69TH CONGRESS } HOUSE OF REPRESENTATIVES { REPORT
1st Session } { No. 464

REGULATION OF RADIO COMMUNICATIONS

MARCH 5, 1926.—Committed to the Committee of the Whole House on the state of the Union and ordered to be printed

Mr. SCOTT, from the Committee on the Merchant Marine and Fisheries, submitted the following

REPORT

[To accompany H. R. 9971]

The Committee on the Merchant Marine and Fisheries, to which was referred H. R. 9971, having considered the same, report the bill to the House with the recommendation that it do pass.

The committee report, No. 404, already filed in relation to H. R. 9108, applies in large part to H. R. 9971. The substantial difference in the two bills is the elimination in H. R. 9971 of section 4 which appears in H. R. 9108 and which attempts "to prevent the receipt from any foreign country or the transmission within the United States, or its possessions, of any radio tubes or radio apparatus upon which there is any contract, agreement, etc., the purpose of which is to fix the price at which such commodity may be resold or to restrict or prohibit the parties by whom or the purpose for which such commodities shall be used."

This particular paragraph was offered and inserted in the bill after the public hearings had been completed. No one had an opportunity to appear before the committee in opposition thereto nor was there any discussion of this provision during the hearings. This paragraph was not a part of the original bill H. R. 5589, and H. R. 9108 represents H. R. 5589 with the committee amendments. It is important to note that H. R. 9108 was reported to the House by this committee the day following its reference to this committee so that no opportunity was afforded the membership of the House to protest the Committee on the Merchant Marine and Fisheries considering

this particular section in the bill which related to patent rights and interstate commerce, over which two subjects the Committee on the Merchant Marine and Fisheries has no jurisdiction.

The majority of this committee is opposed to this section on its merits but, regardless of its merits, your committee feels that its jurisdiction having been questioned it is adopting the proper deferential policy by reporting H. R. 9971. Such a policy insures the consideration of any legislative subject by a committee experienced and familiar with that particular subject and directly chargeable with its consideration. If the committees of the House can change bills, after their reference, in such a way as to usurp the duties and powers of other standing committees of the House it will unavoidably lead to confusion confounded. It was neither the intention nor desire of this committee to transgress its prescribed functions and your committee feels that it is fulfilling the wish of the House in correcting its own error and confining its consideration to subjects over which it has jurisdiction.

MINORITY VIEWS

With the exception of a few minor amendments the last radio legislation was enacted August 13, 1912. Since that time, and particularly within the past few years, there has been a marvelous development and growth of wireless communication. In fact, no other art or industry has ever experienced such a tremendous growth in so short a time. In addition to the thousands of amateur, ship, point to point, and transoceanic transmitting stations, there are 536 broadcasting stations in the United States, comprising two-thirds of those in the entire world; and there are hundreds of applications for new broadcasting licenses, and several applications arriving daily. Millions of our citizens in all sections and in every walk of life have receiving sets, and their number is growing at a rapid rate. It is estimated that $450,000,000 was expended for radio apparatus in the United States during last year.

The future possibilities and potentialities of wireless communication, from a commercial, educational, social, and political standpoint are inconceivable. Its power for good or evil can not be overestimated.

Additional legislation is imperative, but it should be legislation adequately and efficiently dealing with the situation.

I approve most of the provisions of H. R. 9971, but, in my opinion, the bill as it stands does not adequately and effectively meet the requirements. Therefore, the bill should be amended and supplemented.

During the past several years various bills for radio regulation have been introduced and referred to the Committee on the Merchant Marine and Fisheries. Numerous hearings have been held by that committee at which numerous Government officials and representatives of the different branches of the radio industry have appeared and expressed their views. The committee and the subcommittee on radio have given careful and extensive consideration to the subject. The time has arrived when we can and should deal with the subject intelligently and effectively. The time for emergency and make-shift proposals has passed.

In my opinion the pending bill should be amended and supplemented in the manner and for the reasons hereinafter indicated.

HISTORY OF EFFORTS TO ENACT RADIO LEGISLATION, SIXTY-SEVENTH CONGRESS

During the last session of the Sixty-seventh Congress the Merchant Marine and Fisheries Committee reported H. R. 13773, to amend an act to regulate radio communication, approved August 13, 1912, and for other purposes. The committee report accompanying this bill, which was submitted for the committee by Mr. White of Maine, the author of the bill, was filed January 16, 1923.

This report stated in part, as follows:

The bill before you is not a comprehensive radio law, but is limited in its scope. There are many phases of the subject which invite study and which in the not distant future may call for legislative action. Your committee has embodied in this bill only such proposals as are vital at this time and as to which the members of the committee are in unanimous agreement. The approaching end of the session and the imperative need for conferring npon the regulatory body the powers authorized by this bill are sufficient reasons for avoiding at this time controversial matters.

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Apprehension has been expressed, and there is evidence sufficient to raise the question in reasonable minds, that certain companies and interests have been endeavoring to establish a monopoly in wireless communication through control of the manufacture and sale of radio instruments, through contractual arrangements giving exclusive privileges in the transmission and exchange of messages or through other means. Your committee believes that this subject should be carefully investigated and appropriate action considered at an early date. But the committee was unanimously of the opinion that it was impossible during the life of this Congress to inform itself as to the facts involved, and that it would be unwise in the extreme to propose illy considered legislation on so important a subject. Your committee felt that it ought not to delay presenting to the House for action the important proposals contained in this bill, with respect to which the Members are in complete harmony. The bill is not, therefore, an antitrust statute. There are included in it, however, several provisions which it is believed will have a restraining influence upon those who otherwise might disregard public right and interest. It is specifically provided in section 2 of the bill that the Secretary of Commerce may refuse a license to any person or corporation which in his judgment is monopolizing radio communication. He is authorized with respect to licenses for stations transmitting to foreign countries to impose any terms, conditions, or restrictions which may be imposed with respect to cable landing licenses under the act of May 27, 1921. We have authorized the Secretary to revoke the license of any person or company which the Interstate Commerce Commission in the exercise of the authority conferred upon it finds has made any unjust and unreasonable charge or has made or prescribed any unjust and unreasonable regulation or practice with respect to the transmission of messages or service.

This bill was considered in the House on January 24 and 31, 1923, and passed the House on the latter date. However, this bill was never acted upon in the Senate.

During the debate on the bill different Members criticised the bill because it vested too great power in an administrative official and because there were no adequate provisions against monopoly, for regulation, or rates, etc. Different members of the committee answered such criticisms in the same manner as did the report, explaining that the Congress would soon adjourn and it was not considered possible to pass a bill within the short time intervening which contained highly controversial provisions, and that they had only presented an emergency bill, but giving assurances that such matters would likely be adequately dealt with in subsequent legislation.

RADIO MONOPOLY

Twelve days after the passage of said bill by the House, to-wit, on February 12, 1923, Mr. White, of Maine, introduced the following resolution:

Resolved, That the Federal Trade Commission be, and it is hereby, requested to investigate and to report to the House of Representatives at the convening of the Sixty-eighth Congress, or as soon thereafter as practicable, the facts relating to (a) the ownership or patents covering radio apparatus used in interstate and/or foreign commerce and to all assignments or other contracts concerning such

patents; (b) contracts, leases, or agreements in whatsoever form the same may be or practices, the purpose, tendency, or effect of which is to control or restrict the manufacture, sale, resale, or use within the United States of such radio apparatus or to control or fix the price therefor; (c) contracts, leases, or agreements in whatsoever form the same may be, or practices, the purpose, tendency, or effect of which is to give exclusive rights or special privileges in the reception and transmission in interstate and/or foreign commerce of messages by radio; and (d) such other facts, as in the opinion of the commission, may aid the House of Representatives in determining whether, in the foregoing respects or otherwise on this or related subjects, the antitrust statutes of the United States have been or now are being violated by any person, company, or corporation subject to the jurisdiction of the United States; and (e) such other facts as in the opinion of the commission may aid the House in determining what further legislation may be advisable.

The Committee on the Merchant Marine and Fisheries unanimously reported said resolution to the House February 22, 1923, accompanied by the following report:

[To accompany H. Res 548.]

The Committee on the Merchant Marine and Fisheries, having considered House Resolution 548, reports the same to the House without amendment, with the recommendation that the resolution be passed. The members of the committee are unanimous in their approval of the resolution.

The House recently passed House bill 13773. In the preparation of that bill the members of your committee felt constrained to limit its scope because of a lack of accurate information on certain important phases of the general subject of radio. That bill, therefore, dealt only with those matters concerning which we were advised and upon which we deemed it vital that there should be prompt action by the Congress.

It is a matter of common assertion that the development of the art, its use, and enjoyment is being hampered and restricted through the acquisition by a few closely affiliated interests of basic radio patents, and that the intent and effect of the practices of these interests is to establish a monopoly in radio instruments and parts thereof. It is charged that agreements have been entered into between manufacturers and dealers in radio apparatus the purpose and effect of which is to eliminate competition, to restrict the sale, and to unwarrantably maintain the price of instruments and their parts. There is evidence of record of contracts or agreements made which purport to give exclusive rights in the transmission, reception, and exchange of radio messages, with the result that no competition in service is possible in the localities covered by such contracts.

You committee feels that an investigation should be made to ascertain the facts in connection with the matters specifically suggested and more generally covered by the reported resolution. We desire to know the truth. We must have this information in order to satisfy ourselves whether unlawful agreements have been entered into, whether unlawful practices have been and are being engaged in, and to guide us in framing legislation for the consideration of the House. The Members of this House must have the facts if they are to legislate advisedly in the public interest on this subject.

This resolution was called up by Mr. Edmonds under a unanimous consent request and adopted by the House without opposition March 3, 1923.

REPORT OF THE FEDERAL TRADE COMMISSION

The Federal Trade Commission conducted the investigation and made its report December 1, 1923, in accordance with said resolution. This report on the radio industry, together with the appendix, contains 347 printed pages. I respectfully urge Members of the House to read said report.

In the letter submitting said report to the Speaker of the House of Representatives the Federal Trade Commission made the following explanation:

The commission submits no conclusions in this report as to whether the facts disclosed constitute a violation of the antitrust laws, as the House resolution under which the report was prepared called only for the facts and data "as in the opinion of the commission may aid the House of Representatives in determining whether * * * the antitrust statutes of the United States have been, or now are, being violated * * *; and such other facts as in the opinion of the commission may aid the House in determining what further legislation may be advisable."

COMPLAINT OF FEDERAL TRADE COMMISSION

However, the Federal Trade Commission, upon its own motion, filed a complaint against the General Electric Co., the American Telephone & Telegraph Co., the Western Electric Co. (Inc.), Westinghouse Electric & Manufacturing Co., the International Radio Telegraph Co., the United Fruit Co., Wireless Specialty Apparatus Co., and Radio Corporation of America.

A copy of said complaint is herewith filed as appendix to the minority views.

With respect to this complaint, the Federal Trade Commission made the following statement:

FEDERAL TRADE COMMISSION,
Washington, January 28, 1924.

Monopoly in radio apparatus and communication, both domestic and transoceanic, is charged in a complaint issued by the Federal Trade Commission today. Efforts to perpetuate the present control beyond the life of existing patents is likewise charged.

Radio Corporation of America, General Electric Co., American Telephone & Telegraph Co., Western Electric Co. (Inc.), Westinghouse Electric & Manufacturing Co., the International Radio Telegraph Co., United Fruit Co., and Wireless Specialty Apparatus Co., are named as respondents and are alleged to have violated the law against unfair competition in trade to the prejudice of the public.

In the language of the complaint "the respondents have combined and conspired for the purpose and with the effect of restraining competition and creating a monopoly in the manufacture, purchase, and sale in interstate commerce, of radio devices and apparatus, and other electrical devices and apparatus, and in domestic and transoceanic radio communication and broadcasting."

To attain the present control alleged, the complaint recites that the respondents (1) acquired collectively patents covering all devices used in all branches of the art of radio, and pooled these rights to manufacture, use, and sell radio devices, and then allotted certain of the rights exclusively to certain respondents; (2) granted to the Radio Corporation of America the exclusive right to sell the devices controlled and required the radio corporation to restrict its purchases to certain respondents; (3) restricted the competition of certain respondents in the fields occupied by other respondents; (4) attempted to restrict the use of apparatus in the radio art manufactured and sold under patents controlled by the respondents; (5) acquired existing essential equipment for transoceanic communication and refused to supply to others necessary equipment for such communication; and also excluding others from the transoceanic field by preferential contracts.

From the series of contracts referred to in the complaint it appears that the Radio Corporation of America has the right to use and sell under patents of the various respondents which relate to the radio art. It has also given to various respondents the right to manufacture under these patents. Thus there has been combined in the hands of these corporations patents covering the vital improvements in the vacuum tube used in long-distance communications and other important patents or inventions in radio which supplement this central device. Approximately 2,000 patents are involved.

The report of the Federal Trade Commission on the radio industry stated that the gross income of the Radio Corporation in 1922 was $14,830,856.76, and that

its capital stock on December 31, 1922, was $33,440,033.56. The holdings of the several respondents in the Radio Corporation of America are given as follows:

	Number of shares	
	Preferred	Common
General Electric Co	620,800	1,876,000
Westinghouse Electric & Manufacturing Co	1,000,000	1,000,000
American Telephone & Telegraph Co	400,000	
United Fruit Co	200,000	160,000

It is further stated that up until 1922 the Radio Corporation had an absolute monopoly in the manufacture of vacuum tubes and for the first nine months of 1923 sold 5,509,487 tubes. During the same period the only other concern having the right to make and sell tubes sold 94,100 tubes.

In the communication field, while the Radio Corporation has some competition in the ship-to-shore communication, it has a practical monopoly in transoceanic service. It controls all the high-power stations in this country except those owned by the United States Government. Agreements of an exclusive character have been entered into with the following countries, or with other concerns in control of the situation in those countries, namely, Norway, Germany, France, Poland, Sweden, Netherlands, South America, Japan, and China. Arrangements have also been made with the land telegraph companies in this country whereby messages will be received at the offices of the Western Union and Postal Telegraph Cos.

A summary of the contracts between the respondents as recited in the complaint is: First, the organization of the Radio Corporation of America in 1919 under the supervision of the General Electric Co., which company received large holdings in the stock of the Radio Corporation for capital supplied and for its service in connection with the acquisition of the American Marconi Co. An agreement entered into between these companies granted to the Radio Corporation an exclusive license to use and sell apparatus under patents of the General Electric Co. until 1945; and the Radio Corporation granted to the General Electric Co. the exclusive right to sell through the Radio Corporation of America only, the corporation agreeing to purchase from the General Electric Co. all radio devices which the General Electric Co. could supply. Subsequently this arrangement was extended to include the Westinghouse Electric & Manufacturing Co., the business of the Radio Corporation being apportioned between the General Electric Co. and the Westinghouse Co., 60 per cent to the General Electric and 40 per cent to the Westinghouse Co.

Meanwhile, in July, 1920, the General Electric Co. and the American Telephone & Telegraph Co. made an arrangement for mutual licensing on radio patents owned by each and providing for traffic relations. The terms of this agreement were extended to the Radio Corporation of America and the Western Electric Co. and thereafter to the Westinghouse Co.

The Radio Corporation in March, 1921, made an agreement with the United Fruit Co., which operated a number of long-distance radio stations in Central and South America, by which licenses under radio patents of the Radio Corporation and of the United Fruit Co. and its subsidiary, the Wireless Specialty Apparatus Co., were exchanged, and arrangements made for the exchange of traffic facilities, and the definition of their respective fields adopted between the Radio Corporation and the United Fruit Co. Provisions of the agreements between the Radio Corporation of America, the General Electric Co., the American Telephone & Telegraph Co., and the Western Electric Co. were extended to the United Fruit Co.

While motions made by the respondents have been overruled and some evidence taken, yet there has not been a final adjudication upon this complaint.

With respect to the respondents, it may be noted that the Western Electric Co. (Inc.) is a subsidiary of the American Telephone & Telegraph Co., the International Radio Telegraph Co. is a subsidiary

of the Westinghouse Electric & Manufacturing Co., and the Wireless Specialty Apparatus Co. is a subsidiary of the United Fruit Co. According to stock-exchange quotations, the market value of the stock of the said five parent companies against whom said complaint was filed amounts to about $2,500,000,000.

EFFECT OF THE RADIO MONOPOLY

According to the complaint of the Federal Trade Commission, and, as clearly shown by the admitted written contracts between said various parties, copies of which may be found in the appendix to the Federal Trade Commission report, these parties have already firmly established monopolies in the field of manufacture, sale and use of apparatus for wire and wireless telephony, wire and wireless telegraphy, and wireless broadcasting. The more offensive provisions of the contracts are—

(*a*) Those for the pooling of all patents of all the parties for all wire and wireless telegraph devices, for all wire and wireless telephone devices, as well as for all radio devices of whatsoever kind and for whatsoever use, for a period fixed or arranged to terminate in 1945.

(*b*) Those giving to different members of the combination a monopoly in one or more of the fields and containing covenants of all the parties to the contract not to compete or aid others to compete in such fields and to prevent such competition by others.

(*c*) Those providing for a representation of all the members in the purchase of patents by any member; and for the requirement by all the members that employees should assign their inventions and patents to their employer.

The effect of this combination upon the public is in part disclosed by a reference to a few of the many monopolistic features:

The public service system of the Telephone Co. is protected from radio competition.

With relatively unimportant exceptions, the monopoly of manufacturing radio devices is secured to the General Electric and to the Westinghouse Cos.

With relatively unimportant exceptions, the Radio Corporation has no right to manufacture radio devices, and while it has the monopoly, with relatively unimportant exceptions, of using and selling radio devices, it is not allowed to use them in competition with the public service telephone business of the Telephone Co., and the public are thus cut off from the present and future advantages of like radio service. The Radio Corporation has an absolute monopoly in wireless communication between this country and foreign countries, except that radio service between this and a few Central American and West Indies points is reserved to the United Fruit Co., another member of the monopoly.

Even if a prospective broadcaster can procure a license from the Department of Commerce, it is necessary for him to purchase his broadcasting apparatus from the monopoly, and if the monopoly sees proper to sell to him at all he must buy the apparatus and operate same upon such terms and under such conditions as the monopoly dictates.

The inventor and scientist is in the grip of a monopoly which can exclude his inventions and patents from use or sale, excepting at a

tremendous disadvantage to him, with corresponding benefit to the monopoly.

Without considering the vast amount of available evidence as to the unlawful operation of the monopoly, the written contracts, and the combination created by them are unquestionably violative of the Sherman antitrust law and the Clayton antitrust law. (Standard Sanitary Co. *v.* United States, 226 U. S. 20, p. 49; Bauer *v.* O'Donnell, 229 U. S. 1; Straus *v.* Victor Talking Machine Co., 243 U. S. 490; Motion Picture *v.* Universal Film Co., 243 U. S. 502; Boston Store &c. Co. *v.* Graphophone Co., 246 U. S. 8; United Shoe Machinery Co. *v.* United States, 258 U. S. 451.)

RADIO CORPORATION OF AMERICA

In fact, officials of the Radio Corporation of America have frankly admitted that this corporation had a monopoly in wireless communication service between this and foreign countries. In order to effect and permanently maintain such a monopoly, even against other American companies who might desire to enter the field, the Radio Corporation has effected arrangements in various foreign countries, under which radio communication between those countries and the United States can only be sent and received through the Radio Corporation.

In an effort to procure such an exclusive privilege in China, the president of the Radio Corporation of America, endeavored to enlist the assistance of our Government, as shown by letters to Secretary of the Navy Denby and Secretary of State Hughes, which letters are incorporated in the report of the Federal Trade Commission (pp. 63–67).

Although the Federal Telegraph Co. of California already had a concession in China, the Radio Corporation was seeking to obtain an exclusive privilege for wireless communication between this country and China.

In a letter to Secretary Hughes upon the subject, Secretary Denby wrote, in part:

> In other words, this department considers that maintaining free and open competition in the matter of radio communication in the United States is equally as important as correcting the present chaos in China resulting from an endeavor to create monopolies, and believes that every endeavor to correct the latter condition should in no wise prevent a tendency toward the former condition.
>
> In this connection I invite your attention to the fact that the Federal Telegraph Co., of San Francisco, Calif., a company which has spent large sums of money over a period of many years toward advancing the radio art, and is thoroughly familiar with communication conditions in the Pacific and Far East, now has a contract with the Chinese Government for a system of radio stations for communication within and without China. It is believed that any arrangement as to Chinese communication, such as that proposed by Mr. Young's letter, should permit of the Federal Co. being able to compete for the business of establishing means for communication within and without China and for stations in the United States and its possessions for communication to China; and this should be true of any other company which in the future might show its ability to establish such communication as long as there are wave lengths available or wave lengths may be properly shared with other companies.
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> The Navy Department fears that any commitment on the part of the Government to an arrangement favorable to a monopoly by a single commercial company, though limited to a particular service, would but lend a means toward extending monopoly to other services, such as development and distribution of apparatus in general, and this is considered absolutely undesirable, particularly in the field of supply and service to ships.

Secretary Denby sent a copy of this letter to the president of the Radio Corporation, who replied in part as follows:

In a highly technical and rapidly developing art like radio, I believe in private rather than Government exploitation. Accordingly, I have been in favor of private ownership. If, however, we have to choose between a policy of competitive stations in private hands or the policy of Government ownership, then I am certainly in favor of Government ownership.

* * * * * * *

Agencies for communication have been considered in the United States a public utility and so subject to Government control. Whatever may be our policy, however, as to domestic wireless communications, I am satisfied that we must consider external radio communications as a public utility subject to Government control.

Still pursuing the efforts hereinbefore outlined, the president of the Radio Corporation on January 9, 1922, addressed a letter to Secretary of State Hughes suggesting that the question of wireless stations in China be included in the agenda of the disarmament conference. In this letter he further stated in part:

I quite realize that the Radio Corporation of America will be charged, no matter what program it suggests, with an attempt thereby to strengthen its own position in the Orient and to weaken the position of the Federal Co. * * *

The real obstacle seems to be that some of your advisors are again raising that always effective cry of monopoly.

I maintain that the external wireless communications of America should be done by a single public service company regulated by our own Government as to rates, service, and return, and that there is no place for competition in the field of external communications. America can adopt either the theory of regulated monopoly or that of competitive activity; either will regulate rates and service.

Reply to this letter was made by Hon. Elihu Root, stating in substance that it was not thought practicable for the conference to deal with the subject.

In this connection, it is interesting to note that the Radio Corporation of America subsequently acquired the Federal Telegraph Co., together with the concession which that company had to operate between this country and China. In other words, pursuing the customary method of monopolies, failing to crush a competitor, they simply acquired it

During the hearings on the radio bill in the last Congress. David Sarnoff, vice president and general manager of the Radio Corporation of America, appeared before the Committee on the Merchant Marine and Fisheries, and during the course of his testimony the following occurred:

Mr. DAVIS. You have given it as your opinion that the international radio service is a natural monopoly and should be?

Mr. SARNOFF. Yes.

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Mr. DAVIS. Have you objection to the Government regulating international radio so far as this country is concerned?

Mr. SARNOFF. None whatever.

Mr. DAVIS. Or fixing rates?

Mr. SARNOFF. None whatever.

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Mr. DAVIS. And you have no objection to the Government making reservations to protect the public interest, along the same line, in the license that they issue you for international radio service?

Mr. SARNOFF. Quite so; we offer no objection.

Although there is concededly an absolute monopoly in international wireless communication and the officers of the monopoly

frankly state that the protection to the public should be insured by Government regulation of rates, service, etc., and state that they have no objection to such regulation, still the pending bill contains no such provisions, and reposes no authority in anybody to make or enforce any such regulations.

SIXTY-EIGHTH CONGRESS

Reverting to the history of attempts at radio legislation, Mr. White of Maine introduced H. R. 7357, to regulate radio communication, and for other purposes, in the Sixty-eighth Congress. It was referred to the Committee on the Merchant Marine and Fisheries, and this committee held extended hearings on the bill. In the meantime the Senate passed Senate bill 2930, merely reaffirming the use of the ether for radio communication, or otherwise, to be the inalienable possession of the people of the United States and their Government and providing for the temporary suspension by the President of privileges granted licensees in case of war or other national emergency, and providing against any claims of alleged vested rights to the use of any particular wave lengths or to the ether generally. The Committee on the Merchant Marine and Fisheries adopted certain amendments to H. R. 7357 and reported Senate bill 2930 to the House with an amendment. The House amendment struck out all of the Senate bill after the enacting clause and inserted the new draft of 7357 with the amendments thereto adopted by the committee.

Hon. Herbert Hoover, Secretary of Commerce, was the first witness to testify at the hearings before the Committee on the Merchant Marine and Fisheries on H. R. 7357, and among other things he made the following statement:

There is no problem of more technical complexity, or that has more indeterminate factors, at the present time, than the one you have under consideration. It is urgent that we have an early and vigorous reorganization of the law in Federal regulation of radio. Not only are there questions of orderly conduct between the multitude of radio activities, in which more authority must be exerted in the interest of every user, whether sender or receiver, but the question of monopoly in radio communication must be squarely met.

It is inconceivable that the American people will allow this newborn system of communication to fall exclusively into the power of any individual, group, or combination. Great as the development of radio distribution has been, we are probably only at the threshold of the development of one of the most important of human discoveries bearing on education, amusement, culture, and business communication. It can not be thought that any single person or group shall ever have the right to determine what communication may be made to the American people. * * *

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We can not allow any single person or group to place themselves in position where they can censor the material which shall be broadcasted to the public. * * *

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The problems involved in Government regulation of radio are the most complex and technical that have yet confronted Congress. We must preserve this gradually expanding art in full and free development; but for this very purpose of protecting and enabling this development and its successful use further legislation is absolutely necessary.

* * * * * * *

Radio communication is not to be considered as merely a business carried on for private gain, for private advertisement, or for entertainment of the curious. It is a public concern impressed with the public trust and to be considered primarily from the standpoint of public interest to the same extent and upon the basis of the same general principles as our other public utilities.

H. R. 7357 as introduced, and the amendment to S. 2930, as unanimously reported by the committee to the House, contained the following provision:

SEC. 2. (C) The Secretary of Commerce is hereby directed to refuse a station license to any person, company, or corporation, or any subsidiary thereof, which in his judgment is unlawfully monopolizing or seeking to unlawfully monopolize radio communication, directly or indirectly, through the control of the manufacture or sale of radio apparatus, through exclusive traffic arrangements, or by any other means.

A similar provision was contained in the bill introduced and unanimously reported and which passed the House in the Sixty-seventh Congress, except that the former bill provided that "the Secretary of Commerce is hereby authorized to refuse a station license," etc., instead of "the Secretary of Commerce is hereby directed to refuse a station license," etc.

With respect to the said provision contained in section 2 (C), above quoted, Secretary Hoover made the following statement at the hearings:

Section 2 (C) of the bill provides that the Secretary of Commerce shall refuse a license to any concern which is monopolizing or attempting to monopolize radio communication through control of the manufacture of apparatus or otherwise. I am in sympathy with the purpose shown in the paragraph to which I am referring, but I do not believe that the method there adopted is the proper one. The determination of whether or not a given concern is attempting to set up an illegal monopoly in radio communication is dependent upon the ascertainment of a vast number of facts, and the determination of difficult legal questions. We have a conflict between the general American principle of opposition to monopoly and an equally American principle, recognized by our patent laws, that an invention belongs exclusively to him who makes it, which necessarily means an exclusive right in the inventor. The problem does not properly belong to any administrative body.

The Department of Commerce has no machinery with which to carry on the investigations necessary, nor is its organization suited for the decision of such questions. I much prefer the principle adopted in section 2 (g) under which the law and facts applicable are determined judicially, and I would suggest that the bill be so amended that the refusal of a license to a monopoly be placed upon the same basis, and determined in the same manner as is the revocation of a license under this section.

* * * * * * *

The need for radio legislation is imperative, although no law will be a panacea for all radio ills. The bill which you are now considering is a valuable step in the proper direction and, excepting as I have above indicated, I heartily commend it to your favorable consideration.

During the hearings on the bill and in the executive sessions of the committee and of the subcommittee there was very considerable discussion of the advisability of establishing a commission to perform the functions imposed upon the Secretary of Commerce in section 2 (C), which Secretary Hoover insisted should not be imposed upon an administrative official, and to vest the commission with the right to otherwise regulate radio and to hear appeals from the Secretary of Commerce. However, as the creation of such a commission and providing for its powers and functions required the careful drafting of several provisions, because of the lack of time and a desire to expedite the reporting and passage of the bill, the committee did not undertake to provide for the creation of such a commission. However, there was such a strong desire on the part of the committee to adopt some provision that would prevent the issuance of licenses to

parties who were unlawfully monopolizing or attempting to monopolize the radio industry, that the committee unanimously reported said section 2 (C) as a part of the committee amendment to S. 2930, in spite of the objection of the Secretary of Commerce to the duty being imposed upon him.

The Committee on the Merchant Marine and Fisheries adopted certain other antimonopoly provisions which were unanimously reported in the committee amendment to S. 2930. The committee report on said bill, Report No. 719, accompanying S. 2930 with amendment, was reported to the House May 13, 1924. Immediately thereafter certain representatives of the radio monopoly became very active against the bill because of certain antimonopoly provisions therein to which they objected. An effort was made to procure a rule providing for the consideration of the bill, but a majority of the Committee on Rules refused to report the resolution providing for a rule. In the meantime the Secretary of Commerce withdrew his support of the bill. The Committee on the Merchant Marine and Fisheries was not again reached on the Calendar Wednesday call during the last Congress. Consequently the bill died on the Hous calendar.

SIXTY-NINTH CONGRESS

Mr. White of Maine again introduced a bill (H. R. 5589) for t regulation of radio communications, and for other purposes, in the present Congress. It was referred to the Committee on the Merchant Marine and Fisheries, hearings were held thereon, and the bill was referred to a subcommittee, which reported the bill back to the committee with certain amendments. Various amendments to the bill were adopted by the committee, after which Mr. White re troduced the bill with the committee amendments, which bill wa numbered H. R. 9108. This bill was reported to the House by th committee.

The said H. R. 9108, as reported by the committee to the House contained the following provision:

SEC. 4. It shall be unlawful for any person, firm, company, or corporation any manner or by any means (a) to send or carry, or to cause to be sent or carr from one State, Territory, or possession of the United States or the Distric Columbia to any other State, Territory, or possession of the United State (b) to bring, or to cause to be brought, into the United States or into any Territories or possessions from any foreign country, any radio vacuum tub other radio apparatus or any of the parts of either, whether patented o patented, accompanied or then or at any time affected or impressed by o any condition, agreement, instruction, obligation, or limitation, the purpo and/or effect of which is to fix the price at which the purchaser may resell th same or to prohibit or restrict the parties by whom or the purposes for which sa tubes and apparatus or the parts thereof may be used.

Representatives of the radio monopoly immediately got very bus against said provision. On March 3, 1926, Mr. White of Mai reintroduced the bill identical with H. R. 9108, except that sa section 4 was omitted therefrom. On the day following, to wi March 4, 1926, the Committee on the Merchant Marine and Fis eries reported to the House the said H. R. 9971.

During the consideration of this bill in the House, if recogniz I intend to offer an amendment to the bill so as to reincorporate s section 4 therein.

In support of such provision I beg to call attention to the fact the same provision was embraced in the amendment to S.

unanimously adopted, and reported to the House by the Committee on the Merchant Marine and Fisheries in the Sixty-eighth Congress. The committee report, No. 719, accompanying S. 2930, with amendment, which was drafted and submitted from the committee by Mr. White of Maine, in discussing said section 4 of the bill declared as follows:

> Section 4 of the bill deals with an important phase of the radio industry and is in the public interest. There has been general complaint that certain companies engaged in the manufacture of vacuum tubes and radio sets and their parts and in the sale thereof have been guilty of maintaining prices at unreasonable levels of improperly restricting the use of instruments and their parts by competitors and the public, and of other practices prejudicial to the free development of the art and to the public interest. These ends have been obtained by various and devious means asserted by the companies to be legal, challenged as to their lawfulness by others, but felt by your committee to be against public policy whatever the law may now be as to them. Various sections and paragraphs of the bill are efforts to meet these and other conditions which your committee believes should be corrected.
>
> Sections 4 and 5 of the bill contain other provisions aimed against monopolistic control of this great public utility. There is widespread belief that through the acquisition of radio patents, through license contracts, notices, and otherwise, the manufacture, the sale, the resale, the control of price and of the use of radio apparatus has been centered in a few hands, and that this power has been used in an arbitrary and unfair manner. The committee refers those desiring detailed information upon these subjects to the recent report of the Federal Trade Commission, supra.
>
> Section 4 strikes at the evils which we believe to exist. It forbids the movement in interstate or foreign commerce of vacuum tubes or radio apparatus or the parts of either, whether patented or unpatented, if accompanied, affected, or impressed by or with any condition, agreement, or limitation the purpose or effect of which is to fix the price at which the purchaser may resell the article, or which prohibits or restricts the parties by whom or the purposes for which the same may be used.
>
> Your committee has no desire or purpose to invalidate patents, but it is considered to prevent improper results to follow from the ownership of a patent. The owner of a patent has a legal monopoly therein. He may manufacture his patented article or refrain from so doing at his will. He may sell or not as he believes his interest dictates. But there are limits in law and in good conscience to the rights of a patentee. The exclusive right granted by a patent is limited to the invention described in the claims made for the patent in the application therefor. It is also true that the monopoly of use granted by the patent law can not be made the means of controlling the price of the patented article after it has in reality, even though not in form, been sold and paid for. The law does not empower the patent owner by means of license contracts with dealers and license notices attached to patented articles to fix and maintain the prices at which the instruments may be disposed of after they have passed into the hands of the purchaser and after the patent owner has received the full price which it asks or expects for the instrument. Nor does the law empower a patent owner by notices attached to the thing patented to extend the scope of the patent monopoly by restricting its use to materials necessary for its operation but forming no part of the patented invention, nor to send the patented article forth into the channels of trade, subject to conditions to be imposed thereafter in the vendor's discretion. The principles here stated are recognized in the case of Straus et al. *v.* Victor Talking Machine Co. (243 U. S. 490), and in Motion Picture Co.'s Patent *v.* Universal Film Manufacturing Co. (243 U. S. 502). Your committee believes these principles are sound, and taken in connection with the facts existing in the radio industry, justify the provisions of section 4.

The report in the particulars quoted stated the actual facts, and those facts are just as true to-day as they were when they were incorporated in the former report of the committee.

The bill as introduced and as reported to the House in the present Congress modified the said provision in section 2 (C) hereinbefore quoted, so as to read as follows:

> 2.

The Secretary of Commerce is hereby directed to refuse a station license and/or the permit hereinafter required for the construction of a station to any person, firm, company, or corporation, or any subsidiary thereof, which has been found guilty by any Federal court of unlawfully monopolizing or attempting to unlawfully monopolize after this act takes effect, radio communication, directly or indirectly, through the control of the manufacture or sale of radio apparatus, through exclusive traffic arrangements, or by any other means.

Consequently, there is no provision in the bill as reported prohibiting or guarding against the issuance or renewal of licenses to parties unlawfully monopolizing or attempting to unlawfully monopolize radio communication, etc., unless and until such party shall have been found guilty thereof by a Federal court. In view of the report of the Federal Trade Commission, filed more than two years ago, the admissions of representatives of the monopoly hereinbefore quoted, and other abundant evidence of the fact that certain companies are unlawfully monopolizing the radio industry, and in view of the further fact that no action has been taken against the monopoly in any Federal court, it may be fairly inferred that the provision referred to will be wholly ineffective.

PUBLIC UTILITIES, BUT NOT REGULATED

Although persons or concerns engaging in the business of radio communication, including broadcasting, for hire, are concededly public utilities, and should be regulated as such, yet there are no provisions in this bill providing for such regulation. There is nothing in the existing radio law or in this bill to regulate rates or to require equal treatment.

I have already shown that Secretary Hoover recognizes and speaks of parties rendering a radio communication for hire as public utilities; and the previous committee reports have so recognized and designated them.

I have likewise shown that officials of the Radio Corporation of America have a monopoly in radio communication between this and foreign countries, and state that it is a public utility; that the protection of the public lies in regulation of rates, service, etc., and that they have no objection to such regulation.

As before indicated, there should be like regulation of every broadcasting station which charges for its broadcasting.

David Sarnoff, vice president and general manager of the Radio Corporation of America, which operates a few broadcasting stations, testified on this point at the hearings as follows:

Well, my recommendation on that is very definite, that where a broadcasting station performs a function of public service, or as a common carrier, and charges for the service it renders at that station, it should open its doors to all who may have a legitimate right to use it, and that type of station should be subject to Government regulation, both as to rates, character of service, and license. I offer no objection to it.

The American Telephone & Telegraph Co. has a large number of broadcasting stations. Mr. Harkness, assistant vice president of that company, testified at the hearings as follows:

Mr. DAVIS. Would your company object to the same character of regulation, for instance, that applies to the telegraph or telephone or any other public service corporation?

Mr HARKNESS. I do not think so.

Mr. Paul B. Klugh, executive chairman of the National Association of Broadcasters, appeared before the committee and testified in part as follows:

Mr. DAVIS. Do you and your association concede that if a broadcasting station adopts a policy of charging for broadcasting, they should be impressed with the obligations and responsibility of a public utility so that they would be required within certain prescribed limitations to render this service to all who might apply therefor for legitimate purposes and for the payment of regular rates?

Mr. KLUGH. Yes, sir; we subscribe to that.

Yet there is nothing in the pending bill requiring such public utilities to make either reasonable or uniform charges for service or to accord equal treatment to citizens. There is nothing to prevent a broadcasting station from permitting one citizen to broadcast for hire and refusing to permit another citizen to broadcast at all, or to prevent the charge of a reasonable rate to one citizen and a prohibitive rate to another. The broadcasting field holds untold potentialities in a political and propaganda way; its future use in this respect will undoubtedly be extensive and effective. There is nothing in this bill to prevent a broadcasting station from permitting one party or one candidate or the advocate of a measure or a program or the opponent thereof, to employ its service and refusing to accord the same right to the opposing side; the broadcasting station might even contract to permit one candidate or one side of a controversy to broadcast exclusively upon the agreement that the opposing side should not be accorded a like privilege. As Mr. Saranoff, the vice president and general manager of the Radio Corporation, well said, "So powerful an instrument for good should be kept free from partisan manipulations."

WE HAVE PRIVATE RADIO CENSORSHIP

We are naturally jealous of even governmental censorship, and yet under the existing law and practice we have something far worse—individual and corporate censorship—and specific instances of a tyrannical exercise of such power were detailed by witnesses at the hearings.

Mr. W. E. Harkness, assistant vice president of the American Telephone & Telegraph Co., while making a statement at the hearings with regard to the practice of their broadcasting stations operated for hire, stated in part as follows:

Mr. DAVIS of Tennessee. Now, do you assume the right to reject applications for service?

Mr. HARKNESS. We do.

Mr. DAVIS of Tennessee. And in actual experience, have you had occasion to reject a great many?

Mr. HARKNESS. Yes; I can say frankly, we have, because we take the same position that is taken by the editor of any publication. He has the right to accept or to reject any material presented to him. You can not walk into a newspaper office to-day and get them to publish anything you care to present. We felt that was a privilege which the owners of the broadcasting stations also possessed.

Mr. LARSEN. How do you regulate that; do you require them to reduce it to writing?

Mr. HARKNESS. Yes.

Mr. LARSEN. And you censor that?

Mr. HARKNESS. We do just the same as an editor would do with any article presented to him for publication. We do not censor—we edit. We feel if the matter is unfair or contains matter which the public would not care to hear, we may reject it. * * *

As Secretary Hoover stated at the hearings:

> We can not allow any single person or group to place themselves in position where they can censor the material which shall be broadcasted to the public.

RADIO REGULATION NECESSARY

It is true that the Interstate Commerce Commission act and the transportation act of 1920 confer authority upon the Interstate Commerce Commission to regulate both wire and wireless public utilities with respect to interstate communications or from or to any place in the United States to or from a foreign country, but only in so far as such transmission takes place within the United States. However, so far as I am aware, the Interstate Commerce Commission has never exercised such jurisdiction. The fact that they have not done so is presumably due to the fact that their work with respect to common carriers has been so extensive and arduous that they have had no time to deal with communication services. In view of the fact that their work with respect to common carriers is rapidly growing all the time, it can not be reasonably expected that they can in the future give their attention to communication services. Furthermore, a proper regulation of the various radio services, as well as of the telephone, telegraph, and cable, involve a knowledge of such complex and technical questions, which are so widely different from common carrier problems, that in the very nature of things the Interstate Commerce Commission would be compelled to establish a separate organization embracing technical experts before the commission could adequately and intelligently deal with the subject. The cost of the maintenance of such a department under the Interstate Commerce Commission would amount to substantially the same as if established under a communications commission. However, a communications commission could devote all of its time and study to communication services, which the importance of the subject fully justifies, whereas the members of the Interstate Commerce Commission could at best give but little of their time and attention thereto, thus necessarily leaving the determinations largely to subordinate officials.

I believe that I can correctly state that all persons familiar with the subject and the situation agree that a proper regulation of rates, services, etc., of wire and wireless public utilities is inevitable. The sooner some tribunal is created and authorized to perform that function the better. If the situation is permitted to continue to drift, the respective fields will be preempted, claims of vested rights will be urged, those engaged in the radio industry as well as in wire utilities will become still more powerful and influential, and the enactment of appropriate legislation for the protection of the public interest will become correspondingly more difficult.

Such a regulatory tribunal should be established, and proper regulatory power conferred upon it, in this bill. I have shown that Secretary Hoover insists that such regulatory powers, including the determination of the question as to whether licensees and applicants for licenses are unlawfully monopolizing or attempting to monopolize radio communication, should not be imposed upon him or any other administrative official. In my opinion, the logic of his position is absolutely sound. Judge Stephen B. Davis, Solicitor of the Depart-

ment of Commerce, expressed himself in a similar manner as did the Secretary.

RIGHT OF APPEAL

Another important reason for the establishment of a commission of a quasi judicial nature is in order that it may speedily hear and determine appeals from the Secretary of Commerce. During the consideration of legislation upon radio there has been a general demand that a right of appeal from the Secretary of Commerce should be accorded aggrieved parties, and the Secretary of Commerce and the Solicitor of the Department of Commerce likewise took the position that such appeal should be granted. The pending bill provides for an appeal to the Court of Appeals of the District of Columbia by "any applicant for a permit or license whose application is refused by the Secretary of Commerce and any holder of a license revoked by the Secretary of Commerce." However, the opportunity for a review of the decision of the Secretary of Commerce thus accorded is a shadowy one indeed. The bill confers absolute authority and discretion upon the Secretary of Commerce to grant or refuse to grant licenses, to fix wave lengths and power to be used, to revoke licenses, etc. It is well settled that the courts will not reverse or alter the discretion of an administrative officer except in a clear case of abuse of discretion. Upon this subject Mr. Davis, the Solicitor of the Department of Commerce, made the following statement at the hearings:

> The first is on the subject of the review of decisions that the Secretary may make in either the granting or refusing of licenses.
>
> Under the bill as it is drawn at present, which in language provides that action may be taken in the discretion of the Secretary of Commerce, I imagine that it would be very difficult to obtain anything in the way of a review through the courts, the ordinary rule being that the discretion of an administrative officer, once exercised, stands and is not subject to change by the courts except in case of an abuse.
>
> Mr. BLAND. It would have to be a clear abuse of discretion?
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> Solicitor DAVIS. It would have to be a clear abuse of discretion. The power granted by the bill in those respects is very extensive, and, like any such grant of power, of course, might be either abused or wrongfully exercised. And the department is in sympathy with the attitude of those who believe there should be some method of reconsideration in those cases.

Furthermore, the Court of Appeals of the District of Columbia is said to be three or four years behind in its work.

Consequently, a review within a reasonable length of time would be impossible, and when the court finally reached the case it would only consider the question as to whether or not the Secretary of Commerce had clearly abused his discretion.

RADIO COMMISSION

The pending bill also provides for the creation of a Federal radio commission, and grants an appeal by any aggrieved party from the Secretary of Commerce to such commission and a hearing de novo by the commission. I shall later discuss the character and functions of this commission as provided in this bill.

The bill as originally introduced provided for the establishment of a national radio commission, consisting of nine members to be appointed by the President, and for paying the members of such commission a compensation of $25 per day and all their necessary traveling ex-

penses, but restricting them to 90 days' pay in any calendar year. The bill further authorized the Secretary of Commerce to call such commission together at such times and places as he might deem proper and authorized him to refer to the commission for its decision the determination of any matter which was vested in the Secretary under the terms of the act.

When Secretary Hoover appeared before the committee on the Merchant Marine and Fisheries with respect to said bill during the present session, he declared in part as follows:

> I have always taken the position that unlimited authority to control the granting of radio privileges was too great a power to be placed in the hands of any one administrative officer and I am glad to see the checks and reviews which are placed upon that power in this bill.
>
> * * * * * * *
>
> The judgment of the board (commission) is made final and binding, subject only to an appeal to the courts, and I consider this a highly important provision. As some of the members of the committee know. I have felt that that provision for a board of reference should be somewhat tightened up over the present construction of the bill; in other words, that any question of dispute as to who shall enjoy the radio privilege may be referred to that body, not through the volition of the Secretary of Commerce but by either applicant or disputant in the question.

Secretary Hoover also indorsed the principle of regional representation on the commission.

The committee did amend and broaden the provision with respect to a commission so as to provide for regional representation and for an appeal from the Secretary of Commerce to the commission by any party aggrieved, in addition to references by the Secretary to the commission for determination, by increasing to 120 days per annum the time for which the commissioners might receive compensation, and in some other minor particulars.

SUGGESTED AMENDMENTS

My criticism of the commission and its functions as provided in the pending bill, are, first, that because of its restricted functions and time, it could not adequately, speedily, and efficiently perform even the duties imposed upon it; and, secondly, it should have conferred upon it authority and duties which it could not perform at all for the reasons stated. The members of the commission could not afford to give up their regular avocations in order to serve on this commission. It would quite likely happen that some of the members of the commission could not leave their other affairs at the time the commission might be called together from time to time; and even those who might respond to the call would naturally be in a hurry to get through with the work and return to their own homes and affairs. Furthermore, I doubt whether men of the proper caliber would accept appointment on the commission when they would be expected to leave their affairs whenever the commission might be called, especially for the compensation provided.

Furthermore, radio affairs embrace highly technical and complex questions, and the matters pertaining thereto can not be intelligently and efficiently determined without a broad and accurate knowledge of radio problems. Those whose duty it is to determine the rights of parties and the public with respect to such questions should be able to devote all of their time and thought to such questions, in the

same manner that the members of the Interstate Commerce Commission deal with common-carrier problems. Such a commission as provided in the bill would probably be a spineless, inactive commission.

I am opposed to the establishment of any new commissions or the creation of any new offices except in a case of vital necessity. However, after having for several years given this subject very earnest consideration, I have reached the definite conclusion that the interests of the public and of the various citizens engaged in the radio industry can not be adequately and efficiently protected without the establishment of a quasi judicial tribunal to deal with certain phases of the problem.

On the question of expense I submit that the annual salaries of five permanent commissioners would probably amount to but little more than the salaries provided in the pending bill for not exceeding 120 days per annum, together with the traveling expenses allowed the members from their homes and return which are allowed in the pending bill. I am for economy, but there is such a thing as false economy. If the commission functioned at all, it is probable that they would be called into session several times during the course of a year. Furthermore, I submit that the importance of the subject is such as to justify the expense of such a commission in order to protect the public interest. So far as the other personnel is concerned, as before suggested, if we are to have radio regulation, which everybody concedes is necessary, such functions must be performed by some organization somewhere.

The pending bill recognizes the propriety of appeals from the action of the Secretary of Commerce. The commission should be in session prepared to speedily hear and determine such appeals. Not only should the interested parties have the right to present all competent evidence and arguments, but the commission should have a broad and full knowledge of the radio problem generally, in order to intelligently decide the individual cases appealed to them.

Consequently, I suggest that the pending bill should be so amended as to provide for service all the time by the commission and for reasonable annual salaries, that such commission be empowered and directed to regulate the rates and service of all radio public utilities engaged in interstate or foreign business, to investigate and prevent unfair and unlawful practices, etc.

In fact, in my opinion there should be established a Federal communications commission, having such jurisdiction over all wire public utilities, including the telephone, telegraph, and cable, as well as over radio utilities, engaged in interstate or foreign service. However, jurisdiction over wire utilities rests in another committee of the House than the Merchant Marine and Fisheries Committee, so that a point of order would lie against an amendment embracing wire utilities. On the other hand, if this bill passes the House, it will be referred to the Senate committee which has jurisdiction over both wire and wireless problems, and that committee could broaden the jurisdiction of the commission so as to give it jurisdiction over wire utilities. Surely no one will seriously contend that the combination of all communication utilities, wire and wireless, would not be of sufficient magnitude and importance to justify the creation of a commission for the proper regulation thereof; or that the time and

thought of such a commission could not be profitably devoted to such important functions.

According to expressions of some members of the Committee on the Merchant Marine and Fisheries, this lack of full jurisdiction over all communication services prompted them to oppose the creation of the commission which I propose. However, it occurs to me that such a situation does not warrant our committee or the House from squarely meeting the situation, at least in so far as it can do so under the parliamentary situation, and of paving the way for full and adequate legislation.

This is a question in which millions of our citizens are already directly interested and which at no distant date will vitally affect practically all of our citizens and every section of our country. It is distinctly a national problem, and in part an international problem. I particularly approve regional representation upon the commission, as already provided in the bill. We should not only have regional representation to the end that we may have national representation and expression but such commission should have the authority, the time, and the opportunity to deal with these questions fairly and intelligently.

I further suggest that any person in interest feeling aggrieved should have the right of appeal from the action of the commission to the Court of Appeals of the District of Columbia or some other Federal court, and that such court have the right of review of the questions of law, but that the finding of facts of the commission shall be conclusive.

It is further suggested that every applicant for a permit or a license or a renewal thereof should be required to file a written application upon prescribed forms, which, among other things, would require answers as to any contracts, agreements, or connections with other communication services designed to elicit information as to whether or not such applicant is monopolizing or attempting to monopolize interstate or foreign communications or is engaged in a violation or an attempt to violate the laws of the United States against combinations, contracts, or agreements in restraint of trade; and if said commission upon reference by or appeal from the Secretary of Commerce, or upon its own motion, determines that as a matter of law or as a mixed question of law and fact said applicant is violating the laws of the United States in any of the above respects, it shall certify such findings to the Secretary of Commerce and the latter shall refuse to grant the license applied for; thereupon, the applicant shall have a right to a hearing before the commission, and after said hearing the commission shall make its decision in writing setting forth its findings of fact and rulings of law, and if it finds that the applicant is violating the laws of the United States in any of the above respects it shall certify such finding to the Secretary of Commerce, and the latter shall refuse to grant said license; and then providing for an appeal from the decision of the commission, if desired; and further providing that during the pendency of such an appeal to the court, the commission shall have authority, if it deems the law to be doubtful, to authorize the Secretary of Commerce to grant a temporary license to such applicant pending the appeal, such license to be revoked in the event the court finds the applicant guilty in the respects above mentioned.

The right to revoke a license for the same reasons and in the same manner should likewise be provided. And it should be further provided that no license shall thereafter be granted to such a person, firm, company, or corporation thus found to have been so offending unless and until in the opinion of the commission such person, firm, company, or corporation shall have fully desisted from such unlawful practice and conduct and such finding has been certified by the commission to the Secretary of Commerce.

The enactment and enforcement of such provisions would force a dissolution of the powerful radio monopoly. It surely will not be contended that the United States should license applicants to continue to violate its laws. Applicants should be required to "come with clean hands" before the Government throws its mantle of protection around them.

On the other hand, if the pending bill becomes a law without some such amendments, the members of the monopoly will automatically have their licenses renewed probably for five-year periods as authorized in the bill, because there is no provision in the pending bill even designed to prevent such reissuance and neither the Secretary of Commerce nor the commission is authorized to refuse or revoke licenses for such violations of law, unless and until they shall have been convicted in a Federal court of such violation committed after the enactment of this bill—a remote and hazy contingency, at best many years deferred.

During the consideration of the bill in the House, if given an opportunity to do so, I expect to propose amendments along the lines hereinbefore indicated.

EWIN L. DAVIS.

APPENDIX

United States of America, before Federal Trade Commission. In the matter of General Electric Co., American Telephone & Telegraph Co., Western Electric Co., (Inc.), Westinghouse Electric & Manufacturing Co., the International Radio Telegraph Co., United Fruit Co., Wireless Specialty Apparatus Co., and Radio Corporation of America. Docket No. 1115.

COMPLAINT

Acting in the public interest pursuant to the provisions of an act of Congress, approved September 26, 1914, entitled, "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission charges that the various persons, corporate and individual, mentioned in the caption hereof and more particularly hereinafter described and hereinafter referred to as respondents, have been and are using unfair methods of competition in commerce in violation of the provisions of section 5 of said act, and states its charges in that respect as follows:

PARAGRAPH 1. The General Electric Co. is (and was at all times hereinafter named) a corporation organized and doing business under the laws of the State of New York. Its principal place of business is in Schenectady, N. Y. It is engaged in the manufacture and sale in interstate and foreign commerce of apparatus intended for the generating and application of electric current to various purposes, including communication by radio or wireless waves. Prior to October, 1919, and subsequently it has employed a large staff of electrical experts in research and experiment with a view to developing new inventions, discoveries, and devices applicable to any of the various uses of electricity, including apparatus for radio communication, both transmitting and receiving. It was the owner of many patents and licenses or rights under patents for the manufacture, use, and sale of the articles above described and certain applications for patents covering important inventions for use in vacuum tubes. used in radio

communications. The General Electric Co. is the largest manufacturer of electrical apparatus, including devices used in radio communication, in the United States.

PAR. 2. The American Telephone & Telegraph Co. is a corporation organized and doing business under the laws of the State of New York. It has its principal place of business in New York City, State of New York. It is engaged principally in the transmission of telephone messages by wire from point to point in the United States. The Western Electric Co. is a corporation organized and doing business under the laws of the State of New York. It has its principal office and place of business in Cleveland, Ohio. It is engaged principally in the manufacture and sale in interstate commerce and with foreign countries, of apparatus and devices used in wire telephony and in other applications of electricity. A large majority of the stock of the Western Electric Co. was and is owned by the American Telephone & Telegraph Co. Prior to October, 1919, and subsequently, the said American Telephone & Telegraph Co. and the Western Electric Co. maintained a large staff of experts in research and experiment with a view to developing new inventions, discoveries, and devices applicable to any of the various uses of electricity, including radio communication. Each of them was the owner of many patents, and licenses or rights under patents, relating to such inventions and devices, and particularly of important patents relating to vacuum tubes as used in radio communication. The Western Electric Co. manufactured and sold in interstate commerce various articles under the patents of the American Telephone & Telegraph Co. and its own patents, including the aforesaid vacuum-tube patents. The Western Electric Co. is one of the largest manufacturers of electrical apparatus, including apparatus used in radio communications in the United States.

PAR. 3. The Westinghouse Electric & Manufacturing Co. is a corporation organized and doing business under the laws of the State of Pennsylvania. It has its principal place of business in Pittsburgh, State of Pennsylvania. It is engaged principally in the business of the manufacture and sale in interstate commerce and with foreign countries, of electrical apparatus for the generation of electric current and its application to various purposes. Prior to October, 1919, and at all times hereinafter named, it maintained a large staff of experts in research and experiment with a view to developing new inventions, discoveries, and devices applicable to any of the various uses of electricity, including radio communication. It is the owner of many patents and licenses and rights under patents relating to such inventions and devices, and particularly certain important patents covering inventions and devices known as the Armstrong "regenerator" and the Fessenden heterodyne patents, of primary importance in radio communication. The Westinghouse Electric & Manufacturing Co. is the second largest manufacturer of electrical apparatus, including apparatus used in radio communication, in the United States.

PAR. 4. The International Radio Telegraph Co. is a corporation organized and doing business under the laws of the State of Delaware. It is the successor of the International Radio Telegraph Co., having been organized under an agreement of May 22, 1920, between the latter and the Westinghouse Electric & Manufacturing Co. The earlier company had been engaged in the business of transmitting and receiving wireless messages in a limited field prior to the war, and of manufacturing under patents and selling radio apparatus in interstate commerce. The new company, The International Radio Telegraph Co. continued the business of radio communication.

PAR. 5. The United Fruit Co. is a corporation organized and doing business under the laws of the State of New Jersey. It has its principal place of business in New York City. It is engaged in the growing of fruit and the transportation thereof from Central and South America to the United States and the sale thereof, and in connection therewith operates a fleet of steamships. Prior to October, 1919, and subsequently, it had in connection with its business through its subsidiary, the Tropical Radio Telegraph Co., owned and operated stations for the sending and receiving of wireless communications between the United States and various points in the territory where it produced and shipped its products and was equipped with the necessary apparatus for such purposes. These stations were also open to the public for the receiving and transmission of wireless messages. Prior to October, 1919, the United Fruit Co. and the Wireless Specialty Apparatus Co., another of its subsidiaries, had acquired and were the owners of various patents and licenses and rights under patents, for the use, manufacture, and sale of various important devices and apparatus useful in radio communication, especially broad patents covering the use of crystal receiving apparatus. It and its said subsidiary, the Wireless Specialty Apparatus

Co. employed staffs of experts in research and experiment with a view to developing new inventions, discoveries and devices applicable especially to radio communication.

PAR. 6. The Radio Corporation of America is a corporation organized and doing business under the laws of the State of Delaware, having been incorporated on or about October 17, 1919, its principal place of business is in New York City. Its capitalization was 5,000,000 shares preferred stock, par value $5, and 5,000,000 shares of common stock, no par value. It is engaged in conducting a public radio communication service between points in different States in this country and between ships and ships and shore, and between the United States and Cuba and foreign countries, and in the business of buying and selling apparatus and devices for use in radio broadcasting and receiving and radio communication and shipping the same among and between the States of the United States and to foreign countries.

PAR. 7. The Marconi Wireless Telegraph Co. of America was, prior to October, 1919, a corporation organized and doing business under the laws of the State of New Jersey. It had its principal place of business in New York City, State of New York, and was engaged in operating a trans-oceanic radio service and from ships to shore, and in the manufacture of apparatus and devices used in radio communication. It owned and operated stations at various points in the United States and elsewhere for the conduct of its business, equipped with the necessity apparatus therefor, and through its connection with the Marconi Wireless Co. (Ltd.), of Great Britain, the largest holder of its stock, was equipped for trans-oceanic radio traffic. It was the owner of various patents and licenses and rights under patents for inventions and devices used in radio communication, and it manufactured and sold various articles under said patents, including important patents relating to the manufacture and use of vacuum tubes in radio communication.

PAR. 8. Prior to this country's entering the war the General Electric Co., in connection with its research work in the radio field, had developed and constructed a powerful rapid alternating generator known as the Alexanderson generator. The efficiency of this machine in transoceanic communication by radio was demonstrated during the war. The movement for control of this machine and other patented radio devices not owned by General Electric Co., led to the organization of Radio Corporation of America as above alleged, by persons among whom the interests of General Electric Co. predominated. On or about October 22, 1919, the General Electric Co. entered into an agreement with the Marconi Wireless Telegraph Co. of America, whereby the latter agreed to seek the approval by its stockholders of a proposed agreement between the Radio Corporation of America and the Marconi Wireless Telegraph Co. of America, and the General Electric Co. agreed to cause the Radio Corporation of America to execute and deliver said proposed agreement as soon as approved by the stockholders of the Marconi Wireless Telegraph Co. of America. This proposed agreement provided substantially for the sale to the Radio Corporation of America of the assets of the Marconi Wireless Telegraph Co. of America, including its patents and physical assets and stock of various subsidiary corporations, in consideration of the issuance to it by the Radio Corporation of America of 2,000,000 shares of its preferred stock and 2,000,000 shares of its common stock as more fully appears from said agreement.

Thereafter, and on or about November 20, 1919, said proposed agreement between the Radio Corporation of America and the Marconi Wireless Telegraph Co. of America was executed and delivered. In connection with said negotiations and agreements, the General Electric Co. purchased the holdings of the Marconi Wireless Telegraph Co. (Ltd.), a British corporation in the stock of the Marconi Wireless Telegraph Co. of America, for the Radio Corporation of America. In August, 1919, the Marconi Wireless Telegraph Co. of America was dissolved, a trust, however, being created, with the corporation's directors as trustees for the purpose of prosecuting claims of the corporation against the United States Government and accounting for any proceeds thereof. All the stock of the company has been exchanged for shares in the Radio Corporation of America, it being noted in the stock of the Marconi Co. so exchanged that it was entitled to share pro rata in any moneys resulting from the prosecution of said claims against the United States Government, and it was provided further that such moneys were to be invested in the preferred stock of the Radio Corporation of America.

PAR. 9. On or about October 22, 1919, the Radio Corporation of America agreed, by appropriate action of its directors, to issue to the General Electric Co. in consideration of its services and expenses in bringing about the purchase above described from the Marconi Wireless Telegraph Co. of America, and other-

wise, 135,174 shares of preferred and 2,000,000 shares of the common stock of the Radio Corporation of America. Among the considerations referred to was the procuring of an agreement between Marconi Wireless Telegraph Co. (Ltd.), a British corporation, and the Radio Corporation of America, for the conduct of international transoceanic radio traffic. Prior thereto the former corporation (British Marconi Co.) had been the largest stockholder in the Marconi Wireless Telegraph Co. of America, and had entered into agreements and contracts with it covering the exchange of traffic facilities and all equipment and apparatus under patent rights. By said agreement between the Radio Corporation and the Marconi Wireless Telegraph Co. (Ltd.) all said agreements and rights of the Marconi Wireless Telegraph Co. of America under said contracts and agreements and specifically the agreement of April 18, 1902, were confirmed and continued to the Radio Corporation of America under an agreement executed on or about November 20, 1919, between the Marconi Wireless Telegraph Co. (Ltd.) and the Radio Corporation of America.

PAR. 10. On or about November 20, 1919, the General Electric Co. and the Radio Corporation of America made an agreement by which the General Electric Co. granted to the Radio Corporation of America the exclusive divisible license to use and sell (with certain reservations as to use) but not to make, unless the General Electric Co. is not in a position to do so, apparatus for radio purposes under all patents, present or future, owned or controlled by the General Electric Co., for the term of the agreement, namely, until 1945. The Radio Corporation of America granted to the General Electric Co. the exclusive divisible right to make and sell radio devices through the Radio Corporation only, under all its patents, present or future, for the term of the agreement, except certain patents acquired by purchase, for which special provision for apportioning costs was made; and the Radio Corporation agreed to purchase from the General Electric Co. all radio devices covered by patents, which the General Electric Co. is in a position to supply, and not to sell patented articles except as a part of the radio system; and generally to restrict its business to radio supplies and not to enter with any patented device, process, or system, the field of the General Electric Co. or encourage others so to do as more fully appears from said agreement. On December 31, 1922, the General Electric Co. owned 620,800 shares of the preferred stock and 1,876,000 shares of the common stock of the Radio Corporation of America.

PAR. 11. Said agreement of November 20, 1919, between the Marconi Wireless Telegraph Co. (Ltd.) (British) and the Radio Corporation of America recited the agreement of November 20, 1919, described in paragraph 10 between the General Electric Co. and the Radio Corporation of America; also that both companies (radio and British Marconi) owned and controlled patented inventions in radio devices and intended to prosecute diligent research for improving same and producing others in order to establish economically world-wide public commercial wireless; that the Marconi Co. owns rights in all the Marconi radio patents for the British Empire and Marconi patents and inventions of its employees outside of the British Empire existing and in the future; whereupon it is agreed that the trans-Atlantic circuit of radio communication shall be maintained by the parties together and a traffic agreement entered into therefor between them, temporary provision being made for the division of tolls equally. The Radio Corporation then sells to the Marconi Co., for radio purposes only, all its patents and licenses, etc., existing or acquired during the term of the agreement, for the Marconi territory (except those acquired by purchase, as specially provided), and the Marconi Co. grants to the Radio Corporation (subject to previous grants) nonexclusive rights and licenses under its patents, present and future, for radio purposes, and the right to make and sell thereunder radio devices in the territory between the southern jurisdiction of the United States and the Republic of Panama and adjacent islands and regions.

The agreement provides that the traffic agreement shall run to January, 1945, and the British Marconi Co. agrees to transmit or receive over the circuit established by it and the Radio Corporation every message sent or received by or to it, or any affiliated company or interest, which originates in or passes through or to Great Britain and is destined to or routed through or from the territory of the Radio Corporation, and, reciprocally, the Radio Corporation agrees to transmit over said circuit every message sent or received by it or any affiliated company or interest which originates in or passes through or to the territory of the Radio Corporation and is destined or routed to or through or from Great Britain. The agreement of November 20, 1919, by which the licenses and rights of the Marconi Wireless Telegraph Co. of America under all the patents of the British Marconi Co. were transferred to the Radio Corporation of

America and the grant above described of its patents for radio purposes by the Radio Corporation to the British Marconi Co., effected an interchange of licenses in all the patents now or during the term of the contract owned or controlled by the British Marconi and Radio Corporation pertaining to radio. The agreement provides for the maintenance of special departments by each of the parties for the diligent prosecution of research for the improvement of the radio art and for free exchange of information and patents relating thereto, all of which more fully appears by the terms of said agreement of November 20, 1919.

PAR. 12. On or about May 20, 1920, the Westinghouse Electric & Manufacturing Co. entered into a contract with the International Radio Telegraph Co. (see par. 5) for the formation of a new company of the same name. The International Radio Telegraph Co. to take over patents and certain assets of the International Radio Telegraph Co. (the prior company) relating to apparatus for radio communication. The consideration for this contract was the payment by the Westinghouse Co. of $2,500,000 for one-half of the common voting stock of the new company. The purpose was that the new organization should enter the commercial radio communication field in a more comprehensive way and in pursuance of said purpose, the new company did construct and operate stations for the transmission and reception of radio messages at Cape May, N. J., and Siasconsett, Mass., and reopened or rehabilitated stations formerly operated by the old International Co. In connection with the contract of May 22, 1920, the old International Co. agreed to grant to the Westinghouse Co. the right to manufacture and sell radio devices and apparatus under all the patent rights to be transferred to the International Co., subject to the condition that it should not sell such devices or apparatus to business competitors of the International Co. for use in the latter's field. On or about June 29, 1921, the parties above named entered into an agreement which recited that the International Co. had by separate instruments assigned to the Westinghouse Co. all of its existing patents and applications therefor, and that the International Co. granted to the Westinghouse Co. the exclusive, divisible right to make and to sell radio devices to the International Co. only, as well as the exclusive, divisible right to make use of and sell devices other than radio devices under all its future patents and applications for patents, inventions, and rights or licenses under or in connection with patents which the International Co. may require during the term of the agreement, namely, until January 1, 1945, except as to certain patents acquired by purchase.

The Westinghouse Co. granted to the International Co. an exclusive, divisible license to use and sell, as well as a nonexclusive, indivisible license to make only when the Westinghouse Co. is not in a position to supply the desired device with reasonable promptness, every radio apparatus under all patents, applications for patents, inventions or rights, and licenses under or in connection with patents which the Westinghouse Co. owns or may acquire during the term of the contract. The International Co. further agreed to purchase from the Westinghouse Co. all radio devices covered by said patents and the Westinghouse Co. agreed to produce the same. The International Co. agreed to use care not to enter under any patent rights into the field of the Westinghouse Co. or encourage others so to do. The parties also agreed to assist each other with scientific information and results of research of their engineers in their respective fields. Among the patents so acquired by the Westinghouse Co. were patents covering important inventions for radio communication known as the Fessenden or heterodyne, all of which more fully appears from said agreement of June 29, 1921. On December 31, 1922, the Westinghouse Co. owned 1,000,000 shares of the common and 1,000,000 shares of the preferred stock of the Radio Corporation of America.

PAR. 13. On or about July 1, 1920, the General Electric Co. and the American Telephone & Telegraph Co. made an agreement by which each granted to the other, with certain reservations and restrictions, licenses under all patents and rights to, or under patents, owned by each respectively, present and future, for the term of the agreement—namely, 10 years, unless previously terminated by consent of the parties—to use methods and processes, and to make, use, lease, sell or otherwise dispose of apparatus, machines, and devices thereunder in the fields in which the licenses are granted to each respectively, but no rights are granted to either party to manufacture under patents license for which are granted in said agreement, apparatus at the time manufactured by the other party, except in the factories of either party; the uses by each party to which said grants of licenses are restricted, in the fields of telephony and telegraphy, broadcasting and commercial communication, are carefully defined; certain fields of use and manufacture of radio apparatus under said licenses being granted to one party

and others to the other. The American Telephone & Telegraph Co. acquired the exclusive right to manufacture and sell broadcasting transmitting apparatus for commercial purposes, and the General Electric Co. acquired the exclusive right to manufacture and sell receiving apparatus for noncommercial purposes. It is provided that when either party acquires rights to patents applicable to the fields of both, it must do so in such a manner that both parties shall be given an opportunity to acquire the patent, in their respective fields.

Each party grants to the other a license for trans-oceanic wireless telephony, subject to the condition that the General Electric Co., so far as concerns service on this continent for the public and others than the General Electric Co., must render such service through only the telephone company's wire or wireless telephone systems, so long as it supplies that service; and that the telephone company in the field of trans-oceanic wireless telephony, so far as concerns service for the public or for others than the telephone company, shall render such service through only the General Electric Co.'s system for trans-oceanic communication, so long as the latter supplies such system. It is agreed that information with reference to patents and inventions shall be exchanged and facilities mutually afforded for the development of wireless telephony, and that each party shall manufacture for the other certain apparatus covered by patents which are the subject of this agreement; as more fully appears from the said agreement of July 1, 1920. On December 31, 1922, the American Telephone & Telegraph Co. owned 400,000 shares of the preferred stock of the Radio Corporation of America.

PAR. 14. By an agreement dated July 1, 1920, between the General Electric Co., the American Telephone & Telegraph Co., the Radio Corporation, and the Western Electric Co., provision was made whereby the telephone company could extend to the Western Electric, and likewise the General Electric could extend to the Radio Corporation, their respective rights under the agreement of July 1, 1920, described in paragraph 13, and the Western Electric Co. did extend to the General Electric Co. and the Radio Corporation of America grants to the American Telephone & Telegraph Co. rights under their respective radio patents, present and future, of the same character and scope as the rights granted between the General Electric Co. and the American Telephone & Telegraph Co. by the agreement of July 1, 1920, described in paragraph 13, and subject to similar reservations, limitations, and conditions as therein provided, as more fully appears from said agreement dated July 1, 1920, first named herein.

PAR. 15. On March 7, 1921, the Radio Corporation of America entered into an agreement with the United Fruit Co. by which the former granted to the latter a license to use the inventions and devices covered by its patents, present or future, relating to wireless communication or apparatus or devices in connection therewith. This grant was limited, however, to certain territory, defined in said agreement and being generally the territory in which said United Fruit Co. had previously operated in Central America and adjacent regions, and limited otherwise. The United Fruit Co. in said agreement granted to the Radio Corporation an exclusive license under its patents, reserving a right to license similarly the Wireless Specialty Apparatus Co. to make or have made, use, and sell radio devices under its own patents. The United Fruit Co. further agreed to limit its wireless communication business within its territory as defined in said agreement, and to purchase its supplies under the patents under which it is licensed by the Radio Corporation from the Radio Corporation, except at its option to purchase from the Wireless Specialty Apparatus Co. such apparatus as the latter is licensed to make. Provision is made for the exchange of information with reference to inventions and patents relating to wireless communications or apparatus and exchange of licenses under patents thereafter obtained; the agreement includes provisions for exchange of traffic, all of which more fully appears in the said agreement of March 7, 1921. Prior to the date of the agreement above described, namely, March 7, 1921, the United Fruit Co. had purchased 200,000 shares of the preferred stock (par value $5) and 200,000 shares of the common stock (no par value) of the Radio Corporation for the sum of $1,000,000 cash. On December 31, 1922, the United Fruit Co. owned 160,000 shares of the common and 200,000 shares of the preferred stock of the Radio Corporation of America.

PAR. 16. On March 7, 1921, the Radio Corporation of America and the General Electric Co., parties of the first part, entered into an agreement with the Wireless Specialty Apparatus Co., being a subsidiary of the United Fruit Co., whereby the parties of the first part granted to the Wireless Specialty Apparatus Co., under all patents or patent rights owned by them then or thereafter, a nonexclusive license to manufacture and sell certain apparatus, specifically named,

and excluding vacuum tubes, for use in radio communication, limited, however, to manufacture for sale to the United Fruit Co. or its subsidiaries for use under the license granted of even date, namely, March 7, 1921, by the Radio Corporation of America to the United Fruit Co. (par. 15 above); and the Wireless Specialty Apparatus Co. granted to the parties of the first part an assignable license to make and use under all its patents having to do with radio communication or with apparatus or devices in connection therewith, present or future, reserving, however, the right to grant licenses to the United Fruit Co., the said agreement to continue until January 1, 1945, all of which more fully appears in said agreement of March 7, 1921.

PAR. 17. By letter of June 30, 1921, the American Telephone & Telegraph Co. and the Western Electric Co. agreed to the extension by the General Electric Co. and the Radio Corporation of America to the Westinghouse Electric & Manufacturing Co. of the rights under the licenses acquired or to be acquired under the agreement of July 1, 1920 (described in pars. 13 and 14), in consideration of the grant to the American Telephone & Telegraph Co. and the Western Electric Co. of licenses under the present and future patents and inventions of the Westinghouse Electric & Manufacturing Co., corresponding to rights granted by the General Electric Co. in the aforesaid agreement of July 1, 1920, the receipt of such grants from the Westinghouse Electric & Manufacturing Co. being acknowledged by the American Telephone & Telegraph Co. and the Western Electric Co.

PAR. 18. On June 13, 1921, an agreement was made between the Westinghouse Electric & Manufacturing Co., the Radio Corporation of America, and the General Electric Co., by which rights under the Armstrong-Pupin patents were extended by the Westinghouse Electric & Manufacturing Co., with the consent of the Radio Corporation of America, to the General Electric Co., and the terms of payment therefor by the Radio Corporation and the General Electric Co. were fixed.

PAR. 19. On June 30, 1921, the Radio Corporation of America entered into an agreement with the International Radio Telegraph Co. by which in consideration of the issuance to it by the Radio Corporation of America of 1,000,000 shares of its preferred and 1,000,000 shares of its common stock, the International Radio Telegraph Co. sold and assigned all of its assets and liabilities to the Radio Corporation, including its patent rights, and licenses under patents, real estate, and especially the right to the sum of $2,200,000 payable by the Westinghouse Electric & Manufacturing Co. to the International Radio Telegraph Co. in accordance with the terms and provisions of an agreement dated June 21, 1921, between said companies. (See par. 12 above.)

PAR. 20. By a letter dated March 9, 1921, the American Telephone & Telegraph Co. and the Western Electric Co., its subsidiary, assented to the grant by the General Electric Co., and the Radio Corporation of America of special licenses to the United Fruit Co., the Tropical Radio Telegraph Co., and the Wireless Specialty Apparatus Co., under the patent licenses acquired or to be acquired under the agreement of July 1, 1920, between the General Electric Co. and the American Telephone & Telegraph Co. (par. 14 above), on the condition of a grant to the American Telephone & Telegraph Co. and the Western Electric Co. by the United Fruit Co., the Tropical Radio Telegraph Co., and the Wireless Specialty Apparatus Co. of licenses under all United States patents now or hereafter owned or controlled by the United Fruit Co., Tropical Radio Telegraph Co., and the Wireless Specialty Apparatus Co.

PAR. 21. On or about March 14, 1923, the Radio Corporation of America procured from the Radio Engineering Co., a New York corporation, an assignable and divisible license to make, use, sell, and lease under certain patents owned by the Radio Engineering Co., with the right to the Radio Corporation of America, after two years, to take an assignment of those patents, all of which more fully appears from said agreement.

PAR. 22. On or about September, 1922, the Radio Corporation of America entered into an agreement with the Federal Telegraph Co. of California, to incorporate the Federal Telegraph Co. of Delaware for the purpose of carrying out certain agreements between the Federal Telegraph Co. of California and the Government of China, executed on or about January 8 and September 20, 1921, for the construction, installing, and operation in China of a radio system for communication between this country and China; said agreement between the Radio Corporation of America and the Federal Telegraph Co. of California was for the term of 10 years and provided for the taking over by the Federal Telegraph Co. of Delaware of said contracts of January 8 and September 20, 1921, and the participation of the Radio Corporation of America in the carrying out of the agreement with the Federal Telegraph Co. of California with the Chinese

Government on the basis of an equal share of the profits, the Radio Corporation to name the chairman of the board of directors, on which the Radio Corporation of America and the Federal Telegraph Co. of California were to have equal representations in number, the president of the Federal Telegraph Co. of California to be president of the Delaware corporation. By said agreement of September, 1922, the Radio Corporation granted to the Delaware corporation, for the purpose of construction and communication under the Federal Co.-China contracts—a nonexclusive license under all its patents in the United States to use in China for radio telegraphing purposes, but not to make or sell, and the Federal Telegraph Co. of California granted to the Delaware corporation a similar license under its patents, all of which more fully appears from said agreements.

PAR. 23. On or about July 10, 1922, the Radio Corporation of America and the Postal Telegraph Co., a New York corporation, entered into an agreement by which the Postal Co. agreed to accept for and receive from the Radio Corporation messages, each to pay the other for its respective service tolls; the Radio Corporation agreed to tender the Postal Co., to be forwarded over its lines, all trans-Atlantic radio messages received by it or its connections destined to points in the United States reached by the Postal Co., except where the Radio Corporation has its own facilities, it being provided that no traffic arrangement should be made with any other company where the Postal Co. has facilities, except for ship-to-shore and ship-to-ship traffic, the Postal Co. agreeing to receive radiograms only of and from the Radio Corporation and not otherwise to be the forwarder of trans-Atlantic radio messages under any agreement for through radiotelegraph service, all of which more fully appears from said agreement.

PAR. 24. On or about September 25, 1920, the Radio Corporation of America, and the American Telephone & Telegraph Co. entered into an agreement for extracontinental radio traffic, which recites that the latter company in connection with its telephonic system maintains some telegraph terminals and that the Radio Corporation purposes to establish transfer offices for the transfer of extra continental radio telegrams between land lines and its radio stations; said agreement provides that the Radio Corporation may attach wires connecting its transfer offices with radio stations to poles of the American Telephone & Telegraph Co. at the same rates as commercial telegraph companies for use only for the transmission of the Radio Corporation's extracontinental radio telegraph messages, and transmission of its telegraph service and other messages at the Radio Corporation's expense, on the condition that the Radio Corporation shall not direct elsewhere a material part of its extracontinental traffic, all of which more fully appears from said agreement.

PAR. 25. Among the assets of the Marconi Wireless Telegraph Co. of America, acquired as hereinbefore alleged by the Radio Corporation of America, by an assignment dated on or about March 27, 1920, was an agreement entered into on or about August 22, 1916, between the Marconi Co. and the Imperial Japanese Government, which provided for a mutual exclusive contract for the handling of traffic unless specially ordered otherwise by senders, and provided that rates are as cheap as elsewhere, and subject to the terms of the International Telegraph Convention of St. Petersburgh so far as compatible with said agreement, all of which more fully appears from said agreement.

PAR. 26. By various agreements by assignment from the Marconi Wireless Telegraph Co. of America, or directly with the Governments and/or companies having exclusive rights for the operation of radio communication from said Governments, respectively, of Germany, France, Sweden, Norway, and Poland, the Radio Corporation of America has acquired in the year 1920, and thereafter, exclusive and/or preferential traffic arrangements and/or exclusive or preferential arrangements for the exchange of patents and patent rights, relating to radio communication and the operation of same, respectively, as more fully appears from said agreements.

PAR. 27. By an agreement entered into on or about October 14, 1921, between the Radio Corporation of America and representatives of British, French, and German interests owning or controlling rights for the operation of radio communication in and with various territories of Central and South America, a trust was created of which the chairman was to be named by the Radio Corporation with power of vote, by which the parties agreed to communicate exclusively with the stations of the other parties and their affiliated companies in their respective territories and for traffic in the territory of the other parties with the consent of the respective parties, as more fully appears from said agreement.

PAR. 28. Since the organization of the Radio Corporation of America the following respondents have been represented on the board of directors: General Electric Co., Westinghouse Electric & Manufacturing Co., American Telephone & Telegraph Co., and United Fruit Co., and on December 31, 1922, the respondents named, with the exception of the American Telephone & Telegraph Co., were so represented.

PAR. 29. The Radio Corporation of America has, by appropriate action of its board of directors, caused to be published in connection with its radio apparatus offered for sale a so-called "patent license" containing restrictions as to the use thereof by purchasers, viz, to amateur and experimental purposes only and not for commercial purposes or sale, and not for use in circuits or sets made or assembled for commercial purposes; and has also provided that transmitting apparatus, not exceeding 2 kilowatts antenna input, and receiving apparatus may be leased to competing companies and others for communication only between ship and shore and vice versa, also for private use and not for tolls and not to resell, on condition that, other things being equal, the Radio Corporation should be given preference in routing business transmitted by such apparatus; also that apparatus not for external international communication purposes may be sold or leased, provided transmitting apparatus shall not exceed 2 kilowatts per antenna input; also that whenever possible an agreement should be secured giving exclusive traffic connections to stations of the corporation and its affiliated companies; and that no licenses of whatsoever nature are to be granted for the manufacture and sale of vacuum tubes; also, its policy, as recommended by its board of directors, has been that apparatus sold for amateur, entertainment, and experimental purposes differ as widely as practicable from the designs of the apparatus sold or leased for other purposes, as "the best way in which to protect our licensees and enforce our restrictions" and to offer "just one more obstacle that nonlicensees will have to overcome."

PAR. 30. By reason of the facts and acts of the respondents set forth in the preceding paragraphs Nos. 8 to 29, inclusive, the respondents have combined and conspired for the purpose and with the effect of restraining competition and creating a monopoly in the manufacture, purchase, and sale, in interstate commerce, of radio devices and apparatus, and other electrical devices and apparatus, and in domestic and transoceanic radio communication and broadcasting by the following means:

(1) Acquiring collectively, directly and indirectly, patents and patent rights covering all devices and apparatus known to and used in any and all branches of the practice of the art of radio, and combining and pooling, by assignment and licensing, rights thereunder to manufacture and use and/or sell such devices and apparatus, competing and noncompeting, and allotting certain of such rights exclusively to certain respondents.

(2) Granting to the Radio Corporation of America the exclusive right to sell such devices and apparatus manufactured under said patents and patent rights and restricting purchases by the Radio Corporation of America of devices and apparatus useful in the art of radio to certain respondents and apportioning such purchases among them.

(3) Restricting the competition of certain respondents in the respective fields of manufacture and commerce of other respondents.

(4) Attempting to restrict and restricting the use of radio communication and/or broadcasting of articles manufactured and sold under said patents and patent rights.

(5) Acquiring the equipment heretofore existing in this country essential for transoceanic radio communication and perpetuating the monopoly thereof by refusing to supply to others apparatus and devices necessary for the equipment and operation of such service.

(6) Entering into exclusive contracts and preferential agreements for the handling of transoceanic radio traffic, and the transmission of radio messages in this country, thereby excluding others from the necessary facilities for the transmission of radio traffic.

(7) Agreeing and contracting among themselves to cooperate in the development of new inventions relating to radio and to exchange patents covering the results of the research and experiment of their employees in the art of radio, including patents on inventions and devices which they may obtain in the future, seeking thereby to perpetuate their control and monopoly of the various means of radio communication and broadcasting beyond the time covered by existing patents owned by them or under which they are licensed.

PAR. 31. The above alleged acts and practices of respondents are all to the prejudice of the public and of respondents' competitors and constitute unfair methods of competition in commerce within the intent and meaning of section 5 of an act of Congress entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," approved September 26, 1914.

Wherefore, the premises considered, the Federal Trade Commission, on this 24th day of January, A. D. 1924, now here issues this its complaint against said respondents:

NOTICE

Notice is hereby given you, and each of you, General Electric Co., American Telephone & Telegraph Co., Western Electric Co. (Inc.), Westinghouse Electric & Manufacturing Co., the International Radio Telegraph Co., United Fruit Co., Wireless Specialty Apparatus Co., and the Radio Corporation of America, respondents herein, that the 14th day of March, 1924, at 10.30 o'clock in the forenoon, is hereby fixed as the time, and the office of the Federal Trade Commission, in the city of Washington, D. C., as the place, when and where a hearing will be had on the charges set forth in this complaint, at which time and place you shall have the right, under said act, to appear and show why an order should not be entered by said commission requiring you to cease and desist from the violation of the law charged in this complaint.

In witness whereof the Federal Trade Commission has caused this complaint to be signed by its secretary and its official seal to be hereto affixed at Washington, D. C., this 26th day of January, 1924.

By the commission; Commissioner Van Fleet dissenting.

OTIS P. JOHNSON, *Secretary.*

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