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RECENT FEDERAL LEGISLATION

Radio Act of 1927

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MAN'S increasing mastery of the airways is daily creating such stuff as laws, as well as dreams, are made of. Within the memory of persons still young, Marconi in 1895 began his investigations, in 1897, he established wireless communication over a distance of four miles, and on December 17, 1902, the first wireless message was transmitted across the Atlantic. Today it is estimated that there are over five million receiving sets in the United States alone. The sales of radio apparatus in 1926 were estimated in the New York *Herald-Tribune* at $550,000,000. Radio now contributes essentially to the pleasure, comfort, education, entertainment and necessities of our people. Songs, plays, jazz, readings, sermons, lectures, dialogues, operas, market reports, instrumental music and pure advertising are broadcasted from an enormous number of stations. Radio has in large measure made the American home again what it was before the advent of the factories, automobiles, and moving pictures. It has immeasurably increased the practical aspects of the subject of aërial space and converted the old theory of the "music of the spheres" into reality. It has made the complete isolation of any nation through a blockade impossible so long as such nation retains radio sending and receiving apparatus. It helps every traveler on the high seas. Not only may he enjoy music played on the land far away but he may keep in touch with his relatives, his friends and even his business though he is separated from them by immense distances. His comfort is greatly increased by the knowledge that should disaster overtake his ship the chances for a rescue are very good indeed through the flinging into space of the powerful S.O.S. signals for which every boat on the high seas is constantly listening and on receipt of which it immediately changes its course, increases its speed and hastens to the scene of distress. Indeed since Gutenberg devised his crude wooden types and made printing possible there has been no single invention touching human interest and human welfare so closely as radio, the miracle of the present age.

Radio communication cannot be confined by artificial state boundaries. It is essentially interstate in scope and character, broadcasting stations being so constructed that purely intrastate service is not only impracticable but all but impossible. It follows that the interstate com-

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merce clause of the Federal Constitution is peculiarly applicable to it. It is true that radio was not dreamed of when the Constitution was adopted. But neither were the railroads, steamships, motorbuses, autotrucks or automobiles in contemplation of the delegates at Philadelphia, and yet all these instrumentalities of commerce have been included under it. Nor is the elasticity of this marvelous clause exhausted by mere facilities for the transportation of persons and goods, but it includes in its wide and constantly growing range the dissemination of information by telegraph and telephone.[1] If the telegraph and telephone is included the wireless cannot be excluded. That the national government is competent to absorb almost the whole field of regulation of radio is indeed implied in numerous decisions and this theory is the cornerstone on which the Radio Act of 1927 has been built.

The purpose of the Radio Act of 1912 was to provide for the licensing of operators, the lettering of stations, the minimizing of interference, the facilitating of radio communication and particularly to give the government the right of way to distress or danger signals or other important intelligence. The language of the act, its general scope, and the nature of the subject regulated shows that Congress did not intend to give to the Secretary of Commerce and Labor any discretion in the issuing of licenses. The supervision and control was taken by Congress upon itself leaving the Secretary of Commerce a mere authority to deal with the matter as provided in the act and giving him no general regulative power. The duty, therefore, of naming a wave length was mandatory on him. His only discretionary act was in selecting the wave length within the limitations prescribed by the statute which in his judgment would result in the least possible interference. The issuing of a license was not dependent on the fixing of the wave length. The wave length named by the secretary merely measured the extent of the privilege granted to the licensee.[2] Mr. Hoover acting under this statute has played an important part. Instead of prematurely recommending necessarily inadequate laws for this young and growing industry he has wisely been content to call conferences of engineers, scientists, amateurs, broadcasters, manufacturers, distributors, and others interested in the trade, thus keeping abreast with the art and preventing himself from acquiring any frozen views on the subject. The result of his policy is the Radio Act of 1927 just enacted by Congress.

In consequence of the inability of the Secretary of Commerce under the law of 1912 to allocate wave lengths, determine the power which each station must use, fix the locations of such stations, and require a

[1] 1888. *Leloup* v. *Port of Mobile* 127 U.S. 640; 1910. *Western Union Telegraph Co.* v. *Commercial Milling Co.* 218 U.S. 406.

[2] 1923. *Hoover* v. *Intercity Radio Co.* 52 App. D.C. 339, 286 Fed. 1003.

division of time, radio particularly during 1926 ran wild, new broadcasting stations springing up like mushrooms and filling the air with so many conflicting and overlapping vibrations that the result was chaos and the practical value of receiving sets was substantially reduced. At the moment when President Coolidge signed the radio bill there were in existence in the United States 733 program stations, 14,768 amateur stations, 22 trans-oceanic stations, 63 coastal general service stations, 74 point-to-point limited service stations, 207 limited commercial stations, 179 experimental stations, 38 technical and training stations, and 2,035 ships equipped with radio—a total of 28,119 stations. Of the larger cities New York had 62 stations, Chicago 53, Boston 26, Philadelphia 24, Los Angeles and Seattle 23 each, and San Francisco 20. That an interference of a serious nature must result when so many stations crowd into the narrow range of 89 channels of the authorized wave lengths is a forgone conclusion. Radio reception therefore appreciably declined during the year 1926. The country in consequence was "fed up" with uncontrolled radio with its wave pirating, interference, and blatant noises under the guise of programs, smashing into a presidential speech or into metropolitan opera, and desired that the "program smearer" be regulated into a semblance of order. This result has been achieved by the Radio Bill of 1927 under which a commission of five men is now considering the widening of the broadcasting band, limitations of power, reducing frequency, separation, simultaneous broadcasting with the same frequency, time division, consolidation of broadcasting service and limitation of number of stations.

The act was passed to regulate all forms of interstate and foreign radio transmissions and communications within the United States, its territories and possessions, and to maintain the control of the United States over the same.[3] In order to accomplish this purpose the commission was given power to classify radio stations, assign wave lengths to them, prescribe the nature of their service, determine their location, regulate their apparatus, establish areas and zones and make special regulations as to chain broadcasting.[4] The public convenience, interest and necessity is made the deciding factor not only on the question of granting a license[5] but of renewing or modifying the same[6] or of granting a permit for the construction of a radio station.[7] The licensing authority is especially directed to make "such a distribution of licenses, bands of frequency or wave lengths, periods of time for operations, and

[3] Section 1.
[4] Section 2.
[5] Section 9.
[6] Section 11.
[7] Section 21.

of power among the different states and communities as to give fair, efficient, and equitable radio service to each of the same."[8]

What slight judicial authority there was prior to the passing of the Radio Act seemed to be in favor of the acquirement of property rights in wave lengths. In the *Chicago Tribune* case, a circuit court of Illinois set up the principle that priority of time in the use of certain wave lengths in broadcasting, the building of property on this basis and the education of the receiving public to it, create a superiority of right in that particular part of the ether. The court declared that the situation was analogous to the property rights created by the use of signs and trade names, the rights of telephone and telegraph companies in the operation of their lines free from interference and in priority water right cases in western states.[9] It is against such a conception that the Radio Act is particularly directed. It prohibits anyone from broadcasting except under and in accordance with a license granted under the provisions of the act.[10] It makes the granting of such a license dependent on a written waiver by the applicant to the use of any such wavelength because of his previous use of the same as licensee or otherwise.[11] It declares that no license shall be construed to create any right beyond the terms, conditions, and periods (three years) of the license.[12] It lays it down that neither a permit to construct a station[13] or the license for the use of a wave length[14] shall be transferred, assigned or in any manner disposed of voluntarily or involuntarily to any person, firm, company, or corporation without the consent in writing of the licensing authority. The licensing authority may at any time require from the licensee further sworn statements of fact to enable it to determine whether such license shall be revoked[15] and may revoke such license for violation or failure to observe any of the restrictions and conditions of the act or whenever proper authority has found and certified that the licensee has failed to provide reasonable facilities or has made unjust and unreasonable charges or has been guilty of discrimination or has made or prescribed any unjust or unreasonable classification, regulation or practice.[16] In case of war, or public peril, or disaster, or other national emergency, or to preserve neutrality, the president may close

[8] Section 9.
[9] Chicago *Tribune*, November 18, 1926.
[10] Section 11.
[11] Section 5.
[12] Section 1.
[13] Section 21.
[14] Section 12.
[15] Section 10.
[16] Section 14.

any station and have its apparatus and equipment removed.[17] Surely to hold that such a license is a property right subverts not only every legal conception connected with such word license, but does away with the well-known distinction between a mere license and an incorporeal or corporeal hereditament, and clashes with a statement in the Radio Act that it provides for the use of such channels, but not for the ownership thereof, by individuals, firm, or corporations.[18]

Closely connected with the question of the ownership of wave lengths is the question of monopoly. While a good many other countries allow and even encourage "cartels" the United States since the passage of the famous Sherman Anti-Trust Act has firmly set its face against them. No useful purpose will be served by reviewing at this time and place the construction which the United States Supreme Court has placed upon this statute.[19] It is clear, however, even from a very cursory reading of the Radio Act that these constructions will apply to radio matters. All laws of the United States relating to unlawful restraints and monopolies and to combinations, contracts or agreements in restraint of trade are expressly made applicable to the manufacture and sale of radio apparatus or to any trade in radio apparatus.[20] A license is to be refused to anyone who has been adjudged guilty of unlawfully monopolizing radio communication, sale or manufacture through unfair methods of competition, or exclusive traffic arrangements, or by any other means.[21] Licensees are forbidden to acquire, own, control, or operate, directly or indirectly, through purchase, lease, construction, or otherwise, any cable, telephone or telegraph line leading to a foreign country if the purpose or effect thereof may be substantially to lessen competition, restrain foreign commerce, or create a monopoly.[22] If they engage in chain broadcasting the commission is given authority "to make special regulations" in regard to them.[23] The mere granting of a license does not estop the United States or any person aggrieved from proceeding against any one who has violated the Anti-Trust Act.[24] Finally, if any licensee shall be found guilty of the violation of such law his license shall be revoked and all his rights under such license shall thereupon cease.[25]

[17] Section 6.
[18] Section 1.
[19] See Bishop on Criminal Law, 5th Ed., Vol II, § 238a.
[20] Section 15.
[21] Section 13.
[22] Section 17.
[23] Section 4h.
[24] Section 13.
[25] Section 15.

Interference though it is innocent and unintentional is a highly annoying and almost destructive factor. It was such interference which brought about the passage of the Radio Bill. The radio commission is therefore given express authority to make such regulations as it may deem necessary to prevent interference between stations, and, to accomplish this purpose, may change over the protest of the station licensee the wave length, the authorized power, the character of the signals and the time of operation if the public convenience, interest or necessity will be served thereby.[26] Wilful or malicious interference with any other radio communication or signals is cause for suspending the license of operators for a period of not to exceed two years.[27] Government stations whether on land or on shipboard must conform to such rules and regulations as the licensing authority may prescribe to prevent interference with other radio stations.[28] Foreign ships while within the jurisdiction of the United States are placed under similar regulations.[29] An exception, of course, is made in regard to ships in distress. In such cases their transmitting set may be adjusted in such a manner as to produce a maximum of radiation irrespective of the amount of interference which may thus be caused.[30] To prevent interference with such distress signals radio stations which in the opinion of the licensing authority are liable to interfere with the transmission or reception of such distress signals are required to keep a licensed radio operator listening in on the wave lengths designated for signals of distress or radio communications relating thereto during the entire period the transmitter of such station is in operation[31] and must give absolute priority to such communications, ceasing all sending which may interfere with such distress signals.[32]

The administration of the act is in the hands of the Radio Commission consisting of five men appointed from the five zones into which the country has been divided and holding office for two, three, four, five and six years, respectively. This commission for the first year of its existence will have to sit practically continuously and for this reason each member is granted a salary of $10,000. After the first year the administration of the act will be largely in the hands of the Secretary of Commerce, the Radio Commission continuing practically as a species of appellate court, the members receiving thirty dollars a day

[26] Section 4.
[27] Section 5.
[28] Section 6.
[29] Section 8.
[30] Section 23.
[31] Section 22.
[32] Section 23.

for each day spent on official business. An appeal lies, where a station license is refused, to the Court of Appeals of the District of Columbia, and where an existing license is revoked, to such Court of Appeals, or to the district court of the United States in which the apparatus licensed is operated.[33]

[33] Section 16.

National Bank and Federal Reserve Law Amendments

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The act of Congress amending the National Banking laws and the Federal Reserve Act, which was approved February 25, 1927, makes a good many changes in the national banking system but will be chiefly remembered because of the change which it affects in the power of a national bank to acquire branch banks. Ever since the days of Andrew Jackson, when political pamphleteers and stump speakers painted in lurid colors the expanding powers of the money trust (referring to the second United States Bank) and thus brought about the dissolution of that institution, there has been a fierce prejudice against branch banking in the United States.

The very purpose of the National Bank Act of 1864 was to prevent any single bank from becoming too powerful, and, hence, stringent provisions were inserted in the statute against such a result. In consequence a national bank could acquire branch banks only by indirection. It could organize a state bank, have that state bank acquire all the branches which it desired, then transform the state bank into a national bank, and consolidate with it. Under the present amendment this cumbersome process is practically eliminated. Under Section 1 a state bank may now consolidate directly with a national bank and need not pass through the process of first becoming a national bank. Under Section 7 any national bank may establish and operate new branches within the limits of a city, town or village with a population of over 25,000, if state banks have this privilege. A population of from 25,000 to 50,000 entitles a national bank to one branch, a population of from 50,000 to 100,000 entitles it to two branches and if the population is greater, the discretion of the Comptroller of the Currency is the determining factor.

No branch once established may be moved without the consent of the comptroller. Under Section 8 the general business of the bank may be carried on at the place designated in the organization certificate and in

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