STATEMENT

BY

NILES TRAMMELL

PRESIDENT

NATIONAL BROADCASTING COMPANY

BEFORE

SENATE INTERSTATE COMMERCE COMMITTEE

JUNE 17 - 18, 1941

RADIO CORPORATION OF AMERICA

RCA BUILDING

30 ROCKEFELLER PLAZA

NEW YORK CITY

July 16, 1941.

To the Employees of RCA
and its Companies

On May 2, 1941, the Federal Communications Commission issued a series of new regulations which the majority of broadcasters believe would seriously affect the entire business and service structure of broadcasting in the United States.

In view of the issues raised by the Commission, Senator Wallace H. White, Jr. of Maine offered a resolution in the United States Senate calling for a thorough study of the new regulations, and a postponement of their effective date pending completion of the study. This resolution was referred to the Senate Interstate Commerce Committee, which conducted hearings for three weeks in June. Representatives of the Federal Communications Commission, the networks and independent stations were heard by the Committee.

The position of the National Broadcasting Company with respect to the new regulations was presented to the Committee in detail by Mr. Niles Trammell, President of the NBC. Mr. Trammell's statement is contained in the accompanying booklet, together with the text of the FCC regulations of May 2nd and of Senator White's resolution. The discussions which took place between members of the Committee and Mr. Trammell during his appearance are not included in this booklet. They will be printed in the complete transcript of testimony which can be obtained from the Government Printing Office in Washington, D. C., at the conclusion of the hearings.

At the present time, the issues under consideration by the Senate Interstate Commerce Committee are still pending.

I believe that the information contained in the accompanying booklet is of interest to every employee of the RCA organization.

Sincerely yours,

David Sarnoff

President.

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FOREWORD

ON May 2, 1941, the Federal Communications Commission issued a new set of rules and regulations covering the operation of chain broadcasting. It became apparent immediately that these regulations would result in drastic changes in the American system of broadcasting. (*The full text of these regulations will be found on page* 59 *of this book*).

These new rules and regulations and their adverse effect upon the ability of networks and radio stations to continue to render adequate public service, became a major subject of public discussion and industry concern.

On May 13, 1941, Senator Wallace H. White, Jr., of Maine, introduced a resolution in the United States Senate proposing that an immediate study of the Commission's new rules and regulations and their probable effect on the broadcasting industry be made by the Committee on Interstate Commerce of the Senate. This resolution also requested postponement of the effective date of these regulations until the Senate Committee should have opportunity to report its findings back to the Senate. (*Full text of Senator White's resolution will be found on page* 62 *of this book*).

Senator White's resolution was referred for study to the Senate Interstate Commerce Committee. Under the Chairmanship of Senator Burton K. Wheeler of Montana this Committee has been holding public hearings on the subject.

On June 17th and 18th, Mr. Niles Trammell, President of the National Broadcasting Company appeared before the Senate Interstate Commerce Committee. His statement before that body is reprinted in this book.

STATEMENT BY NILES TRAMMELL

MR. CHAIRMAN and members of the Senate Interstate Commerce Committee:

My name is Niles Trammell. I appear here as President of the National Broadcasting Company, to urge that your Committee approve Senate Resolution Number 113, introduced by Senator Wallace White of Maine. I urge this because:

First: As one who has been in the radio industry since its inception, it is my firm belief that the orders and regulations recently issued by the Federal Communications Commission will disastrously affect the entire broadcasting structure of the nation.

Second: The issues raised by the new regulations are not merely industry issues; they are distinctly public issues. They affect the users of fifty million radio receiving sets; they affect thousands of radio programs and those public interests which provide them; they affect the business life of the nation; and they affect the morale and welfare of the American people.

Third: A national radio policy defined by Congress is urgently needed, at the present time, to protect by clear mandate the freedom of the air against either private or governmental control, and to insure the continued operation of broadcasting under the American system of private enterprise.

I appreciate very much your consideration of these issues, which are not only vital to the industry, but also to the National Broadcasting Company. I want to state frankly that the operations of the NBC are seriously affected, and that the welfare of our 2,300 employees is at stake. But, our interests are closely interwoven with those of the many public groups we serve, the independent stations which make up the NBC networks, and the vast radio audience which has so heartily approved our service in the past.

I want to make it clear, however, that I am not in any way opposed to the proper regulation of broadcasting under the licensing powers authorized by Congress and administered by the Federal Communications Commission, which is a creature of Congress. Such regulation is essential, but we are operating under a law conceived fourteen years ago and before the present problems of network broadcasting could be foreseen. The vagueness of this old law, the lack of clarification of certain vital principles, and the limited rights of appeal all argue strongly for new legislation as the only solution of the major problems confronting us.

Neither do I want to appear to defend all the business practices of the industry, nor to maintain that broadcast service cannot be improved. I do not believe, however, that there are substantial abuses. I do not believe that competition has been restricted in the past or that it is restricted now. The whole history of our progress in the past fifteen years refutes all such charges. The country has been linked together for instant, simultaneous communication through stations established from Maine to California. The American public today receives the greatest broadcasting service in the world.

The changes decreed by the orders of the FCC, however, will disrupt the present orderly distribution of this broadcast service. They are not the result of public demand or a deficiency of service. They are the result, apparently, of unproven charges of domination, control and monopoly. They stem from the competitive cry of those who seek, through Commission edict and without competitive effort, to replace the pioneers who developed our American system of network broadcasting.

The Commission now essays to regulate the business practices of the industry. Therein lies the great danger of the new regulations. We have not believed that Congress intended to give the Commission the power to prescribe business rules or program practices for the broadcasting industry. We have believed that Congress intended to give the Commission power to regulate the industry, not to operate it.

The situation which confronts us has been clearly stated by the dissenting Commissioners in their Minority Report. I quote:

> "It is no exaggeration to predict that the decision of the majority instead of resulting in 'free competition' would more likely create 'anarchy' or a kind of business chaos in which the service to the public would suffer. . . . This is no time to embark upon a new and untried course for which no urgent need can be established."

Senator White summed up this vital issue when he said earlier in this hearing:

"Of course, what troubles me about the situation is that I see in these present regulations the very definite suggestion of an assertion of authority in the Commission to do pretty nearly whatever it wants to do if it says it is in the public interest. It is pretty hard to see, if we accept these regulations as being within the authority of the Commission, why the Commission could not assert almost anything as being in the public interest and then going ahead to do it."

We as broadcasters do not know, the Commission does not know, Chairman Fly does not know, how the American system of Broadcasting can operate, under the new Rules as it has in the past.

While the Commission promises in its report that if the new order does not function, it will then appeal to Congress for legislative help, we, of the industry, appeal to the Congress for relief and clarification now. I believe that we are properly apprehensive about the willingness of the Commission to perform a serious, and perhaps fatal, operation, while limiting Congressional help to post mortem relief.

The startling change in the entire basis of regulation from technical control to business control has confused and bewildered the industry. Neither court determination of the intent of Congress under the present law, nor the mere modification of the new rules, leaving unlimited discretion in the hands of the Commission, is sufficient to enable broadcasters to go forward with any confidence as to their future status.

There is no substitute, I am convinced, for legislative study and action on the problems that confront broadcasting. The Supreme Court decision of January 29, 1940, in the Pottsville Broadcasting Company case, summarizes the distinction between the remedies of litigation and legislation. The following statement from this decision, previously referred to by a distinguished member of your Committee, is worth recalling in this connection, and I quote:

"But courts are not charged with general guardianship against all potential mischief in the complicated tasks of government. The present case makes timely the reminder that 'legislatures are ultimate guardians of the liberties and welfare of the people in quite as great a degree as the courts.' (Missouri, Kansas & Texas Ry. Co. v. May, 194 U.S. 267, 270).

"Congress, which creates and sustains these agencies, must be trusted to correct whatever defects experience may reveal. Interference by the courts is not conducive to the development of habits of responsibility in administrative agencies. Anglo-American courts, as we now know them, are themselves in no small measure the product of a historic process."

Many of the differences between the broadcasters and the Commission are the conflicts between theory and practice. The vital economic props are suddenly pulled from under our present system. The network structure of the nation is asked to find, on immediate order, some untried way to function and survive.

We have been abiding fully by the various regulations that have been promulgated from time to time by the FCC. In so doing, we have responded to the desires of the Commission as well as its commands. Differences of opinion became acute only when arbitrary control of business practices was decreed by the Commission.

The industry had set up its own machinery for self-regulation to prevent and correct bad trade and program practices. But we have come down a long road to the point now where the Commission demands that the industry yield to it the control of business practices, under the guise of its authority to grant licenses "in the public interest, convenience and necessity." That is the real issue before us. I contend that it can only be resolved by law, not Commission edict, and that the law should be so defined that the industry will know how to proceed.

Magna Charta or Minor Operation

In promulgating the new rules, Chairman Fly declared that they constituted a Magna Charta for the broadcasting industry. He has glorified the great freedom now bestowed upon the broadcaster. He has stated that as many as six national network systems in the standard broadcast band can rise in the new day ahead.

On the other hand, he told this Committee that only a minor operation on a few small clauses in station and network contracts had been performed.

He has promised that there will be no loss in sustaining programs or public service. He has denied, on the one hand, that this is a "wrecking" operation, while on the other hand he has stressed the dangerous and monopolistic control he is destroying.

Magna Charta or minor operation—which is it? The apprehension of the Commission itself in the Majority Report is indicated when they declare that if the rules now issued by the FCC do not achieve the purposes hoped for by the Commission, then Congress — and I quote — "should amend the Communications Act to authorize and direct regulations appropriate to a non-competitive industry."

In other words, the Commission foresees the possible breakdown in the competitive system of broadcasting now maintained by private enterprise. It is perfectly willing, when the chaos and business anarchy predicted by the dissenting Commissioners becomes a reality, to recommend that a government controlled monopoly be legislated by Congress as the only alternative method of operation.

When the mask of "minor operation" is removed from the face of the present FCC proceedings, it will be seen that the almost limitless powers, which the Commission seeks to assume, without going to Congress for authority, strike directly at the freedom of the air. The present rules are but a prelude to further regulations. This is fact, not theory. It is declared in the FCC Report on Chain Broadcasting: "We are under no illusion that the regulations we are adopting will solve all questions of public interest with respect to the network system of program distribution." The confusion and chaos that must follow the sudden removal of the business and contractual props upon which chain broadcasting now rests will signal the assumption of more and more control by the Commission. Neither the industry nor the FCC has any illusions about that.

It is significant that the Magna Charta which has been presented to the broadcasters imposes the penalty of death for the infraction of every rule. The station is specifically penalized by loss of its license if it does not accept the dictation of the Commission. With such power of life and death held over the station owner, a nod is as effective as an order.

What is clear is that if freedom of the air is to be maintained, public interest must mean, not whatever a commission wants it to mean, but what Congress, acting for the people, *intends* it to mean.

I believe I speak for the industry as well as my company when I say that broadcasters are bewildered by the philosophy of control expressed in the FCC's recent report. It is full of indirection, innuendo and oblique references. Because there are no facts to support it, the direct charge of monopoly is not made. But a new slogan, *Domination,* is constantly sounded throughout the report.

Much has been made, during these proceedings before your Committee, of the restraints and the restrictive provisions in the existing contracts between NBC and its affiliated stations.

In order that there be no confusion between the minor and the major issues to be considered, I have taken direct action to eliminate any further need for consideration of these lesser matters so vigorously complained of by the Chairman of the Commission.

The relationship between the affiliated stations and the network organization is, and must be, one of contract. The present written contracts reflect the mutual desires, rights, and obligations of the parties. Their terms are the result of need, experience and practice.

Charges have been made, however, that we restrict competition by these contracts with affiliated stations. Chairman Fly, in his testimony, referred to the evil effect and monopolistic tendencies of these contracts. The NBC was pictured as a great monopolistic organization — one of the "couple of New York corporations" — which forced the stations to accept an arrangement against their will, and kept them under the yoke of domination by these untenable and unfair clauses.

There has been no secrecy whatsoever about the terms and provisions of our contracts. All of our contracts made throughout the years have been filed with the Federal Communications Commission.

Chairman Fly, in his testimony, criticized at great length, certain clauses appearing in contracts signed between the affiliated stations and the National Broadcasting Company. Specifically the clauses that he particularly stressed were:

1. The National Broadcasting Company is permitted to cancel the affiliation agreement on twelve months' notice whereas the station is bound for a period of five years.

2. The National Broadcasting Company prevents the station from having rates for local business below those charged for network broadcasting by the NBC.

The penalty for such practice is to reduce the network rate to conform to the local rate.

3. In the event a station cancels a network program to carry a local commercial program, the station must rebate to the network the difference between what the network would have paid it for carrying the network program and the amount the station received for carrying the local program.

These clauses were placed in our original contract at a time when such arrangements were experimental. To my knowledge, the first two have never been enforced. The third has been invoked only on rare occasions when a supplemental arrangement had been mutually agreed upon by the station and the NBC.

I want to say that none of the foregoing provisions in our contracts has ever been a matter of issue between the NBC and the affiliated stations. Many NBC affiliates do maintain different rates for local and national spot business. We have never controlled the rates charged by affiliated stations for such business.

Nevertheless, I have had memoranda prepared to all NBC affiliates affected by these contract provisions, asking them to agree to the elimination of these clauses from our contracts.

Further, one of our sales policies has been subject to the criticism of a competitor. Since 1927, the National Broadcasting Company has permitted its advertisers to combine their billing on the Red and Blue networks for a total volume discount. This policy is not important. It affects only seven of our advertisers. Its elimination will increase their expenditures by only two per cent. We are eliminating this discount and all advertisers will be so notified.

Now that we have eliminated these "vicious" clauses referred to in the testimony of Chairman Fly, I would like to advise the members of the Committee that of the 233 contracts NBC has with affiliated stations, 117 are firm commitments with equal rights of cancellation on the part of the station and the NBC. The remaining 116 contracts give the NBC an option to cancel on twelve months' notice.

It should be borne in mind that these contracts do not expire simultaneously, and that in the course of any one year many stations have the opportunity of changing their network affiliations.

WHILE the new rules issued by the FCC are far-reaching in their effect on the entire broadcasting industry and its service to the public, they involve, in addition, a direct attack on the National Broadcasting Company.

The Chairman of the FCC, by statement and inference, has charged us with being a monopoly, with restricting competition, with controlling public opinion, with dominating our affiliated stations, and, in broad generalizations, unsupported by facts or evidence, has endeavored to discredit our reputation.

As President of the National Broadcasting Company, and representing the 2300 employees of the company, I want to say that we have not been adjudged guilty of any of these charges by a jury of our peers, but instead have been condemned in advance by a regulatory body, and by a Chairman who is accuser, prosecutor and judge.

We have been given a "death sentence" on one or the other of the two network services we conduct. We have been told that we cannot operate some or all of the stations we have been operating for many years.

The stations affiliated for network service with the NBC have been ordered not to enter into any future contracts with us under penalty of a revocation of their licenses, unless we conform in every detail to the latest edicts of the Commission — the most radical and most severe regulations ever issued by that body.

The history of the NBC is public property. Its progress has been a source of pride to those in the company and of satisfaction to a vast American radio audience. The list of its contributions to broadcasting development, both in engineering technique and program service, is a matter of record. If it is a crime to grow, to extend service, to make reasonable profits — then we are guilty. But I submit that our record of achievement and public service is a matter for *commendation,* not *condemnation.*

No broadcasting organization in the country operates on a higher plane of public responsibility than the National Broadcasting Company. It expresses no editorial opinion. It seeks to provide equal representation to public leaders on controversial issues. It does not censor or edit the opinions expressed by speakers on its networks. It gives, not sells, time for controversial, religious and educational programs.

In order that you may completely understand what is involved in this destruction of the service now being rendered by the NBC, I want to review briefly the development of the company, the character of the service it has created and maintained through the years, and how completely we have conformed to the highest standards of "public interest, convenience and necessity."

At this time, I would like to present as Exhibit "A", (*see following page*) the total number of stations affiliated with the four national networks. This Exhibit will show the gradual growth of the National Broadcasting Company since 1926.

You will note that there are now 503 stations affiliated with the four national networks. Of these 503 stations, 233 are affiliated with the Red and Blue networks of the NBC.

I would like particularly to call your attention to the fact that in 1935, we had 18 stations on the Blue Network, and we had 25 stations on the Red Network; also, we had 46 stations that were supplementary to both the Red Network and the Blue Network.

At that time, the Mutual Broadcasting System had 19 stations. Now, since 1935, Mutual has had opportunity to develop and extend its network—the same opportunity that we had with our Blue Network.

I have been asked about switches in stations from one network to the other. Our records show that 15 stations have switched from NBC to CBS; 27 stations have switched from CBS to NBC; 2 stations have switched from NBC to Mutual, and 4 additional stations will do so in the near future. Five stations have switched from CBS to Mutual, and 1 additional station will do so in the near future.

The next exhibit "A-1", (*see page 16*) which I should like to call to your attention, is the distribution of NBC affiliated stations by population groups. There has been quite a bit of discussion about the networks covering only the major cities. Our network services go into 186 cities. Of these 186 cities, 117 are cities under 100,000 population. They represent approximately 62% of the cities we serve. We have stations in 39 cities under 25,000 population.

I would like to also submit as Exhibit "B", a map of the United States showing the location and call letters of the stations affiliated with our Red Network, our Blue Network,

EXHIBIT A

Total Number of National Network Affiliates (According to NBC Records)

	NBC						
As of Dec. 31	Red	Blue	Alter-nates	Total	CBS	MUTUAL	Total National Network Affiliates
1926	19	—	—	19	—		19
1927	15	9	24	48	15	—	63
1928	20	14	22	56	28	—	84
1929	21	17	32	70	47	—	107
1930	21	18	34	73	70	—	143
1931	27	22	36	85	83	—	168
1932	27	24	36	87	93	—	180
1933	27	24	36	87	94	—	181
1934	27	20	41	88	99	4 (1)	190
1935	25	18	46	89	100	19 (2)	206
1936	29	29	47	105	95	46 (14)	232
1937	36	44	62	142	112	83 (16)	321
1938	46	52	68	166	115	108 (28)	361
1939	52	57	71	180	116	126 (27)	395
1940	74	87	58	219	125	173 (37)	480
June 1941	76	103	54	233	127	176 (33)	503

Note: *Figures in parentheses are MBS stations also affiliated with NBC or CBS.*

and the stations available to both the Red and Blue, designated as "Supplementary Groups," together with rate cards.

In 1926, before the Radio Act was adopted by Congress, the NBC was organized in a pioneer attempt to provide a truly national service of broadcasting. It established what is now known as the NBC Red Network. This network had no competitors, because no one else was ready to take the investment risks and hazards of such a major venture.

Blue Network Created in Response to Station Demand

In January, 1927, because of the requests of competing local stations in the same cities for another broadcasting service, NBC established its second network service, known as the Blue. Today, the NBC operates only ten of the 828 stations in the United States. Because of its Red and Blue Network services, it has been licensed for many years to operate two stations in New York, in Washington, in Chicago, and in San Francisco.

At the time of its organization in November, 1926, the Company announced its policies of public service and its desire to have others engage in competitive network service. With few good programs on the air and with little advertising support, the task was to create a broadcasting industry and a radio audience. A typical American industry founded on the principle of competition and free enterprise was in the making. Competition did come. A few months after the creation of the NBC Blue Network, the Columbia Broadcasting System was organized. Today, CBS is a most important competitive factor in the standard broadcast field.

The National Broadcasting Company, since its inception in 1926, has used the ingenuity, skill and experience of its organization, as well as its resources, to give to the American public the best programs that could be made available.

The quality and extent of the public service provided by the NBC is largly a result of its operation of the Red and Blue Networks. Such service is dependent not merely on the hours of broadcast time available, but, more importantly, on the resources and staff of the NBC. Through a stable and profitable business operation, we are enabled to maintain adequate studio facilities, to engage the world's great artists and orchestras, to maintain world-wide news contacts, to conduct research and engineering development, and to sustain thereby

EXHIBIT A-1

Distribution of NBC Stations by Population Groups as of June 15, 1941

(Canadian and other extra-territorial stations excluded)

CITY POPULATION (1940 Census)	NUMBER OF STATIONS			CITIES	
	RED	BLUE	TOTAL	NO.	PER CENT
Under 25,000	20	19	39	39	21.0%
25,000-50,000	15	22	37	35	18.8
50,000-100,000	30	16	46	43	23.1
100,000-250,000	25	21	46	35	18.8
250,000-500,000	18	15	33	20	10.8
Over 500,000	15	15	30	14	7.5
	123	*108	231	186	100.0%

* Includes six stations contracted for but not yet receiving service.

This summary was accompanied by detailed lists of all NBC stations, classified by city population groups.

policies of public service that meet the cultural and spiritual needs of the one hundred million listeners of the nation.

By this operation of two network services, NBC during 1940 carried 266 programs on defense and military training. This service has been increased greatly during the present year.

Fifteen Years of Public Service

In the field of religious education, in which NBC programs have been outstanding, I quote Monsignor Fulton J. Sheen, representing the Catholic Church, who has said, "There is no corporation in the entire United States which has made such a contribution to religion as the National Broadcasting Company." He has also publicly stated, and I quote: "The NBC has built the greatest pulpit the world has ever known."

For the Protestant Church, the Rev. Harry Emerson Fosdick has spoken in these words: "No religious opportunity comparable with that furnished by the NBC to reach every conceivable kind of human being in the country ever existed before."

For the Jewish faith, Rabbi Jonah B. Wise stated, and again I quote: "It is difficult to put a value on the kind of service rendered by this means—we find that this communication means a spiritual rebirth and a spiritual companionship."

In the educational activities of NBC, headed by Dr. James Rowland Angell, the distinguished President Emeritus of Yale University, the company has a solid record of achievement. Each year, NBC has been awarded honors for distinguished service by the various educational groups of the country.

In the field of women's and children's activities, with the cooperation of the Government, the General Federation of Women's Clubs, the Parent-Teachers Association, the Women's National Radio Committee and many other organizations, NBC has been able to render outstanding service through the operation of its two networks. Miss Katherine F. Lenroot, the Director of the Children's Bureau of the United States Department of Labor, has declared: "The mothers of the country have a great resource in radio. Through such varied and effective programs as those sponsored by and developed in cooperation with the NBC, mothers are being helped to realize the objectives of democracy in their own homes and communities throughout the nation."

In the department of music, NBC programs include performances of the Metropolitan Opera, the Music Appreciation Hour conducted by Walter Damrosch, and concerts by the leading symphony orchestras of the country. From New York City, we carry the programs of the NBC Symphony Orchestra, created exclusively for radio under the baton of Arturo Toscanini and other celebrated conductors.

In the effort to maintain an enlightened public opinion on the issues of the day, the NBC has made its facilities available to such forums as America's Town Meeting of the Air, the Chicago Round Table, the National Radio Forum from Washington, and continual national news service gathered from the four corners of the world and broadcast to a vast American public.

We have prepared a detailed list of public service programs presented by the Red and Blue Networks in the year 1940. I offer it for the information of the Committee. (*See Exhibit C, on facing page.*)

Gentlemen, it is easy for me to recite a long list of public service programs which have been developed by NBC, and distributed to the American people by its affiliated stations.

I wish it were just as easy to convey to your minds the vast amount of experience, skill, patience, tact, good judgment and good faith required on the part of our organization to accomplish these results. An outsider might think that, granted the possession of network facilities, the rest of the service is just a question of plugging in lines and pressing buttons.

It has taken NBC fifteen years to learn what we know today about putting a balanced diet of public service programs, that people will listen to, on the air. We don't pretend to know it all yet. Nevertheless, there has not been a day in those fifteen years that has not taught us something new, that has not helped us learn how to make the programs more effective, and more welcome to a greater number of people.

We have had to learn how to sort the wheat from the chaff, how to resist selfish interests, and how to transform the raw material of good ideas into the finished product of good programs.

NBC Advisory Council

NBC's record in the public service field has been consistent since the day the company was organized. Let me read a sentence from the first public announcement of the formation of the company in 1926. I quote:

EXHIBIT C

NBC Red Network
Public Service Broadcasts
1940

	Number of Broadcasts		
	Regular Series	Individual Broadcasts	Total
Public Affairs	127	88	215
Government	73	322	397
Education	210	12	222
Arts	123	8	131
Sciences	78	14	92
News	1013	878	1891
Special Events	——	107	107
Religion	316	25	341
Classical Music	142	25	167

NBC Blue Network
Public Service Broadcasts
1940

	Number of Broadcasts		
	Regular Series	Individual Broadcasts	Total
Public Affairs	219	155	334
Government	412	378	790
Education	638	41	679
Arts	538	12	550
Sciences	109	34	143
News	555	874	1429
Special Events	——	116	116
Religion	228	27	255
Classical Music	304	12	316

It is important to note that in order to show the number of broadcasts in a particular classification, there is bound to be an overlapping of figures in some instances, such as: under the Education Division the number of broadcasts have also been included in the Government section, if sponsored by a Governmental organization. Also, under the Government activities the political conventions have been counted, which obviously are also special events.

This summary was accompanied by detailed listings of Public Service Programs.

"In order that the National Broadcasting Company may be advised as to the best type of program, that discrimination may be avoided, that the public may be assured that the broadcasting is being done in the fairest and best way, always allowing for human frailties and human performance, it has created an Advisory Council, composed of twelve members, to be chosen as representative of various shades of public opinion, which will from time to time give it the benefit of their judgment and suggestions."

The NBC Advisory Council then formed was a distinguished group, each member notable for the outstanding contribution he had made in the field of his own activity. Elihu Root, the statesman, was there, and William Green, speaking then, as now, for the American Federation of Labor; Charles Evans Hughes, then Secretary of State and later Chief Justice of the United States Supreme Court, was neighbor to Walter Damrosch from the field of music. The voice of American women was heard through Mrs. John Sherman, then President of the American Federation of Women's Clubs. Francis D. Farrell, President of the Kansas State College, represented agricultural interests. Dwight Morrow, banker and later Senator and United States Ambassador to Mexico, was present, as were Charles S. MacFarland, Executive Secretary of the Federal Council of Churches, Henry M. Robinson, banker, and A. E. Alderman, University of Virginia President. Owen D. Young, noted industrialist, was Chairman of the Council.

Some of those original Council members have passed on, and a few have retired, but their places have been filled by other eminent and public-spirited men and women. Among these are James Rowland Angell, Educational Counselor of the National Broadcasting Company, Mrs. August Belmont, prominent in social and philanthropic work, Henry Sloane Coffin, President of Union Theological Seminary, Dr. Karl T. Compton, President of Massachusetts Institute of Technology, Ada Comstock, President of Radcliffe College, John W. Davis, Henry S. Pritchett, former President of Carnegie Foundation, and Alfred E. Smith, former Governor of New York.

Down through the years, NBC has gradually built up its own traditions and code of program policies. This code has been in the process of evolution ever since the formation of the company. It embodies the rules which govern all the programs of NBC and its advertising clients — questions of good taste, fair dealing, respect for the beliefs and opinions of others, the unbiased handling of news and controversial discussions, commercial announcements, types of products whose advertising is unacceptable to NBC, and many other subjects.

The point I wish to emphasize is that these policies were not laid down for us either by Congress or the Federal Communications Commission. We laid them down for ourselves. That our own self-imposed standards of conduct measure up to the highest standards of public interest is confirmed by the fact that nowhere in the Commission's Report on Chain Broadcasting is there a complaint against NBC programs or program policies.

A fifteen-year record of constantly improving public service ought not to be so lightly overlooked or brushed aside. Disregarding questions of jurisdiction, disregarding the rewards due pioneering enterprise, service to the public should be the major test.

I may add that the National Broadcasting Company has expended more than forty-five million dollars on sustaining programs — that is, programs that carry no advertising — to carry out its responsibilities towards the government and public which it serves.

I do not say these things boastfully. I merely list them to indicate the extent to which NBC has rendered service "in the public interest, convenience and necessity" through the operation of its Red and Blue Networks.

While the broadcast programs and the record of public service of the NBC are well known, we have been charged with being a "rich New York corporation," that we make "plenty of money," the inference being that there is something wrong about profits. The record shows that the NBC has averaged under two million dollars per year in profits for the fifteen years it has been in existence. This represents a net profit of 7.29% on its gross income.

The charge has been made that our profits are out of proportion to our investments. The fact is that our profits are made by rendering service in which capital investments are only a part of the story. Advertising agencies with negligible investments in physical assets handle large volumes of business, their profit varying directly with the amount of service rendered.

Incidentally, NBC paid taxes last year to Federal, State and local governments amounting to $2,510,000.

Some discussion has been had during the hearing that we do not pay our stations a satisfactory stipend. The claim has been made that we take the lion's share of the dollar. I should like to present here for your information a pie chart (*see facing page, Exhibit D*) showing the distribution of revenue from the sale of network time on NBC affiliated stations. Network time sales on affiliated stations amounted to $23,852,808 — that is, after discounts and agency commissions. Of that amount we paid the stations $10,562,213, or approximately 45%. We retained for ourselves 55% for wire lines, sales expense, sustaining service, network staff and all other operating expenses. In other words, we are splitting the dollar we take in on almost a fifty-fifty basis with the stations.

It should be evident that the company has endeavored to operate a successful business, make a fair return to stockholders, carry out its governmental obligations, give employment with full recognition of wage and labor standards, and that it has been enabled to do all this through the rendering of a valued service to the listening public and to American business.

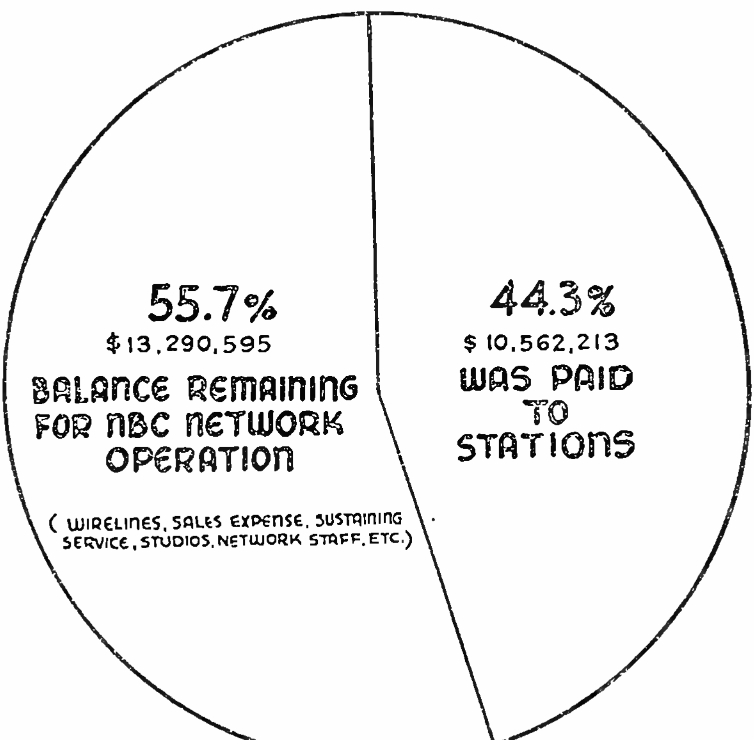
We have sought constantly to improve and expand our facilities for service. We have conducted during these years extensive research and have expended an average of half a million dollars annually for this purpose. Our expenditures for research and development have increased as income made it possible, and during the last two years the NBC has spent over a million dollars on television alone.

Likewise, the company has been a pioneer in the field of international short-wave broadcasting. Until two years ago the FCC rules prohibited the acceptance of commercial revenue for this service. It is still being operated at a loss. Nevertheless, this service has been maintained by the company throughout these years in conformance with the policies and desires of our Government in the field of international relations. International broadcasting is vital in the present crisis. We have expanded our facilities, and greatly increased the number of hours of programs sent to our hemisphere neighbors, as well as to the rest of the world. For five years the international division of the NBC has carried a daily schedule of programs in six languages. It has recently placed this service on a twenty-four hour basis.

EXHIBIT D

1940
DISTRIBUTION OF REVENUE FROM SALE OF NETWORK TIME ON NBC AFFILIATED STATIONS

NETWORK TIME SALES ON AFFILIATED STATIONS - $23,852,808
(AFTER DISCOUNTS AND AGENCY COMMISSIONS)



Unwarranted Charge of Domination

To create the spectre of domination in the industry, Chairman Fly in his testimony presented a synthetic creature composed of two vigorous rivals, the NBC and the Columbia Broadcasting System. He even creates a name for it— "duopoly". By lumping their business, and by lumping the number of independent affiliated stations which they serve, in terms of wattage, he turns two of the most aggressive competitors in American industry into Siamese twins of his own imagination. The fact is, of course, that these two network organizations are separate and apart. They compete for advertising, they compete for station affiliations, they compete for desirable programs, they compete for news scoops, they compete for prestige and they compete for the ear of the American listening public. Yet Chairman Fly charges these two companies with a joint control of our national public opinion.

The greatest achievement of network broadcasting is its service of mass communications on a nationwide and instantaneous basis. That is a vast contribution in time of peace and an imperative necessity in time of war. It gives Government a national, as distinguished from a local forum. It is this system which carries the voice of Congress to the remotest community. It is by this means that a fair presentation is possible of all sides of the great controversial issues of our time. The NBC has accepted the responsibility that goes with the requirements of public service in this respect. It is through national network organizations that a nationwide pulpit has been created for religion; that educators have found for cultural programs a new and greater opportunity which would not exist if they had to be originated by individual stations. It is by this system that patriotic, civic and other interests find national expression that no other means of communication affords.

Certainly no charge can be sustained that NBC dominates public opinion, when the only opinions expressed on the air are those of Government, of members of Congress, of State and civic leaders, of the recognized religious, educational and social forces of the country, and of others whose views are always expressed as their own. That in this crisis of our country, and perhaps in the most critical debates of our history, we have maintained and do maintain the balance that has been commended by members of your Committee is to us a source of great satisfaction.

Of course, no operator in the broadcasting field should be allowed to dominate the public opinion of the nation. I am for any action that it would please Congress to take to prevent even the possibility of control of the air.

The worst domination that could be visited upon public opinion is domination by a political commission. The Chairman of the FCC has given reams of testimony on what he says is a threat to public interest inherent in the operation of nation-wide networks, although these networks actively and aggressively compete with each other. He has said nothing about the dangers of the assumption of unlimited power by a commission which insists that it has a mandate from Congress to make and enforce its own definitions of public interest, convenience and necessity.

I submit that it is as important for Congress to guard against this type of domination as it is to guard against the remote possibility that a network operator would commit business suicide by violating the policies which now guarantee the freedom of the air.

Mr. Fly himself has narrowed down the issue by naming those who, in his view, now exercise the alleged domination. In an address delivered before the National Association of Broadcasters on May 12, 1941, he declared he fears that an error of judgment or policy — and I quote his words — "by means of management groups" would have a disastrous result for the nation as a whole. In his testimony before the Committee he pointed to two New York corporations, and finally he charged — and I quote again — that "two New York gentlemen" wield this monstrous control.

As President of the NBC, I assume that I am one of the gentlemen to whom he refers. The NBC certainly does not have, and does not seek, the domination of anything. It strictly recognizes its responsibilities to provide a forum for free speech, and no charge has been made, even in the Commission's report, that this policy has been violated.

If "decentralization" is the basis, as Mr. Fly has stated, of the new rules of the FCC, it is clear proof of the fact that what is being attempted is far from a "minor operation" on the American broadcasting structure.

The confusion and bewilderment of my organization, resulting from the Commission's new regulations in the standard broadcast band, are even more apparent when the subject of television development is considered.

All that broadcasting has achieved today is dwarfed by the vast possibilities of television, which adds sight to sound. The first step, of course, is the establishment of primary television stations in leading centers. The NBC has had the advantage of more than $12,000,000 poured into television research; it has spent several millions of dollars to pioneer in the establishment of the first public service of television — all without the slightest return. We recognize the great possibilities of this new service and the contribution a new industry will make to the nation's recovery program when the present emergency is over.

Television in the national sense must begin with a network. It will require investment and enterprise to which that of sound broadcasting is like a drop in the bucket.

NBC has been doing everything in its power, subject to priorities of men and materials, to establish local television in Washington as well as in New York. But it is mere moonshine to say, as has been stated to your Committee, that by limiting television licenses to three stations for any one licensee, the go-ahead signal has been given and — presto chango! — a national service of television is made possible.

As I have said, the NBC has expended many millions of dollars in developing television. It initiated the first public program service in television in the United States. It has maintained this service under severe limitations by the Commission for more than two years, in spite of the fact that not one dollar of revenue has been obtained during this time.

We are now ordered to divest ourselves of one of our network services, and threatened with the loss of operation of standard broadcast stations, while, at the same time, the licensing policy of the Commission encourages our entrance into the operation of new stations in the fields of television and frequency modulation. The older service of broadcasting is profitable, but the new services have yet to produce any revenue. Apparently the Commission favors our loss of present investments and revenue, but wants us to invest in new fields. Under such circumstances how can anyone know what to do? We cannot plan our course until the Congress has determined, definitely, what it expects of those engaged in the business and service of broadcasting sound and sight.

It is unfortunate, for the NBC as well as the industry and the public served, that there should be so great a misconception of the character of the company's operations with two network services. I have related to you how we were organized, how we have developed, and the type of service we render. Yet we are confronted today with an order to dispose of, or to stop, one or the other of our two network services. It is suggested that we dispose of the Blue Network, as though it were an entity and on the assumption that we can barter with the rights of the affiliated stations now contracting for Blue Network service. The reasoning of the Chairman of the FCC, who interprets the new rules to fit the needs of the occasion, is all to the effect that the Blue Network can be transferred as a going concern, that contracts of affiliation will remain stable under new management, and that business now on the NBC books can be transferred with the cheerful consent of the advertiser.

The Commission says, on the one hand, that the stations are to be freed of these restrictive contracts of affiliation, and, on the other hand, says to the NBC — sell these contracts! — transfer them to a new owner! The Commission ordered a new system of network broadcasting which, in effect, makes every station an affiliate of every network, and yet proudly announces that the Blue Network under new management will rise to great stature as one of the four, five, or perhaps six national networks of the nation.

The Commission and its Chairman blandly assume that all the great programs now on the Blue Network will continue just as usual. Yet Chairman Fly stated in this hearing, and I quote — "The Blue today covers by far more than its proper share of public service programs, with the result that the ultimate income to the Blue and to the stations on the Blue is far below that of the Red. That will be improved, of course, when the two are separated and each stands on its own feet."

If I understand Chairman Fly correctly, he means that some of the public service now on the Blue Network, should be replaced with commercial programs by the new management.

The Chairman's supreme confidence that the Blue Network will continue as an entity; that networks and stations will continue in the same relationship; that there is plenty of room for five or six national networks; that there will be advertising revenue in abundance, — with public service in the democratic manner for all — is in sharp contrast to the new rules that have been ordered into effect. The Commission has ordered the disposal of one of our network services, yet these same orders destroy existing contractual relationships, prohibit exclusivity of affiliation and option time, and create a situation of forced sale that is practically a death warrant for the Blue Network.

How can either seller or purchaser intelligently estimate the value, the future stability or future profits of the Blue Network?

I understand that the Commission has issued a clarifying order, modifying the ninety-day execution, but a great deal more than *time* is involved.

I want to quote Chairman Fly from his most illuminating suggestions on the sale of the Blue Network, made to this Committee. These were his words:

> "I do not think that there is going to be any difficulty in disposing of the Blue Network, assuming that the Blue Network is sold. I do not think for a moment that there will be any difficulty. It will not be wiped out. That, again, is one of the exaggerations that NBC has been putting forth here. It will not be wiped out. I cannot imagine that they would be guilty of such business indiscretion.
>
> "We are not going to tell them how to do it, but it certainly is the view of the Commission that they ought to be able to sell that network, lock, stock, and barrel, with all of the equipment and all of the personnel, existing contracts, affiliations, program sources, and everything else that would go with it, and the public that is receiving the program service from that network should not feel the following day the slightest impact."

I take it from Chairman Fly's statement that we are going to have his assistance and that of the Commission in disposing of the Blue Network, and that, at least, if he is unconcerned about the effect of such a sale on the NBC, he is concerned, and in fact strongly believes, that the Blue will continue under new management as a vigorous and successful network. I submit that the potential purchaser should receive more assurance as to this being possible than are furnished by either Chairman Fly's statements or the new rules. It should be remembered in this connection that under the law, transfers of licenses are subject to Commission approval, and, therefore, that the potential purchaser of the Blue Network must receive such approval.

The Problem of Selling the Blue

I want this Committee to know exactly what is involved in selling or disposing of the Blue Network. We operate WJZ in New York City as the key station of the Blue. We operate a half-time station, WENR, as the Chicago outlet. We lease Station WMAL from the Washington Evening Star, and Station KGO in San Francisco from the General Electric Company. There are 103 stations receiving Blue Network service. In 1940, the volume of business on the Blue Network amounted to slightly more than $8,000,000 after all discounts and agency commissions. All advertising contracts are subject to 13-week cancellation, and as for affiliation contracts, I need enlightenment.

The truth of the matter is that there is involved in this transaction a transfer of the licenses of one full-time and one half-time station, the sale of these transmitters; the partition of studios and plant equipment now utilized jointly for Red and Blue Network programs; and putting on the block those NBC employees who have been with the Company for years, whose services are no longer required for the remaining operation.

While the serious business and personnel problems that have thus been created by the order of the FCC are of grave concern to the NBC, the loss in public service is of far greater significance. This statement has been challenged and, therefore, I want to give you an illustration of what is involved.

The National Farm and Home Hour

On the initiative of the NBC, the United States Department of Agriculture was invited, many years ago, to participate in a daily farm program, created by the company. That program, the National Farm and Home Hour, has been on the air for more than twelve years. The Company has expended approximately $100,000 annually to sustain this activity and the affiliated stations have contributed approximately a million dollars worth of time annually. The time is valuable today, and could easily be sold for commercial purposes. It is on the Blue Network, and nearly 100 stations carry it six days a week.

When the NBC disposes of the Blue Network, one of three things must happen. First, the program could remain under NBC's supervision by being transferred to the Red Network, providing that the Red Network stations want the program and will replace time now sold, in many instances, with this non-commercial feature. If this happens, the present Blue Network stations will lose a program they value highly.

Or, second, the new operators of the Blue Network can take develop new services, to provide employment. Like the NBC, such an organization may, after fifteen years of operation, suddenly be declared to have functioned not for, but against public interest, convenience and necessity.

I don't want to oversimplify the situation. It does seem to me that on the vague charge of domination and monopolistic practices, unsupported by any evidence of injury to anyone, the NBC is suddenly proclaimed a menace to the public interest because of the extent of the service it renders.

It is, therefore, ordered to strip itself of stations, of customers, of valuable public service features, and of sources of income. All to support a new theory of competition which would penalize the older, established networks of the country in favor of a new method of scrambled network operation!

(To illustrate the fact that it is the advertiser, not NBC, who controls the switching of commercial programs from one network to another, particularly from NBC Blue to Red; and to prove there is constant competition between all networks, Mr. Trammell introduced Exhibit E, shown on facing page.)

I would like to have you look at the summary that has just been handed to you of the number of switches of commercial programs since 1934. There have been 19 programs switched from Red to Blue; 29 from Blue to Red — 48 altogether. On the other hand, there have been 19 programs switched from Red to CBS and 17 from Blue to CBS. From CBS back to the Red, 29; and from CBS to the Blue, 10. Two programs went from Red to Mutual, and one program went from Mutual to Blue. We do not have as much control over the switching of these programs as might appear to someone who is not actually in the business. The advertiser decides what network he'll use.

If we were required to dispose of the Blue Network, it might be left with the same facilities it currently has, but how the new owner could prevent these switches from occurring is beyond me.

The Mutual Broadcasting System

I have carefully studied the Report on Chain Broadcasting which contrasts the pioneer network services of the country with that of the Mutual Broadcasting System. Let me read from the Commission report on that subject. I quote:

"The Mutual Broadcasting System is organized along lines radically different from those of the

EXHIBIT E

Summary

Network Commercial Program Switches From One Network to Another

1934 to Date

NBC Red to NBC Blue	19	
NBC Blue to NBC Red	29	
Total Switches between NBC Networks		48
NBC Red to CBS	19	
NBC Blue to CBS	17	
Total Switches NBC to CBS		36
CBS to NBC Red	29	
CBS to NBC Blue	10	
Total Switches CBS to NBC		39
NBC Red to MBS	2	
MBS to NBC Blue	1	
Total Switches	126	
Programs involved	89	

This summary was accompanied by detailed lists of programs.

Columbia Broadcasting System and the National Broadcasting Company. It does not own any stations, but is owned by several stations. Mutual has no studios, maintains neither an engineering department nor an artists' bureau, and does not itself produce any programs except European news broadcasts.

"The commercial programs are produced by the originating station, or by the sponsor who buys time, and the sustaining programs are selected from among those put on by the stations associated with the network."

If that pattern of broadcasting service is to be followed, it would produce networks without central studio facilities, undertaking no engineering developments, contributing nothing to research or new services, as contrasted with the large sums poured into such activities by the pioneer networks of the country.

The Mutual Broadcasting System has complained to the Commission that its ability to compete has been hampered by the older networks. Yet in its statements to the advertising trade Mutual refutes its own complaints. Let me quote:

"Mutual is America's fastest growing network . . . at present 178 stations."

"Mutual covers 227 of the first 300 markets."

"Today *two* new network advertisers select Mutual for every *one* who selects any other broadcasting chain."

"It has 'regular network coverage of 70% of the nation' and '73% of all retail sales'."

These are all statements from Mutual's advertisements.

Yet Mutual cries that competition has been unfair! What is involved in the false issue thus raised is well stated in the dissenting report of the FCC. I quote:

"The Commission should encourage the organization of independent, highly competitive national networks. However, if there are limitations or barriers to the establishment of additional competitive networks, the Commission need not and should not promulgate rules the effect of which would destroy all existing systems, merely to provide some other private enterprise with an opportunity to capture the revenues of broadcasting. There are better ways to encourage and secure additional competition."

Chairman Fly, on the other hand, stated to this Committee:

> "The Mutual Network, itself, is in favor of the regulations. Mutual is the newest one in this field, and it has felt the impact of these restraints. The door of opportunity has all but been closed already with the two network organizations in existence, and Mutual has had a great deal of difficulty. So, they are in support of the regulations. Generally those people who are trying to move in and to serve, as distinguished from those who are softly cushioned with the status quo, are the ones who are supporting the regulations."

Chairman Fly seems to feel that, despite the fact that there are physical limitations which restrict the number of radio stations operating in the United States and the power they can utilize, that station contract affiliations should be altered and the Blue Network should be disposed of in order that Mutual be able to place its service on larger stations and in more markets.

In other words, Chairman Fly agrees with Mutual that they have gotten along pretty well, but apparently, he and the Commission want to help them to do better, and at the expense of the Blue Network.

We do not believe it necessary to argue at length whether we should be compelled to give up one of our networks. It should be enough to call attention to this order, by the Commission, to prove that such a vivisection, if performed at all, should be performed only after legislative, as distinguished from administrative action.

If the majority of the Commission are allowed now to compel us to dispose of half our property, lawfully acquired and lawfully operated for fourteen years, on *their* determination alone, and if Congress does nothing about it, don't be surprised, Senators, if six months from now Mr. Fly comes in and tells us to get rid of half the *Red* Network. It will then be too late to protest, because his power has been conceded.

Not only is the subject matter, in our opinion, outside the power delegated to the Commission by Congress but, nowhere in the history of administrative regulation has so brutal a method for the amputation of a major portion of a great enterprise been invoked.

Here, in effect, Chairman Fly proclaims: "Bend your knee, concede my power, give up the Blue, and I will let you live—you may keep the Red."

The first cracks in the structure of democracy are often invisible to the unaided eye, but if Congress, by failure to act now, concedes to Chairman Fly the power to force us to give up half our property, then Congress need not be surprised when it learns, in the not too distant future, that Chairman Fly has taken over the entire radio industry.

NBC Managed and Operated Stations

Fundamental to our present system of network broadcasting is the operation by the network company of key stations in originating centers. These stations are, in a sense, the keystone of the arch. They perform a triple function: First, they must be located in the large talent centers and in Washington to provide the nucleus of the network program supply. Second, they set the pattern and the example of program-scheduling. And third, they furnish stability and necessary earning power to the network organization.

Even Mutual has found it necessary to have key stations in New York, Washington, Chicago, Los Angeles and San Francisco. Such programs of national interest as they maintain, even under their plan of a station-dominated network, come largely from these program centers.

The NBC holds licenses for ten of the 828 stations in the United States. The Company has been licensed to operate these stations for many years. I now introduce an exhibit giving a brief history of these stations, when purchased and from whom. (*See Exhibit F, on following page.*)

The original grants of license by the FCC and the annual renewal of such licenses is, we believe, evidence of our operation in complete accordance with "public interest, convenience and necessity." No charge or accusation to the contrary has been made. We do not understand any reason for, or the justice of, the Commission's order which says, in effect—the Commission will deny a license for any radio station to a network organization which operates another station in the same area, or will refuse to renew a license to the NBC, for example, to operate a single station in any area where other stations are few in number or less strong in power or coverage than the station now operated by the company.

This rule deprives the NBC, in the Commission's discretion, of the right to operate any station in Washington, in Cleveland, and, possibly in other major markets. The only justification is again the vague charge of domination, of monopoly, of control, and of rendering too extensive a service. The rule simply takes from one to give to another. It penalizes the pioneer in favor of the newcomer. It exchanges present good service for something unknown. It destroys, under terms of forced sale, the investments that have been made during years of creative work and energetic effort to build up these stations. Finally, it destroys all faith in the fairness of a

EXHIBIT F

Brief History of Stations Licensed to NBC

WJZ: This station was started in 1922 by RCA and later transferred to NBC. It was first licensed to NBC in October, 1930.

WEAF: This station was purchased from the AT&T Company in November, 1926 at which time it was first licensed to NBC.

WMAQ: This station was purchased from the Chicago Daily News, Inc. and was first licensed to NBC in October, 1931.

WENR: This station was purchased from Great Lakes Broadcasting Company and was first licensed to NBC in February, 1931.

KPO: This station was purchased from Hale Brothers, Inc. and the Chronicle Publishing Company, and was first licensed to NBC in June, 1932.

WRC: This station was started by RCA in 1923 and later transferred to NBC. It was first licensed to NBC in October, 1930.

WMAL: This station is owned by the M. A. Leese Radio Corporation and leased to and operated by NBC. It was first licensed to NBC in February, 1933.

KOA: This station is owned by the General Electric Company and leased to and operated by NBC. It was first licensed to NBC in March, 1930.

KGO: This station is owned by the General Electric Company and leased to and operated by NBC. It was first licensed to NBC in March, 1930.

WTAM: This station was purchased from The Cleveland Electric Illuminating Company and The Van Ess Company, and was first licensed to NBC in October, 1930.

Stations in Which NBC Formerly Had an Interest

KEX: This station was owned by the Western Broadcasting Company, a subsidiary of Northwest Broadcasting System, Inc., which was in turn an NBC subsidiary. It was leased for a number of years to the Oregonian Publishing Company and NBC sold all its interest in this station which it had acquired from its subsidiaries to the Oregonian Publishing Company on May 10, 1941.

KJR: This station was owned by Northwest Broadcasting System, Inc., a subsidiary of NBC, and leased to Fisher's Blend Station, Inc. NBC sold, on April 8, 1941, to Fisher's Blend Station, Inc. all its interests in this station which it had acquired from its subsidiary.

KGA: This station was owned by Northwest Broadcasting System, Inc., a subsidiary of NBC and leased to Louis Wasmer. NBC sold, on May 9, 1941, to Louis Wasmer all its interest in this station which it had acquired from its subsidiary.

WGY: For a number of years NBC acted as programming and sales agent for this station for the General Electric Company, the owner and licensee thereof. This arrangement was discontinued on October 1, 1940.

KDKA, KYW, WBZ and WBZA: For a number of years NBC acted as programming and sales agent for these stations for the Westinghouse Electric & Manufacturing Company, the owner and licensee thereof. This arrangement was discontinued on July 1, 1940.

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[illegible] that it is bad public [illegible] public interest for the NBC to operate [illegible] in New York City, [illegible] to operate two international [illegible] and a television sta- [illegible] rule apply only [illegible] but I submit that if the same [illegible] can be [illegible] at any [illegible] the four stations in [illegible] international broadcast [illegible]

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regulatory body, which, when the risk is great and revenues nonexistent, encourages a citizen to acquire a license, only to deprive him of it years later because he has been successful.

It seems to me that a fair question is: Who benefits by all of this? Will the public receive a better program service than the one that is constantly being improved by the NBC? Will the advertiser receive better service than that now provided by these stations under NBC management? Will the new and different operator make more money, and is that the goal that is desired? Or is this a game where private enterprise, operating under the regulation of a Commission with a mandate from Congress to "foster and encourage the art," is first to be invited in and later kicked out?

I call to your attention again the fact that the NBC is currently licensed to operate in New York City, two standard broadcasting stations, two international short-wave stations, a frequency modulation station, and a television station. The latter two are non-revenue producing, and already represent substantial investments in time and money. Profits are still a long way off.

We are told by the new regulations that it is bad public policy, and against the public interest, for the NBC to operate more than one standard broadcast station in New York City, but in the public interest for us to operate two international stations, a frequency modulation station, and a television station. I understand, of course, that the new rules apply only to the standard broadcast band, but I submit that if the same reasoning is followed, more new rules can be issued at any time to deprive the NBC of any or all of the four stations in frequency modulation, television, and international broadcasting.

I think it is plain, gentlemen, that the new rules issued by the Commission are not only destructive of the present system of network broadcasting in the standard band, but also of the future services in the high-frequency band, yet to be created.

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Stations in Which NBC Formerly Had an Interest

KEX: This station was owned by the Western Broadcasting Company, a subsidiary of Northwest Broadcasting System, Inc., which was in turn an NBC subsidiary. It was leased for a number of years to the Oregonian Publishing Company and NBC sold all its interest in this station which it had acquired from its subsidiaries to the Oregonian Publishing Company on May 10, 1941.

KJR: This station was owned by Northwest Broadcasting System, Inc., a subsidiary of NBC, and leased to Fisher's Blend Station, Inc. NBC sold, on April 8, 1941, to Fisher's Blend Station, Inc. all its interests in this station which it had acquired from its subsidiary.

KGA: This station was owned by Northwest Broadcasting System, Inc., a subsidiary of NBC and leased to Louis Wasmer. NBC sold, on May 9, 1941, to Louis Wasmer all its interest in this station which it had acquired from its subsidiary.

WGY: For a number of years NBC acted as programming and sales agent for this station for the General Electric Company, the owner and licensee thereof. This arrangement was discontinued on October 1, 1940.

KDKA, KYW, WBZ and WBZA: For a number of years NBC acted as programming and sales agent for these stations for the Westinghouse Electric & Manufacturing Company, the owner and licensee thereof. This arrangement was discontinued on July 1, 1940.

regulatory body, which, when the risk is great and revenues nonexistent, encourages a citizen to acquire a license, only to deprive him of it years later because he has been successful.

It seems to me that a fair question is: Who benefits by all of this? Will the public receive a better program service than the one that is constantly being improved by the NBC? Will the advertiser receive better service than that now provided by these stations under NBC management? Will the new and different operator make more money, and is that the goal that is desired? Or is this a game where private enterprise, operating under the regulation of a Commission with a mandate from Congress to "foster and encourage the art," is first to be invited in and later kicked out?

I call to your attention again the fact that the NBC is currently licensed to operate in New York City, two standard broadcasting stations, two international short-wave stations, a frequency modulation station, and a television station. The latter two are non-revenue producing, and already represent substantial investments in time and money. Profits are still a long way off.

We are told by the new regulations that it is bad public policy, and against the public interest, for the NBC to operate more than one standard broadcast station in New York City, but in the public interest for us to operate two international stations, a frequency modulation station, and a television station. I understand, of course, that the new rules apply only to the standard broadcast band, but I submit that if the same reasoning is followed, more new rules can be issued at any time to deprive the NBC of any or all of the four stations in frequency modulation, television, and international broadcasting.

I think it is plain, gentlemen, that the new rules issued by the Commission are not only destructive of the present system of network broadcasting in the standard band, but also of the future services in the high-frequency band, yet to be created.

As part of this station situation, a reference was made in this hearing to Mutual's inability to get a full-time station affiliation in Cleveland. Great concern was expressed by the Chairman of the FCC and by counsel for Mutual over the lack of facilities in that city available for the four networks. Counsel for the Mutual Broadcasting System stated that, while they had a day-time station in Cleveland, they had only a second mortgage on a night-time station, which happens to be WHK, now regularly affiliated with the Blue Network.

The Commission files on the Cleveland situation indicate clearly that a fourth full-time station could have been established years ago in the sixth largest market of the country.

An examination of the record discloses that since 1930 there have been nineteen different applications for an additional station, or for full time on a present station, and that the Commission either has rejected the applications, or on the two pending applications, has taken no action.

In one case, filed November 21, 1936, the Commission on March 9, 1938, denied an application for a regional station in Cleveland. The reasons given were that the station would be limited to the 4.8 millivolt line at night—a technical limitation which has been repeatedly exceeded in subsequent grants in other cities.

The Commission in this case further held, and I quote:

> "The area which the station proposes to serve now has program service from a number of existing stations."

and that:

> "No such need is shown for additional broadcasting service as will warrant the establishment of an additional regional station, which because of interference, will be unable to serve as extensive an area as is normally expected to be served by a station of this class."

In another case, decided that same year, 1938, although the Commission found the applicant to be legally, technically and financially qualified to construct and operate the proposed station in Cleveland, it held that:

> "The frequencies available for assignment to broadcast stations being limited, public interest would be

served by an allocation of licenses to those who will, where need exists, render a broad, general public service."

and the Commission further held that:

"No need exists for an additional station in the area which would be served upon the basis of program service proposed to be rendered."

Therefore the Commission ruled that:

"Public interest, convenience and necessity will not be served by a granting of the application."

In a third case when the application for a regional station was denied in June 29, 1938, the Commission concluded; and again I quote:

"1. The granting of this application would not cause objectionable interference to any established station. However, interference from existing stations would be expected to limit coverage of the proposed station to its 4.7 millivolt contour at night."

This limitation has since been frequently exceeded in other locations, even to the extent of interference to the nine or ten millivolt line.

The Commission went on to say:

"2. While the evidence indicated that there *may* be need for an additional station in Cleveland, the degree of need shown by the applicant for this station is not of such a convincing and compelling nature as to warrant the Commission in departing so radically from standards of allocation and service which have been established as primary elements in determining whether a particular station would serve the public interest, convenience and necessity, from the standpoint of the nation as a whole."

There are now two applications pending, according to our examination of the record. One of them was filed August 3, 1937—almost four years ago. It calls for a 1000 watt regional station. No action has been taken by the Commission.

The second application would give full time to the present Mutual Station, WCLE, which is now limited to daytime operation. This application was filed in March 28, 1940, more than fourteen months ago. It is still pending.

If both these applications are granted, Cleveland will have adequate facilities, in accordance with the Commission's conception of adequacy. But if neither is granted, the NBC could be required, under the new regulations to dispose of Station WTAM, which we have operated in the public interest for twelve years.

Network Contractual Relationships

So far, I have discussed the effect of the two rules issued by the FCC aimed directly at the NBC. I believe I have made it sufficiently clear that it is a "wrecking operation," despite denials by Chairman Fly. He stated further, in respect particularly to the other rules, that they "are merely the relaxing of a few restrictions." I want to discuss now the remaining rules to show you that if they are "a minor operation," so is the loosening of a few screws in the steering gear of an automobile.

One of the strongest contentions of the Chairman of the Commission was to the effect that networks controlled not only the time of the affiliated stations, but the public opinion of the country as well, through a vicious restriction of the stations' freedom of operation. The contrary is true.

Cancellation Privilege

Stations affiliated with the NBC have always enjoyed the privilege of rejecting a network commercial or public service program for a program of local importance.

In Rule No. 3.105 the Commission declares that a station may be punished by the loss of its license if it enters into any contract which prevents it from exercising this right which it has always had.

As evidence of the policy that we have always followed, I desire to submit, for the information of the Committee, a list of network commercial programs refused by NBC affiliated stations between January 1, 1940, and May 31, 1941. During this period there were 3,993 program cancellations by our affiliated stations. (*See Exhibit G, on following page.*)

I feel that this is the best evidence we can present to disprove the charge of domination over our affiliated stations, or the contention of Chairman Fly that the local station is prevented from carrying a broadcast by the Daughters of the Confederacy or a Senator to take a network program consisting of a blonde gal from Hollywood who might happen to be on a commercial program. We have never forced them to forego broadcasts of local interest in favor of those offered by the network.

Exclusivity

The pioneer networks of the country have found that mutually exclusive contracts between stations and networks furnish

EXHIBIT G

Network Commercial Programs

Refused by NBC Affiliated Stations

January 1, 1940 - May 31, 1941

SUMMARY

Total number of cancellations of commercial programs by stations during the year 1940, from January 1 to December 31, inclusive................	2,091
Total number of cancellations of commercial programs by stations during the first five months of 1941, from January 1 to May 31, inclusive......	1,902

This summary was accompanied by detailed lists of programs cancelled.

the best basis of operation from the standpoint of quality of service rendered to the public, the requirements of local stations, and stable network operation.

The station is part of a network family. Under this arrangement, the station, in addition to its own programs, broadcasts those of the network with which it is affiliated, and the network in turn furnishes its programs exclusively to the affiliated station.

The new rules forbid any station to contract for exclusive network service, and make it impossible for any network to render it. This makes it impossible to assure religious, educational and civic interests, as well as advertisers, either completeness of coverage or continuity of service.

By preventing a station from being the exclusive outlet of a network, and a network from offering a fixed and definite line-up of stations, these rules cut an essential link out of the broadcasting chain, and set stations and networks adrift.

In essence, the rule more viciously fosters monopoly than could any possible restraint which now exists in the industry. If there is "dominance" in the fact that four competitive networks serving 500 stations now operate in the standard field (and no such dominance has been proved), what would happen if the best programs, the best features and the largest advertising accounts gravitated, as they would, to the fifty or sixty largest and most powerful stations in the country? Yet that is exactly what would happen under the so-called non-exclusivity rule.

Today there are Red network programs, Blue network programs, Columbia network programs, and Mutual network programs, distinctly advertised to and recognized by American business and the listening public. Today the network stations of the country have competitive advantages—locally as well as nationally—in business solicitation, prestige and popularity because of their definite identification with one or another of the networks.

Loss of Exclusivity Spells Chaos

Under the new rule all will be chaos and confusion. Stations will rush for the best features of every network service. Advertisers will try to preempt the best hours on the best stations. Time brokers will inject unfair methods of competition. Advertising agencies will make their own arrangements for "front-page" position with the bigger and better stations. If the existing networks lose key stations and therefore advertising support, the responsibility for public service from the national standpoint will be nobody's business. Then the Federal Communications Commission will have the opportunity it foresees in its Report on Chain Broadcasting. Private enterprise will have failed, and a non-competitive, government-controlled operation will be necessary.

The destruction of exclusivity would have an equally serious effect on non-commercial or sustaining programs. Let me tell you how NBC clears its public service programs. Take, for example, a talk by a member of Congress or a Government official. We may book the talk in a period not in use by a network commercial program. Some stations will find it impossible to accept this booking, either because of some local public service feature or a local advertising program. These are the only factors that limit the widest possible distribution of the program.

But eliminate the exclusive relationship between the network and the stations, and the possibility of getting a satisfactory line-up for public service features becomes remote. Every public service program which NBC would offer would be measured by the stations against the commercial and public service offerings of every other network for that period. Public service would be buffeted from pillar to post. There would be no incentive for public organizations to build up such programs; no reason for any network to spend the sums they now spend to build competitive recognition and prestige. Whatever element of public service remains will be local service. National service will be the exception, not the rule.

A grave question of public interest was put to Chairman Fly at these hearings. He was asked whether a group of advertising agencies, or even big advertisers on their own account, could construct their own network under the new rules. Chairman Fly replied that he did not think it would be feasible. I believe, on the contrary, that it would not only be feasible, but inevitable.

There is no problem in interconnecting broadcasting stations. The telephone company has adequate facilities for the purpose. Many agencies now have expensive production departments and studios, and already place much business direct with the stations. Such networks, however, would lead to a concentration of advertising support for broadcasting over larger stations and in larger communities, weaken the economic structure of hundreds of smaller stations, and make for inadequate service in many parts of the country that are now suitably covered by network broadcasting.

Our American system of broadcasting must continue to be competitive, but, in spite of Mr. Fly's belief, networks to be really competitive must maintain the mutual exclusivity arrangements existing between stations and networks.

As you all know, our American system is supported by the dollars received from national and local advertisers. Inasmuch as the advertising dollar is used to sustain this system of broadcasting, we find that it is the advertiser—not the stations, not the network—who determines the distribution or line-up of stations on commercial programs.

General Foods on Jello may require a different line-up of stations from those that General Foods may require on Maxwell House Coffee, and the stations required by the Packard Motor Car Company would differ radically from those of Colgate-Palmolive-Peet. Each advertiser, within the requirements set by the networks, custom-builds his network to his own needs.

However, while the advertiser is able to exercise this freedom of choice, it is a freedom of choice within the confines of certain restrictions which the networks, through experience, have found it necessary to establish. I refer now to the minimum requirements as to the number of stations used by a network advertiser. They are dictated chiefly by national coverage needs.

Minimum Station Requirements

To illustrate these minimum requirements: Ten years ago an advertiser could purchase, during the evening hours, as few as ten stations on the NBC Red Network for his program. Some years later we increased this minimum requirement to 23 stations, and today, during the important evening hours, it is necessary for an advertiser to buy a minimum of 60 stations on the Red Network.

The establishment of these minimum requirements has had definite results in three directions: First, it has enabled us to give our affiliated stations, particularly the smaller stations, more hours of outstanding programs and more dollars of commercial revenue. Second, it has enabled more stations to better serve more people in their communities with outstanding radio entertainment. And third, it has produced increased revenue for NBC, not only for profit, but for investment in more and better sustaining and public service programs.

In addition to the establishment of these minimum requirements, the network, with its sales organization, acts as network sales agent for each station affiliated with it. In conjunction with every commercial account, this sales organization does all in its power to convince the advertiser that it is profitable for him to employ a maximum number of stations in his line-up.

If you will examine the table I now present (*Exhibit H on facing page*), you will see examples of how NBC has increased commercial traffic on affiliated stations.

The best proof of the effectiveness of these requirements and operations is the fact that in May 1934, the average number of stations on an evening Red Network program was only 40, whereas by May 1941 it had increased to 73 stations.

New Regulations Favor Large Stations

With the adoption of these new regulations, it becomes impossible for the NBC to continue to maintain these minimum requirements, which have worked in the interest of the public and the stations. The Commission proposes to substitute a system which will favor the large stations and the large advertisers. We charge that the Commission, unwittingly perhaps, in its efforts, as it says, to free the stations from the domination of the major networks, has successfully thrown the domination of radio into the hands of a limited group of stations and a few large national advertisers.

Mr. Fly has stated that there is no reason why the stations and the networks, under these regulations, cannot, for all practical purposes, operate pretty much as they did before. That is fallacious thinking. The large advertiser, from experience, is thoroughly familiar with the coverage and popularity of practically all stations in the country. Being desirous of purchasing the best network—and by that we mean the network that will give him the greatest audience at the lowest cost—the advertiser already sees in these regulations the opportunity to put together a network line-up heretofore unavailable to him, by selecting the best stations from *all* networks.

Advertisers May Build Own Networks

Let us assume that he comes to the NBC and states that he wants to buy a network consisting, not of all NBC stations, but one built up of the best stations of the NBC Red, NBC Blue, Columbia and Mutual. Should the network decline to act as

EXHIBIT H

Examples of How NBC Has Increased Commercial Traffic on Affiliated Stations

(All figures represent clock hours of commercial traffic.)

Knoxville, Tennessee (WROL)

1937	50*
1938	156
1939	295
1940	627

* *Affiliated August 1, 1937*

Chattanooga, Tennessee (WAPO)

1938	8*
1939	207
1940	426

* *Affiliated November 1, 1938*

Wilmington, Delaware (WDEL)

1937	577*
1938	1,741
1939	2,200
1940	2,435

* *Affiliated April 15, 1937*

Boise, Idaho (KIDO)

1937	36*
1938	307
1939	724
1940	988

* *Affiliated October 1, 1937*

Mobile, Alabama (WALA)

1938	106*
1939	304
1940	582

* *Affiliated June 1, 1938*

Pueblo, Colorado (KGHF)

1937	151*
1938	85
1939	104
1940	687

* *Affiliated January 1, 1937*

Pocatello, Idaho (KSEI)

1938	230*
1939	619
1940	870

* *Affiliated March 15, 1938*

Butte, Montana (KGIR)

1936	572
1937	737
1938	520
1939	763
1940	979

Albuquerque, New Mexico (KOB)

1937	88*
1938	227
1939	397
1940	444

* *Affiliated June 15, 1937*

(The above figures were presented in chart form.)

sales agent for the deal, there is nothing to prevent the advertiser or his agency from negotiating with the stations direct, contracting for lines and establishing his own network for his program.

So far so good, but let us see what happens, particularly if we multiply this type of transaction by similar activities on the part of 20 or 30 major advertisers.

I now offer for the information of the Committee a map of a 64-station network built up along the lines just described, which we will call the No. 1 Advertiser Network, which national advertisers may be able to acquire after August 1st. This is not a theoretical line-up of stations, but one selected by a well-known advertising expert as typifying what he would like to purchase for his clients when the new regulations make it possible.

Note that this network of 64 stations affords effective ground-wave coverage of 92.4% of all the radio families in the United States. In addition, all of the remaining families will be reached through sky-wave coverage.

Assuming that this network is to be used by an advertiser from 9 to 10 o'clock on Monday night, let us see what kind of a competing network a second advertiser can buy at the same time.

I now offer a second map, showing what it will be necessary for the second advertiser to buy even to approximate the coverage achieved by his competitor who bought Network No. 1.

Now note the interesting fact that it takes the second advertiser 160 stations to achieve 76.4% coverage of the radio families in the United States.

And should there be a third advertiser who desires to go on the air at the same time Monday night, let us take a look at map No. 3, which I also offer for your information.

Here we find that, regardless of the number of stations this advertiser desires to buy or even the amount of money he has to spend, it is impossible for him to acquire any network which will give him national coverage equal to his competitors.

The significance of these maps is somewhat startling in contrast with Mr. Fly's statement that he believes that five or six national networks are possible under the "new freedom." It looks to me as if even three would be impossible.

These facts are doubly significant when we remember Mr. Fly's statements that the economics of station costs will prevent the big stations from dominating the business. For we find that the No. 1 Advertiser Network, despite its unprecedented coverage, costs slightly less than the present NBC Red Network or the present CBS Network. More illuminating still, we see that Advertiser Network No. 2, with less coverage, not only costs more than the present NBC Red or CBS Network, but more than the super network No. 1.

True national coverage, under the new regulations, will become the opportunity of a relatively few major advertisers. The bulk of the advertising revenue under these regulations will go to a relatively few of the country's major stations.

Option Time

Rule No. 4, prohibiting option time, strikes directly at the heart of network broadcasting. In building up radio, it was found to be in the common interests of stations and networks to reserve, or option in advance, definite hours for network service to individual stations, so that there may be fixed time for fixed features and the proper balance between local and national programs. By this means the listener knows when and where to tune in for programs of his choice; the advertiser is assured of definite time and definite coverage; the station can dispose of its hours as between local sustaining and commercial programs; and networks are enabled to plan in advance, as they must, their schedule of operations.

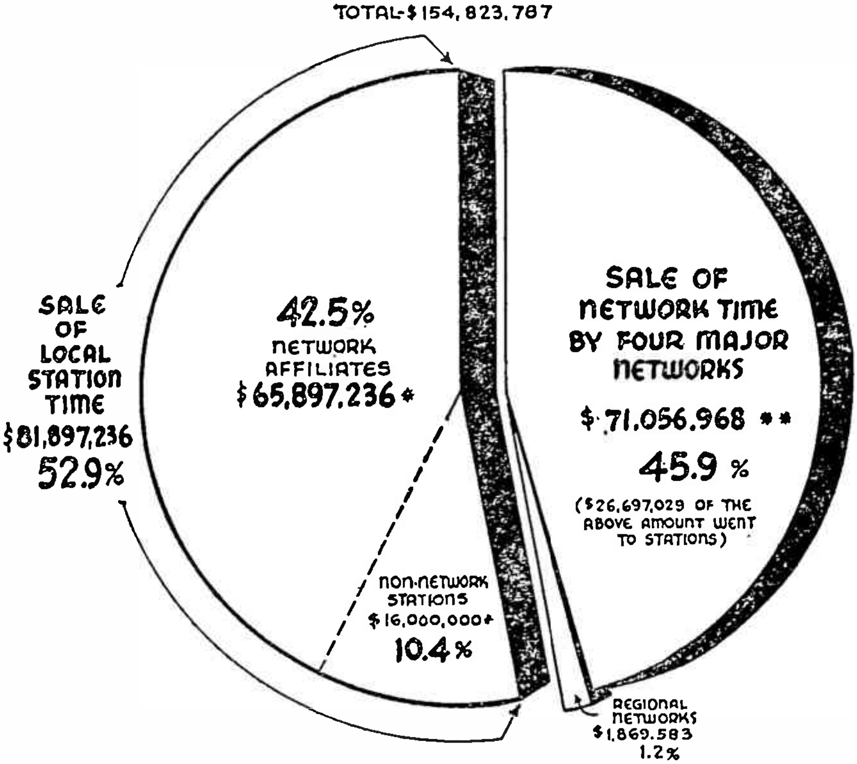
In contracts with affiliated stations, the needs of local service have been specifically recognized by the NBC. Thus, the option time granted to network broadcasting by NBC affiliates are from 10 to 12 in the morning, 3 to 6 in the afternoon, 7 to 7:30 and 8 to 11 in the evening, with slightly different schedules for Sunday. Inasmuch as most stations operate from eighteen to twenty hours daily, this gives the NBC a call on less than 50% of the station's operating time. As proof of the fact that this arrangement has worked satisfactorily for both station and network, I offer a chart prepared from information released by the Commission on May 31st of this year. (*Exhibit L, on following page.*)

The total time sales of all broadcasters in the United States for the year 1940 amounted to $154,823,787. National network time sales amounted to less than half, or $71,919,428. In the latter figure is included approximately $900,000 of Canadian sales. Regional network time sales amounted to $1,869,583. Local time sales, therefore, accounted for $81,897,236. Of the latter amount, the thirty-one network operated and man-

EXHIBIT L

TOTAL SALES OF BROADCAST TIME ON 765 STANDARD BROADCAST STATIONS YEAR 1940

(FCC FINANCIAL REPORT)



* THESE FIGURES APPROXIMATE - NOT YET AVAILABLE FROM FCC.

** EXCLUDES SALE OF CANADIAN AND OTHER EXTRA-TERRITORIAL STATIONS.

aged stations of all national and regional networks accounted for $10,648,592 in local sales, leaving for the 734 other stations in the country for local time sale, a balance of $71,248,644.

If you will eliminate the time sold by regional networks, you will see that the local stations of this country, independent of network ownership or management, received more revenue from local sales than the combined networks sales of NBC, CBS and Mutual on United States stations. Pertinent to this discussion is the further fact that these local stations affiliated with networks sold 80.4% of the total local time sold. Out of a total of $81,897,236 of local time sales, the stations affiliated with networks accounted for approximately $65,897,236.

Two things should be evident from the foregoing figures: First, the total sale of time by networks is less than the sale of time by the stations themselves. As a matter of fact, station revenue from local time sales increased approximately 20% last year, while network time sales increased 15%. Second, stations affiliated with networks do better in local time sales than those unaffiliated.

Under the new rules "option time" is made a crime punishable by the cancellation of the station license. After many years of successful operation under the present system, the FCC now discovers that option time is an element of "control" of the station's freedom of choice between local and national programs, regardless of the fact that the vast majority of stations desire and approve this arrangement. The truth is that under NBC contracts with its affiliates, local stations always *have had* and *have now* the right to reject or cancel any network offering. Time reservations are for the purpose of insuring stability of operations, not to impose restrictions on local station management.

The dissenting members of the FCC thoroughly understood this principle. They declared in the minority report, and I quote:

> "It is not necessary or desirable to prohibit options of a station's time. The record does not reveal that the operation of the option clauses has restricted the affiliates in their obligations to their local communities. In fact, affiliation connections and time options appear essential because they facilitate better radio service to the public. Also, they appear necessary for effective coordination of program service on a

national scale, because without them the situation would be analogous to a railroad in which each station-master along a *through* route had adequate power to make his own train schedules for through trains."

The Chairman of the FCC has denied to your Committee that either in this or in other rules was he engaged in a "wrecking" operation. He has said that stations could continue to be known as the regular affiliates of given networks, while networks could continue to arrange for necessary time from individual stations.

How does he achieve this miracle under the new rules? By substituting in his testimony the word "contract" for the word "option." He has declared, and I quote from the transcript of his testimony on June 3 (Page 109):

> "To begin with, let me make it clear that there is nothing in any of the regulations which prohibits a network and its affiliate from entering into firm contracts for particular commercial or sustaining programs or for a particular series of commercial or sustaining programs. There is nothing to prevent the network from making a firm commitment to supply the station during specified hours or to prohibit an affiliate from making a firm contract to purchase sustaining programs during specified hours or for a minimum number of hours. The affiliate may, as heretofore, pay for the sustaining programs either at a fixed price, or, as is the practice now, certain network programs permit the separate charge of a reduced rate."

If Chairman Fly's statement is to be taken literally, one network or several networks could purchase and control *all* the saleable time of *all* of the stations. Yet he cries "domination" at a time-option arrangement which leaves the station free to render local service, accept local advertising business, carry out its obligations of public service and at the same time insures the networks of stable coverage for commercial and sustaining service broadcasts on a nationwide basis.

Under the Chairman's new proposal a network-station relationship, by which both sustaining as well as commercial programs are balanced by option time, would have to go overboard. It would be necessary for the network to *contract* for time, to buy certain specified hours, and for the network to take all risks of cancellation. The flexible program structure now maintained under time option would be made inflexible for the individual stations, and a tremendous financial burden would be placed upon the networks.

Let me cite a single example of what would occur.

Say we receive today the cancellation of a period from 9:30 to 10 on Monday evening, effective July 16th. Stations served by us are notified of this cancellation 28 days in advance and, assuming for a moment that we do not sell this particular period until October 1st, stations are at liberty to place in this period local advertising or national spot advertising, a program of local interest or a sustaining program from the network. The only option we reserve in such circumstances is that the local station will clear that period for us by moving its program to another open period on 28 days' notice, if we sell the time later.

Under Chairman Fly's plan it would be necessary for us to continue to pay the station for this period for the three months mentioned, even though it might be broadcasting local commercial programs.

If we did not, because we could not, undertake the great financial risks of buying in advance some fixed period from a particular station, the period might be lost to us by sale to another network, under the catch-as-catch-can system of operations imposed by the new rules. The station, which may be a key station, could sell the time to another network.

But when four or five such stations had become unavailable for a given period, 80 or 90 other stations would be penalized by the loss of network business that would occur if an advertiser turned up later with a national advertising account that we could not place because we could not assure him satisfactory coverage in key markets. I am not talking theory; I am talking facts. We lost a good deal of business in the 'thirties when we had no option time from stations and so were unable to secure for the advertiser a satisfactory line-up of stations in the principal markets.

While Chairman Fly has stressed that he is only interested in the local stations' ability to sell the unused time to a competing network, it is clear, to me at least, that there will be a free-for-all fight for the best hours of the best stations. The network organizations will also have to yield to the demands of the advertiser, who will most certainly elect to have the best station in each city carry his program.

I agree with the Commission that then there will be a necessity for additional rules. Regulations will have to be issued requiring advertisers to take the little stations, and forbidding the large stations to sell certain hours to advertisers. Just what rules will be necessary to insure that the stations continue to carry public service programs is not clear. Nor is it clear who will provide the national public service that Chairman Fly assumes will continue as heretofore.

One Year Contracts

I have only brief comment to make on rule 3.103, which prohibits any contract between a station and a network organization for more than one year. It is true that longer term contracts go beyond the licensing period granted by the Commission. But what possible stability could there be for any broadcasting in the United States, if every broadcaster went on the supposition that he will have to dismantle his studios, disperse his organization, destroy his property, at the expiration of a one-year licensing term? On the contrary, we must proceed with the determination to render service in the public interest as a provision of our license, to maintain our facilities up to date, and to justify by our record that we have rendered the service for which we have been licensed. We must proceed with the hope and expectation that our applications for renewal will not be treated arbitrarily or capriciously.

It is nonsense to suppose that long-term contracts are or were designed for the purpose of controlling the affiliated stations. A great many of our affiliates have insisted on long-term contracts. Stations must make substantial investments in studios and equipment, which have to be amortized over a period of years. They require the assurance of continued network service and revenue. The network enters into commitments for wire-line facilities. In addition, the networks must make long-term leases for studios and plant facilities, and must contract for talent and features beyond the one-year term.

Long-term expenditures, which may be productive only in the future, must be made by network organizations for periods much beyond the regular licensing period. Congress recognizes this situation by providing in the Communications Act that the Commission may grant licenses up to a three-year period. The Commission apparently prefers to keep the industry on annual sufferance.

Conclusions

Whatever improvements are possible, it is evident that the broadcasters of the United States have created the greatest system of mass communication known anywhere in the world. Whatever criticism may apply to specific programs, the fact is that the best in entertainment, music, drama, and education has been introduced on the air. But this did not just happen. It required doing. The task demanded organization, capital, research, invention, vision and courage.

Through the establishment of the NBC, the first nation-wide network service was created in 1926. There was no cry of domination or monopoly then. What NBC actually did was to enable stations to compete with each other with national program service theretofore unavailable. NBC's pioneering venture did not restrict competition; it created competition.

Through a stable and profitable business operation, NBC is able to maintain the most modern studio facilities, to engage the world's great artists and orchestras, to maintain instantaneous news coverage from many parts of the world, to conduct research and engineering, and to develop the new services made possible by radio science.

I am emphasizing these facts because the Chairman of the FCC, in his testimony before this committee, saw fit to brush this record aside.

If the purpose of the Commission is to favor existing competition at the expense of the NBC, it is clear that the transfer or destruction of one of the NBC networks would subtract rather than add to the number of network services now available to stations and, to the American listening public. Chairman Fly, on one hand, urges that the Blue Network be disposed of as a going concern, and on the other hand he supports the new regulations that break down the network structure.

Because NBC's record cannot be attacked on the basis of public service, Mr. Fly has adopted the slogan "domination." That the domination is an excuse and not a reason should be evidenced from the fact that he does not come to Congress with the facts to support the charge, or with a request for legislation that would make it impossible for networks or stations to abuse their rights on the air in this respect.

We have called attention to the misuse of figures and facts to indicate the alleged domination by two New York corporations of 85 per cent of the nation's night-time wattage. Wattage is not a measure of domination. But if Mr. Fly had said that the best programs on the air today employ 85 per cent of the nation's night-time wattage, that at least would have been a fact. To combine, however, in terms of wattage, all stations affiliated with NBC and Columbia networks, and add together their broadcasting time, both local and national, in order to support the false charge of domination, is a curious combination of mathematics and logic.

If what was pioneering and leadership fifteen years ago is to be called domination today, what assurance has any factor in the broadcasting industry that investments made today and new services established now will not be destroyed by edict two years, five years, or ten years from now?

The NBC has no opinion to impose on stations or the public. If such partisanship were evident, the first to note and complain would be the stations now associated with NBC networks. The fact is that no such violation has occurred, and Chairman Fly has been reduced, therefore, to the argument that such a violation *might* occur.

Errors in broadcasting can and do occur, but when and if they do, they are checked by 800 broadcasting stations, and by a vast listening public strikingly alert to its interests. But if the almost unlimited power asserted by the Commission should go unchecked, its errors of judgment and policy would have disastrous effect.

It should be evident from the facts I have presented to you that the question involved in the new rules is the question of the extent of business control of broadcasting by the Commission. Business control means program control. Involved here is the choice between operation of broadcasting by private industry and operation by government.

The breakdown of our present broadcasting structure inevitably would make it incumbent on the government to step in and, perhaps, finally to subsidize stations or to tax listeners.

While I am concerned as to the future of the company which I represent, I am deeply apprehensive concerning the continuance of our American system of broadcasting. Its freedoms are in jeopardy. To safeguard them, I earnestly urge approval of Senator White's Resolution.

I repeat, and I respectfully submit to this Committee, that the genuine Magna Charta, to insure the freedom of the air, would come from a clear definition by the Congress of a national radio policy. Broadcasting has come of age. It is entitled to the same constitutional protection and guarantee of freedom that was secured, after so many difficult years, for the press. A free press and a free radio are foundation stones of American democracy.

NOTE: The following are the New Rules and Regulations referred to in Mr. Trammell's Statement.

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D. C.

COMMISSION ORDER IN DOCKET NO. 5060.

IN THE MATTER OF THE INVESTIGATION OF CHAIN BROADCASTING

MAY 2, 1941

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

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

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

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

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

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

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

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

SENATE RESOLUTION No. 113

INTRODUCED IN U. S. SENATE — MAY 13, 1941

BY SENATOR WALLACE H. WHITE, JR., OF MAINE

WHEREAS the Federal Communications Commission (hereinafter referred to as the Commission) is an administrative agency created by the Act of June 19, 1934 (48 Stat. 1064), known as the Communications Act of 1934, as amended, by Act of June 5, 1936, (49 Stat. 1475), and by Act of May 20, 1937, (50 Stat. 189) ; and

WHEREAS said Commission has by the terms of said Act certain delegated powers and duties in respect of Interstate commerce in communications and the facilities and instrumentalities used and usable in said commerce and has no powers and duties not so specifically conferred upon it; and

WHEREAS the Commission on May 2, 1941, in a proceeding before it styled "In the Matter of the Investigation of Chain Broadcasting", Docket No. 5060 made and published certain rules and regulations enacted and promulgated by it which said rules and regulations are alleged to constitute an attempt upon the part of the Commission to exercise a supervisory control of the programs, of the business management and of the policy to be employed by radio broadcast stations which are licensed by said Commission pursuant to said Act; and

WHEREAS it is urged that the Supreme Court of the United States in the case of Federal Communications Commission v. Sanders Brothers radio station decided March 25, 1940, interpreted and construed the Communications Act of 1934, as amended, as conferring no such power or authority upon the Commission as that which it is charged the Commission has attempted to exercise in its said rules and regulations of May 2, 1941, as aforesaid, and in so doing stated:

> "But 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. In short, 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."

Now, therefore, be it

RESOLVED, that the Committee on Interstate Commerce of the Senate, or a sub-Committee thereof, be, and it hereby is, authorized and requested to undertake a study (1) of said rules and regulations; (2) of the probable effects thereof upon the broadcast system of the United States and in particular upon the network organizations and licensees affiliated with said organizations or independent thereof; (3) of the probable effects thereof upon the quality of programs broadcast to the American public; (4) of whether said rules and regulations attempt to confer or do confer upon the Commission supervisory control of the programs, business management or policies of network organizations and of broadcast licensees; (5) of whether said rules and regulations if enforced will adversely affect the broadcast structure of the United States and the service rendered thereby to the people thereof; (6) of whether they constitute a threat to the freedom of speech by radio in the United States; (7) of whether they will contribute to government ownership and operation of broadcast stations or to regulation of them as common carriers; (8) of whether said rules and regulations are in their effect an effort to define monopoly or monopolistic practices and to assert the power of the Commission to find a licensee guilty thereof and to deny a license to an applicant because of such finding; (9) of any problem of radio broadcasting which said Committee finds is raised or is affected by said rules and regulations and of the principle and policies which should be declared and made effective in legislation for the regulation and control of the radio industry, of broadcasting and of Interstate and foreign communication by radio and which should guide and control the Commission in the administration of said Communications Act of 1934, as amended; (10) and finally to consider whether said Commission is authorized by present law to promulgate and enforce the rules and regulations adopted by it as aforesaid; be it further

RESOLVED, that all testimony, exhibits, briefs, arguments, and reports or photostatic copies thereof, submitted by or to the Commission in connection with said proceeding Docket No. 5060 be transferred to and filed with said Committee of the Senate for its study and consideration; be it further

RESOLVED, that the Committee shall report to the Senate as soon as practicable its findings and its recommendations concerning the matters which it is hereby requested to study; and be it further

RESOLVED, that said Commission be, and it hereby is, requested to postpone the effective date of said rules and regulations until said Interstate Commerce Committee shall have made its report to the Senate in pursuance of this resolution for 60 days thereafter.

For the purposes of this resolution the Committee, or any duly authorized sub-Committee thereof, is authorized to hold such hearing; to sit and act at such times and places, either in the District of Columbia or elsewhere, during the sessions, recesses, and adjourned periods of the Senate, in the 77th Congress; to employ such experts, and clerical, stenographic, and other assistants; to require by subpoena or otherwise the attendance of such witnesses and the production and impounding of such books, papers, and documents to administer such oaths; and to take such testimony and to make such expenditures as it deems advisable. The cost of stenographic services to report such hearings shall not be in excess of 25c per 100 words. The expenses of the Committee, which shall not exceed $5,000, shall be paid from the contingent fund of the Senate upon vouchers approved by the Chairman.