

Hearings Are Begun for Barred Stations

Washington

Representatives of 107 of the 164 smaller radio stations named in the general order of the Federal Radio Commission issued May 25, for removal from the air on August 1, for alleged failure to serve public interest, appeared before the Commission to contest the Commission's action. The action was taken by the Commission pursuant to the new radio law.

The Commission's order (General Order No. 32), named only 162 stations, but two stations which subsequently applied for renewal of broadcasting licenses were included.

Fifty-seven stations failed to answer when the roll was called. It was assumed these 57 are ready to quit or at least join in consolidations. Of these, ten were in the first or Eastern zone, in which 36 stations were refused renewal of licenses; seven in the second zone, including Pennsylvania, Ohio, Kentucky, Michigan and bordering States, in which zone 31 stations were named; 36 out of the 91 in the Fourth or Middle-western zone, in which the most stations were named by the order; and four out of the five in the Pacific Coast zone. The third zone, embodying the southern States, is not affected by the order, being below its quota of stations.

Procedure is Explained

Opening the hearings, the Chairman of the Commission, Ira E. Robinson, announced that everyone would be given "a full and fair hearing." He stated that testimony would not be heard until after it had been ascertained how many stations would contest the Commission's order.

The General Counsel of the Commission, Louis G. Caldwell, outlined the procedure to be followed in hearing the arguments of protesting stations. He said that all cases must be closed by August 1.

Announcing that it was the intention to exclude from evidence all letters, petitions and other documentary evidence not sworn to, and that only affidavits, and oral testimony would be accepted, Mr. Caldwell evoked responses from several of the representatives of stations, who objected on the ground that it would entail additional expenditures and lost time in getting affidavits, and bringing witnesses before the Commission. Norman Thomas, the Socialist candidate for President, representing WEVD, of Woodhaven, N. Y., which is the Debs Memorial Fund Station, and Frederick C. Dow, of WLBH, led the opposition, but were overruled by Chairman Robinson.

Emergency Cases First

Emergency cases will be given preference in the hearings, General Counsel Caldwell stated. He read the following announcement to the meeting:

"As each station is called, it should be stated whether it desires a hearing, and 1, amount of time presentation of station's case will take and probable number of witnesses; 2, preference of station for date; and 3, mention of consolidation or merger proposals.

"1. Intention to exclude all evidence such as letters, petitions, etc., not sworn to, but to permit station to make an offer of these in evidence, describing them in such a way that they will not become part of the record.

"2. Intention to permit affidavits subject to right of Commission's counsel to cross-examine. Cases may be submitted on affidavits entirely.

"3. Intention, so far as possible, to present Commission's evidence against a particular station as each case is heard.

"4. Intention to hear evidence on engineering facts applicable to all cases, to be offered in behalf of the Commission, promptly.

"5. At conclusion of call of docket, calendar will be made up showing dates of hearings. It may be possible to hear one or two today and emergency cases will be given right of way.

"6. As to stations not appearing on requesting a hearing, an order in nature of a default will be entered, precluding them from presenting any evidence in their behalf."

Mergers Announced

A roll call of the stations involved in the Commission's general order was had, to ascertain those present; the time that would be required to present arguments; the date preferred; and consolidations with other stations contemplated, if any. Chairman Robinson stated that a docket of hearings will be drawn up with the Commission adhering to the requests of stations as to date and time allotments as far as is possible.

Several of the stations announced their intention of effecting consolidations, while others announced that they would vigorously oppose the order of the Commission to exclude them from air.

Mr. Thomas filed with the Commission a brief in behalf of the Debs Memorial Radio Fund, which he made public. The brief, which he filed jointly with August Gerber, secretary of the fund, raised the issue of free speech as follows:

"If WEVD is taken off the air and in fact is not treated on a parity with others who are richer and more influential with the government, the people of this nation can truly recognize the radio, which might be such a splendid force for the honest clash of ideas, is nothing but a tool to be used by the powerful against any form of disagreement or any species of protest."

Raises Americanism Issue

He stated that WEVD asked for no special privilege.

"Give us the power and the time and the advantageous wavelengths that have been bestowed on these great and mighty money-making interests," the brief read. "To destroy us is unthinkable and un-American."

General Counsel Caldwell opened the afternoon session with the announcement of the docket of the hearings. He named 16 stations that would be heard first, because they requested only short periods of time ranging from 5 to 30 minutes.

Mr. Caldwell also explained that general engineering evidence would be heard, such as the number of channels available for broadcasting, and the number of stations that may safely operate simultaneously in one geographical district. Other technical phases of broadcasting also will be considered. It is not the intention of the Commission to go into these technical discussions at great length, Mr. Caldwell said.

Channel Opportunities Unknown

Ernest R. Richmann, counsel for the Independent Broadcasters' Association of Chicago, asked of the Commission whether there was any possibility of informing representatives of the named stations at any early date the number of wavelengths that will be available for

the existing stations. He said that he understood this information would not be available until after the hearing of the 107 stations had been concluded.

Chairman Robinson replied that it was not practicable to make this information public at this time. He said that the Commission's action was not against the small stations, and that "whatever is done will be done fairly, squarely, and open and above-board."

The first station to offer argument against the exclusion order was WGDM of Stockton, Calif. E. F. Pepper, on behalf of the station, said that it served 85,000 people, and that no other stations were available in that area.

Offering documentary evidence in the form of petitions signed by listeners, Mr. Pepper was not privileged to insert it in the record because it was not sworn to. This objection was made by General Counsel Caldwell in line with the prescribed procedure outlined at the outset of the hearing.

Mr. Gerber, on behalf of WEVD, then began presentation of the case for retention on the air of his station. He said that the Commission had failed, when it licensed this station, to give it adequate power, and favorable wavelength assignment to serve the number of people the Commission deemed requisite to warrant its retention on the air.

Fights Back

He emphasized several points in asking that the stations should not be deleted as follows:

"The burden of proving the necessity of the cancellation of the permit rests upon the Commission; and the proof should be clean and overwhelming before the Commission should act.

"To reproach WEVD for not having a more extensive audience is equivalent to reproaching the Radio Commission for failing to provide its own licensee with adequate power, time and wavelength,

"WEVD should be given a preferential position among radio licensees because it is not operating for the purpose of profit."

Cites 20,000 Telegrams

Mr. Gerber stated that many thousands of persons have endorsed WEVD, and that 20,000 telegrams had been received, endorsing the station.

Mr. Gerber, in closing, asked for sufficient power, time and wavelength, to "cope with our problem." He said that this should follow the formal petition presented to permit the station to continue to operate.

Norman Thomas also took the stand and gave testimony to confirm the statement of Mr. Gerber, that WEVD was not being used to further Mr. Thomas' political aspirations.

Outlaw Broadcasts of Scandal Probed

Washington

Upon receipt of reports that an "outlaw" radio broadcaster, who has adopted the call letters of "Station PDQ" was interrupting programs in the vicinity of Crooksville, Ohio, and disseminating "town scandal," W. D. Terrell, Chief, Radio Division, Department of Commerce, announced that S. W. Edwards, Radio Supervisor at Detroit, had been ordered to trace the law violator.

Operation of a broadcasting station without a license is a specific violation of the law, Mr. Terrell said. The penalty under Section 33 of the Radio Act, he said, is a minimum of \$5,000 fine for each count, and a prison sentence may be imposed.