makes it an offense to "utter...obscene, indecent, or profane language by means of radio communication." The U.S. District Court jury found his language was "indecent" but not "obscene." The Court ruled that "profanity" was not involved.

On appeal the U.S. Court of Appeals held the words "obscene" and "indecent" were to be read as parts of a single proscription, applicable only if the challenged language appeals to the prurient interest. Thus defining "indecent" as language which is patently offensive, but not necessarily appealing to the prurient interest, is an incorrect interpretation.

--561 F. 2d 53 (9th Cir. 1977)

C-316 Zacchini vs. Scripps-Howard Broadcasting Co.

Hugo Zacchini sought damages in an Ohio court alleging "unlawful

appropriation" of his "professional property" against the Scripps-Howard Broadcasting Co. for videotaping and showing without his permission his 15-second "Human Cannonball" Act in which he is shot from a cannon into a net 200 feet away. The trial court ruled in favor of the TV station. The judgment was reversed by the Ohio Court of Appeals which in turn was reversed by the Ohio Supreme Court. The U.S. Supreme Court, on certiorari, reversed the Ohio Supreme Court, holding that Zacchini's "entire act" could not be appropriated without compensation to him. Despite the First Amendment "freedom of the press" implications, the Court felt that such expropriation, an element of the tort of invasion of privacy, could have harmful effects on the development of cultural and artistic efforts.

--433 U.S. 562 (1977).

C-317 Nixon vs. Warner Communications.

Copies of tapes of conversations recorded by ex-President Nixon were admitted into evidence and played at a criminal trial arising from the "Watergate" investigation. After the trial had begun in the U.S. District Court for the District of Columbia, certain broadcasters, over Nixon's objection, petitioned for immediate access to the tapes for the purpose of copying, broadcasting, and selling to the public those portions of the tapes played at the trial. During the course of the trial, transcripts of the tapes furnished by the Court were widely reprinted in the press. At the close of the trial, the District Court denied the broadcasters' petition for immediate access to the tapes on the ground of possible prejudice to the rights of the convicted defendants, in view of their pending appeals. The U.S. Court of Appeals for the District of Columbia Circuit reversed, holding that the common-law right of access to judicial records required the District Court to release the tapes. But the U.S. Supreme Court reversed, holding that evidence introduced in a trial was not public property, either according to constitutional or common law. The Court held that the trial judge controlled the disposition of evidence in his courtroom. But the Court said that Congress had ultimate control over the tapes and that its intent was to make the materials available to the public in an orderly manner.

--435 U.S. 589 (1978).

C-318 United States vs. National Broadcasting Co.

In April of 1972, the U.S. Government filed separate but similar complaints against ABC, CBS, and NBC. Upon a motion by defendants to dismiss the actions on the ground that there had been uncompliance by the plaintiff with certain court orders, the Court, on Nov. 13, 1974, dismissed the original actions without prejudice. On Dec. 10, 1974, the government filed new complaints, again alleging the same violations of the Sherman Act as contained in the original complaint.

The complaint alleged violations in connection with NBC's practices in producing, procuring, and distributing prime time television programs. In general the complaint challenged the control exerted by NBC over the production, acquisition and exhibition of television programs shown during the prime-time hours.

One of the practices challenged by the government was NBC's custom of purchasing from independent program producers various rights in addition to the right of exhibition. After the completion of its run on network

television, a program could be distributed to individual television stations for non-network broadcast. It also could be distributed to foreign television stations for broadcast while appearing at the same time over a domestic television network. The government contended that for a substantial number of programs produced by independent producers, NBC acquired the syndication rights and thereby derived a substantial portion of the ultimate profits produced by a television program. The government contended that NBC was able to purchase these valuable subsidiary rights from independent program producers because of its control of access to the NBC television network, and since CBS and ABC pursued the same practice, independent program producers had to deal on network terms or not deal at all.

> NBC entered into a consent decree which read (in part) the... judgment prohibits NBC from acquiring syndication and other distribution or profit shares in television programs by others. Thus, in negotiating the purchase of television programs from independent producers and suppliers, NBC would be permitted to acquire only the right of first-run exhibition and certain rights incident to the licensing...of programs. The network would be prohibited from acquiring "financial interests" in a television program produced by an outside source which would earn revenues and profits for NBC beyond the network run of the program. NBC...(is) prohibited from acquiring any domestic syndication rights. The judgment permits foreign syndication of NBC-produced programs...
>
> --449 (F. Supp. 1127 (D.C. Calif. 1978)

C-319 Zurcher vs. Stanford Daily.

On April 9, 1971 the Stanford Daily student newspaper published news and photographs which described a group of demonstrators that had seized the Stanford University Hospital.

The Santa Clara District Attorney secured a warrant for an immediate search of Stanford's Daily's office for all materials relating to the event. No materials were taken during the search. The newspaper staff brought action against police officers who conducted the search, the district attorney, and the judge who issued the warrant.

In a 5-to-3 decision, the Supreme Court overturned a Court of Appeals decision holding that police, armed with only a search warrant, had violated the Fourth Amendemnt protection against unreasonable search and seizure. The Court had said that parties not suspected of being involved in a crime must be given substantial protection from unreasonable searches, adding that this was particularly true in the case of journalists.

The Supreme Court, however, held that "Courts may not, in the name of Fourth Amendment reasonableness, forbid the states from issuing warrants to search for evidence simply because the owner or possessor of the place to be searched is not then reasonably suspected of criminal involvement." The Court said that the criteria should be whether there is "reasonable cause" to believe "that the sought for items are to be found on the property."

--436 U.S. 547 (1978).

C-320 F.C.C. vs. National Citizens Committee for Broadcasting.

The FCC adopted regulations barring licensing in transfers of newspaper-broadcast combinations where there is common ownership of a radio or television broadcast station and a daily newspaper located in the same community. Divestiture of existing "co-located" combinations was not required except in 16 cases where the combination involved the sole daily newspaper published in a community and either the sole broadcast station or the sole television station. Divestiture was to be accomplished in those 16 cases by Jan. 1, 1980. On petitions for review of the regulations, the Court of Appeals affirmed the FCC's ban but ordered adoption of regulations requiring dissolution of all existing combinations that did not qualify for waivers. The Court held that the limited divestiture requirement was arbitrary and capricious within the meaning of Section 10(E) of the Administrative Procedure Act. The Supreme Court held that the challenged regulations are valid in their entirety.

> The Supreme Court opinion delivered by Justice Marshall said:
> Section 2 of the Communications Act does not make it impermissible for the FCC to use its licensing authority with respect to broadcasting to promote diversity in an overall communications market which includes, but is not limited to, the broadcasting industry. It was not inconsistent with the statutory scheme for the FCC to conclude that the maximum benefit to the "public interest" would follow from allocation of broadcast licenses so as to promote diversification of the mass media as a whole.
> Commission regulations relating to common ownership of co-located broadcast stations and newspapers did not violate the first Amendment rights of newspaper owners. There was no unabridgeable First Amendment right to broadcast comparable to the right of every individual to speak, write, or publish.
> The Commission's decision was based on a judgment that the need for diversification was especially great in cases of local monopoly. This policy judgment was certainly not irrational, and indeed was founded on the assumption upheld by this Court--that the greater the number of owners in a market, the greater the possibility of achieving diversity of program and service viewpoints.
> We think the standards settled upon by the Commission reflect a rational legislative-type judgment. Some line had to be drawn, and it was hardly unreasonable for the Commission to confine divestiture to communities in which there is common ownership of the only daily newspaper and either the only television station or the only broadcast station of any kind encompassing the entire community with a clear signal.
>
> --436 U.S. 775 (1978).

C-321 Houchins vs. KQED.

Noncommerical KQED-TV, San Francisco, had been refused permission to inspect and take photographs in the Little Greystone County jail where a prisoner's suicide reportedly had occurred and where conditions were

allegedly responsible for prisoner's problems. KQED brought action against the sheriff, claiming deprivation of their First Amendment rights. Thereafter the sheriff announced a program of regular monthly tours open to the public. Cameras or tape recorders were not allowed on the tours, nor were interviews with inmates. Persons, including members of the media, who knew a prisoner at the jail could visit him. A U.S. District Court preliminarily enjoined the sheriff from denying KQED news personnal and responsible news media representatives access to the jail and from preventing their using photographic or sound equipment, or from conducting inmate interviews. The Appeals Court subsequently affirmed the ruling, but the U.S. Supreme Court finally reversed and remanded the case on the grounds that KQED, and the press in general, could not exercise greater privileges under the First Amendment than the public. Both the press and the public have the same rights under the law.

--438 U.S. 1 (1978).

C-322 F.C.C. vs. Pacifica.

In 1973 WBAI, New York City, in a program which dealt with society's attitudes toward language, broadcast a recording made by George Carlin, a comedian, in a performance at the Circle Theater in San Carlos, Calif. The recording contained "seven dirty words...you couldn't say on the public.. airwaves." The program's host, immediately prior to playing the record, warned his audience that there would be some "sensitive language" in the upcoming Carlin material.

The FCC and WBAI received only a single complaint, from a father who listened to the program while riding in an automobile with his 15-year-old son. The FCC was under pressure at the time to "clean up" the airwaves. The Commission held that it was acting on proper authority under statues which proscribe against obscene or indecent material.

The Supreme Court overturned the lower court's findings that overruled the FCC. In a 5-to-4 ruling, the Court upheld the FCC's authority to regulate and punish the broadcasting of "indecent" material. The Supreme Court said "patently offensive, indecent material presented over the airwaves confronts the citizen, not only in public, but also in the privacy of the home, where the individual's right to be let alone plainly outweighs the First Amendment rights of the intruder."

--98 S. Ct. 3026 (1978).

C-323 Landmark Communications, Inc. vs. Virginia.

Landmark Communications, Inc. had published in its newspaper an article accurately reporting on a pending inquiry by a State Judicial Review Commission and had identified the judge whose conduct was being investigated. The Virginia Supreme Court upheld the conviction of Landmark for violating a Virginia statute which makes it a crime to divulge information regarding proceedings before the Commission. Landmark contended that the statute was a violation of the First Amendment made applicable to the States by the Fourteenth. The U.S. Supreme Court overruled the conviction, holding that "The First Amendment does not permit the criminal punishment of Third persons who are strangers to proceedings before such a commission for divulging or publishing truthful information regarding confidential proceedings of the commission."

--435 U.S. 829 (1978).

C-324 American Broadcasting Co., vs. Writers Guild of America, West.

The Writers Guild of America, representing movie and television writers, had collective-bargaining contracts with the Association of Motion Picture and Television Producers, Inc. and three TV networks, including ABC. Among the Guild's members were many "hyphenates" who perform executive and supervisory functions for the networks. In anticipation of an economic strike upon expiration of its contracts with the TV networks, Writers Guild distributed strike rules to its members, including the hyphenates, to whom the rules were made expressly applicable. The rules included a prohibition against crossing a picket line established by a Guild member. After the strike began, the networks informed the hyphenates that they were expected to continue their regular supervisory functions, though they would not be asked to perform writing duties covered by the union contract. Thereafter Writers Guild notified the hyphenates who had returned to work that they had violated the ban on crossing a picket line. After ensuing disciplinary proceedings (at which there was no proof that hyphenates had performed any work covered by the recently expired contracts) Writers Guild imposed various penalties on the hyphenates. Meanwhile the association and networks filed charges against Writers Guild for allegedly violating sections of the National Labor Relations Act, which makes it an unfair labor practice to restrain an employer in the selection of his representatives for the purpose of collective bargaining or the adjustment of grievances. After extensive hearings, an administrative law judge found that the hypenates' regular supervisory duties included the performance of grievance adjustment; that the employer insisted that hypenates return to work, but only to perform supervisory, not rank-and-file, duties; and that the hyphenates who reported did only supervisory work and had the authority to adjust grievances, which they did when the occasion arose. The judge held that sections of the act had been violated because, by keeping hyphenates from work, the union deprived the employer of fully effective representatives. The National Labor Relations Board (NLRB) adopted these findings and conclusions, found that the union's disciplinary action was an unfair labor practice under that provision, and issued a remedial order against the Writers Guild. The Court of Appeals denied enforcement, but the U.S. Supreme Court ruled that the Writers Guild's action against the hyphenates violated the Labor Relations Act.

--437 U.S. 411 (1978).

C-325 F.C.C. vs. Midwest Video Corp. (II).

The FCC promulgated rules requiring cable television systems that have 3,500 or more subscribers and carry broadcast signals to develop, at a minimum, a 20-channel capacity by 1986; to make available certain channels for access by public, educational, local governmental, and leased access users; and to furnish equipment and facilities for access purposes. Under the rules, cable operators were deprived of all discretion regarding who may exploit their access channels and what may be transmitted over such channels. The FCC had rejected a challenge to the rules, maintaining that the rules would promote "the achievement of long-standing communications regulatory objectives by increasing outlets for local self-expression and augmenting the public's choice of programs." On a petition for review, the U.S. Court of Appeals set aside the FCC's rules as beyond the agency's jurisdiction. The Court said the rules amounted to an attempt to impose common-carrier

obligations on cable operators, and thus ran counter to the command of the Communications Act of 1934 that "A person engaged in...broadcasting shall not...be deemed a common carrier." The U.S. Supreme Court agreed, holding the FCC's rules are not reasonably ancillary to the effective performance of the Commission's various responsibilities for the regulation of television broadcasting," and hence are not within the FCC's statutory authority. The FCC's access rules plainly imposed common-carrier obligations on cable operators. Under the rules, cable systems were required to hold out dedicated channels on a first-come, nondiscriminatory basis; operators were prohibited from determining or influencing the content of access programming; and charges for access and use of equipment were delimited.

Consistently with the policy of the Act to preserve editorial control of programming in the licensee, the Communications Act of 1934 foreclosed any discretion in the FCC to impose access requirements amounting to common-carrier obligations on broadcast systems. The provision's background manifested a congressional belief that the intrusion worked by such regulation on the journalistic integrity of boradcasters would overshadow any benefits associated with the resulting public access. Although the Communication Act of 1934 did not explicitly limit the regulation of cable systems, Congress' limitation on the FCC's ability to advance objectives associated with public access at the expense of the journalistic freedom of persons engaged in broadcasting was not one having peculiar applicability to television broadcasting. Its force is not diminished by the variant technology involved in cable transmissions.

The court said that in light of the hesitancy with which Congress has approached the access issue in the broadcast area, and in view of its outright rejection of a broad right of public access on a common-carrier basis, the FCC exceeded the limits of its authority in promulgating its access rules. The FCC may not regulate cable systems as common carriers, just as it may not impose such obligations on television broadcasters. Authority to compel cable operators to provide common carriage of public-originated transmissions must come specifically from Congress.

--47 U.S.L.W. 4335 (1979).

C-326 Yellow Freight System & American Trucking Association, Inc. against the National Broadcasting Company

On the NBC Nightly News on October 4, 1977, David Brinkley and Brian Ross reported on instances of "long haul truck drivers" who took drugs to stay awake because the "company expected..delivery on time no matter how long [they went] without sleep." Ross, the investigative reporter, continued with a discussion of how the use of drugs often leads to increased risk of accident, and concluded with a segment on the mechanical weaknesses of the trucks due to insufficient maintainance. Ross essentially laid the blame for the circumstances on trucking companies and federal regulations which allow these policies to continue.

Yellow Freight System complained to NBC about the fact that the program "made little effort to differentiate between the practices of 'wild catters' and independent operators on one side and [Interstate Commerce Commission] certified carriers on the other." In the meantime, the American Trucking Association's president telegraphed NBC requesting "comperable time."

NBC refused the request whereupon Yellow and the ATA appealed to the Commission. The FCC ruled that the Fairness Doctrine does not impose obligations for isolated statements within a broadcast, and that the FCC was not generally concerned with factual accuracy of individual statements. They also ruled that NBC's failure to grant time to Yellow or the ATA was not unreasonable since NBC had concluded that the existance of a serious safety problem was not a controversial issue (particularly since Yellow and ATA had conceded that point).

--46 RR 2d 531, 73 FCC 2d 741 (1978)

C-327 Broadcast Music Inc. vs. Columbia Broadcasting System, Inc.

CBS brought action against the American Society of Composers, Artists and Performers (ASCAP) and the Broadcast Music Industries (BMI) charging that blanket licenses to play copyrighted music issued to stations constituted illegal price fixing. A District court dismissed the suit, but a Court of Appeals reversed and remanded for consideration.

The Supreme Court reversed the Court of Appeals, holding that the Sherman Anti-trust Act should not be interpreted so literally, though taking no position on whether the practice is a restraint of trade in the context of the television industry. They said "the blanket license cannot be wholly equated with a simple horizontal arrangement among competititors."

--Slip Opinion #77-1578, April 17, 1979

C-328 Herbert vs. Lando

Anthony Herbert, a retired Army officer, received widespread media attention in 1969-70 when he accused his superior officers of covering up reports of atrocities in Vietnam. In 1973 in a Mike Wallace interview (produced by defendent Lando), CBS broadcast the story. Herbert alleged the program (and an article in the Atlantic Monthly magazine) "falsely and maliciously portrayed him as a liar and a person who had made war-crimes charges to explain his relief from command."

In preparing his case Herbert sought an order to compel answers to a variety of questions on the state of mind of those who edited and produced the program and article. The New York District court ruled that the defendant's state of mind was of "central importance" and, rejecting a claim of constitutional protection under provisions of the First Amendment, ordered the defendents to respond to Herbert's questions. The Court of Appeals reversed the District Court, believing the First Amendment extended to the editorial process.

On certiorari, the Supreme Court reversed again, holding "it difficult to believe that error-avoiding procedures will be terminated or stifled simply because there is liability for culpable error and because the editorial process will itself be examined in the tiny percentage of instances in which error is claimed..." They further held that the burdon a petitioner bears to prove "at least recklass disregard for truth" was sufficiently "substantial" to preclude his winning an undeserved verdict.

--Slip Opinion #77-1105, April 18, 1979

C-329 Wolston vs. Reader's Digest Association, et. al.

In 1957 and 1958 a grand jury investigated Soviet intelligence agents in the United States. Wolston's aunt and uncle were among those who were arrested on espionage charges to which they subsequently pleaded guilty. During the investigation the grand jury subpoenaed Wolston to testify on several occasions. Wolston became most upset and on one occasion failed to answer a subpoena citing his own mental condition. A Federal District judge issued an order to show cause why Wolston should not be held for contempt of court. On the date of this hearing Wolston offered to testify to the grand jury but the grand jury refused the offer. He pleaded guilty to the contempt charge when his wife became hysterical. The presiding judge issued a suspended sentence.

A number of New York and Washington, D.C. newspapers carried the story at the time, but as Wolston was not implicated by the investigation, he was eventually able to return to a reasonably normal life.

Then in 1974 the Reader's Digest published a book titled KGB: The Secret Work of Soviet Agents in the U.S. in which Wolston was described as convicted of contempt charges following espionage indictments and listed elsewhere in the book as being a Soviet agent in the United States.

Wolston filed suit for defamation against the Reader's Digest and other subsequent publishers of the book. The Court of Appeals affirmed a District Court's finding that since Wolston had not sought publicity in the first place and had returned to relative obscurity that he was not a public figure and therefore did not need to prove "actual malace" as defined in New York Times vs. Sullivan.

On certiorrari, the Supreme Court concurred and pointed out that, in fact, Wolston was never convicted of espionage and the innuendo to the contrary in the book was sufficient grounds for the defamation charge and affirmed the Appellate Court's finding.

--433 U.S. 157 (1979)

C-330 Gannett Co. vs. DePasquale

Clapp and two companions, Jones and Greathouse, went out on Seneca Lake, south of Rochester, N.Y., to fish on July 16, 1976. Greathouse and Jones alone returned to shore in Clapp's bullet-ridden boat. On July 21st, Michigan police arrested Jones, Greathouse and Greathouse's wife in a Michigan motel. They confessed and were returned to New York to stand trial for murder and grand larceny. News of the apparent crime was carried in two newspapers in Rochester owned by the Gannett Co.

In a pre-trial hearing to suppress the allegedly involuntary confessions, Jones and Greathouse requested that the press and public be excluded to prevent public sentiment from going against them, so that an impartial jury could be impaneled. The District Attorney did not object nor did Ritter, a reporter for the newspapers; Judge DePasquale therefore granted the request. The following day Ritter moved to have the closure order set aside and a transcript of the previous day's testimony be made available. DePasquale refused stating that the right of the defendant superseded the privledge of free access by the press.

The case was appealed to the New York Supreme Court which ruled that although the particular case was moot, since Jones and Greathouse had pleaded guilty to lesser charges, that the issue of public access needed to be delt

with. The Court ruled that in order to protect the due process rights of the defendent guaranteed by the Fourteenth Ammendment, the trial judge has the constitutional responsibility to minimize pre-trial publicity which would jeopardize a fair trial. The Court went on to say that the Sixth Ammendment's guarantee to a public trial was a guarantee granted to the defendent and not the public nor the press. They added that even if common-law interpretation of the Sixth and Fourteenth Ammendments could give support to the notion of public access to criminal trials, it surely did not extend to pre-trial hearings.

In a lengthy opinion written by Justice Potter Stewart, the U.S. Supreme Court affirmed the New York Court.

--433 U.S. 368 (1979)

C-331 Request of Noble Syndications, Inc.

In 1979 Noble Syndications, Inc. was delivering program material to radio stations XTERA and XTERA-FM in Mexico for broadcast into the San Diego, Ca.area in apparent violation of Section 325(b) of the Communications Act. The Commission ruled against Noble and issued a cease and desist order.

Noble filed an appeal to the Commission based upon the fact that one Dan McKinnon had evidently acted in violation of Sec. 1.1245 of the Rules and Regulations in that he had made an ex parte oral presentation to the Chairman regarding the earlier cease and desist order.

The Commission was not favorably disposed to Noble since his request concluded with a "baseless, ruthless" personal attack on McKinnon. They also held that since the presentation was done in advance of the original formal complaint by McKinnon that neither the Chairman nor McKinnon knew it would be ex parte, and since the Commission believed no substantive prejudice accrued the hearing, Noble's petition was denied.

The significance of this decision is the Commission held that since they have an affirmative obligation to stay in touch with their constituants, it is inevitable that some ex parte contacts will be made and that the Commissioners can step away from influences of these presentations to objectively examine both side of a subsequent litigation.

--46 RR 511 (1979)

C-332 Writer's Guild of America, West vs. FCC

The Writer's Guild of America, West, Inc. and Tandem Productions instituted suit against the three major commercial TV networks, the National Association of Broadcasters and the FCC challenging the adoption of the "Family Viewing Policy" by the NAB. They alledged violations of the First Ammendment, the Administrative Procedures Act and Section 326 of the Communications Act on grounds of anti-trust violations against the networks. Also at issue was whether the FCC had acted in a proper manner in the promulgation of this policy

The charges were consolidated and heard by a District Court which ruled that pressure by the FCC brought about the adoption of the policy by the networks and NAB and (among other things) that the networks and NAB in pre-empting the judgement of individual licensees had violated the First Ammendment.

The Court of Appeals mildly chastized the District Court for "having thrust itself so hastily into the delicately balanced system of broadcast regulation." It vacated and remanded the decision holding the FCC's previous decisions, such as in Red Lion Broadcasting Co., Banzhaf vs. FCC and in FCC vs. Pacifica Foundation, all of which had been subsequently upheld by

the Supreme Court, gave the FCC some authority to create broad programming policies, and therefore no abridgement of the First Ammendment or Section 326 had occured. They also held that the FCC's informal "jawboning" was in truth nothing worse than an attempt to "chart a workable 'middle course' in its quest to preserve balance between the essential public accountability and the desired private control of the media."

They also pointed to the fact that in the 1960s and 1970s there had been considerable concern by the public and congress regarding sex and violence on television, particularly as it affected children. Indeed, the Senate Appropriations Committee had directed the FCC to proceed "as rapidly as possible" to "determine what is its power in the area of program violence and obscenity..." The Court held the FCC was only acting under some pressure from the Congress to take action in this area and that its decision in the Family Viewing

--Slip Opinion #77-1058,November 14, 1979.

C-333 Hutchinson vs. Proxmire

Senator William Proxmire used a "Golden Fleece of the Month Award" to publicise examples of wasteful governmental spending. One such award was bestowed upon the agencies which funded a study of agression in animals, headed by Dr. Ronald Hutchinson. Hutchinson filed a libel suit against Proxmire for bestowing the award and publicising it. He held that it was damaging to his academic standing and interfeared with his work.

Proxmire's defense was that local newspapers had previously reported the giving of the grant and had thereby thrust Hutchinson into the position of being a public figure under the New York Times vs. Sullivan standard, and further that Hutchinson sought and acquired a public standing and reputation by widespread publication in various scientific journals.

The Supreme Court in an 8 to 1 decision held that although his bestowing of the award in the Senate chambers was a protected utterance, the subsequent publicity on the Mike Douglas Show was not, and that although Hutchinson was a public figure by the time Proxmire went on the Douglas show, it was the same issue which thrust Hutchinson, unwillingly, into that status; and consequently Proxmire was guilty of libel.

--443 U.S. 111 (1979)

S E C T I O N D

selected exerpts from

THE RADIO CODE and THE TELEVISION CODE

of the

National Association of Broadcasters

Selected Exerpts From

THE RADIO CODE and THE TELEVISION CODE

of the

National Association of Broadcasters

Note: The following is taken from The Radio Code/The Television Code, published by the Code Authority of the National Association of Broadcasters, Twenty-first/Twentieth Edition (with amendments), June 1978. The organization most closely follows the Television Code but both Codes have similar provisions in virtually every applicable category.

D-1 I. Principles Governing Program Content

General Goals

It is in the interest of television as a vital medium to encourage programs that are innovative, reflect a high degree of creative skill, deal with significant moral and social issues and present challenging concepts and other subject matter that relate to the world in which the viewer lives.

D-2 Responsibly Exercised Artistic Freedom

To achieve these goals, television broadcasters should be conversant with the general and specific needs, interests and aspirations of all the segments of the communities they serve. They should affirmatively seek out responsible representatives of all parts of their communities so that they may structure a broad range of programs that will inform, enlighten and entertain the total audience.

Sound effects and expressions characteristically associated with news broadcasts (such as "bulletin," "flash," "we interrupt this program to bring you," etc.) shall be reserved for announcement of news, and the use of any deceptive techniques in connection with fictional events and non-news programming shall not be employed.

D-3 Family viewing considerations

Additionally, entertainment programming inappropriate for vewing by a general family audience should not be broadcast during the first hour of network entertainment programming in prime time and in the immediately preceding hour. In the occasional case when an entertainment program in this time period is deemed to be inappropriate for such an audience, advisories should be used to alert viewers. Advisories should also be used when programs in later prime time periods contain material that might be disturbing to significant segments of the audience.

D-4 II. Responsibility Toward Children

Broadcasters have a special responsibility to children. Programming which might reasonably be expected to hold the attention of children should be presented with due regard for its effect on children.

Programming should be based upon sound social concepts and should include positive sets of values which will allow children to become responsible adults, capable of coping with the challenges of maturity.

Because children are allowed to watch programs designed primarily for adults, broadcasters should take this practice into account in the presentation of material in such programs when children may constitute a substantial segment of the audience.

Programming should avoid appeals urging children to purchase the product specifically for the purpose of keeping the program on the air or which, for any reason, encourage children to enter inappropriate places.

Programming should present such subjects as violence and sex without undue emphasis and only as required by plot development or character delineation.

Violence, physical or psychological, should only be projected in responsibly handled contexts, not used to excess or exploitatively. Programs involving violence should present the consequences of it to its victims and perpetrators.

The depiction of conflict, and of material reflective of sexual considerations, when presented in programs designed primarily for children, should be handled with sensitivity.

D-5 III Community Responsibility

Broadcasters and their staffs occupy a position of responsibility in the community and should conscientiously endeavor to be acquainted with its needs and characteristics to best serve the welfare of its citizens.

Requests for time for the placement of public service announcements or programs should be carefully reviewed with respect to the character and reputation of the group, campaign or organization involved, the public interest content of the message, and the manner of its presentation.

D-6 IV Special Program Standards

Violence; conflict

Violence, physical or psychological, may only be projected in responsibly handled contexts, not used exploitatively. Programs involving violence should present the consequences of it to its victims and perpetrators.

Presentation of the details of violence should avoid the excessive, the gratuitous and the instructional.

Anti-social behavior; crime

The treatment of criminal activities should always convey their social and human effects.

The presentation of techniques of crime in such detail as to be instructional or invite imitation shall be avoided.

D-7 Self-destructive behavior: drugs; gambling; alcohol

Narcotic addiction shall not be presented except as a destructive habit. The use of illegal drugs or the abuse of legal drugs shall not be encouraged or shown as socially acceptable.

The use of gambling devices or scenes necessary to the development of plot or as appropriate background is acceptable only when presented with discretion and in moderation, and in a manner which would not excite interest in, or foster, betting nor be instructional in nature.

The use of liquor and the depiction of smoking in program content shall be deemphasized. When shown, they should be consistent with plot and character development.

D-8 Mental/physical Disadvantages

Special precautions must be taken to avoid demeaning or ridiculing members of the audience who suffer from physical or mental afflictions or deformitites.

D-9 Human Relationships; Sex; Costume

The presentation of marriage, the family and similarly important human relationships, and material with sexual connotations, shall not be treated exploitatively or irresponsibly, but with sensitivity. Costuming and movements of all performers shall be handled in a similar fashion.

D-10 Pluralism; Minorities

Special sensitivity is necessary in the use of material relating to sex, race, color, age, creed, religious functionaries or rites, or national or ethnic derivation.

D-11 Obscenity; Profanity

Subscribers shall not broadcast any material which they determine to be obscene, profane or indecent.

Broadcasters are responsible for making good faith determinations on the acceptability of lyrics under applicable Radio Code standards.

Above and beyond the requirements of law, broadcasters must consider the family atmosphere in which many of their programs are viewed.

There shall be no graphic portrayal of sexual acts by sight or sound. The portrayal of implied sexual acts must be essential to the plot and presented in a responsible and tasteful manner.

Subscribers are obligated to bring positive responsibility and reasoned judgment to bear upon all those involved in the development, production, and selection of programs.

D-12 Hyposis

The creation of a state of hypnosis by act or detailed demonstration on camera is prohibited, and hypnosis as a form of "parlor game" antics to create humorous situations within a comedy setting is forbidden.

D-13 Superstition; Pseudo-sciences

Program material pertaining to fortune-telling, occultism, astrology, phrenology, palm-reading, character-reading, and the like is unacceptable if it encourages people to regard such fields as providing commonly accepted appraisals of life.

D-14 Professional Advice/Diagnosis/Treatment

Professional advice, diagnosis and treatment will be presented in conformity with law and recognized professional standards.

D-15 Subliminal perception

Any technique whereby an attempt is made to convey information to the viewer by transmitting messages below the threshold of normal awareness is not permitted.

D-16 Animals

The use of animals, consistent with plot and character delineation, shall be in conformity with accepted standards of humane treatment.

D-17 Game Programs; Contests

Quiz and similar programs that are presented as contests of knowledge, information, skill or luck must, in fact, be genuine contests; and the results must not be controlled by collusion with or between contestants, or by any other action which will favor one contestant against any other.

Contests may not constitute a lottery.

D-18 Misrepresentation; Deception

No program shall be presented in a manner which through artifice or simulation would mislead the audience as to any material fact. Each broadcaster must exercise reasonable judgment to determine whether a particular method of presentation would constitute a material deception, or would be accepted by the audience as normal theatrical illusion.

D-19 V. Treatment of News and Public Events

News

Radio is unique in its capacity to reach the largest number of people first with reports on current events. This competitive advantage bespeaks caution -- being first is not as important as being accurate. The Radio Code standards relating to the treatment of news and public events are, because of constitutional considerations, intended to be exhortatory. The standards set forth hereunder encourage high standards of professionalism in broadcast journalism. They are not to be interpreted as turning over to others the broadcaster's responsibility as to judgments necessary in news and public events programming.

D-20 News Sources

Those responsible for news on radio should exercise constant professional care in the selection or sources -- on the premise that the integrity of the news and the consequent good reputation of radio as a dominant well-balanced news medium depend largely upon the reliability of such sources.

D-21 News Reporting

News reporting should be factual, fair and without bias. Good taste should prevail in the selection and handling of news. Morbid, sensational, or alarming details not essential to factual reporting should be avoided. News should be broadcast in such a manner as to avoid creation of panic and unnecessary alarm. Broadcasters should be diligent in their supervision of content, format, and presentation of news broadcasts.

D-22 Commentaries, Analyses and Editorials

Special obligations devolve upon those who analyse and/or comment upon news developments, and management should be satisfied completely that the task is to be performed in the best interest of the listening public. Programs of news analysis and commentary should be clearly identified as such, distinguishing them from straight news reporting.

Broadcasts in which stations express their own opinions about issues of general public interest should be clearly identified as editorials.

D-23 VI. Controversial Public Issues

Radio provides a valuable forum for the expression of responsible views on public issues of a controversial nature. Controversial public issues of importance to fellow citizens should give fair representation to opposing sides of issues.

Requests by individuals, groups or organizations for time to discuss their views on controversial public issues should be considered on the basis of their individual merits, and in the light of the contributions which the use requested would make to the public interest.

Discussion of controversial public issues should not be presented in a manner which would create the impression that the program is other than one dealing with a public issue.

D-24 VII. Political Broadcasts

Political broadcasts, or the dramatization of political issues designed to influence voters, shall be properly identified as such.

Political broadcasts should not be presented in a manner which would mislead listeners to believe that they are of any other character.

D-25 VIII. Religious Programs

It is the responsibility of a television broadcaster to make available to the community appropriate opportunity for religious presentations.

Programs reach audiences of all creeds simultaneously. Therefore, both the advocates of broad or ecumenical religious precepts, and the exponents of specific doctrines, are urged to present their positions in a manner conducive to viewer enlightenment on the role of religion in society.

In the allocation of time for telecasts of religious programs, the television station should use its best efforts to apportion such time fairly among responsible individuals, groups and organizations.

D-26 IX. Presentation Of Advertising

Applicability of Code Standards

Commercial radio broadcasters make their facilities available for the advertising of products and services and accept commercial presentations for such advertising. However, they shall, in recognition of their responsibility to the public, refuse the facilities of their stations to an advertiser where they have good reason to doubt the integrity of the advertiser, the truth of the advertising representations, or the compliance of the advertiser with the spirit and purpose of all applicable legal requirements.

In consideration of the customs and attitudes of the communities served, each radio broadcaster should refuse his/her facilities to the advertisement of products and services, or the use of advertising scripts, which the station has good reason to believe would be objectionable to a substantial and responsible segment of the community.

D-27 Safety considerations

Representations which disregard normal safety precautions shall be avoided.

Children shall not be represented, except under proper adult supervision, as being in contact with or demonstrating a product recognized as potentially dangerous to them.

D-28 Audience sensibilities: general

Advertising messages should be presented with courtesy and good taste; disturbing or annoying material should be avoided; every effort should be made to keep the advertising message in harmony with the content and general tone of the program in which it appears.

D-29 Audience Perceptions of Clutter

A multiple product announcement is one in which two or more products or services are presented within the framework of a single announcement. A multiple product announcement shall not be scheduled in a unit of time less than 60 seconds, except where integrated so as to appear to the viewer as a single message. A multiple product announcement shall be considered integrated and counted as a single announcement if:

-- the products or services are related and interwoven within the framework of the announcement (related products or services shall be defined as those having a common character, purpose and use); and

-- the voice(s), setting, background and continuity are used consistently throughout so as to appear to the viewer as a single message.

Multiple product announcements of 60 seconds in length or longer not meeting this definition of integration shall be counted as two or more announcements under this section of the Code. This provision shall not apply to retail or service establishments.

D-30 Audience Sensibilities; Children

The broadcaster and the advertiser should exercise special caution with the content and presentation of television commercial placed in or near programs designed for children. Exploitation of children should be avoided. Commercials directed to children should in no way mislead as to the product's performance and usefulness.

No children's program personality or cartoon character shall be utilized to deliver commercial messages within or adjacent to the programs in which such a personality or cartoon character regularly appears. This provision shall also apply to lead-ins to commercials when such lead-ins contain sell copy or imply endorsement of the product by program personalities or cartoon characters.

D-31 Alcoholic Beverages

The advertising of hard liquor (distilled spirits) is not acceptable.

The advertising of beer and wines is acceptable only when presented in the best of good taste and discretion, and is acceptable only subject to federal and local laws.

This requires that commercials involving beer and wine avoid any representation of on-camera drinking.

D-32 Ammunition; Firearms; Fireworks

The advertising of firearms/ammunition is acceptable provided it promotes the product only as sporting equipment and conforms to recognized standards of safety as well as all applicable laws and regulations. Advertisements of firearms/ammunition by mail order are unacceptable. The advertising of fireworks is unacceptable.

D-33 Personal Products

Because all products of a personal nature create special problems, acceptability of such products should be determined with especial emphasis on ethics and the canons of good taste. Such advertising of personal products as is accepted must be presented in a restrained and obviously inoffensive manner.

D-34 Betting/Gambling

The advertising of tip sheets and other publications seeking to advertise for the purpose of giving odds or promoting betting is unacceptable.

The lawful advertising of government organizations which conduct legalized lotteries and the advertising of private or governmental organizations which conduct legalized betting on sporting contests are acceptable provided such advertising does not unduly exhort the public to bet.

D-35 Bait-and-Switch and Pitchman Techniques

"Bait-switch" advertising, whereby goods or services which the advertiser has no intention of selling are offered merely to lure the customer into purchasing higher-priced substitutes, is not acceptable.

The "pitchman" technique of advertising on television is inconsistent with good broadcast practice and generally damages the reputation of the industry and the advertising profession.

D-36 Testimonials

Personal endorsements (testimonials) shall be genuine and reflect personal experience. They shall contain no statement that cannot be supported if presented in the advertiser's own words.

D-37 X. Claims: General

False, misleading or deceptive advertising

The role and capability of television to market sponsors' products are well recognized. In turn, this fact dictates that great care be exercised by the broadcaster to prevent the presentation of false, misleading or deceptive advertising.

Broadcast advertisers are responsible for making available, at the request of the Code Authority, documentation adequate to support the validity and truthfulness of claims, demonstrations and testimonials contained in their commercial messages.

D-38 Use of research, surveys or tests

Reference to the results of bona fide research, surveys or tests relating to the product to be advertised shall not be presented in a manner so as to create an impression of fact beyond that established by the work that has been conducted.

D-39 Fictitious Exploitations

Appeals to help fictitious characters in television programs by purchasing the advertiser's product or service or sending for a premium should not be permitted, and such fictitious characters should not be introduced into the advertising message for such purposes.

D-40 Competitive References

Advertising should offer a product or service on its positive merits and refrain from discrediting, disparaging or unfairly attacking competitors, competing products, other industries, professions or institutions.

D-41 XI. Advertising of Medical Products/Services

Because of the personal nature of the advertising of medical products, claims that a product will effect a cure and the indiscriminate use of such words as "safe," "without risk," "harmless," or terms of similar meaning should not be accepted in the advertising of medical products on television stations.

A television broadcaster should not accept advertising material which in his/her opinion offensively describes or dramatizes distress or morbid situations involving ailments, by spoken word, sound or visual effects.

Commercials for services or over-the-counter products involving health considerations are of intimate and far-reaching importance to the consumer. The following principles should apply to such advertising:

A. Physicians, dentists or nurses or actors representing physicians, dentists or nurses, shall not be employed directly or by implication.

B. Visual representations of laboratory settings may be employed, provided they bear a direct relationship to bona fide research which has been conducted for the product or service.

C. Institutional announcements not intended to sell a specific product or service to the consumer and public service announcements by non-profit organizations may be presented by accredited physicians, dentists or nurses, subject to approval by the broadcaster.

D-42 XII. Contests

Contests shall be conducted with fairness to all entrants, and shall comply with all pertinent laws and regulations. Care should be taken to avoid the concurrent use of the three elements which together constitute a lottery -- prize, chance and consideration.

All contest details, including rules, eligibility requirements, opening and termination dates should be clearly and completely announced and/or shown, or easily accessible to the viewing public, and the winners' names should be released and prizes awarded as soon as possible after the close of the contest.

D-43 XIII. Premiums and Offers

Full details of proposed offers should be required by the television broadcaster for investigation and approved before the first announcement of the offer is made to the public.

Before accepting for telecast offers involving a monetary consideration, a television broadcaster should be satisfied as to the integrity of the advertiser and the advertiser's willingness to honor complaints, indicating dissatisfaction with the premium by returning the monetary consideration.

Premiums should not be approved with appeal to superstition on the basis of "luck-bearing" powers or otherwise.

D-44 XIV. Time Standards for Network-Affiliated Stations (Television)

Non-Program Material Definition

Non-program material in both prime time and all other time includes billboards, commercials and promotional announcements.

Non-program material also includes:

A. In programs of 90 minutes in length or less, credits in excess of 30 seconds per program, except in feature films. In no event should credits exceed 40 seconds in such programs.

B. In programs longer than 90 minutes, credits in excess of 50 seconds per program except in feature films. In no event should credits exceed 60 seconds in such programs.

The only exclusions from the foregoing definition of non-program

material are: (1) public service announcements; (2) voice-over credits program information announcements not to exceed 30 seconds; (3) scheduling information regarding unusual special news programs; (4) scheduling information presented in special programs of indeterminate length (e.g., special news, sports or other special events programs) regarding an immediately upcoming program(s) whose regular broadcast time has been affected by the indeterminate length program, and (5) promotional/informational material used to fulfill time requirements of certain formats two hours in length or longer such as theatrical length motion pictures, mini-series, made-for-television movies,(or)occasional special long-length versions of series programs.

D-45 Allowable Time for Non-Program Material (Network TV Stations)

A. Prime Time

Prime time is a continuous period of not less than three consecutive hours per broadcast day as designated by the station between the hours of 6:00 PM and midnight.

In prime time on network-affiliated stations, the amount of non-program material shall not exceed nine minutes 30 seconds in any 60-minute period. When deemed necessary by the broadcaster, an additional 30 seconds per hour may be used for promotional announcements.

B. All Other Time

In all other time, non-program material shall not exceed 16 minutes in any 60-minute period.

D-46 Children's Programming Time

Children's programming time is defined as those hours other than prime time in which programs initially designed primarily for children under 12 years of age are scheduled.

Within this time period on Saturday and Sunday non-program material shall not exceed nine minutes 30 seconds in any 60-minute period.

Within this time period on Monday through Friday, non-program material shall not exceed 12 minutes in any 60-minute period.

D-47 Averaging Concept

In prime time and all other time, programs of 90 minutes in length or longer, the reasonable averaging of the amount of allowable time for non-program material and/or of the number of allowable interruptions is permitted for the purpose of preserving program continuity in the interests of the viewer. In such situations, one or more 60-minute period(s) may contain more than the allowable amount of non-program material and/or more than the allowable number of interruptions providing the remaining 60-minute period(s) contains appropriately less non-program material and/or fewer interruptions so that, on average, each hour of the program is compliant with applicable Television Code standards.

D-48 Program Interruptions

Definition: A program interruption is any occurence of non-program material within the main body of the program.

In prime time, the number of program interruptions shall not exceed two within any 30-minute program, or four within any 60-minute program. Programs longer than 60 minutes shall be prorated at two interruptions per half hour.

The number of interruptions in 60-minute variety shows shall not exceed five.

In all other time, the number of interruptions shall not exceed four within any 30-minute program period.

In children's weekend programming time...the number of program interruptions shall not exceed two within any 30-minute program or four within any 60-minute program.

In both prime time and all other time, the following interruption standard shall apply within programs of 15 minutes or less in length:

5-minute program -- 1 interruption;
10-minute program -- 2 interruptions;
15-minute program -- 2 interruptions.

News, weather, sports and special events programs are exempt from the interruption standards because of the nature of such programs.

D-49 Consecutive Announcements

In both prime time and all other time, no more than five non-program material announcements may be scheduled consecutively within programs by the originating Code subscriber, of which no more than four may be commercial announcements, and no more than three non-program material announcements may be scheduled consecutively during any station break.

Public service announcements are excluded from the consecutive announcement count.

D-50 Time Standards For Advertising Copy (Radio)

As a general rule, up to 18 minutes of advertising time within any clock hour are acceptable. However, for good cause and when in the public interest, broadcasters may depart from this standard in order to fulfill their responsibilities to the communities they serve.

For the purpose of determining advertising limitations, such programs as "classified," "swap shop," "shopping guides," and "farm auction" programs, etc., shall be regarded as containing one and one-half minutes of advertising for each five-minute segment.

D-51 Prize and Donor Identification

Reasonable and limited identification of prizes and donors' names where the presentation of contest awards or prizes is a necessary part of program content shall not be included as non-program material as defined above.

D-52 Shopping Guides/Service Formats

Programs presenting women's/men's service features, shopping guides, fashion shows, demonstrations and similar material provide a special service to the public in which certain material normally classified as non-program is an informative and necessary part of the program content. Because of this, the time standards may be waived by the Code Authority to a reasonable extent on a case-by-case basis.

D-53 XV. Time Standards For Independent Stations (Television)

Non-program elements shall be considered as all-inclusive, with the exception of required credits, legally required station identifications, and "bumpers." Promotion spots and public service announcements, as well as commercials are to be considered non-program elements.

The allowed time for non-program elements, as defined above, shall not exceed seven minutes in a 30-minute period or multiples thereof in prime time (prime time is defined as any three contiguous hours between 6:00 PM and midnight, local time), or eight minutes in a 30-minute period or multiples thereof during all other times.

Where a station does not carry a commercial in a station break between programs, the number of program interruptions shall not exceed four within any 30-minute program, or seven within any 60-minute program, or 10 within any 90-minute program, or 13 in any 120-minute program. Stations which do carry commercials in station breaks between programs shall limit the number of program interruptions to three within any 30-minute program, or six within any 60-minute program, or nine within any 90-minute program, or 12 in any 120-minute program. News, weather, sports, and special events are exempted because of format.

Not more than four non-program material announcements...shall be scheduled consecutively. An exception may be made only in the case of a program 60 minutes or more in length, when no more than seven non-program elements may be scheduled consecutively by stations who wish to reduce the number of program interruptions.

The conditions of paragraphs three and four shall not apply to live sports programs where the program format dictates and limits the number of program interruptions.

S E C T I O N E

TOPICAL INDEX

TITLE INDEX

T O P I C A L I N D E X

to excerpts from the Communications Act, FCC Rules and Regulations, and selected FCC decisions and court rulings

T I T L E I N D E X

to exerpts from FCC decisions and court rulings

S E C T I O N F

WRITTEN ASSIGNMENTS

WRITTEN ASSIGNMENTS

Assignments will be graded on the basis of 80 points for each assignment -- 10 points for each question. Ten points will be deducted from the grade for any assignment not submitted by the beginning of the class period in which it is due.

Assignments must be typewritten, on one side of sheets of regular white typing paper. A margin of at least one inch should be provided at the left-hand margin of the sheet, and two inches at the right-hand margin. In addition, a space of from one-and-a-half to two inches should be provided following the answer to each question for comments by the instructor.

Answers to questions should probably average from 50 to 80 words in length; no "extra credit' will ge given for needlessly detailed answers. Each answer is to include four elements, indicated below, in some cases a fifth element may be included:

a) The number of the question. The figures "3" or "7" are sufficient, it isn't necessary to repeat the question itself.

b) A definite answer of "yes" or "no." Place this at the beginning of the paragraph in which you answer the question; to be certain that it is seen, underline it - but use only "yes" or "no."

c) The items of evidence which justify the answer you have given. These may be Sections of the Act or Rules & Regulations or opinions of the FCC or of courts. Wherever possible, cite at least two such items - the ones which most directly support your position, and are the "best" ones bearing on the point at issue. In some instances you may use only one; occasionally you may want to mention as many as three - but don't try to cite every bit of material which is related to the point. Be sure that each item you use is correctly identified and do not use the A, B, C, or D designation alone.

d) Whatever "reasoning" may be required to show that the items of evidence you cite really apply in the situation described in the question. It is necessary that you "link up" your evidence with the specific point or points at issue.

[Note: c) and d) above need not be present in that order; they're invariably intermixed - but both should be evident!]

e) Possibly, citation to an NAB Code provision that bears on the question - but be sure you don't give this as a reason for you decision!

EXAMPLES:

If a question asks whether any information must be given on the air identifying the sponsor of a local news program, your answer might be as follows:

3. Yes. Section 317 of the Communications Act states that "all matter broadcast .. for which money .. is paid .. shall at the time the same is broadcast, be announced as paid for .. by such person." In addition, Section 73.1212 of the Commission's regulations provide that the announcement must identify the person paying for the

program. Since the news program is "paid for" by a sponsor, sponsor identification must be given on the air.

Or, if question 8 asks whether as the licensee of a station, you have the right to remove from the speech of a qualified candidate for office statements you believe to be libelous, your answer might be this:

8. No. By the statement of the question, the speaker is a qualified candidate, and Section 315 of the Communications Act states that "licensees shall have no power of censorship over the material broadcast" under provisions of the section which refers to broadcasts by qualified candidates. The same provision appears in Section 73.120 of the Commissions regulations; in addition, the Commission's ruling in 1948 in the Port Huron case, involving station WHLS, clearly indicated that a station may not remove materials from a candidate's speech on the grounds that the material is "possibly libelous."

In selecting the items of "evidence" to be used, you'll naturally be expected to use the best ones available -- those that most closely apply to the situation in the question. In general, the following might be a sort of order of authoritativeness:

a) A decision by the U.S. Supreme Court
b) A section of the Communications Act or other federal law
c) A section of the FCC's Rules and Regulations
d) A ruling or decision by the Communications Commission
e) A decision by a state court
f) Possibly some sort of "action" by the Commission - without formal ruling, such as placing a station on temporary license.

If there is a Supreme Court decision or a section of federal law that applies, by all means include it (or them) in your answer. If not, take the best available from the evidence that remains. If you find two contradictory rulings by the courts or the Commission, use the one more recent; situations change. On the other hand, if there are several available decisions that apply, all with the same general effect, use the first important one, in point of time, which is cited; usually it is the "precedent" decision.

When a short direct quotation can be used, as in the two illustrations on the preceding page, use quotation marks and indicate omissions (which do not change the meaning) with the usual two dots. Or if you must insert a word or two to clarify the meaning, enclose the inserted word in parantheses. You need not use direct quotations in all of your answers; usually you can give the sense of a ruling in your own words--but be sure you're accurate.

Every item of "evidence" you include must be completely and correctly identified. You may abbreviate, using Sec. 315 rather than Section 315. In the case of FCC regulations, be certain to cite the correct section; in many cases there will be seperate sections relating to AM stations, FM stations and television stations, check the question to be sure you cite the correct one.

Do not include items of evidence which do not very directly relate to the question at issue. Points will be deducted from your grade for inclusion of irrelevant items or irrelevant passages.

It may be helpful to you if a sort of schedule of maximum deductions from grades is provided at this point. From the 10 point basis for each question, deductions up to the following amounts will be made, for the shortcomings indicated below:

A - 5 points - for giving the wrong "yes" or "no" answer - or for failure to provide either a definite "yes" or "no" answer.

B - 2 points - for failure to cite any provision of the Act or of federal law that applied fairly directly.

C - 3 points - for failure otherwise to cite the best items of evidence.

D - 1 point - for each incorrect identification or incomplete identification of an item of evidence (or use of a "code" identification, such as "C-54").

E - 1 point - for each inclusion of an item of evidence that doesn't apply to the situation in the question.

F - 3 points - for failure to "link up" items of evidence with the particular situation in the question.

G - 2 points - for generally sloppy or careless answering - anything from failure to type the assignment, failure to provide margins, incompleteness, or failure to staple the pages together.

H - 2 points - for incorrect or incomplete interpretation of a correctly cited item of evidence.

These are maximum deductions for specific shortcomings. However, not more than 7 points in all will be deducted for any incorrect answer where there's evidence that you tried to handle the question; however, if there's no answer at all beyond a "yes" or "no," 10 points off! If any of the letters above are "red inked" after the question, they'll indicate the shortcomings for which points have been deducted.

Unless indicated otherwise, for every question, you're the licensee or operator of the station - the person who has to make the decisions. If the word station is used, the reference is to a standard AM station; FM and TV stations will be so identified when involved in a question.

One final word: you are to answer all questions by the fruits of your own labor alone. Detected cases of collusion or consultation with others will be considered plaguerism.

1. Engineers at your commercial FM station go on strike and set up a picket line which your program employees will not cross. On the basis of appropriate law, regulations or decisions, can you simply shut down your station without first getting permission for such action from the FCC, and give up all attempts to operate the station until the strike is settled or until such time as you have opportunity to apply for formal authorization to remain off the air until your engineers return to work?

2. As the representative of the Republican party in your state, you apply to the Commission for authorization to construct and operate a 5 kw. AM radio station, operating on a part-time basis "to present the Republican point of view" on various public issues that may arise; your application states that as a Republican station, your station will not sell time or give time on a free basis to representatives of other political parties or to others who differ with the viewpoints you plan to present. Assuming that the frequency for which you apply is available and that the people you represent are legally, technically and financially qualified, and that no one else has applied for the facilities you plan to use, will the Commission grant your application?

3. As manager of a commercial VHF television station you're on hand while your sports announcer is presenting a remote broadcast of a championship college basketball game. At the time when the regular "on-the-hour" station identification is supposed to be maade, the score is tied with only six or seven minutes left to play, and action is unusually rapid and thrilling. Under the circumstances, would you instruct the director of the program to interrupt the game for station identification?

4. You're the operator of an AM radio station licensed for 24-hour operation; you have a very satisfactory audience during the daytime, but as a result of television competition, an extremely small audience after 7:00 o'clock in the evening. Since your night-time audience is so small, you are unable to sell time enough during evening hours to pay the costs of operation. In the circumstances, would you give orders to your employees to sign the station off at 7:00 o'clock each evening, and do no broadcasting until sign-on time the following morning--of course notifying the Commission of your action when applying for license renewal?

5. You're attempting to organize a corporation to apply for a new television station; you find a man who is willing to buy a full third of the voting stock in the corporation, which is all that remains to be sold. He is an outstanding community leader, president of the largest bank in the community, active in local civic enterprises and charity campaigns. However, though he has lived in your city for more than 20 years, you find that he is a Canadian by birth, who recently has taken out his first papers to become an American citizen; of course, he has not yet been granted citizenship. In the circumstances, would you permit him to buy the remaining stock in your company?

6. You've applied to the FCC for a construction permit for an FM station in your home community; there's an available frequency, the community isn't served by any other station, you're completely qualified in every way, and there are no competing applications, so that you're practically assured of favorable action. Before the necessary "red tape" is completed, however, you have an opportunity to buy an antenna tower, second hand; you can buy it and have it erected on the site you have chosen for about a third of the price you had expected to pay--if you have the work done at once. Would you go ahead with the deal, and have the tower erected, although not installing a transmitter?

7. You are the owner of a one-fourth interest in a company applying for a television authorization; your company is one of five competing for the same facility so that a comparative hearing will be held. From 1950 to 1952, you were the manager of a radio station in a community in another state; during your period of radio operation you were frequently involved in minor difficulties with the Commission--on one occasion over an obviously incorrect series of entries in your programming log, on another over the filing of copies of your network contract with the Commission, and on three occasions over other minor violations of FCC regulations concerning station identification and sponsor identification. In passing on the relative merits of the various applicants for the TV station, would the Commission in any way take into account your past record as the manager of a radio station--so long ago you've practically forgotten the entire matter?

8. You are the manager of a university-owned closed-circuit educational television system in which educational programs produced in a central studio are fed by means of a coaxial cable to classrooms in various buildings on the campus. Under FCC rules and regulations, are you required to provide public access to your operating logs?

9. Your station is owned by a corporation. Four years after the station went on the air, a local bank which has held 20 percent of the voting stock sells its stock interest to a local investor. The change does not involve majority control of the company--the buyer has previously had no interest in the owning corporation--nor does it affect the lineup of officers or directors. Are you required to make any report of the transaction to the FCC prior to your application for license renewal? (If so, what kind of report?)

10. You live in Ohio, where you operate an AM radio station in a small city. A consulting engineering firm in Washington advises you that there is an available frequency on which a 5 kw station might be constructed, in a rapidly-growing city in western Texas. You make application for a 5 kw station on that frequency, in the Texas community--although you have never visited the city personally, and know little about either the city or the rural area your station would serve; in the program plans in your application, you largely duplicate the type of programming you are using on your Ohio station, which has never had any difficulties with the FCC. If there is no competing for the facility, if the frequency is "open" for a new station, and if you are legally, technically and financially qualified, is it probable that the FCC will authorize your construction of the station?

11. As the director of the Central Intelligence Agency, you determine that you will need a new frequency for your South American intelligence gathering operations. Included in your plans are two highly directional antennas, one in the U.S. and one in South America for beaming the classified information back and forth. Do you need FCC permission to begin construction, and if so, what forms do you need to file?

12. You provide free time on your AM station for a 15-minute religious program each weekday, with one religious group using the time on Monday, a second on Tuesday, and so on. At the request of the group using your facilities on Fridays, you make off-the-line recordings of that group's programs; the Friday group has dubbings made of these programs which are supplied to other stations in the U.S. Some months after their series has started, this religious group asks your permission to give sets of 15 of the recordings of their programs to local stations in each of four Asian nations; Pakistan, Nepal, Thailand and India. If you give your approval to the use of the programs by the Asian stations, must you make any advance arrangements with, or any report of, the transaction to the Communications Commission, and if so, what?

13. You are the station manager at a station with a good track record in the eyes of the FCC. Your great aunt dies and leaves you a very substantial inheritance, in excess of 10 million dollars. In the small town of Murphydale, about 300 miles away from where you lived for many years, there is a station, WMUD, owned by the Murphydale Evening News and Telegram Sun Times, a metropolitan newspaper. Although WMUD is not in trouble with the FCC, they are not "Mr. Clean," having several citizens' informal complaints against them. Prior to license renewal time, you conduct an ascertainment survey and file for a transfer of license for that station. At the competitive hearing for the license, all other things being equal, is the FCC likely to rule in favor of the Murphydale Evening News and Telegraph Sun Times?

14. Your application for a construction permit is rejected by the FCC on the grounds that you have not done a survey of the audience in the community where you propose to build a station. You take the FCC to court charging that they do not have the statutory authority under provisions of the Communications Act to require a survey. Is the court likely to find in your favor?

15. You are the licensee of five VHF stations in fairly large cities throughout the country; you also are the licensee of a UHF station in Jacksonville, a market with one UHF and one VHF station. The FCC decides to "de-intermix" the market, and to substitute a VHF channel for the UHF channel you are using. After the Commission's de-intermixture order has been made final, you apply for a modification of license, allowing you to shift over your operation and equipment from UHF to the new VHF channel. Assuming that your TV operation in Jacksonville has been outstandingly good, it is probable that the Commission will approve your application in light of the fact that there are qualified competing applicants?

16. You have successfully operated a small restaurant in the town where you have lived for many years. Since there is no television station in town, though there is an available frequency, you and some friends form a syndicate to own and operate a television station.

One of the members flies to Washington to make contact with a lawyer who specializes in communications. That done, you print the required notice of application in the newspapers. The notice, however, attracts the attention of a large group owner who decides to file a competing application. Since the group owner has considerable broadcasting experience and is much better

financed, your syndicate becomes quite agitated. You call your lawyer in Washington and explain the recent developments. He tells you not to worry, a former law school friend is now one of the Commissioners and, while stopping short of offering a bribe, he volunteers to talk to his friend and try to convince him to give your group the award of the construction permit.

Can your lawyer jeopardize your application by an informal chat like this?

17. A broker buys a two-hour block of time, from 2:00 to 4:00 o'clock in the afternoon, five days a week, on your station, paying you a flat amount for use of the time, but with your contract with him providing that he is to program that two-hour period every day--in every way in a manner subject to your approval and is to sell announcements within that period to advertisers in near-by communities, to make his profit. Are you obligated to report to the FCC any information concerning the arrangement?

18. You were awarded a license for your VHF television station after a long and expensive--to you--comparative hearing in which a selection was made among six applicants. Now, after you have operated the station for five or six years, you decide to sell it and retire, because of poor health; you find a buyer who is willing to pay what you consider a very satisfactory price, and a contract for transfer is signed--subject, of course, to approval by the Commission. Assuming that the prospective buyer is completely qualified, is the Commission likely to approve the sale and the transfer of the station license to him, without your making some effort to find other possible buyers for the property, so that the Commission is given a chance to find the one best qualified?

19. Your station--a 250 watter in a very small market--operates on a close margin financially. A local religious organization proposes an arrangement under which the religious group will buy a 90-minute period each Sunday morning on a three-year contract, at your regular rates; it will also pay rental on a telephone line connecting the church with your studios, to permit a live remote pickup of its regular Sunday morning services; since you have no remote equipment, it will also purchase the necessary equipment and donate it to your station, if you will agree that you will carry no other local religious services between the hours of 8:00 AM. and 2:00 PM on Sundays. The church organization is completely willing to have the contract provide that the station may cut off the air any materials you feel to be objectionable. Would you sign such a contract?

20. A local university has a VHF television station which, though licensed to the university, occupies a channel allocation that is commercial. In view of the heavy costs of operating the station, the university's board of trustees offers to sell you the station at a ridiculously low price, provided that you will agree, for the next 15 years, to set aside two hours of your time each weekday for the presentation of university-produced programs. The trustees are willing to include in the sale contract a clause giving you the unlimited right to reject any single program which you find unsatisfactory, and replace that program with filmed educational materials which you and a representative of the university have both previously approved --but the time period from 9:30 to 11:30 each morning is to be set aside for university educational programs. Would you agree to the provisions?

21. In your community there are a number of personal loan companies which make "salary" loans on which the rates of interest charged run as high as 4 per cent a month. The activities of these loan companies have been the subject of numerous newspaper editorials; you yourself have not only refused to carry advertising for such companies, but have editorialized frequently on your station against the excessive rates of interest charged, although on the basis of existing law, the interest rates charged are legal. A prominent citizen of your community, at the time president of the local Chamber of Commerce, calls a meeting of all of the local newspaper editors and radio and television station managers in the community; he informs you that the proposal he wants to make has the backing of the six leading newspaper and radio-and TV advertisers in the city. The proposal is that all newspapers and broadcasters join in a fight to secure enactment of a state law lowering the legal interest rates which may be charged; that pending enactment of such a law, the newspapers and broadcasting stations of the community sign an agreement which binds them not to accept advertising of any loan company charging interest rates that would exceed 18 per cent a year. Would you sign such an agreement, if the enactment of a law of the type proposed, and enforcement of an 18 per cent maximum rate of interest is exactly what you have proposed in your editorials?

22. Lynne Selinger has been taken into custody by the police, accused of attempted arson. A news reporter for your station gets a short piece on his ENG camera which shows Selinger, in handcuffs, being led from a Police car into a woman's detention center, pending trial. Selinger was found not guilty by a jury and released. She brings suit against your station for invasion of privacy on the basis of the 20 second news story and video tape shown on your evening news program on the day of her arrest. On the basis of applicable past decisions, does she have a strong case?

23. For several years you have successfully operated 24 hr. AM-FM simulcast stations in Smallville. You have been very civic minded and the FCC has never had reason to complain about your operation. In Chicago another AM-FM sister station comes up for sale. You apply for the license, conduct your ascertainment survey and can demonstrate a need for stations in the simulcast format you have been running. A Chicago firm also files for the licenses. They also run an ascertainment survey but propose to format the stations separately, nevertheless, they have no broadcasting experience. Is the FCC likely to approve the Chicago firms's application?

24. You're the manager of a University-owned educational TV station, occupying an educational channel assignment; like most educational stations, additional operating revenues are needed. Knowing that several educational AM stations operate on a commercial basis, you propose in your application for license renewal that your station will expand its hours of operation to 16 hours instead of the present 12 hours a day; that it will carry its present 12 hours a day of non-commercial educational and cultural programs, but will use the 4 hours added each day to carry commercially sponsored programs of a higher quality than has previously been possible. Is the FCC likely to grant license renewal to your station, on the proposed new basis?

25. You are the licensee of a TV station, which is an NBC affiliate. NBC notifies you of a new plan for all affiliate stations called the Incentive Plan. This plan would pay affiliates for the use of their time for commercial programs on a sliding scale. The more evening commercial hours devoted to the network, the higher the incentive. Since you had recently cancelled a locally-originated show and had planned to fill the spot with network time anyway, you see this as very beneficial for your station. When your license comes up for renewal, will the FCC's decision be affected by this arrangement?

26. Your television station is affiliated with a national network. You've accepted a network series, however, you hear advance reports that one particular program to be included in that series contains highly objectionable material. Are you within your rights if you refuse to carry that one program, substituting for it, on the night it is to be broadcast, a stand-by syndicated filmed program?

27. You operate an independent TV station in a four-station market; naturally you'd like to have a network affiliation. A national network does offer you an affiliation contract, but with the condition that if you affiliate with that network there's to be an off-the-record agreement that you'll carry the complete network schedule, subject only to the limitation that you can reject any program or program series you feel is objectionable. Would you accept the affiliation, if financial terms were unusually satisfactory?

28. The network with which your station is affiliated has prepared a special documentary program dealing with use of narcotics and with "sex parties" participated in by juveniles in the United States; prior to the network run of the program, the network arranges a special closed-circuit showing for its affiliated stations. You find, in watching the closed-circuit presentation, that the filmed documentary includes segments that are presumably films of actual parties, with a considerable amount of near-nudity or nudity, some use of profanity, language at least vulgar and possibly obscene, and actions on the part of the participants which are more than merely suggestive. Do you carry the program?

29. In a news story showing violence at a strike at a Goodyear tire plant, your anchorman accidentally says the strike was at a Goodrich tire plant. Officials at Goodrich bring suit against your station, despite the fact that the anchorman apologized on the next evening's telecast. Is Goodrich likely to be headed for a good year in court?

30. You produce a weekly television comedy satire series under a three-year contract with a major station. In the early part of the third season you plan to have as one weeks' featured guest, a political satirist well known for his advocacy of having the U.S. declare was on Canada. The station requests that you not put the satirist on. You successfully convince the satirist not to use your program as a platform for his "War on Canada" theme, and despite the stations wishes you video tape the program. The station refuses to air the episode on the grounds that they don't even want to be associated with the satirist. The series has been on unsteady ground and you believe that this particular program was especially good and would bolster your ratings so you appeal to the court. In the hearing you argue that since nothing illegal was said that cancellation amounts to censorship. Is the court likely to require the station to run this episode?

31. The National Amateur Golf Championship tournament is being staged in Teutopolis some 450 miles away from Midland in which your AM station is located. The managers of the tournament have made no arrangements for radio coverage of the various matches; they have, however, sold exclusive television rights to a television sports network. Since two very popular golfers from Midland are entered in the tournament, there is considerable interest in at least those portions of the tournament in which they appear; when you find that no television station within the 200 miles of Midland is cancelling its regular commercial programs to carry the less-profitable sports network broadcast of the tournament, you decide that you will provide your own listeners with at least some coverage of the event. So you send one of your announcers to Teutopolis where the local TV station is planning to carry the sportscast, have him go to the home of a friend who has a television set, tune in the television broadcasts of the golf tournament, and supply you, by telephone, with information concerning the progress of the tournament. His materials are fed to you about 10 minutes prior to the start of each hour and on the hour, your sports broadcaster presents a 5-minute summary of tournament news. If the managers of the tournament bring suit against you for unauthorized broadcasting of the sports event, is it probable--on the basis of past decisions of courts in similar cases--that they will win their case, and be given a judgement against your station?

32. On Monday afternoon, you learn that a 250-watt station in a city 80 miles from your community is presenting a special program at 6:00 o'clock that evening that would be of unusual interest to people in your community; unfortunately, the signal of that station cannot be heard in your area. But you know that the originating station will also carry the program on equipment that would enable you to pick up the FM signal for rebroadcast. In view of the probable interest of the program to people in your community, you plan to pick up the FM signal and rebroadcast the program over your own 250 watt AM station; you instruct your announcers to make frequent annoucements of your plans during the remainder of the afternoon. However, when you attempt to get in touch with the manager of the originating station by telephone, you find that there's a break in the long-distance lines--and the time for broadcast arrives without your having been able to talk to him and secure his permission for your rebroadcast of the program. The other manager is a close personal friend; you've frequently rebroadcast programs that he has originated; there's no question at all in your mind about his willinngness to grant permission for this rebroadcast. In the circumstances, if you decide to rebroadcast the program at 6:00 o'clock without having secured his advance permission, are you within your rights as a broadcaster and licensee, according to applicable laws or rulings of the FCC?

33. You offer on your FM station a daily disc-jockey program entitled "Make Believe Ballroom," of course using music from phonograph records, but in which the DJ-host carries on imaginary one-sided conversaations with artists whose recorded music is used, and makes extensive use of sound effects to give the impression that the program is coming from an actual ballroom. Must the music presented be identified as recorded?

34. When the time comes for renewal of your AM license, your application for renewal shows that during the preceding year, you have carried no educational programs; from every other point of view, your operating and programming record is excellent, by Commission standards. Do you think it probable that the FCC will refuse to renew license?

35. Mr. Smith, not a candidate for office, buys time for a 15-minute talk on local public issues to be presented on your station. In reading the advance script he has provided, you find numerous statements which, while not defamatory or in any way contrary to law, seem to be deliberate misrepresentations of facts. Are you within your legal rights if you require him to delete from his talk the statements you believe to be misrepresentations?

36. The American Legion has made elaborate plans for "Americanism Week;" one part of their plan calls for the presentation, between 7:00 and 7:30 in the evening on each day, Monday through Firday, of a special series of beautifully-produced television films; they want the films carried at that hour on one station in every TV market. The local Legion officers come to you, as licensee of the only TV station in your city, and request that you carry the five-day series at the specified hour; they'll make the films available to you without charge. You refuse; you don't want to cancel your regular news program that's scheduled at 7:00 o'clock, but offer them time from 10:30 to 11:00. That doesn't satisfy them; consequently they protest to the FCC, and demand that the FCC order you to carry the program at the time they wish. Do you think it is probable that the FCC would require you to carry the program series at the advertised time?

37. In applying for a license for your station, your program plans specified that at least 20 per cent of your broadcasting time would be devoted to sustaining (not commercially sponsored) programs. You're considering the use of a new program format, in which each hour of the broadcasting day would be divided into segments, as follows: a 5-minute sponsored news program; 20 minutes of recorded music, including no commercials; a 4-minute "between programs" period in which four commercial announcements would be given; a station identification also including a public service announcement; another 25 minute period of recorded music, in which three public service announcements would be presented; and a final period with 5 minutes of solid commercials and your station identification. Would the FCC, in your opinion, accept this formula as "satisfying your responsibilities as a licensee?"

38. The publisher of a racing tip sheet proposes to buy a 30-minute period on your station, from 1:00 to 1:30 seven days a week, for a racing program; the program will provide information concerning track conditions, jockeys, weights carried by horses, etc., for the day, for three race tracks in the East--none located within 100 miles of your station. On the basis of past actions, would the FCC consider this an acceptable program?

39. A man--not a physician--wishes to buy time for a daily 15-minute program on your AM station, in which he will give advice concerning dieting, and promote a book that he has written on the subject. He's an excellent showman, and most of his program in devoted to reading letters in which listeners ask

for advise; in each case, without identifying the writer of the letter by name, but only initials, he will recommend a particular diet to be followed, using a structure of this type: "Mrs. J.M., I think that in your case I would recommend a low-fat diet; specifically, diet No. 18 in my book Eating for Health and don't eat any salt for a month." If you've consulted with local medical authorities, and find that the diets he suggests are along generally approved lines, would you provide time for the program?

40. You are the operator of a 50 kw standard station; you've contracted with the state Federation of Labor to present a paid 15-minute program from 6:30 to 6:45 each weekday morning--The Union Viewpoint. As it is presented, however, the program proves to be very dull; you feel that it seriously affects the size of your audience for the programs that follow it. Consequently, when your six-month contract with the labor organization expires, you notify the organization that the contract will not be renewed; you do, however, offer them a period from 11:30 to 11:45 at night, at a time when you feel that the program's lack of attractiveness will do less harm to your station's audience-building abilities. The labor organization indignantly refuses to accept the late-night time; it wants that period early in the morning or nothing. When you stand firm in refusing to allow the program to be continued in the 6:30 to 6:45 morning period, the state Federation complains to the Communications Commission, charging that you are discriminating against labor. In the light of appropriate law and past FCC decisions, is it likely that the Commission will require you to acceed to the labor organization's demands?

41. It is not an election year but your station carries a weekly report from the Congressman representing your district; it is prepared in taped form in Washington, and sent to you each week by express. If one of the broadcasts in the series includes material which defames a political opponent, who brings suit against both your station and the Congressman, can the station be held liable for damages if the injured person can prove that the material was actually defamatory?

42. You have rebroadcast on your station--with permission of the originating station, of course-- a program originated by a station in another city; in the course of the broadcast, defamatory statements were made concerning a resident of your own community, who brings suit against your station for damages. Since your station did not originate the program, is it probable that court will hold your station responsible and order payment of damages--assuming that the statements made were definitely defamatory?

43. Your TV station carries a daily news program which is sponsored by a local automobile dealer; the newscaster is employed directly by the sponsor, and is not an employee of your station, although he does make use of wire news and picture services supplied by the station. In one of his broadcasts, he makes a statement defaming a prominent citizen in your community; the statement is read from the newscaster's prepared script, although the script has not been submitted to you for approval or to any station employee. If the injured person brings suit for damages, and the court finds that the statement actually is defamatory, can your station be held liable?

44. A speaker on a forum program on your station makes a strong attack on policies followed by certain merchants in the community; one of the merchants with whose activities he is dissatisfied is singled out in particular, and mentioned by name, four times during the program. The point the speaker is making is extraneous to the subject for discussion; no reply to his contentions on this point is made by other speakers. If you feel that the situation requires you to provide time for a refuation of the forum speaker's attacks, is there any principle laid down by the FCC which would suggest that some one speaker in reply should be given preference over other speakers?

45. Your television station has arranged to broadcast an important post-season college football game which is held in your city; your origination will also be fed to six other television stations in your state. In the between-halves intermission, ceremonies on the playing field are interrupted by a disturbance in the stands; two men are engaged in a noisy altercation which shortly develops into a general free-for-all fight in which a dozen or more men, most of whom are considerably the worse for liquor, take part. Attention of spectators is centered on the fight. Without really being conscious of it, one of your cameramen focus his camera on the melee; the switcher cuts in that camera, and for more than a minute a picture of the fight is put on the air--over the facilities of half a dozen television stations whose signals blanket the entire state.

Two months later, one of the participants in the fight files suit against your station in the state district court, charging that in putting his picture on the television screen you had invaded his privacy and his "right to be left alone;" he also states in his petition that the excellent closeup provided by the Zoom lens on the camera caused him to be recognized by dozens of friends, business associates and acquantances who were watching the broadcast of the football game, and that as a result he had been subject to ridicule by his acquantances, and ultimately had lost his position as a salesman for the firm which had employed him. Do you feel that there is a fairly good chance that the plaintiff in this action will be granted a judgement against your station?

46. A speaker on a forum program regularly carried live on your AM station is a small town newspaper editor, a decidedly well-informed authority on the topic to be discussed, but a man known to have a violent temper, easily aroused, and likely when excited to blurt out anything. Under the circumstances, you take unusual precautions; you give specific instructions to the control room engineer, the producer of the program and the moderator, as to what steps to take if the editor gets too excited. During the ad libbed discussion, the editor does get excited, and makes some extremely defamatory statements concerning a man not in public life. The engineer cuts him off the air--although a part of what was said did go out over the air; the program moderator made an immediate apology for the outburst, which was repeated at the end of the program by the programs' producer, a station employee. If the man defamed brings suit for defamation against the station, is it probable that a court would order the station to pay damages?

47. In applying for a license for a new station, would you state that you would follow a fixed policy of presenting discussions of controversial issues only on a two-sided basis, and that if editorial opinions were expressed on

your station, they would similarly be presented on a two-sided forum-type program, unless the issues discussed were not in any sense controversial?

48. Your news team is the pride of your station. They have flourished through your financial support and keen recruiting efforts. At the airport one afternoon a hijacked airplane sets down for re-fueling. FBI agents and one of your newsmen manage to sneak into the plan in the guise of airport workers. When the ruse is detected two of the hijackers start shooting, killing an FBI agent. Your newsman gets filmed footage of the shooting as he jumps out a side door. You edit the film and show as much as you believe is valuable. The FBI subpoenas your film, including the outtakes. You provide the aired version only, so the FBI obtains a search warrant to connfiscate the remaining film. Under current interpretation by the courts, are they within their right to do so?

49. Early in February the son of an individual in your city died under unclear circumstances. One of your neophyte reporters, at your urging and himself eager for a promotion, scooping other news departments jumped to the conclusion that the boy had committed suicide, the result of a bitter argument with his father. You broadcast the story - complete with ENG footage which put the father in a bad light by implying that he had precipitated the son's death. In June, following an exhaustive study by the coroner's office and the state's special investigative unit, it was determined without a doubt that the boy had died accidentally. The father sues you for damage to his reputation based on the earlier story. Does he stand a reasonable chance of collecting?

50. You're the licensee of a television station in an industrial community. While you are not opposed to labor organizations, you are disgusted with the use of violence in strikes that take place throughout the United States; accordingly, you instruct your program department to prepare and present a series of documentary broadcasts which will give a factual presentation of violence accompanying strikes during the past two or three years; you make it clear that you are concerned no less with violence on the part of police or of special officers employed by management then you are with violence on the part of union members. The documentaries are prepared in accordance with your instructions; films are secured from other stations in industrial areas, from libraries of network news departments, and in some instances from employers; in addition to films, still photographs are secured from news services. In every case, you make sure that the materials you secure are paid for, to avoid any possible questions of "identification." The documentaries are presented without editorial comment; your station simply present them "as a public service, to allow your listeners to see some of the effects of violence occurring in connection with strikes." Although your documentaries have an editorial purpose, you do not regard them as editorials; consequently, when a representative of the United Auto Workers demand that your station provide equal time for him to present labor's position, you refuse to make the time available. If he complains to the Communications Commission, will the Commission in all probability advise you that you should have provided time to some spokeman for labor, for a reply?

51. You present an editorial on your station, vigorously advocating increased appropriations for public schools in your community, with an increased tax levy to provide the necessary funds. You announce at the conclusion of the editorial that the station will be glad to provide time, without cost, to any responsible person who wishes to present an opposing point of view. Only one person indicates a desire to reply--a man generally regarded as a crack-pot in the community; you feel that if he is allowed to become the spokesman for those who differ from you, the principles of fairness will be violated. On the basis of the Commission pronouncement concerning balance in editorializing, are you justififed in refusing to allow the crack-pot to appear, even if no other resident of the community wishes to use your station to reply to your editorial?

52. To increase listenership to your TV station, you decided to embark on a vigorous program of presenting editorial comments over the air. You employ a man who is given the responsibility of writing and presenting your station's editorials. In the light of past actions of the FCC, are you within your rights if you instruct your new employee that his editorials must conform to your point of view with respect to public issues, rather than his own, and that he is to conform to general lines of policy laid down by you, as licensee?

53. Your city has a personal income tax. You discover that the city council is planning, at its next meeting, to pass an ordinance doubling the amount of the tax; since the members of the council know that the action will be highly unpopular, they want no advance notice given of the action they expect to take --and in this they have the cooperation of the editor of the only newspaper in the community. You feel that the council's position is highly objectionable; personally you do not believe that the tax increase is needed, but you feel even more strongly that before action is taken by the council, the issue should be widely aired and the public given a chance to express its views. Consequently you prepare a stinging editorial on the subject, taking members of the council to task for their efforts to take secret action, and opposing the tax increase itself. Since your editorial attacks the council, and mentions its members by name, you feel that in fairness you should provide an opportunity for reply--the reply to be broadcast immediately after your presentation of the editorial. You telephone each member of the council personally advising them of your proposed editorial, and of your plan to present a reply from one of their group. If no member of the council is willing to appear, would you braodcast the editorial anyway, prior to the council's meeting?

54. A local merchent wishes to present a weekly 30-minute program on your TV station, one feature of which will be a drawing of a name from a container; the person whose name is drawn receives a merchandise certificate for $250, which can be used at the sponsor's store. Each person who visits the store is given three entry blanks, whether any purchase is made or not; they can write their own name on all three blanks, or use two of the three for names of friends or relatives; the blanks bearing the names are placed in a receptacle from which the winning name is to be drawn. If you felt that the program had entertainment values that were unusually high, would you sell time for the program, including this drawing feature?

55. The management of a new shopping center just opening in your community plans an elaborate celebration of the opening, with free circus acts, clowns, a parade, carnival rides, and also a daily drawing in which an automobile will be given away each day during the period of the opening celebration to the holder of the lucky ticket. Tickets for the drawing are given by merchants in the center to each customer who buys merchandise to the value of a dollar or more. Would you carry advertising on your station of the celebration itself, if it included no mention whatever of the drawing?

56. A sponsor wishes to present on your radio station a package-agency-originated give-away program, at one point in which short selections from ten unidentified musical numbers are played. Initial letters of the titles of the musical numbers presented, if arranged in an order different from that in which the selections are presented, will form a 10-letter "secret word;" in addition to the musical selections, other clues are given on the program which will help identify the secret word for the day. Listeners who wish to play the game are asked to identify the selections played and to arrange initials letters of the titles in an order which forms the word; then they are to write the secret word on a postcard, with the contestant's name and address, and send the postcard directly to the sponsor. The postcard bearing the correct word which is received first will entitle the listener who sent it to a substantial merchandise prize. If you believe that the program and the game will be attractive to listeners, is there any reason why you should not carry it on your station?

57. Several churches in your community conduct regular weekly bingo games, charging participants 25 cents or 50 cents for a bingo card for each game, selecting numbers to be entered on the cards by lot, and awarding a donated merchandise prize to the winner of each game. There is a state law prohibiting lotteries, but a court has ruled that a church may conduct games for charitable purposes. If a church organization operating such a game wishes to buy time on your station to call attention to its weekly game, and giving the time and location, would you accept the advertising?

58. You are licensee of a 250 watt AM station in a county-seat town of less than 10,000 population--the only station in the community. Another concern applies for a 5,000 watt station to be located in the same small town; the FCC grants the application. You file a protest, stating that the amount of business in the community is too small to allow two stations to operate; with the proposed new station having far better facilities than those of your station, and with its owners being much better financed, the result will be that only one station can survive--and since the new station has every advantage, it will be your station that is forced out of business, and you who will be ruined financially. On the basis of your protest, would the Commission probably reverse its original decision and deny the grant of the new company's application?

59. Your cable system carries the four network stations in town as well as two commercial independents and a second PBS affiliate from a town 70 miles away. The local PBS affiliate for one week on October of each year always runs a fund-raising marathon program in which they auction items donated by merchants and individuals. Unfortunately, the station is not doing well and requests that during the week in October you not carry the programs of the other PBS affiliate. Since they will be pre-empting all of their network programming anyway, are you within your rights to refuse their

request and carry the other PBS station that week?

60. You're the owner of a station licensed to operate in Franklin Heights, an incorporated suburb of a large city. You discover, however, that Franklin Heights offers little commercial potential; you can sell advertising time much more readily if you were located, at least physically, in Berwyn, another incorporated suburb of the same large city, but across town, some 18 or 20 miles away. To handle the problem, would you set up a second studio and your business headquarters in Berwyn though leaving your transmitter in its original location and continuing to maintain a Franklin Heights studio--but originating most of your programs from the Berwyn studio?

61. A prospective sponsor wants to use time on your station to promote the name and location of his store, which he has just purchased. To that end, he offers a 5-time-a-week program of an entertainment nature--one that you think would have unusually high entertainment values--which includes no formal commercials whatever, but does use an identify the store gimmick which provides in each broadcast an additional clue to the identity and location of the store; when some listener is finally able to provide a correct identification, which you estimate will be in perhaps three or four weeks, that listener will receive a prize of $1,000. Would you carry the program on your station?

62. A used-car dealer in your community wishes to buy a very extensive schedule of spot announcements on your TV station. However, he has a very unsavory reputation for "sharp business practices" although to your knowledge he has always operated technically within the law. You feel that the great number of spot announcements he wishes to buy will identify him too closely with your station, and injure the station's reputation in the community. In the circumstances, can you legally refuse to accept any advertising from this one dealer, while accepting advertising from his competitors?

63. You broadcast a TV homemaker's program, five days a week; half of the program originates in a practical kitchen set, an "all-steel kitchen" donated to your station by a leading manufacturer of such kitchens. Are you required to announce during the course of each program the fact that the kitchen used was donated or supplied without cost by the manufacturer, if the manufacturer provided the equipment with no provision that it be identified by trade name or otherwise, on the air?

64. A local department store buys a 2-hour block of time, five days a week, on your FM station; the advertising in that block is used entirely to promote the store and products it has for sale. Are you required to submit any special report of the transaction to the Commission provided the store does not exceed the NAB guidelines on advertising time?

65. During the preceding two years you have had numerous, relatively serious problems with the FCC. At the end of your license period the Commission refuses to issue a renewal. You file a suit against the FCC on the grounds that you have spent three million dollars in the purchase and subsequent renovation of the facilities which become worth much less on the market because everyone knows you are forced to sell. Is the court likely to award you damages for any amount you can demonstrate was lost as the result of FCC's action?

66. Your station has had an expressed policy of providing time only on a sustaining (free) basis for your programs on controversial issues of public importance. In your license renewal application you state that in the future you plan to insert commercials around and within these programs. Is the FCC likely to object to your new policy?

67. A popular country-western singer has been found dead, apparently the victim of an interrupted robbery attempt. A young man is picked up and subsequently charged with the murder. Being aware of the local judge's generally negative attitude toward the media, and the young man's preference to be kept out of the news, you don't try to send a camera crew to the pre-trial hearing, but you do send a reporter and sketch artist. The judge bars your employees so you file suit in the Federal District court for an injunction to lift the judge's order. Is it likely the Federal Court will issue the injunction?

68. Your station representative concern forwards to you an order for an extensive schedule of commercial announcements advertising a new remedy for common colds, which has been on the market for less than a year. The pharmaceutical house which manufactures the remedy has previously had some difficulties with the federal government concerning its advertising of other products; you are under the impression that the Federal Trade Commission has issued a cease and desist order relating to the cold remedy to be advertised on your station. If your station representative company assures you that all FTC requirements have been met by the company, would you accept the advertising?

69. A company submits advertising copy for broadcast over your station for a new reducing agent developed in the experimental laboratories of, and endorsed by the medical school of a major state university. The copy provided states that 95 of every 100 people who use the product will be able to lose from six to eight pounds per week for a period of four weeks, without appreciable reduction in the amount of food consumed; it also states that the preparation is guaranteed as absolutely harmless to the user. Would you accept the advertising for broadcast over your station?

70. One of the major distributors of music recordings offers to provide your FM "good music" station with a library of more than 200 recent albums, without charge, for use on your station. There are no strings attached to the offer; you are not required to use the materials provided in your programs, in any way, and if they are used, you are not in any way obligated even to identify the label of the company which produced the recordings, or to include any plugs for the producing company or the distributor. If you accept the offer, are you obligated, when using any of the contributed records on the air, to identify such records as provided without cost by the company which donated them?

71. You are an affiliate of ABC. After studying the advertising potential in your market you decide to lower your advertising rates for your locally produced and syndicated programs. ABC objects, since they believe that this will reflect unfairly on the programming they supply. They decide to use your station as a test case and file suit to prohibit you from lowering your local advertising rates. Are they likely to win the suit?

72. Competition among the media in your town is fierce, with newspapers, radio and television all vieing for the advertising dollars of a slowly shrinking economy. Your FM station's situation is becoming desperate. In order to induce advertisers to place their advertising dollars with you, you conceive an idea. You propose that as an inducement to purchase time on your station you will give any advertiser who contracts for more than a thousand dollars in any single buy a prize consisting of merchandise such as TV receivers, lawn mowers, etc. that you have taken in from trade-out agreements. On the basis of present regulation, must you mention the prizes given to the local advertisers on the billing forms when those advertisers are involved in cooperative sponsorships with the manufacturers?

73. A man running for the school board election is coincidentally the host for your TV program Bowling for Bucks. You are not giving or selling time for schoolboard nominees, feeling that it is not an important race. An opponent of your employee's requests time equal to your employee's exposure on Bowling for Bucks. You refuse since your employee is doing nothing on the program to advocate his own election. If the opponent files a complaint with the FCC is the FCC likely to support your position?

74. Green, a legally qualified candidate for congress, approaches your TV station three months before the election with a request to buy time. He proposes to air all of his spots in the week immediately preceeding the election. Since you feel that his request is not unreasonable, you acquiesce. After the election, Grey, who lost the election to Green, files a suit against your station on the grounds that he was not informed of Green's purchase and since spots for Green were all run just a week before the election, he did not have time to prepare TV spots in his own behalf. Is Grey likely to win his suit?

75. The local Mental Health Drive activities chairman comes to you requesting that your station contribute to their campaign drive. Your station has been a bit hard-pressed financially in recent months and you don't feel you could make a very substantial contribution. He proposes that in lieu of a contribution you underwrite the cost of an all-day broadcast where you would intermingle your regular schedule of music, news, features and previously scheduled commercials with seven or eight appeals each hour for people to "come on down" and make a donation to the Mental Health campaign. Unfortunately your station is on a back-country, dirt road and you both agree that would present problems for potential contributors. Alternatively the activities chairman suggests that he will let you do the broadcast from the sales floor of the automobile dealership for which he is general manager. Obviously, in the appeals his dealership will need to be mentioned frequently so that the audience will know where to bring their donations. Can you accept this arrangement without disrupting your regular full schedule of commercial messages and without violating the provisions of the NAB Code or the FCC Rules regarding overcommercialization?

76. Trace, the legally qualified Republican candidate for governor, has purchased time on your TV station for campaign spots. In a couple of the spots Trace puts his arm around Mitchell, his running mate for Lieutenant Governor, and gives a clear endorsement of Mitchell. Jones, the Democratic

candidate for Lieutenant Governor, demands equal opportunity for the exposure given. You refuse Jones' request on the grounds that the time was sold to Trace, and further that Mitchell did not speak in his own behalf. If Jones files a complaint with the FCC, is the Commission likely to agree with Jones?

77. Shortly after his election, public opinion polls report the slipping popularity of Andrew Roberts, President of the United States. Shortly thereafter Roberts requests time to appear on the three major TV networks to describe a tense situation in Cuba. The network of which your station is an affiliate agrees to the request and then schedules an editorial "instant analysis" of the speech immediately after the President's appearance. In that editorial the commentators spend more than half the time discussing the timing of the speech in view of the recent opinion polls in somewhat disparaging terms. White House spokesmen request an opportunity to reply to the commentators under provisions of the fairness doctrine. Will the network, and your station, be required to comply?

78. Two men, Smith and Jones, are both qualified candidates for the same political office; both buy time on your television station a month before the election. Smith buys enough time that on the basis of your regular commercial rate card he is entitled to a discount of 10 per cent, reducing the cost of the time he buys from $320, your standard one-time rate for 15 minutes of Class A time, to $288, the rate after giving the 10 per cent quantity discount. Jones, on the other hand, buys fewer periods--not enough to entitle him to the discount to which Smith is entitled. In conformity with federal law and with FCC rulings, should you reduce the charges to Smith, to the $288 figure to which he is entitled by the rate card, since you intend to charge Jones the full $320 for each 15 minute period?

79. The state law in your state provides that candidates for statewide offices, and also candidates for the United States Senate, shall be nominated by official conventions of "recognized" political parties and shall have their names on the official ballot in the regular November elections. The Socialist Party nominee for election to the United States Senate is Abram Plotnik, a widely-known radical agitator; since the Socialist Party is a recognized party in your state, Plotnik's name will appear on the official ballot. You've sold time for campaign talks on your TV station to both the Republican and Democratic candidate. However, when Plotnik wishes to buy time--which you didn't expect--you'd prefer not to make the time available. And since Plotnik was foreign-born, and received his final citizenship papers only seven years ago, you have some doubts as to whether you're required to provide time for him; since the Constitution provides, in the 3rd paragraph of Article II, Section 3, that "no person shall be a Senator who shall not have attained to the age of thirty years, and been nine years a citizen of the United States," you have some question as to whether Plotnik actually is qualified, even if his name does appear on the official ballot. On the basis of appropriate laws and Commission decisions, would you be permitted to refuse to provide Plotnik with the time he wishes to buy on your station, even if you are making time available to this opponents?

80. You've sold time for a political talk to a candidate for Congress; his opponents have also used time on your station. You demand an advance script, as you do of all candidates; when the script for the talk reaches you, you discover that it includes a number of very derogatory, and possibly defamatory, comments concerning various community leaders. But since the candidate has the reputation of being unusually obstinate and of refusing to accept suggestions about the content of his speeches, you're powerless to see that changes are made. However, on the day of the broadcast, the candidate is suddenly taken ill; his campaign manager appears at the station to take his place on the program. So you notify the campaign manager that he can appear on your station only if the objectionable materials are taken out of the script; otherwise the program will be cancelled. Are you within your rights to do so?

81. You've sold time to a qualified candidate; you've received an advance script, and the candidate will present the talk on your AM station in person. However, the script contains references presumably relating to the candidate's opponent which fall decidedly short of meeting the standards of good taste. For example, although there's no out-and-out profanity, the initials "S.O.B." are used three times, and the initials "G.D." in four places in the script. In addition, extensive use is made of unnuendo that seem to you to be if not obscene or indecent, at least vulgar. You simply do not know whether the materials are technically "profane, obscene or indecent," or not. In the circumstances, would you insist that the candidate clean up the script before you permit it to be broadcast over your facilities?

82. A local Political Action Committee of the AFL-CIO buys time on your station for a program supporting the Democratic nominee for Congress. You require submission of an advance script; when the script is received, it includes comments which you feel may possibly be defamatory concerning the opposing candidate. You are not positive that they would be considered defamatory by a court, however, you think they are too close to the line to be safe. In the circumstances, and on the basis of appropriate federal law or FCC rulings, do you have the right to insist that possibly-defamatory materials to be removed from the script?

83. A candidate for election as governor of your state buys a 30-minute period on your station--a clear channel station which effectively covers the farm areas in the entire state--from 7:30 to 8:00 o'clock the evening before the November election. Four days before the date of the broadcast, his manager submits an advance script, and you discover that the program which is to be presented will be in the form of a dramatization; the "play" to be presented has been modeled after the melodramas of the late 19th century, with the candidate appearing as the "hero" who "saves the child" and the candidate's opponent in the election--of course played by an actor--cast as the villain, threatening various acts of violence against measures advocated by the candidate. The candidate's opponent is never mentioned by name, nor are other political leaders; however, innuendo is heavily used, and the net result is by no means flattering to the opponent. You'd prefer not to have the broadcast go on the air; however, in the contract for time, no mention was made of the form the broadcast was to take.

Would you be within your legal rights if you made very generous use of a blue pencil in editing speeches in the play which would be presented by the villian or other character, as long as you scrupulously avoid censoring any words to be spoken by the "hero" candidate, who purchased the time on your station?

84. Your star investigative reporter learns of a secret meeting of a paramilitary group that plans to overthrow the Castro regime in Cuba. He gains admission to the meeting with the promise not to shoot the faces of any of the participants and not to shoot any of the actual plans of the attempt. After two weeks of gathering data and shooting what the group permits, you air the program. Following the program a Federal Grand Jury subpoenas you for your records of the men involved, you refuse to testify on the grounds that to release the information would jeopardize future news contacts which in turn is an abridgemennt of your personal First Amendment guarantees. Is it likely the court will support the Grand Jury and compel you to take the stand?

85. Recently the town where your station is located passed an ordinance permitting topless dancing in bars, but not without a great deal of controversy, including a referendum. All of these stories your station reported and held open forums and other debates about. Following passage of the ordinance a group of ministers, priests and rabbis forms a Decency League and attempts to have the town council repeal its earlier decision. They come to you requesting to buy spots to present their opinions. You refuse on the grounds that they have raised no new issues and besides you don't sell time for such purposes to any group. Is it likely that the FCC would support your position?

86. The State Democratic Committee in your state has prepared a series of six 15-second film clips which have been provided without charge to all television stations in the state for use in news programs or as non-commercial spot announcements during the period in which voters are required to register in order to be eligible to vote in the coming election. In each film a prominent citizen in the state--not connected in any way with politics--urges eligible voters to register; nothing in the film relates to any political party. If you insert the film clips in various news programs on your station, must you announce over the air the fact that they were provided by the Democratic organization?

87. The town in which your station is located is the county seat and the center of a congressional district. The two principle candidates for the congressional race have each come to you requesting time. As you consider their requests, you decide to call them in together to discuss the format for the presentations. During the discussion you discover that the two candidates have already scheduled a series of three public debates in the three principle communities in the district. The three of you agree that your station will send a news crew with ENG to cover each of the public debates, scheduled for 1:00 pm, on the three town squares on the three successive Tuesdays when they are planned, then show them as news specials at 7:00 pm each of the three corresponding Tuesday evenings. In view of regulations and court decisions, will this violate the provisions of Section 315?

88. A qualified candidate for election to Congress buys time on your radio station for a political talk; his opponent has also bought time and has appeared on your station. Both candidates have signed your standard political contract, which calls for any political speaker, candidate or otherwise, to submit a script in advance of his talk for station inspection, at least 48 hours prior to the time he is scheduled to go on the air. Although the first candidate has signed the contract, he fails to submit the advance script; three hours before the time set for the broadcast, you still have not received a copy, although you have twice telephoned the candidate's manager reminding him that the script must be submitted. In the circumstances, are you within your rights if you cancel the broadcast and refuse to allow the candidate to appear at the time provided in the contract?

89. Young and Wells are the Republican and Democratic candidates for mayor in your city; a third candidate Mills is running on the Socialist Labor party ticket. Young and Wells each buy a four-week campaign of 50 spots per week on your station. Mills with less money comes to you three days before the election with plans for a blitz campaign proposing to air 100 spots in the last three days. You refuse to sell him the time on this basis. Mills goes to court seeking an injunction to force you to sell him the time in the manner he desires. Is he likely to be granted the injunction petition?

90. Your Congressional district is overwhelmingly Republican; the only announced candidate for the Republican primaries is the incumbent Congressman, who has held a seat in Congress for the past 18 years, and announces himself a candidate for reelection. No other Republicans announce in opposition to him; no one else would have a chance against him in either the primaries or the election. Two weeks prior to the date of the primary, however, a number of young men in one city lying within the district advance the name of a popular young businessman as a rival to the incumbent Congressman in the Republican primary--completely as a joke. However, joke or otherwise, the young businessman "joke" candidate is qualified under the laws of your state; he lives in the district, and since write-ins are permitted in the primaries, he can be voted for. The young "joke" candidate takes the joke in good stride, giving interviews to newspapers on a tongue-in-cheek basis, and representing himself as a candidate for the nomination--although making it entirely clear that he is not seriously a candidate, and that he supports his opponent for the nomination. A week prior to the primaries he comes to your station and asks that you carry the joke along by giving him free time to equal the time donated to the Congressman a few days earlier. Since he is actually qualified in a technical sense, and since you have given free time to his opponent in the primary, are you obligated to provide him with equal opportunity, knowing the time will not be used actually to promote a serious candidate?

91. After local primaries in which Republican and Democratic candidates for mayor have been selected, Bill Walser, a well-known radical who is suspected of being a card-carrying Communist, announces that he will run as an independent candidate by "write-in;" in your state, voting for a candidate whose name is not on the ballot is permitted on a write-in basis. Then he comes to your station, wishing to buy time for a series of political talks supporting his candidacy. You have not carried talks by either the Republican nor the Democratic candidate since the primary election, although you sold time to both men for appearances during their primary campaigns. Furthermore, you

have not sold time to either of the regular party candidates for future appearances. Are you within your legal rights if you refuse to sell time to Walser for the political talks he wishes to present, and announce that during the campaign you will noy allow any candidate for election to mayor to appear on your station?

92. This time, you're the "policy-making" head of a national television network--and as the network is the licensee of television and radio stations, you're at least indirectly governed by the same legal requirements as are individual stations. It's a presidential election year; like other national networks you make elaborate arrangements for the coverage of both the Democratic and the Republican national conventions by your news department. Actually, you devote 50 hours or more of network time to the coverage of each convention. After the two conventions have ended, a representative of the National Prohibitionist Party demands that you devote at least 20 hours to broadcast coverage of the Prohibitionist's national convention which is to be held two weeks later; he also demands that you carry the acceptance speeches of the Prohibitionist candidates for President and Vice-President since you carried those of the Republican and Democratic nominees. Are you obligated on the basis of federal law or of rulings of courts or of the Communications Commission to carry both the requested special broadcasts from the convention and the acceptance speeches?

93. You have sold candidate Adams two 15-minute blocks of time on your radio station for talks to be presented by him. After Adams makes his first appearance on the air, candidate Baker, running for the same office, and like Adams a completely "qualified" candidate, comes to you with a request for purchase of equal time. However, candidate Baker proposes to balance the two 15-minute time periods used by Adams by the use of 30 one-minute argumentative spot announcements, each to consist of a taped statement made by Baker himsepf. You disapprove on principle of political spot announcements - especially if they are to be presented by the candidate himself, so that their censorship by the station becomes impossible; however, you find that there was no provision in the contract signed with Adams which barred the use of spot announcements by candidates. In the circumstances, can you legally refuse to sell the spot announcements to Baker?

94. You carry on your cable access channel the Republican governnor of your state in a series of reports to the people. Although time for a state election is approaching, you continue to carry the weekly reports, since the governor is not a candidate for reelection or for other public office. You stipulate, however, that the reports presented are to be scrupulously non-political and non-partisan, dealing with activities of government and not with candidates or issues. The governor's report conforms completely to your requests. However, the state Democratic chairman feels that the Governor's reports have a considerable political effect; he demands that your cable system provide, each week, a time period equal to that you are using for the governor's reports, to present the Democratic "answers;" he says that the time for these replies will be used by the Democratic candidate for governorship. You would rather not do this, but being a cable system can you graciously refuse this rather insistent chairman?

95. You are a land developer; years ago you anticipated a major highway and industrial park both of which have now been built. You bought land in this area but housing, shopping and recreation facilities are all scarce. You arrange for adequate financial backing and begin to develop the land. Included will be a large residential area to include 325 single-family homes to be sold. You decide to provide some services to the homes not available from municipalities near by. Included are water and sewage treatment plants. You also decide to reap some benefit by installing your own cable TV system. You will install the leads into each home along with the electrical lines, but you will charge monthly for connection to the cable lines. Since you own the land and build the houses, do you need to obtain permission from the FCC to operate this CATV system?

96. The local professional football team has imposed, with the sanction of the NFL, a blackout on local station coverage of a home game crucial to determining which team will go to the playoffs. You are able to pull in a distant station unaffected by the blackout onto your cable system. On the basis of regulations and courts cases, can you legally provide this service to your subscribers?

97. You've been having some difficulties with the operator of a cable system located in a city roughly 135 miles from the one in which your VHF television station is located. You have an arrangement with another TV station in the same city as the cable system under which that station receives your programs by microwave relay, and itself broadcasts such of your programs as it wishes, paying you $1500 a month in addition to relay charges for its use of your programs. The cable system, however, has erected a very tall antenna on which it picks up your programs - along with those of three other stations - and feeds them to its subscribers, of course paying you nothing. There is a strong possibility that the TV station will want to cancel its $1500 a month arrangement. You take the trouble to copyright the scripts of all your locally originated programs. You arrange with a friend to monitor the cable offerings and report on which of your copyrighted programs are shown on the cable system. If you then bring suit in federal court against the cable company, is it probable the court will award you damages?

98. You have carried on your television station, for the past two years, a five-day-a-week local audience-participation game show, which has become quite popular with viewers. There is nothing particularly novel or unique about the program; however, it includes one feature in which the six winning contestants in earlier portions of the program are asked to guess the weight of a selected person - sometimes a person chosen from the studio audience, sometimes a person of unusual weight whom the producer invites to appear on the program. After guesses have been registered on a special illuminated blackboard, the subject is actually weighed on a custom-made scale with an unusually large dial. The contestant whose guess is closest to the actual weight receives a substantial prize. This feature is the basis of the title of the program, "Winning Weights." After your program has become extremely popular, a competing TV station in the community introduces a new audience-participation game shhow using a guess-the-weight feature very similar to your own. If you apply to the courts for a cease and desist order on your competitor, is there a good chance that the court would grant it?

99. You are an NBC affiliated television station and assign a newswriter to prepare a News Special on the high incidence of train wrecks since the inaugeration of AMTRACK. The work is being done using mostly film clips from other stations around the country. While the material is being put together a major wreck occurs not far from your station. You send a cameraperson and a reporter to get some footage and interviews at the scene. The reported is not able to interview the train engineer though an ABC Network reporter does. Your cameraperson shoots the interview, with sound, for use in your upcoming special, without permission of the engineer or the ABC reporter. Since this is a bona-fide documentary effort, are you within your rights to use this film segment?

100. J. T. Thomas comes to your station as a new DJ and personality man from another market. You request that he form a fictitious character and J. T. dreams up the character "Tomfool", a buffoon with whom J. T., in his normal voice, carries on conversations. After a meteoric rise to celebrity status in his first four months on your station, a cross-town competitor hires Thomas away. Thomas takes the "Tomfool" characterization with him and continues his conversations. You bring suit against Thomas on the grounds that Tomfool is your property since Thomas was in your employ when the character was created and was, in fact, created at your requirement. Thomas replies that Tomfool is identified with himself and is therefore his personal property. Is the court likely to find in your favor?