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## Religious Broadcasting in America: A Regulatory History and Consideration of Issues

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To the Graduate Council:

I am submitting herewith a thesis written by Gary R. Drum entitled "Religious Broadcasting in America: A Regulatory History and Consideration of Issues." I have examined the final electronic copy of this thesis for form and content and recommend that it be accepted in partial fulfillment of the requirements for the degree of Master of Science, with a major in Communication.

Herbert H. Howard, Major Professor

We have read this thesis and recommend its acceptance:

Edward Dunn, G. Allen Yeomans

Accepted for the Council:

Carolyn R. Hodges

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Herbert H. Howard  
Herbert H. Howard, Major Professor

We have read this thesis  
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RELIGIOUS BROADCASTING IN AMERICA: A REGULATORY  
HISTORY AND CONSIDERATION OF ISSUES

A Thesis  
Presented for the  
Master of Science  
Degree  
The University of Tennessee, Knoxville

Gary R. Drum

June 1976

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## DEDICATION

This paper is dedicated to Mr. and Mrs. Ardean J. Drum, as the culmination of nine years of hopes and frustrations, achievements and failures, joys and sorrows, all shared with love and compassion and a concern and determination that their son should become all he is capable of becoming.

## ACKNOWLEDGMENTS

Acknowledgment should go, of course, to the members of the Thesis Committee, Dr. Herb Howard, Chairman, and Drs. Edward Dunn and G. Allen Yeomans, not so much for their invaluable assistance in the preparation of this thesis, but for their individual contributions in the classroom: Dr. Howard in broadcast programming, Dr. Dunn in communications theory, and Dr. Yeomans in organizational communications and, yes, even Southern Oratory.

Acknowledgment should also go to Dr. Darrell Holt, Head of the Department of Broadcasting, for having enough faith in the author to give him another chance to complete a graduate degree program on his third try.

Credit should also go to the author's employers at WEZK(FM), Knoxville and stations WATO(AM)-WJUU(FM), Oak Ridge, for allowing him to arrange a full-time work and full-time academic schedule to run simultaneously.

## ABSTRACT

The purpose of the research gathered in this thesis was to bring together an ordered history of federal regulation of religious-affiliated broadcast licensees and to consider the issues raised in such regulation.

The work consists of (1) a detailed analysis of the thirty-five sectarian licensees that were in operation during the regulatory period of the Federal Radio Commission from 1927 to 1934; (2) a chronology of cases involving sectarian licensees considered by the Federal Communications Commission from 1934 to 1976; (3) a discussion of landmark cases relating to the issues of private property, limitation of access, freedom of speech, and such contemporary issues as discrimination on the basis of religion, qualifications for FM reserved channels, and the implications of the Fairness Doctrine for sectarian licensees; (4) an in-depth discussion of the Milam-Lansman Petition of 1974; and (5) a consideration of issues not significantly resolved in the history of broadcast regulation.

Research involved complete examination of all 110 volumes of FCC Reports, as well as examination of all extant publications of the Federal Radio Commission.

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## CHAPTER I

### INTRODUCTION

#### A. BACKGROUND

##### 1. The Growth of Religious Broadcasting

Few persons in or out of the broadcasting profession are aware of the growth and extent of religious broadcasting in America. Many persons have long been aware of international short-wave broadcasts or of syndicated sectarian programs, heard chiefly on Sunday mornings, many of which solicit support for certain missionary efforts.

However, two trends frequently overlooked are the growing number of religious organizations becoming licensees of broadcast stations and the increasing number of non-sectarian broadcast licensees turning to religious formatted programming.

Both sectarian and non-sectarian licensees, however, must work under secular, non-religious, regulation of the Federal Communications Commission (FCC), operating under a mandate of the Communications Act of 1934, authorizing that Commission to license stations to operate in the public interest, convenience and necessity.

It is not the purpose of this paper to consider the non-sectarian stations' approach to religious programming as a commercially viable format, but to consider the issues raised by sectarian licensees during the relatively brief period of federal regulation of broadcasting.

The growth of sectarian ownership of broadcast stations was recently stressed by Dr. Ben Armstrong, editor of Religious Broadcasting, the official publication of the National Religious Broadcasters (NRB),

of which Dr. Armstrong is Executive Secretary. The NRB membership includes both sectarian and non-sectarian licensees, as well as producers of religious programming for use by such licensees.

. . . As executive secretary of the NRB since 1966, I continue to be amazed at the phenomenal growth of religious broadcasting. Today Christian radio stations are opening at the rate of one a week, and nearly every month a new Christian TV station goes on the air. Cable television (CATV), just beginning with 3,350 operating systems, offers great potential for spreading the gospel message to new audiences on a specialized basis.<sup>1</sup>

Note that Dr. Armstrong considers "religious programming" and "Christian broadcasting" synonymous. The membership of the NRB is exclusively Christian, and predominately fundamentalist in approach to Christianity.

As will be discussed in Chapter II, church-owned radio stations pre-date the beginning of the Federal Radio Commission (FRC) in 1927. Many non-sectarian licensees have devoted most of their programming to religion for many years as well. Such stations were usually low power, and low budget operations. Yet, in recent years, many sectarian licensees have become greatly concerned with sales of commercial time and with the profitability of their broadcast properties. In the Summer, 1975, issue of Religious Broadcasting, John R. Linstra, a manager of several church-owned stations, addressed the sales issue, arguing that revenue is an important concern of all broadcast licensees:

Some people would lead you to believe that because a station is a Christian-owned commercial operation, as opposed to a non-commercial operation, the commercial organization's primary motive is that of making money, as opposed to reaching the non-Christian

---

<sup>1</sup> Ben Armstrong, "From the Editing Block," Religious Broadcasting, March, 1976, p. 7.

audience with the Gospel. There are no two ways about it - both types of operations are in need of funds to continue to operate, whether they be in the form of gifts, advertising, or paid programming time. <sup>2</sup>

Additionally, many church organizations have sought to obtain licenses in the FM broadcast band reserved for educational, non-profit organizations. Section 73.503 of the FCC rules states that "a non-commercial educational FM broadcast station will be licensed only to a non-profit educational organization and upon showing that the station will be used for the advancement of an educational program." <sup>3</sup>

Today there are several church-related institutions holding FM reserved channel stations, and many other church groups operate non-profit stations in the commercial portion of the FM band, as well as on the AM band and in the TV spectrum. Among these are the Moody Bible Institute of Chicago, with several AM and reserved channel FM operations, including WMBW in Chattanooga, Southern Missionary College of Collegedale, Tennessee, and University of the South in Sewanee, Tennessee. Additionally, some church-owned stations, such as those licensed to the Church of Jesus Christ of Latter Day Saints (Mormon), known as the Bonneville Stations, are commercial operations with non-sectarian, entertainment programming. Bonneville is also heavily involved in program syndication and consulting of stations engaged in entertainment programming, but does not directly produce or distribute sectarian programming.

---

<sup>2</sup> John R. Linstra, "Sales - A Part of Programming," Religious Broadcasting, Summer, 1975, p. 12.

<sup>3</sup> Federal Communications Commission, Rules and Regulations, III, (Washington: United States Government Printing Office, 1972), p. 198.

## 2. Controversy in Regulation of Sectarian Licensees

Since the beginning of the FRC in 1927, various issues have been raised regarding church-related licensees, but true controversy did not develop until recent years as such licensees proliferated.

The growth of such licensees has led to federal decisions on matters of program content, the Establishment Clause of the First Amendment, the Due Process Clause of the Fifth Amendment, and the Equal Protection Clause of the Fourteenth Amendment. Specifically, the FCC has considered discrimination in employment, access to the airwaves by various creeds and faiths, the necessity of religious programming in a balanced schedule, and the question of the distinction between religion and education.

Very few, if any, of these issues have been finally resolved to the satisfaction of all parties concerned.

### B. PROBLEMS

This paper will seek to consider two matters within the broad scope of religious broadcasting and programming: (1) the history of regulation of sectarian-related licensees, and (2) the substantive issues raised by such regulation.

To gain better perspectives on the issues currently raised by the growth of sectarian broadcasting, and the potential problems of such stations, it is necessary to consider the historical background of such stations. Federal regulation of broadcasting began, in any meaningful form, with the Radio Act of 1927, which created the Federal Radio Commission. Just under fifty years of history is involved, and some

issues have only recently been raised as regards the regulation of sectarian licensees.

Following a review of such history, one must ask for a clear consideration of the current issues, since they are often fogged by emotion and matters of personal conscience, rather than reason and the words of law. In order for any future consideration of individual issues to be meaningful, there must be a clear understanding of the facts involved. Examination of these facts is one purpose of this paper.

### C. REVIEW OF THE LITERATURE

#### 1. Availability of Sources

The primary source of material regarding regulation is, of course, the documents published by the regulatory agencies. Also of value are the documents of various judicial bodies to which decisions of the regulatory bodies may be appealed.

Additionally, both regulatory and judicial documents have their corresponding indexes, usually privately compiled, and these were also examined.

For post-1934 decisions, each of the 110 volumes of FCC Reports, published by the Federal Communications Commission, was examined for decisions relating in any way to sectarian licensees. Since the indexing procedure of FCC Reports has been inconsistent until very recently, the key word procedure was abandoned in favor of a page-by-page, title-by-title examination, thereby assuring that all relevant cases were studied.

For the period from 1927 to 1934, the era of the Federal Radio

Commission, there were additional problems. The FRC did not issue regular, consistently organized reports. All seven annual FRC reports were available, but the Journal of Radio Law, published by the Northwestern University Press in 1931 and 1932, as well as several tables of existing stations, published sporadically by the FRC, also were examined to give a more complete picture of relevant decisions.

In several instances, usually involving complex decisions, reference was also made to index material, notably Pike and Fischer's Radio Regulation and annual reports of the FCC.

## 2. Secondary Sources

Prior to the exhaustive examination of primary documents, an index search was undertaken of scholarly journals in the field, as well as of Dissertation Abstracts, and Journalism Abstracts. Such publications as Journal of Broadcasting, Journal of Communications, and such trade publications as Broadcasting and Religious Broadcasting, and the Federal Communications Bar Journal were also examined.

With the exception of the last three publications, no significant references to the issues of religious broadcasting were found.

A library card file search of books resulted in a small number of volumes concerned with religious broadcasting, although many of them were only how-to-do-it guides for broadcast preaching, and were chiefly published by sectarian organizations. Only one, Models of Religious Broadcasting, by J. Harold Ellens, gave any historical perspective or consideration to the issues raised by the licensing of sectarian organizations.



Actually, the dearth of source material of a secondary nature was one of the factors encouraging continuance of this study. There was abundant primary material available, but never had it been compiled and organized in one research work. There was also the suspicion that the lack of such compilation might, in itself, be a factor in the controversies that have arisen in the matter of sectarian licensees. That suspicion further encouraged investigation.

#### D. METHODOLOGY

##### 1. Basic Approach

The bulk of this study is historical, primarily narrative, seeking to organize relevant facts. This is especially the case in Chapter II, which traces the history of the FRC and FCC regulatory decisions. The consideration of contemporary issues, dealt with primarily in Chapter III, involves a somewhat more critical approach, but the emphasis remains on presenting a relatively uncolored statement of the issues, leaving for others the resolution of the many issues raised. There is indeed a lack of critical examination of the issues; but since this is likely based on the corresponding lack of organized source material, it seems more fruitful for this paper to offer the latter in order to facilitate the former.

##### 2. Definitions

An historical organization of data requires some basic definitions, some of which are defined for the purpose of the work, and others of which are generally accepted in meaning.

Religious broadcasting. This term shall herein apply exclusively to broadcast activities engaged in by sectarian licensees, either individuals or groups. Included as religious broadcasters are ministers, evangelists, individual churches, denominational organizations, and church-related institutions, such as schools, colleges, and institutes.

Religious programming. This term is not to be confused with religious broadcasting. Religious programming is any presentation of a religious nature, whether broadcast by a sectarian or non-sectarian licensee.

Sectarian broadcaster, broadcasting, or licensee. All three terms are related to religious broadcaster, broadcasting, or licensee, and shall be used interchangeably in their respective forms.

Commercial broadcaster, broadcasting or licensee. While a commercial broadcast station might program religious material, perhaps almost exclusively, and while certain sectarian licensees might operate a station for commercial gain, perhaps with virtually no religious programming, the term "commercial" shall, on occasion, be used in contrast to "sectarian."

Non-sectarian. This shall be the preferred form of description of broadcasters, broadcasting, and programming that are not religious in nature.

Several other significant terms will be defined as they arise in the discussion of cases and issues, where they may be better understood in context.

### 3. Limitations

As already mentioned, this study is limited to religious licensees, and does not include those non-sectarian licensees involved in predominately religious programming. Although many issues raised here may have application for them as well, both time and lack of availability of material on the precise number and degree of involvement of such licensees must leave consideration of such groups to later works.

The study is also limited to the rather brief period of broadcast regulatory history (1927 - 1976), again for reasons of time and availability of source material.

A somewhat more involuntary limitation arises from the fact that documentation, such as found in FCC Reports, et al., means the research person must rely on the documents' authors as to comprehensiveness and accuracy of the material reported.

### 4. Basic Outline of the Study

Chapters II and III of this work contain the major listings of cases and issues, whereas Chapter IV includes a summing up and suggestions for applications of the data gathered.

Chapter II. To lay appropriate groundwork for consideration of issues, Chapter II comprises a regulatory history, including (1) a study of thirty-five sectarian stations dealt with by the Federal Radio Commission, (2) a chronological listing of thirty-four cases involving sectarian licensees or applicants before the Federal Communications Commission, and a more in-depth study of (3) landmark cases considered by the FRC and the FCC, dealing with several basic issues.

Chapter III. A consideration, on a more critical plane, of contemporary issues is the subject of Chapter III. This chapter includes a study of the Milam-Lansman Petition of 1974, and controversy surrounding such regulatory issues as the Fairness Doctrine, as well as the Equal Time Rule, all of which shall be defined in the context of the cases in which they arose.

Chapter IV. In addition to a brief summation of Chapters II and III, Chapter IV will offer some personal observations regarding the issues considered, and suggestions for utilization both of the facts presented and the issues raised.

## CHAPTER II

## REGULATORY HISTORY OF RELIGIOUS LICENSEES

## A. EARLY BROADCAST REGULATORY HISTORY

1. The Wireless Ship Acts

Guglielmo Marconi made the first successful demonstration of wireless transmission of telegraphic signals in 1896. In subsequent years many transmitting and receiving units were installed on ships and at shore stations. Not until 1910 did recognition of wireless telegraph appear in the laws of the United States.

The Wireless Ship Act of June 24, 1910 (effective July 1, 1911) was directly solely at the promotion of safety of life at sea and required that every passenger vessel carrying fifty or more persons be equipped with wireless facilities, although the required transmitting and receiving distance was only 100 miles.<sup>1</sup>

The Act established the Radio Service of the Bureau of Navigation and the Secretary of Commerce and Labor (after March 14, 1913, the Secretary of Commerce) was empowered to establish regulations for the execution of the act. Additional acts to regulate domestic (interstate) radio were passed in 1912. The main provisions of the Act of August 23, 1912, were as follows:

1. Every station must be licensed.

---

<sup>1</sup> Lawrence F. Schmeckebier, The Federal Radio Commission: Its History, Organization, and Activities (Washington, D.C.: Brookings Institution, 1932), p. 2.

2. Every operator must be licensed.
3. The frequencies must be above 187.5 kiloHertz (kHz.) and less than 500 kHz.
4. Amateur stations not engaged in commercial business must not use a frequency higher than 1500 kHz.<sup>2</sup>

Unlike the earlier wireless legislation, this act gave the Secretary of Commerce only executive power and no right to develop regulations such as assignment of frequencies, qualifications of licensees, hours of operation, and content of transmissions, among other matters.

Real awareness of this lack of regulatory power did not come until the 1920's when the Secretary of Commerce, Herbert C. Hoover, made several attempts at frequency allocation, but an individual, in-depth, consideration of the litigation is not necessary for discussion here.

The lack of such regulatory power, the growth of commercial domestic broadcast services and the resultant interference problems, as well as the ineffectiveness of international treaties to resolve allocation problems, led to the Radio Act of 1927.

## 2. The Radio Act of February 23, 1927

This act created the Federal Radio Commission, a body designated to exist for one year, with its powers of regulation to be then transferred to the Secretary of Commerce, with the Commission assuming only appellate responsibility.<sup>3</sup> The act divided the country into five zones with representation from each zone. The five zones are as follow:

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<sup>2</sup> Schmeckebier, pp. 2 - 3.

<sup>3</sup> Ibid., p. 15.

First Zone: Maine, New Hampshire, Vermont, Massachusetts, Connecticut, Rhode Island, New York, New Jersey, Delaware, Maryland, the District of Columbia, Puerto Rico, and the Virgin Islands.

Second Zone: Pennsylvania, Virginia, West Virginia, Ohio, Michigan, and Kentucky.

Third Zone: North Carolina, South Carolina, Georgia, Florida, Alabama, Tennessee, Mississippi, Arkansas, Louisiana, Texas and Oklahoma.

Fourth Zone: Indiana, Illinois, Wisconsin, Minnesota, North Dakota, South Dakota, Iowa, Nebraska, Kansas, and Missouri.

Fifth Zone: Montana, Idaho, Wyoming, Colorado, New Mexico, Arizona, Utah, Nevada, Washington, Oregon, California, Hawaii and Alaska. <sup>4</sup>

The powers specifically conferred on the Commission were as follows:

1. To classify stations.
2. To prescribe the nature of the service to be rendered.
3. To assign frequencies or wave-lengths to stations or classes of stations, to determine power to be used and to allocate the time of operation.
4. To determine the location of classes of stations or individual stations.
5. To regulate the apparatus to be used with reference to its external effects and the purity and sharpness of emissions.
6. To make regulations to prevent interference.
7. To establish zones to be served by any station.
8. To make special regulations applicable to chain (network) broad-

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<sup>4</sup> Ibid,, p. 16.

casting, although not to require licensing of chains. <sup>5</sup>

The most unique feature of the Radio Act of 1927 was the inclusion of a phrase previously found in legislation regarding interstate commerce and public utilities. The first paragraph of Section Four of the Act, the section enumerating the powers listed above, began with the words, "Except as otherwise provided in this Act, the commission, from time to time, as public convenience, interest, or necessity requires, shall - . . ." <sup>6</sup>

The public interest, convenience or necessity (as the phrase is often stated) was to be paramount in broadcast regulation, regardless of whether the service licensed was a commercial broadcast station or some other form of radio transmission, such as ship-to-shore or mobile emergency units. While a private individual or corporation might hold the license, the licensee was not to be the prime beneficiary of the broadcast service. The importance of the public interest clause will be seen in subsequent discussion of broadcast regulation in this chapter.

Section 29 is perhaps the most important in the Act, and is directed to regulation of program content.

Sec. 29. Nothing in this Act shall be understood or construed to give the licensing authority the power of censorship over the radio communications or signals transmitted by any radio station, and no regulation or condition shall be promulgated or fixed by the licensing authority which shall interfere with the right of free speech by means of radio communication. No person within the jurisdiction of the United States shall utter any obscene, indecent or profane language by means of radio communication. <sup>7</sup>

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<sup>5</sup> Ibid., p. 17.

<sup>6</sup> Ibid., p. 86.

<sup>7</sup> Ibid., p. 100.



As the chronology of cases in this chapter will indicate, Section 29 has been interpreted as applying to prior censorship of broadcast material and several of the earliest cases considered by the Federal Radio Commission asserted the right of the Commission to consider past programs in determining if the public interest would be served by continuance of the licensed operation in question.

The FRC remained in existence until 1934 through enabling legislation allowing its continuance beyond the original one year limit. In response to complaints, primarily from the southern states, that stations were not being fairly allocated geographically, the Davis Amendment was enacted March 28, 1928, requiring the establishment of a complex quota system for station allocation. In brief, each facility licensed was assigned a value based upon frequency, power and hours of operation. Each of the five zones had a quota figure assigned, as did each state within each zone.

As a result, most cases of competing applications were settled on the basis of technical interference, financial ability to operate, available programming and engineering talent, and upon the current status of the quota for that state and zone.

Political pressures from elected representatives of areas concerned, as well as unique geographical problems (arising from cities bordering or straddling boundaries of zones or states) led to many zones or states being severely over or under quota. For example, the Tennessee quota was set at 7.29, but in 1932 the state had 12.83 units assigned to it, putting the state 75.9 percent over its assigned quota. In fact, the state stayed consistently over its quota during the life of the FRC,

despite being the home state of Congressman Davis, the author of the Davis Amendment.<sup>8</sup>

The FRC was crippled by inadequate financing, uncertainty over the length of the commissioners' terms of office and by pressures mentioned above, and was replaced by the Federal Communications Commission, as established in the Communications Act of 1934.

### 3. The Communications Act of 1934

While the Federal Communications Commission did not labor under the Davis Amendment, the Communications Act of 1934 carried over most of the provisions of the Radio Act of 1927. Section 303 of the act begins with the words, "Except as otherwise provided in this Act, the Commission from time to time, as public convenience, interest, or necessity requires, shall - ... ." <sup>9</sup>

Section 326 of the Communications Act reads as follows:

Section 326. Nothing in this act shall be understood or construed to give the Commission the power of censorship over the radio communications or signals transmitted by any radio station, and no regulation or condition shall be promulgated or fixed by the Commission which shall interfere with the right of free speech by means of radio transmission. <sup>10</sup>

Since 1934, several policies regarding fairness in discussion of controversial issues and personal attacks have been developed by the commissioners and by judicial bodies, and these will be discussed later,

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<sup>8</sup> Radio Broadcast Stations of the United States (Washington, D.C.: United States Government Printing Office, 1932) p. 61.

<sup>9</sup> Frank J. Kahn, ed., Documents of American Broadcasting, 2nd ed. (New York: Appleton-Century-Crofts, 1973), p. 65.

<sup>10</sup> Ibid., p. 85.

primarily in Chapter III.

The next two sections of this chapter will consider the history of regulatory decisions and litigation involving religious licensees from the first days of the FRC through FCC decisions through 1976. The first section offers a chronology for each of the thirty-five such licensees in operation from 1927 to 1934, as well as a case chronology of FCC decisions from 1934 to 1975.

The second section will consider several such cases in detail, focusing upon landmark decisions in the areas of (1) use of a license to express personal views of the licensee and make attacks upon groups and individuals, (2) licensee limitation as to who may express views over the licensed facility, (3) licensee rights under the First and Fifth Amendments to the Constitution, (4) the WTBK license case, in which the first three issues were brought together among others, and (5) recently raised issues of religious organizations' right to "educational" status, and the right of such groups to discriminate in employment.

While all the cases in the second section will have been mentioned in the first section, putting the chronology in toto first will give some perspective of the general history of such regulation. Chapter III will consider the the issues raised by the landmark cases in further detail.

## B. CHRONOLOGY OF REGULATORY DECISIONS

### 1. The Pre-FRC Period

In December, 1920, the Calvary Baptist Church of Pittsburgh began broadcasting Sunday morning worship services over KDKA, Pittsburgh. Five

years later, there were 600 radio stations operating in the United States and sixty-three of them were church owned. They had been established by local congregations as tools for reinforcing and strengthening the image of local ministries. <sup>11</sup>

The Depression forced many such groups to sell their stations to commercial concerns for full-time operation. Most stations licensed to church congregations had operated only on Sunday morning and evening, broadcasting the weekly worship services. J. Harold Ellens, in Models of Religious Broadcasting, views the sale of the stations as a turning point for all forms of religious broadcasting, asserting that a "crucial precedent was set which still controls radio and television - control of program content and production techniques by the broadcast industry, not the church." <sup>12</sup>

Actually, several of the stations left the air prior to the FRC in 1927, for the Commission's 1928 report lists 43 stations surrendering licenses, only two of which are church owned. Yet the report also lists just over thirty such stations still in existence. <sup>13</sup> In fact, analysis of all the annual FRC reports and lists of stations turns up only thirty-five such stations in existence from 1927 to 1934.

As the subsequent listing indicates, some religious-based stations sold out to commercial organizations; some merely altered their formats

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<sup>11</sup> J. Harold Ellens, Models of Religious Broadcasting (Grand Rapids, Mich.: William B. Eerdmans Publishing Company, 1974), p. 16.

<sup>12</sup> Ibid., p. 16.

<sup>13</sup> Report of the Federal Radio Commission - 1928 (Washington, D.C.: United States Government Printing Office, 1928), p. 83.

to commercial programming; and a few continued as share-time, Sunday-only operations for several decades.

## 2. Thirty-five Religious Licensees

Many of the thirty-five religious stations found to be operating during the FRC era did not last into the FCC regulatory period. Those stations that did operate beyond 1934 will be mentioned in the FCC case chronology as well as the FRC listing.

Perhaps as a result of the persistent funding problems, the FRC did not issue regular reports of its decisions. Even its annual reports were not consistent in format. The Journal of Radio Law, which was published for two years (1931 and 1932), included all FRC general orders issued during those years; but often decisions on licensing and allocation were not included for certain periods of time.

If no citation appears in the data for the stations listed below, the information came directly from this author's compilation of the data in each FRC annual report. However, when a station appeared in one listing, but not in the subsequent year's listing, and was not listed as deleted, such deletion was assumed to have occurred, although the exact date of deletion and circumstances surrounding the deletion could not be determined. Further, the FRC was inconsistent in that the exact date of licensing or deletion was sometimes omitted.

The listing is alphabetical, beginning with the K-prefix stations (mostly west of the Mississippi), followed by the W-prefix stations (mostly east of the Mississippi). For each listing the call letter-location heading is followed by the licensee and the originally assigned frequency and power.

KFGO, Boone, Iowa. Boone Biblical College, 1310 kHz., 100 watts.

In September, 1941, the Federal Communications Commission granted the station a construction permit for 1260 kHz., with 1000 watts daytime only, and it still operates as such today and has added KFGQ-FM, both programming chiefly religious material on a non-commercial basis. <sup>14</sup>

KFSG, Los Angeles, Ca. Echo Park Evangelistic Association, 1120 kHz., 500 watts, sharing time with KRKD, Los Angeles. Operated with evangelistic programming for the International Church of the Four Square Gospel, KFSG used Sunday hours not used by commercial station KRKD. Since 1970, when KRKD became KIIS, operating on 1150 kHz., with 1000 watts, the Church has continued its programming on KFSG-FM, which it acquired in 1949.

KFUO, Clayton, Mo. Evangelical Lutheran Synod of Missouri, 550 kHz., 500 watts. The station was first licensed January 29, 1925, to be operated by the church's Concordia Seminary. An application for a change of frequency and higher power was denied by the FCC June 12, 1936, on grounds of interference to existing stations. <sup>15</sup> In February, 1938, both KSD, St. Louis, and KFUO were granted renewal on a share-time basis, with KFUO operating twenty-six-and-a-half hours per week. <sup>16</sup> KFUO now operates on 850 kHz., with 5000 watts from local sunrise to local sunset, Denver time, protecting 50,000 watt KOA in that city. The licensee also

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<sup>14</sup> Boone Biblical College, 9 FCC 282 (1941).

<sup>15</sup> Evangelical Lutheran Synod of Missouri and Other States, 2 FCC 656 (1936).

<sup>16</sup> Evangelical Lutheran Synod, 5 FCC 188 (1938).

operates KFUD-FM, duplicating and extending the AM religious formatted programming. 17

KFXR, Oklahoma City, Okla. Exchange Avenue Baptist Church, 1310 kHz., 250 watts daytime, 100 watts nighttime. The Church had operated the station since 1927, and from 1929 to 1932, a Mr. B.C. Thomasan had managed the station commercially to provide income for the church. On October 3, 1932, the church entered into a formal agreement of leasing with Mr. Thomasan, so that he became, in effect, the licensee. In 1938, the church applied for renewal and transfer to Plaza Broadcasting, noting that it had been apprised that the lease agreement was contrary to Section 310 of the Communications Act of 1934, regarding transfer of control approval vested in the Commission. The Commission granted the transfer April 20, 1938, and did not censure the church, asserting that the error appeared to be unintentional in light of the licensee's meritorious programming service. 18

KGEF, Los Angeles, Ca. Trinity Methodist Church, South, 1300 kHz., 1000 watts, share-time with KTBI, Los Angeles. This case of the Reverend Robert B. Shuler is discussed in further detail in the landmark case section of this paper. For the record, an FRC examiner recommended renewal on August 7, 1931, but the FRC denied the renewal request on November 13, 1931, and denied a stay of its cessation order on December 1, 1931. A rehearing of the case was denied April 28, 1932, and the appeal

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<sup>17</sup> Broadcasting Yearbook - 1975 (Washington, D.C.: Broadcasting Publications, 1975), p. C-108.

<sup>18</sup> Exchange Avenue Baptist Church, 5 FCC 333 (1938).

was heard before the Court of Appeals of the District of Columbia on May 3, 1932.<sup>19</sup> The Court upheld the FRC in a ruling November 28, 1932, with a request for rehearing denied on December 2, 1932.<sup>20</sup>

KGHI, Little Rock, Ark. First Baptist Church, 1200 kHz., 100 watts. This Sunday-only station was sold to commercial interests in 1932.

KGJF, Little Rock, Ark. First Church of the Nazarene, 890 kHz., 250 watts. As in the case of KGHI, this Sunday-only station was sold to commercial interests in 1932, becoming known as KARK.

KPOF, Denver, Colo. Pillar of Fire, Inc., 880 kHz., 500 watts, sharing time with KFKA, Greeley, Colorado. This station is under the same ownership as WAWZ, Zarapheth, New Jersey, and today operates on 910 kHz., with 5000 watts daytime and 1000 watts nighttime, as a non-profit, non-commercial religious formatted station.<sup>21</sup>

KPPC, Pasadena, Ca. Pasadena Presbyterian Church, 1210 kHz., 50 watts, share-time with KFCM, San Bernadino. The station operated from December, 1924, until it was denied renewal on technical grounds in 1936.<sup>22</sup> However, a KPPC does operate on 1240 kHz. with 100 watts under the commercial ownership and operation of the National Science Network.

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<sup>19</sup> Journal of Radio Law, II, (Evanston: Northwestern University Press, 1932), p. 156.

<sup>20</sup> Trinity Methodist Church, South v. Federal Radio Commission, 62 F 2d 850 (1932).

<sup>21</sup> Broadcasting Yearbook, p. C-29.

<sup>22</sup> Pasadena Presbyterian Church, 2 FCC 498 (1936).



KRE, Berkeley, Ca. First Congregational Church of Berkeley, 1370 kHz., 100 watts, share-time with KZM, Hayward, California. The station was first licensed in 1922 as a Sunday-only operation, later expanding to a commercial operation to help subsidize the church's mission work. The station incurred several years of financial loss as a commercial venture, and in 1936 applied for transfer of license to Central California Broadcasters, a division of California Crematoriums, Inc., with an agreement that the church would continue its original Sunday morning operation for a period of twenty years. <sup>23</sup>

KTEI, Los Angeles, Ca. Bible Institute of Los Angeles, 1300 kHz., 1000 watts, share-time with KGEF, Los Angeles. In 1932, the station transferred its license to KFAC, a commercial concern which later took the hours of Dr. Shuler's KGEF.

KTW, Seattle, Wash. First Presbyterian Church, 1220 kHz., 1000 watts, share-time with KOL, Seattle. The station was first licensed on August 20, 1920, operating as a Sunday-only station. It was sold to commercial interests December 12, 1966. <sup>24</sup>

WABO, Rochester, N.Y. Lake Avenue Memorial Baptist Church, 1290 kHz., 100 watts. The station was licensed prior to the creation of the FRC, and on August 18, 1927, began sharing time (Sundays only) with commercial station, WHEC, Rochester. It was deleted in 1933. WHEC assumed its hours on Sunday.

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<sup>23</sup> KRE, Inc., 3 FCC 417 (1937).

<sup>24</sup> Broadcasting Yearbook, p. C-205.

WABZ, New Orleans, La. Coliseum Place Baptist Church, 1200 kHz., 100 watts. The call letters were changed to WBNO in 1932 and commercial operation was begun. In 1938, the station moved to 1420 kHz., with 250 watts daytime and 100 watts nighttime. That frequency is today occupied by a non-commercial station licensed to the City of New Orleans.

WAWZ, Zarapheth, N.J. Pillar of Fire, Inc., 1350 kHz., 250 watts. This non-profit, primarily religious, station shared time with three other stations through the 1930's and now operates on 1380 kHz., with 5000 watts daytime only, sharing time with WBNX, Bronx, New York. WAWZ also operates an FM station, duplicating the AM religious programming.

WBBL, Richmond, Va. Grace Covenant Presbyterian Church, 1210 kHz., 100 watts. The station operated for years on Sundays only, sharing the frequency with a full-time station in Richmond. In 1944, the War Production Board, which during World War II had to approve all new construction involving scarce materials, authorized the FCC to grant a construction permit to WBBL for a power increase to 5000 watts and extended hours. The station now shares hours with WLEE, Richmond, on 1480 kHz.

WBEB, Brooklyn, N.Y. Peoples Pulpit Association, 1300 kHz., 1000 watts, sharing time with WHAZ and WEVD, New York. The station operated on Sundays only, but in 1935 the FCC deleted the station in order to give more hours to WEVD and because the licensee had not met technical requirements in the station's operation.

WCHI, Chicago, Ill. Peoples Pulpit Association, 1490 kHz., 5000 watts, sharing time with WJAZ, Chicago, and WCKY, Covington, Kentucky.

The station was deleted on May 7, 1932, in order to give WCKY better coverage for programming service the FRC judged to be more meritorious.

WFBC, Knoxville, Tn. First Baptist Church, 1200 kHz., 50 watts.

This station was a victim of the quota system, in that the FRC authorized removal of the station to Greenville, South Carolina, in 1934 to give that city its first broadcast service without exceeding the quota assigned to Zone Three, which included both Tennessee and South Carolina.

WHBC, Canton, Ohio. St. John's Catholic Church, 1200 kHz., 10 watts. The station operated on Sundays only until it went commercial under the same ownership in 1934 with 250 watts daytime and 100 watts nighttime. In 1938, the church sold the station to a local newspaper, which still holds the license.

WHBY, Green Bay, Wis. St. Norbert College, 1210 kHz., 100 watts. The Norbertine Fathers had operated the station since 1925 primarily for instructional purposes, and not as a religious formatted station. In 1934, the FCC denied license renewal purely on grounds of technical interference to then-existing stations providing a more general broadcast service. The Fathers later operated WBAY AM-FM-TV in Green Bay, selling these properties in recent years.

WIBG, Elkins Park, Pa. St. Paul's Episcopal Church, 930 kHz., 50 watts. Originally used only for Sundays, the station was sold to commercial interests in 1931 and continues today on a different frequency in Philadelphia, Pennsylvania.

WLCI, Ithaca, N.Y. Lutheran Association of Ithaca, 1210 kHz., 50 watts. This Sundays-only station was voluntarily deleted in 1932.

WABI, Bangor, Me. First Universalist Society of Bangor, 1200 kHz., 100 watts. The station was sought in 1932 from an inactive licensee whom, the FCC held, had not operated it often enough to have any right of transfer. The church again made application in 1933, and operates the station today under the name Community Broadcasting Service with a commercial format.

WLWL, New York, N.Y. Missionary Society of St. Paul, 1100 kHz., 5000 watts, share-time with WPG, New York. The station sought in 1936 to move to 810 kHz., unlimited hours, but was denied by the FCC because it would displaced an existing station providing meritorious service.

WJED, Indianapolis, Ind. 31st Street Baptist Church, 600 kHz., 250 watts, daytime only. The station was authorized by the FCC June 30, 1931, but never operated and was deleted in late 1931.

WMBI, Chicago, Ill. Moody Bible Institute, 1080 kHz., 5000 watts. Originally share-time with WCBD, Zion, Ill., and WBT, Charlotte, North Carolina, the station, licensed since 1926, today operates with 5000 watts on 1110 kHz., restricted from nighttime operation except when WBT is off the air. The format has always been predominately religious.

WMAY, St. Louis, Mo. King's Highway Presbyterian Church, 1200 kHz., 250 watts daytime, 100 watts nighttime. The station has been licensed in 1928 for Sunday operation only, basically broadcasting only the regular morning and evening services. In 1931, it sought renewal

and transfer to a commercial owner. The FRC ruled that the station had been operated so infrequently that there was really no license to renew and thus none to transfer, a ruling similar to that made in the WABI case cited above.<sup>25</sup>

WMBJ, Pittsburgh, Pa. The Reverend John Sproul, 1500 kHz., 100 watts. Sproul was granted a license by the FRC on February 27, 1930. In April, creditors declared him insolvent and took possession of station equipment. He obtained a second transmitter and continued operation in hopes of obtaining funds to meet his debts and transferred all his income to a group of his creditors, operating as Pittsburgh Broadcasters, Inc. He did not notify the FRC of the change. When the second transmitter was seized in September, 1930, Pittsburgh Broadcasters filed for the license, with Sproul agreeing to transfer it to them with the provision that they allow him to continue the use of the facility for his preaching programs in order to pay off the indebtedness. Another Pittsburgh citizen, William Walker, a long-time resident with radio experience, also filed for the license. The FRC again ruled that the lack of facilities, in that Sproul had no equipment, meant that he had nothing to transfer. Sproul was censured for not filing a change of ownership in regard to Pittsburgh Broadcasters. That group was also found not qualified to hold a license by virtue of lack of experience, lack of funds, lack of equipment, and because of its part in the illegal corporate transfer of the station. On February 27, 1931, one year after the trou-

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<sup>25</sup> Journal of Radio Law, I (Evanston: Northwestern Univ. Press, 1931), p. 112.

bles began, the Court of Appeals of the District of Columbia denied Sproul's appeal of the Commission's decision to grant the license to William Walker. <sup>26</sup>

It should be noted that nowhere was the content of Mr. Sproul's programming, mostly evangelistic, brought into question.

WMPC, Lapeer, Mich. First Methodist Church of Lapeer, 1500 kHz., 100 watts. Originally operated only on Sundays, sharing time with various stations in the region, WMPC is today licensed to the Calvary Bible Church to operate daytime only on 1230 kHz., with 1000 watts. <sup>27</sup>

WNBX, Springfield, Vt. First Congregational Church Corporation, 1200 kHz., 10 watts, share-time with WCAX, Burlington, Vt. The station had been licensed prior to the FRC, and that Commission found it had not been operated since 1928. That finding led to a denial for an increase in power to 100 watts, sought by the licensee when the station filed for renewal in 1931. In 1934, WCAX took over the designated time as a commercial operation.

WOQ, Kansas City, Mo. Unity School of Christianity, 1300 kHz., 1000 watts, share-time with KGH, Wichita, Kansas. In 1931, KFH applied for unlimited hours, deleting WOQ. The examiner ruled and the Commission concurred that (1) KFH had rendered good program service, (2) the program service of WOQ would not be missed in a city receiving several

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<sup>26</sup> Journal of Radio Law, I, p. 113.

<sup>27</sup> Journal of Radio Law, II, p. 546.

good signals, (3) full-time operation of KFH would bring up the Kansas quota which was quite low, and (4) deletion of WOQ would decrease an over-quota level in Missouri. The station was deleted October 18, 1931, and KFH was granted unlimited hours. <sup>28</sup>

WPCC, Chicago, Ill. North Shore Church of Chicago, 560 kHz., 500 watts. In 1931, WJKS, Chicago, sought to move from 1360 kHz., with 1000 watts and a share-time operation with WGES, Chicago, to take over 560 kHz. with 1000 watts, thus displacing WPCC and another Chicago station, WIBO, with which WPCC shared hours on Sunday. Also in 1931, WPCC sought FCC approval of an agreement with WIBO to increase WPCC's hours from Sundays only to nineteen hours per week. The FRC granted WJKS's application and deleted WPCC and WIBO on June 13, 1931. <sup>29</sup> The two deleted stations appealed, and the decision was reversed by the Court of Appeals of the District of Columbia on December 5, 1932. <sup>30</sup> The 560 kHz. frequency is now occupied by WIND, operated by Group W Broadcasting.

WSSH, Boston, Mass. Tremont Temple Baptist Church, 1410 kHz., 500 watts. In 1927, the station joined with WAAB, a commercial operation, and shared time for seven hours on Sundays. On February 25, 1931, WLEX in Lexington, Massachusetts and WSSH applied to the FRC for approval of a share-time operation. The FRC approved the application on grounds

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<sup>28</sup> Ibid., p. 339.

<sup>29</sup> Journal of Radio Law, I, p. 339.

<sup>30</sup> North Shore Church of Chicago (WPCC) et. al, v. Federal Radio Commission, 62 F 2d 854 (1932).

that WAAB (then operating as WMAF) had not been on the air on a regular basis for the past two years. 31

WWL, New Orleans, La. Loyola University of the South, 850 kHz., 10,000 watts. Although owned by a Catholic university, the station had been programmed for general audiences. In November, 1937, the FCC granted WWL 50,000 watts in order to better serve rural areas in the southeastern and southwestern United States. No religious questions were raised and the station was praised by the FCC for meritorious program service. 32

Of the 35 stations, only seven remain today in something similar to their original form. The other 28 are either gone from the airwaves or are operated as commercial outlets. The basic history of these stations was researched to give some perspective on the issues and problems faced by such operation. The seven year FRC term was accessible to study, while it would be beyond the scope of this project to catalog all such licensees from 1934 to 1976. As should become apparent later in this paper, very few new issues were raised in later years that had not already appeared during the reign of the FRC.

The next section of this paper will consist of a chronological listing of cases heard by the full FCC that involved religious licensees. The list is drawn from examination of more than 100 volumes of FCC Reports, dating from 1934 to 1976. In addition to citations from the reports, the list will include occasional references to Pike and Fischer

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31 Journal of Radio Law, I, p. 314.

32 Loyola University of the South, 5 FCC 43 (1937).



volumes of Radio Regulation, as well as selected court decisions.

### 3. Religious Broadcasting Cases, 1934 - 1976

Most licensing matters are decided by the Broadcast Bureau, and the full commission limits its hearings to cases the Bureau declines to decide because of complexity of the issues, or appeals from the decisions of the Bureau. In recent years, routine cases have been listed briefly in the back of each volume of FCC Reports. But the practice is so recent that such information is not available for the bulk of the years surveyed.

All 110 volumes (in two series) of FCC Reports have been examined for cases involving religious broadcasters as defined in Chapter I. Some cases involve purely technical issues, some deal with programming practices or proposals, others with the issue of which group of competing applicants will best render service to the community of license.

While the FCC has been far more consistent in its listing procedures than the FRC was, there are some discrepancies, especially in the specificity of dates.

Each case is listed chronologically, using the accepted FCC form of case citation. For example, 1 FCC 120 refers to page 120 of Volume 1 of FCC Reports. 28 FCC 2d 001 refers to page 1 of the 28th volume of the second series of FCC Reports.

WHBY, 1 FCC 120 (1934). The details of this denial of renewal and deletion of license has already been discussed (p. 25) in the previous section. Such cases already discussed will be thus cited, with reference to the page of the original discussion.

WARD, et al., 2 FCC 208 (1935). The station had been licensed as a commercial operation since 1932, sharing time with three other New York area stations. In considering renewals for all four stations and several other applications for the frequency, as well as claims by WABY and three others to be best qualified for full-time operation on 1400 kHz., the FCC found all four to be deficient in technical operation. The Commission cited outmoded equipment, lack of maintenance and interference problems for all four licensees, and also questioned the programming of WARD by "Rabbi" Aaron Kronenberg, the principal stockholder.

According to complaints from Jewish organizations and others, Kronenberg reportedly broadcast programs that included solicitations for rabbinical services such as weddings, bar mitzvahs, and circumcisions. Some questioned his rabbinical qualifications as well. None of the solicitations, nor several promotions for dance halls in which Kronenberg and associates held interests, were logged as commercial matter. The FCC ordered surrender of the license on both technical and programming grounds.

Radio Chapel of the Air, 2 FCC 394 (1936). Radio Chapel of the Air and Edward Hoffman, a businessman in Minneapolis, filed competing applications for 1370 kHz., 100 watts. While Radio Chapel proposed primarily religious programming, it asserted no discrimination among creeds. <sup>33</sup> Hoffman proposed general audience programming. Without giving any reason, the FCC awarded the license to Hoffman.

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<sup>33</sup> Radio Chapel of the Air, 2 FCC 396 (1936).

Pasadena Presbyterian Church, 2 FCC 498 (1936). This denial of license renewal on technical grounds was discussed (p. 22) in the previous section.

Evangelical Lutheran Synod of Missouri and Other States, 2 FCC 656 (1936). This decision, regarding nighttime power increase and a frequency change, has already been discussed (p. 20) in the previous section.

KRE, 3 FCC 417 (1936). This transfer of license was discussed (p. 23) in the preceding section.

Missionary Society of St. Paul the Apostle, 3 FCC 519 (1936). This denial of a frequency change and unlimited hours was discussed (p. 26) in the preceding section.

Loyola University of the South, 5 FCC 043 (1937). This granting of a power increase to WWL, New Orleans, was discussed (p. 30) in the preceding section.

Pillar of Fire, Inc., 5 FCC 072 (1938). This granting of a power increase to KPOF, Denver, was discussed (p. 22) in the preceding section.

Evangelical Lutheran Synod of Missouri and Other States, 5 FCC 188 (1938). This granting of license renewals and approval of a time-sharing agreement was discussed (p. 20) in the preceding section.

William States Jacobs, 5 FCC 227 (1938). Dr. Jacobs sought a construction permit for a station on 1220 kHz., 1000 watts, unlimited time in Houston, Texas. In addition to questions of possible interference,

as well as limited financial resources, the FCC cited Mr. Jacobs' proposed programming, in which he allotted 75 percent of the time for espousal of his personal views on the needs of "the laborers and the underprivileged." <sup>34</sup> The Commission denied the application primarily on program proposal grounds, citing the FRC decision in 1928 denying a license to Great Lakes Broadcasting for a station to be devoted primarily to advertising messages. The issue was raised as to whom the airwaves belong: the licensee or the people. A further discussion of the landmark Great Lakes case appears in the next section.

St. John's Catholic Church, Canton, Ohio, 5 FCC 234 (1938). This approval of a transfer of control to a commercial corporation was discussed (p. 25) in the preceding section.

Exchange Avenue Baptist Church, 5 FCC 333 (1938). This approval of a transfer of control of KFXR, Oklahoma City, Oklahoma, to commercial ownership was discussed (p. 21) in the preceding section.

Young Peoples Association for the Propagation of the Gospel, 6 FCC 178 (1938). This landmark denial of a construction permit on grounds that the applicant would discriminate regarding access to the airwaves on the basis of religious tenets is discussed in detail in the next section.

Coliseum Park Baptist Church, 6 FCC 210 (1938). The Coliseum Park Baptist Church had operated WBBX, licensed by the FRC to Samuel D.

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<sup>34</sup> William States Jacobs, 5 FCC 229 (1938).

Reeks, as a basically commercial operation. In 1934, the Church formally assumed the license under FCC approval, operating on 1200 kHz., with 100 watts, sharing time with WJBW, New Orleans. In 1938, the FCC granted the licensee's request to operate on 1420 kHz. with 250 watts daytime and 100 watts nighttime. The FCC cited previous meritorious programming by the licensee and the need for more local programming (1420 kHz. was designated as a local, low power, frequency) because most stations serving New Orleans offered primarily national network programming.

Pillar of Fire, Inc., 7 FCC 265 (1939). Pillar of Fire, licensee of WAWZ, Zarapheth, N.J., and KPOF, Denver, Colorado, sought a CP for an international short-wave station to serve its missionary force in Great Britain. The FCC denied the application, citing both interference with existing short-wave stations and the narrow audience for which the station would be programmed, especially in light of Pillar of Fire's express intent to merely duplicate the programming of WAWZ.

Moody Bible Institute, 7 FCC 491 (1940). The licensee of WMBI, Chicago, was denied an application for a short-wave station for local coverage (41,300 kHz., 100 watts). The station would not duplicate WMBI to any great extent, but was meant to reach church missionary personnel for instructional purposes, "to educate, direct, encourage, maintain, and send forth Christian workers, Bible readers, gospel singers, teachers and evangelists, competent to effectually teach and preach the gospel of Jesus Christ." <sup>35</sup> The Commission's denial cited both the limited

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<sup>35</sup> Moody Bible Institute, 7 FCC 491 (1940).

audience programmed for, the lack of receiving equipment, interference to existing short-wave stations, and the need for service locally.

Boone Biblical College, 9 FCC 282 (1941). This granting of a frequency change to KFGQ, Boone, Iowa, is discussed (p. 20) in the preceding section.

Grace Covenant Presbyterian Church, 10 FCC 418, 479 (1944). This granting of a power increase and frequency change by the FCC and the approval of the War Production Board for construction plans was discussed (p. 24) in the preceding section.

Evangelical Lutheran Synod of Missouri and Other States, 11 FCC 1447 (1946). The licensee of KFUD, Clayton, Mo., was granted an FM construction permit.

WIBK Broadcasting Co., Inc., 14 FCC 072 (1949). The denial of a license to cover an AM CP and the denial of an application for a CP for a new FM station, both requested by J. Harold Smith of Knoxville, Tn., is discussed in the landmark case section.

New Jersey Council of Christian Churches, et al., 14 FCC 365 (1949). In early 1949, WCAM, licensed to the City of Camden, New Jersey, announced a policy of carrying only sustaining religious programming, and of no longer selling time to religious organizations. The Council challenged WCAM's right to restrict the airwaves. The Commission ruled that WCAM had apportioned its time for religious programming quite fairly among all faiths and denominations, and stated that it is the responsibility of the licensee to determine programming.

Radio Commission of the Southern Baptist Convention, et al., 16 FCC 046 (1951). The petitioners requested that the FCC amend its rules to "extend to religious organizations the privileges and exemptions now accorded to non-commercial educational FM broadcast stations." <sup>36</sup> The petitioners also requested that a general class of low-power FM stations be reserved for all non-profit, educational organizations. Perhaps in an effort to skirt the religious issue, the FCC determined that the basic issue was the establishment of a new FM class. Ruling that only the petitioner, among all possible non-profit educational groups in the United States, had expressed a desire for such a classification, the petition was denied. In the next section, the later controversy of qualifications for the reserved FM band will be discussed in greater detail.

KCOD, et al., 11 FCC 2d 349 (1968). KCOD, a commercial station, and Baptist Bible College, filed mutually exclusive applications for an FM CP for Springfield, Missouri. KCOD attacked Baptist Bible College on grounds that the college proposed "narrow Baptist-oriented service," <sup>37</sup> whereas KCOD proposed general audience material. In answer to FCC questioning, Baptist pledged to make time available for all faiths and creeds, although the bulk of the programming would be provided by the college. The Broadcast Bureau granted the license to KCOD on grounds that Baptist lacked a showing of representative programming. The full Commission, however, reversed the Bureau's decision, holding that the

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<sup>36</sup> Radio Commission of the Southern Baptist Convention, et al., 16 FCC 46 (1951).

<sup>37</sup> KCOD, et al., 11 FCC 2d 350 (1968).

college's showing was sufficiently representative. 38

Gospel Broadcasting Company of Fort Wayne, Indiana, and Fort Wayne Broadcasting Company, 17 FCC 2d 130 (1969). In 1968, both groups named sought a construction permit for a new FM station in Fort Wayne. The FCC ordered a comparative hearing to determine (1) the financial ability of Fort Wayne Broadcasting to construct and operate the station, (2) the necessity of granting Gospel Broadcasting a waiver of Section 73.315(a) of the FCC rules, and (3) which, if either, grant would best serve the public interest.

The Commission ruled that Fort Wayne Broadcasting qualified, but denied a waiver to Gospel Broadcasting, thus granting the CP to Fort Wayne Broadcasting.

Section 73.315(a) requires an FM station to place a 3.16 mv./meter signal over the entire city of license, to assure city-grade coverage. Gospel Broadcasting claimed that finances precluded six possible sites offered it, and also cited zoning restrictions on sites otherwise suitable within the city of license. Waivers can be granted on grounds that the applicant is offering or will offer a unique programming service. Gospel asserted that all-religious programming it proposed would provide a unique service not available on any other Fort Wayne station.

The Commission disagreed, arguing that all the other stations were featuring a set amount of religious programming on a daily basis, and that there was a question of how much and what kind of religious programming a community needed.

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38 KCOD, 11 FCC 2d 350 at 352.



. . . (Q)ualitatively, "religion" is not all one in its faiths, styles, and distribution. It is inconceivable that a city like Fort Wayne would not contain a more or less polyglot Christianity as well as any non-Christian religions. It appears that the applicant, Gospel, would emphasize what is called fundamentalism, although it would not "confine itself to fundamental Protestant programming." Paragraph 30, supra. Blessed though fundamentalism may be - and the hearing examiner would be the last to deny it - he is hard put rationally to find that saturating that portion of Fort Wayne Gospel would propose to serve with the style of religious programming contemplated by Gospel would be of such great public service as to warrant a coverage requirement waiver.<sup>39</sup>

Since Gospel could not meet the basic requirement for a waiver, the providing of unique and necessary programming, the application was denied. Although not necessarily a landmark decision, in that it was never cited again in FCC programming decisions, it shall be mentioned in a discussion in the next section of this chapter.

Sandern of Iowa, Shenandoah Broadcasting Company, Buddy Tucker Evangelistic Association, and C & H Broadcasting, 20 FCC 2d 546 (1969). All four applicants sought 920 kHz., with 500 watts, in Shenandoah, Iowa, the deleted facilities of KFNF. In a comparative hearing, the FCC determined that Buddy Tucker, a Knoxville, Tennessee, evangelist, was neither financially qualified to construct and operate the station (showing a balance sheet in which liabilities exceeded assets by \$20,000), nor willing to promise to make time available "for the presentation of views of other religious groups."<sup>40</sup> Actually, Tucker did not deny such access, but neglected to reply to several enquiries from the Commission on the matter.

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<sup>39</sup> Gospel Broadcasting Company of Fort Wayne, et al., 17 FCC 2d 130 at 151 (1969).

<sup>40</sup> Sandern of Iowa, et al., 20 FCC 2d 547 (1969).

Pacifica Foundation and National Education Foundation, 24 FCC 2d 223 (1969). This denial of National Education Foundation's appeal of an FM reserved channel denial on grounds that the applicant did not qualify as an educational organization is discussed in greater detail in the next section of this chapter.

Bible Moravian Church, 28 FCC 2d 001 (1971). This denial of a reserved channel FM is also discussed in the next section.

Christian Radio Fellowship of Valdosta, Ga., 29 FCC 2d 003 (1971). After this applicant requested a construction permit for a new FM, Florida-Georgia Interstate, Inc., filed a competing application and challenged Christian Radio's ascertainment methods and proposal to meet community needs thus ascertained. Florida-Georgia, however, did not appear for the comparative hearing, and the FCC ruled that the ascertainment and programming proposals of Christian Broadcasting were quite adequate. The CP was granted.

WABB, Inc., Gospel Voice, Inc., Trio Broadcasting, and Hartzog Broadcasting, 29 FCC 2d 419 (1971). The four applicants for a new FM station in Mobile, Alabama, were placed in a comparative hearing, and it was determined that Gospel Broadcasting was not qualified, because it failed to specify that it would not discriminate against other religious creeds and groups in granting access to the airwaves. The other three applicants proposed general audience programming.

Biola Schools and Colleges, 29 FCC 2d 787 (1971). The licensee of KBBI (FM) Los Angeles, and KBEW (FM), San Diego, sought to transfer both

stations to a commercial concern, PSA Broadcasting. The case was referred to the full Commission in response to 100 letters protesting that the change of ownership would deprive the two cities of a unique form of programming, namely religious. The FCC ruled (1) the assignor had conducted meritorious programming, but (2) such programming was readily available on several stations in both cities, and (3) the assignor was endangering the existence of its educational institutions through financial losses incurred by both stations. The transfer was granted.

Trygve J. Anderson, Concerning Employment Practices by Kings Garden, Inc., Radio Station KGDN and KBIQ, Edmonds, Wash., 34 FCC 2d 937 (1971). This decision, regarding a claim of discrimination in employment on the basis of religious belief, is discussed in the next section as a landmark case.

Radio New York Worldwide, 56 FCC 2d 428 (1975). When the licensee of WRFM (FM), New York, filed for renewal, a petition to deny was filed by Solomon O. Battle of New York City, charging (1) inadequate ascertainment of community needs, (2) discrimination in employment, (3) racist policies on the part of Radio New York Worldwide's parent company, the Corporation of the President of the Church of Jesus Christ of Latter Day Saints, and (4) covert contacts with the Central Intelligence Agency.

The FCC ruled that the latter two charges were based on documents that were very speculative in nature, and thus could not be considered by the Commission. The FCC further ruled that, though there were some clerical errors in the ascertainment, the procedure was according to Commission guidelines. The renewal was granted with the provision that

the licensee present periodic reports on plans for strengthening its affirmative action program of minority representation in employment.

### C. LANDMARK REGULATORY CASES

#### 1. Five Significant Areas of Study

The preceding lists of FRC and FCC cases make clear that few, if any, significant broadcast regulatory cases involved only one issue. Yet there are a number of cases that are especially important because of one of the issues. The cases discussed in this section are referred to as landmark cases in that they had a special impact on many subsequent cases, either as legal precedents, a point of reference for discussion of a point of appeal by a party disagreeing with the decision.

The cases are considered under four headings, with one case given its own heading, inasmuch as many issues came together in it. The first heading, that of personal views and personal property, considers the Great Lakes, KFKB, and KGEF decisions. The first two do not involve religious licensees, but a mention of both is necessary for an understanding of the third decision. The issue in question is that of who owns the airwaves and whether a person's broadcast license is his "property."

The second heading is limitation of access, involving discussion of the licensee's responsibility to present representative programming by not restricting the airwaves to those sharing his or its point of view.

Third is the WIBK decision, in which several issues play a role in the final Commission decision.

The fourth and final heading is that of contemporary issues, including questions raised in recent years as to the definition of "educa-

tional" in granting reserved channel FM licenses, and as to a sectarian licensee's right to discriminate on the basis of religion in matters of employment. Also to be considered again, prior to another discussion in Chapter III, is the issue of whether a community "needs" religious programming, a matter raised in the Gospel Broadcasting of Fort Wayne decision.

## 2. Personal Views and Personal Property

Both the FRC enabling statute, the Federal Radio Act of 1927, and the equivalent FCC statute, the Communications Act of 1934, direct the designated regulatory body to license stations to serve the public interest, convenience, and necessity. Yet neither body may practice censorship.

Neither the FRC nor FCC could prescribe programming, yet even the earliest FRC application form asked for detailed program proposals.<sup>41</sup> And in 1928, the FRC began to deny station renewals on the basis of previous programming, in several instances because the stations had devoted almost all their airtime to commercial messages.

The Great Lakes Application. The Great Lakes Broadcasting Company applied to the FRC for a license, proposing programming consisting mainly of commercial advertising, the idea being that the station would serve for radio much the same purpose as the weekly "advertisers" served in the newspaper field. The FRC denied the application on grounds that such programming would serve too limited an audience.

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<sup>41</sup> Schmeckebier, p. 112.

Broadcasting stations are licensed to serve the public and not for the purpose of furthering the private or selfish interests of groups of individuals. The only exception to this rule has to do with advertising . . . because advertising furnishes economic support for the service and thus makes it possible. (But) the amount and character of advertising must be rigidly confined within limits consistent with the public service expected of the station. <sup>42</sup>

But the FCC was not seeking to single out advertising as the only culprit. The Commission spoke directly to the problem of what the public wants versus what is considered of service to the public.

If a broadcasting station had to accept and transmit . . . anything and everything any member of the public might desire to communicate to the listening public . . . the public would be deprived of the advantages of the self-imposed censorship exercised by the program directors of broadcasting stations who, for the sake of popularity and standing of their stations, will select entertainment and educational features according to the needs and desires of their individual audiences. . . .

The tastes, needs and desires of all substantial groups among the listening public should be met, in some fair proportion, by a well-rounded program in which entertainment . . . religion, education and instruction, important public events, discussions of public questions . . . news, and matters of interest to all members of the family find a place. <sup>43</sup>

Clearly, the FCC felt that programming consisting only of material provided by paid advertisers for their specific products did not serve the public in the broadest sense. But beyond that consideration, the FCC in this case stated a policy that has had far-reaching consequences ever since. The policy is based upon a concept often referred to as the limited spectrum and it is a policy that was readily adopted by the Federal Communications Commission as well, just in the form of the FCC.

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<sup>42</sup> M.R. Bensman, "Federal Decisions on Broadcast Programming," mimeograph, distributed by the Memphis State University, Memphis, Tn., Department of Speech and Theater, 1973, p. 2.

<sup>43</sup> Bensman, p. 3.

In such a scheme there is no room for the operation of broadcasting stations exclusively by, or in the private interests of, individuals or groups, so far as the nature of the program is concerned. There is not room in the broadcast band for every school of thought, religious, political and economic, each to have its separate broadcast station . . . propaganda stations are . . . not consistent with the most beneficial sort of discussion of public questions. <sup>44</sup>

The FRC had asserted its right to consider program service in determining the granting or denial of license applications. In its second annual report, the FRC stated:

The Commission believes it is entitled to consider program service rendered by various applicants, to compare them, and to favor those which render the best service. <sup>45</sup>

The FRC had next to consider not only its right to deny or grant licenses on the basis of program proposals, but on past programming performance, and that right was to be challenged in the courts.

The KFKB Case. Here again, the landmark case did not involve a religious licensee or religious programming, but the precedent set had far-reaching implications for both.

KFKB, Milford, Kansas, had first been licensed by the Secretary of Commerce on September 20, 1923, with a power of 1000 watts on 1050 kHz. By the time the FRC came into being, KFKB's signal was at least 5000 watts. <sup>46</sup> The station was originally licensed in the name of Brinkley-Jones Hospital Association, but was relicensed on October 23, 1926 to Dr. J.R. Brinkley, and on November 26, 1929 to KFKB Broadcasting Inc.

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<sup>44</sup> Ibid., p. 3.

<sup>45</sup> Report of the Federal Radio Commission - 1928, p. 161.

<sup>46</sup> Eric Barnouw, A Tower in Babel (New York: Oxford University Press, 1966), p. 170.



The Dr. Brinkley in question achieved fame through a "goat gland" operation that supposedly restored a man's "manhood." Impressed by his response from a broadcast over KHJ, Los Angeles, in the early 20's, Brinkley obtained a license for Milford, Kansas. While the station broadcast music, religion, and features, a daily program, "Medical Question Box," featured Dr. Brinkley prescribing medicines in response to descriptions from listeners of their respective medical problems. The prescriptions were given by number only, and only a pharmacist who paid to belong to Dr. Brinkley's association knew the formula for dispensing the prescription. A typical reply went as follows:

Sunflower State, from Dresden, Kansas. Probably he has gall stones. No, I don't mean that, I mean kidney stones. My advice to you is to put him on Prescription No. 80 and 50 for men, also 64. I think he will be a whole lot better. Also drink a lot of water. 47

The American Medical Association protested, challenging not only the ethics of a doctor prescribing without seeing the patient personally, but also the quality and genuineness of the prescription medicines.

Consistent with its previous rulings on the requirement of stations to serve the public interest and not just the licensee, the Commission ruled that:

. . . the testimony in this case shows conclusively that the operation of Station KFKB is conducted only in the personal interest of Dr. John R. Brinkley. While it is to be expected that a licensee of a radio broadcasting station will receive some remuneration for serving the public with radio programs, at the same time the interest of the listening public is paramount, and may not be subordinated to the interests of the station licensee. 48

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47 KFKB Broadcasting Association, Inc. v. Federal Radio Commission, 47 F 2d 670 at 671 (1931).

48 KFKB, 47 F 2d 670 at 671.



Citing the American Medical Associations's protests, the Commission further declared:

that the practice of a physician's prescribing treatment for a patient whom he's never seen, and bases his diagnosis upon what symptoms may be recited by the patient in a letter addressed to him, is inimical to the public health and safety, and for that reason is not in the public interest. <sup>49</sup>

Dr. Brinkley appealed the ruling, under provisions of Section 16 of the Radio Act of 1927, to the Court of Appeals of the District of Columbia. He cited Section 29, forbidding the FRC to practice censorship in programming. The Court of Appeals affirmed the FRC decision, declaring that Brinkley's charge of censorship

is without merit. There has been no attempt on the part of the commission to subject any part of the appellant's broadcasting matter to scrutiny prior to its release. In considering the question whether the public interest, convenience or necessity will be served by a renewal of appellant's license, the commission has merely exercised its undoubted right to take note of appellant's past conduct, which is not censorship. <sup>50</sup>

Even though the Court of Appeals handed down its decision on February 2, 1931, Dr. Brinkley continued his broadcasts over Mexican border stations for some years. Nonetheless, the FRC had been upheld. The question of personal views, however, had not been completely settled, and the issue of private property as regards a broadcast license, was about to arise.

The KGEF Case. Here the Commission's right to consider programming practices was again challenged on the Federal court level.

For several years, KGEF, Los Angeles, had been operated on 1300 kHz.

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<sup>49</sup> KFKB, 47 F 2d 670 at 671.

<sup>50</sup> KFKB, 47 F 2d 670 at 672.

with 1000 watts, sharing time with KTBI, another religious station. KGFF was licensed to Trinity Methodist Church, South, under the direction of the Reverend Robert F. Shuler, pastor. Shuler, who had received the station as a gift to the church from Lizzie Glide on October 5, 1926, installed it in the church tower. <sup>51</sup>

What first drew attention to Shuler were his sermons on Sunday and civic messages on Friday night. The latter dealt almost exclusively with gossip and innuendo about area civic officials and local institutions. In Models of Religious Broadcasting, J. Harold Ellens describes Shuler as rather racy in his manner, and a broadcast expose of a party, apparently held by a thousand "Christians" was described in the following manner by Shuler:

(They were) celebrating the coming of our Lord engaged in a drunken carousel, with hugging, kissing, and women displaying their nakedness, brazenly, openly, flagrantly, and viciously, with booze sold openly contrary to law, and the most suggestive dancing engaged in by all. <sup>52</sup>

Although Shuler mentioned no names, he aroused much protest, and apparently caused the resignation or political defeat of several office holders. According to the FRC decision, Shuler

charged judges with sundry immoral acts . . . and (on) one occasion he announced over the radio that he had certain damaging information against a prominent unnamed man, which, unless a contribution (presumably to the church) of one hundred dollars was forthcoming, he would disclose. . . . (H)e received contributions from several persons. <sup>53</sup>

The Commission further questioned Shuler's racial and ethnic slurs.

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<sup>51</sup> Ellens, p. 62.

<sup>52</sup> Ibid., p. 62.

<sup>53</sup> Trinity Methodist Church, South, 62 F 2d 850 at 852.

He alluded slightly to the Jews as a race, and made frequent attacks on the Roman Catholic Church and its relations to government. However inspired Dr. Shuler may have been by what he regarded as patriotic zeal, however sincere in denouncing conditions he did not approve, it is manifest, we think, that it is not narrowing the ordinary conception of "public interest" in declaring his broadcasts - without facts to sustain or justify them - not within that term. <sup>54</sup>

The court had again upheld the FCC right to consider programming as a public interest issue. Unlike Brinkley, however, Shuler challenged the ruling not only on First Amendment, but Fifth Amendment, grounds, asserting that denial of renewal was equivalent to taking of private property without due process.

Actually, while the public interest clause had made clear that the licensee was to operate his station for all the people, it was not clear if the license belonged to the licensee, or was merely a permit to operate the people's property.

In response to Shuler, the Court of Appeals declared that a license is not private property, in which rights are vested, but only the granting of permissive rights to make "use of a medium of interstate commerce, under the control and subject to the dominant power of the government." <sup>55</sup> Anyone who applies for and obtains a grant for the use of such medium, ruled the Court, is subject to "the exercise of the power of government, in the public interest, to withdraw it without compensation." <sup>56</sup>

Not only was the license not private property, but the Commission's notification of hearing on the renewal, and the procedures it followed

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<sup>54</sup> Trinity Methodist Church South, 62 F 2d 850 at 852.

<sup>55</sup> Trinity Methodist Church South, 62 F 2d 850 at 854.

<sup>56</sup> Trinity Methodist Church South, 62 F 2d 850 at 854.

in conducting the hearing, ruled out any claim that due process had not been followed.

Although KGEF was licensed to a religious organization, and though the programming in question was religiously oriented, the actual issue of broadcasting of religious dogma had not been raised.

### 3. Limitation of Access

As has already been mentioned, many stations licensed in the 1920's and early 1930's were owned by individual churches and religious institutions primarily for presenting Sunday morning and Sunday evening services.

Since most of these stations shared time with another station that broadcast most days of the week with rather general programming, the FRC apparently did not deem it necessary for the church stations to present diversified programming. Even full-time church stations were considered on such grounds as unique community service or, to use a popular regulatory euphemism, meritorious programming. The full-time stations did present news, interviews, and non-religious programs, but drew their funding from sectarian programs. The FRC ruled in the Great Lakes Decision that a station is justified in programming what will be well received in the community and what will allow the station to survive financially, assuming that over-commercialization is avoided.

In the KFKB case, and in the later WCBD case of Wilbur Glenn Voliva (p. 45 et. seq.), the FRC had emphasized that there was a limited electromagnetic spectrum that did not allow for "propaganda" stations, that is, stations operated for the expression of one's personal views to the exclusion of others.

Soon after its creation, the FCC found several license cases from religious institutions to revolve around just this issue.

Young Peoples Association for the Propagation of the Gospel. In 1938, this organization applied for a 1000 watt unlimited station on 1220 kHz. in Philadelphia, Pennsylvania. Chief among the parties to the application was evangelist Percy B. Crawford, who proposed to operate the station on a non-profit basis, with all revenues going to the establishment and maintenance of the proposed King's College in Belmar, New Jersey.

Although there was some concern over financial reports from the group as well as questions of potential interference to existing radio stations, the real problem arose in the applicant's statement of proposed programming, according to the hearing examiner.

The facilities of the station are to be used primarily for the dissemination of religious programs to advance the fundamentalist interpretation of the Bible. The applicant stated, however, that in connection with religious broadcasts the station's facilities would be extended only to those whose tenets and beliefs in the interpretation of the Bible coincide with those of the applicant. <sup>57</sup>

According to the applicant, this restriction would not apply to civic and public affairs programming.

The Commission denied the application, citing primarily the limited spectrum concept and the related propaganda-public interest issue.

Where the facilities of a station are devoted primarily to one purpose and the station serves as a mouthpiece for a definite group or organization it cannot be said to be serving the public interest. <sup>58</sup>

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<sup>57</sup> Young Peoples Association for the Propagation of the Gospel, 6 FCC 178 at 180.(1938).

<sup>58</sup> Young Peoples, 6 FCC 178 at 180.

The application was denied August 31, 1938.

Actually, the FCC had denied Radio Chapel of the Air in Minneapolis on March 17, 1936 because it did not specify that it would not discriminate in its religious programming, even though it did not claim, as in the case of Young People's, that it would definitely discriminate.

Dr. William States Jacobs was denied a CP for a station in Houston, Texas (5 FCC 227), on much the same grounds in 1938. Although Jacobs was not proposing religious programming exclusively, 75 percent of the time was to be devoted to his opinions on the laborer and the oppressed.

The issue of religious discrimination was raised each time a religious applicant sought a station, and most times the applicant pledged and proposed diversified programming. As mentioned previously (p. 39), Knoxville evangelist Buddy Tucker was denied a permit in a competitive hearing for a station in Shenandoah, Iowa (20 FCC 2d 546) because he failed to respond affirmatively to the FCC's enquiry as to whether he would allow other religious views airtime.

In 1971, Gospel Voice, Inc., seeking an FM station in Mobile, Alabama, was denied consideration by the Commission on identical grounds. (29 FCC 2d 419).

It should be noted that nowhere has the FCC really dealt with religious programming as unique from other forms of propaganda programming. The precedents cited in each case stem from non-sectarian cases, such as Great Lakes and KFKB. Other earlier precedents involved the Chicago Federation of Labor, and assorted business establishments. Neither the FCC nor the FRC seemed concerned that a program week contained predominantly religious programming, but that opportunity was not stifled for opposing or diverse viewpoints.

#### 4. The WIBK Decision

This case deserves consideration not only because it brings together the issues already considered, but because of its locale in Knoxville, Tennessee, the site of the University of Tennessee. As to the former reason, the case has been cited in subsequent decisions, since it brought together so many previously considered issues, and added some of its own.

Background. On July 3, 1946, Independent Broadcasting Company of Knoxville, Tennessee, applied for a construction permit for an AM station on 800 kHz. with 1000 watts, daytime only. The application was granted on October 10, 1946, and the station began program tests, using the call WIBK. It continued to operate under such authority until 1949, when the FCC's denial of a license grant was upheld by the Court of Appeals. On July 8, 1947, WIBK applied for a license to operate the AM station. It had also filed earlier for an FM construction permit, doing so on December 16, 1946, just over two months after the AM application.

Problems. The Commission's primary concern was with a series of conflicting financial reports, presented over a period of three years. Not only were there accounting discrepancies, (for example, the listing of assets, but no liabilities), but there were indications the control of the corporation had changed, with required FCC approval. Further investigation uncovered evidence of conduct on the part of the applicant casting doubt upon its ability to operate the proposed stations in the public interest.

Until then, the FRC and FCC had based program decisions on either proposed programming or upon past performance. WIBK's program proposals

raised no significant problems, and while the principal owner of WIBK, the Reverend J. Harold Smith, had broadcast religious programs on other radio stations, he had not previously run a radio station. Thus, the issue of past programming performance was not as clear as in the case of KGEF, for example.

J. Harold Smith, in December, 1935, established what came to be known as the "Radio Bible Hour" on WFBC, Greenville, South Carolina. The program was supported by contributions solicited from listeners, and from readers of the Carolina Watchman, a paper Smith published, and from funds donated to the Southern Bible Institute, established and owned by Smith.

The entire case of Smith's finances is too complex for consideration here, but what most disturbed the commissioners was the lack of adequate bookkeeping. Many of the funds for regular programs in Greenville and on WNOX, Knoxville, were kept in personal bank accounts in Smith's name, or in Smith's strongbox, for which no ledger was kept. The Commission declared that the finances of Smith, his wife, the Carolina Watchman, and Southern Bible Institute were hopelessly intermeshed.

Further the FCC presented evidence of Smith's heavy investment in a Mexican radio station, none of which was reflected either in WIBK's applications or corporate records.

The chief issue in the WIBK license case still involved Smith himself and his performance in broadcasting.

Smith's followers and enemies. Smith was nothing if not controversial. The Commission acknowledged his influence as follows:



The radio has been one of the principal organs used in his preaching and a substantial source of the revenue for support of his activities. He has expended thousands of dollars for the purchase of radio time. In the course of his activities, he has acquired a substantial number of followers. There is no doubt that his activities have aroused the opposition of others. <sup>59</sup>

The Commission had spent some time interviewing both followers and detractors, the former praising Smith for his religious zeal, the latter condemning him for mass appeal propaganda techniques, reminiscent of Hitler and Stalin. <sup>60</sup> The Commission also produced transcripts of some of his broadcasts, noting that Smith had been terminated on many stations.

In a number of instances, stations over which Smith has conducted his broadcast activities have terminated his broadcasts upon the establishment of a policy of refusing the sale of time for religious broadcasting. Whether or not Smith's own behavior has in every instance prompted the adoption of such policy, there is little doubt that it has been a contributing factor. In every instance following the termination of his programs, Smith has engaged over the air, in the columns of the Watchman and in other speeches and writings in a campaign of abusive language, and has sought to have the station or the newspaper under the same ownership boycotted by its advertisers. <sup>61</sup>

Following cancellation by WNOX, Knoxville, Smith led a demonstration of such magnitude that the management, fearing violence, removed the station personnel to the transmitter site far from the studios. <sup>62</sup>

Smith also prepared a pamphlet about WNOX, stating in it:

I charge this afternoon that the Knoxville News-Sentinel and her affiliated radio station WNOX are anti-God, anti-Bible, anti-Christ, anti-Gospel, and anti-preacher, and further:

I repeat your News-Sentinel station WNOX has grown rich off

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<sup>59</sup> WIEK Broadcasting Inc., 14 FCC 72 (1949).

<sup>60</sup> WIEK, 14 FCC 72 at 86.

<sup>61</sup> WIEK, 14 FCC 72 at 85.

<sup>62</sup> WIEK, 14 FCC 72 at 85.

the "blood of your sons."

I believe there will be 10,000 people in Knoxville and East Tennessee who will never permit another News-Sentinel paper to be left on their doorstep. . . .

Communism, fascism and nazism are fundamentally all the same. They all sponsor a system whereby one man (in our radio fight, Mr. Jack Howard) seeks to dominate another without that man's consent, the rule of the many by the few, the lowest concept of the human brain.

Can it be denied that the present owner of the News-Sentinel and WNOX, as a reporter, went to Russia and personally interviewed Stalin and other Communist leaders and then came back to this country and began to organize what is today the great Scripps-Howard newspaper syndicate? <sup>63</sup>

Smith also took on the Federal Council of Churches (later the National Council of Churches of Christ) and accused the organization of being the "green-eyed monster," "a red front for the principles of communism," "the best friend the devil has in America today," among other epithets. <sup>64</sup>

The actual proposed programming, as mentioned, was never an issue in the decision. The program director of WIBK, Marvin I. Thompson (who today manages radio station WKXV AM in Knoxville, a primarily religious station under sectarian ownership) even went so far as to assert that many of Smith's statements and programs would not be acceptable for broadcast on WIBK and that he, Thompson, would be responsible to see that they were not aired. <sup>65</sup>

In denying both the AM and FM applications, the Commission stated:

Our concern in this proceeding is not with propriety of individual broadcasts containing the language which Smith has used and the

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<sup>63</sup> WIBK, 14 FCC 72 at 87.

<sup>64</sup> WIBK, 14 FCC 72 at 88.

<sup>65</sup> WIBK, 14 FCC 72 at 90.

attacks which he has made, but with Smith's qualifications as a broadcast licensee, in which role he will have the responsibility of determining the overall radio fare offered to the listeners in the service area of his station. In attempting to anticipate his behavior as a licensee, the only guide we have to go by is the past pattern of his behavior as a private individual. Using that guide, we cannot conclude that the public interest would be served by vesting in Smith the public responsibility of a broadcast licensee.<sup>66</sup>

Smith's pattern of behavior, as concerned the FCC, involved his use of personal attacks in a variety of media, his financial negligence, and negligence in correctly reporting his broadcast and other business interests. It was feared by the Commission that Smith was likely, if granted the permits applied for, to conduct WIBK in much the manner of KGEF, or the Young Peoples Association for the Propagation of the Gospel.

Smith appealed to the Court of Appeals, which affirmed the Commission in October, 1951. In October, 1952, the U.S. Supreme Court refused to review the lower court's decision.<sup>67</sup>

## 5. Contemporary Issues

The landmark cases discussed so far involve issues of use of the airwaves for private interests, restrictions by licensees against certain religious views, and the right of the FCC to consider programming performance or proposals in licensing and renewal decisions.

In recent years, a number of other issues have arisen for the first time. Chief among them are (1) whether religious broadcasters should be granted use of FM frequencies allocated for educational institutions,

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<sup>66</sup> WIBK, 14 FCC 72 at 94.

<sup>67</sup> Bensman, p. 56.

and (2) whether any sectarian licensee may discriminate in employment on the basis of religious beliefs.

Among topics to be considered in Chapter III will be the Milam-Lansman Petition of 1974 which sought a "freeze" on grants of FM reserved channels to, among others, all religious affiliated licensees, whether or not such groups satisfied other requirements for such reserved channels.

While the Milam-Lansman issue will be given extensive consideration in this paper, the FCC denial of the petition is not considered a landmark as such, inasmuch as it is likely to reappear shortly at some regulatory or judicial level and should be considered an issue-in-progress. The cases discussed in this section have been decided with some finality.

The issues raised by Kings Garden and National Religious Broadcasters decisions will be discussed for years to come, but these cases have also been settled as regards the specific groups involved.

Reserved channels for FM. Reserving some portion of the broadcast band for non-profit, educational organizations has been considered since the mid-1920's, when legislation creating the Federal Radio Commission was being worked out in Congress. <sup>68</sup> It was not until 1934 that direct action was taken, with Section 307(c) of the Communications Act requiring the FCC to report on the advisability of such reservation. In 1935, the Commission reported that it had determined that existing commercial stations provided more than ample opportunity for educational organiza-

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<sup>68</sup> Sydney Head, Broadcasting in America, 2nd ed. (New York: Houghton-Mifflin Company, 1972), p. 181.

tions to gain access to the airwaves. <sup>69</sup>

In 1940, the first FM allocation table, however, did reserve five of the forty channels for educational use. The allocation table was never fully implemented. <sup>70</sup> In 1945, the final basic FM allocation table (revised periodically since then) allocated 20 channels, from 88.1 to 91.9 MHz. for such use, and in 1945, created a new Class D category, with a maximum power of 10 watts. <sup>71</sup>

The qualifications for a licensee of a reserved channel were, the FCC apparently felt, quite explicit.

73.503 Licensing requirements and service.

The operation of, and the service furnished by noncommercial educational FM broadcast stations shall be governed by the following:

(a) A noncommercial educational FM broadcast station shall be licensed only to a nonprofit educational organization and upon showing that the station will be used for the advancement of an educational program.

(1) In determining the eligibility of publicly supported educational organizations, the accreditation of their respective state departments of education shall be taken into consideration.

(2) In determining the eligibility of privately controlled educational organizations, the accreditation of state departments of education and/or recognized regional and national accrediting organizations shall be taken into consideration. <sup>72</sup>

Thus an applicant must be engaged in an educational program in order to qualify for a reserved channel. This presented no problem to countless church-related schools and colleges, or churches that maintained such institutions and programs.

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<sup>69</sup> Head, p. 182.

<sup>70</sup> Ibid., p. 182.

<sup>71</sup> Ibid., p. 183.

<sup>72</sup> Federal Communications Commission, Rules and Regulations, III (Washington, D.C.: U.S. Government Printing Office, 1972), p. 199.

Difficulties arose because churches are also generally considered non-profit organizations and share the same basic tax exemptions as the educational organizations. It was probably inevitable that many church groups would sincerely reason that such tax-exempt status equivalency should also grant them sanction as educational organizations, for indeed their evangelistic efforts were a form of education.

Aware of controversies raised historically regarding First Amendment guarantees of separation of church and state, the Commission has only occasionally addressed the question of the nature of religion. In the case of Gospel Broadcasting Company of Fort Wayne, cited earlier (p. 38), the Commission came its closest to defining "religion."

In 1951, the Radio Commission of the Southern Baptist Convention and the Executive Board of the Baptist General Convention of Texas petitioned the FCC for a new class of reserved channels. As noted in the earlier discussion of this case (p. 37), the Baptists sought a reservation for all "tax-exempt, non-profit organizations."<sup>73</sup> The FCC very adroitly side-stepped any First Amendment issues by denying the petition on the grounds that no other group other than the petitioners had requested the establishment of such a reservation.<sup>74</sup>

Acknowledging the lack of formal demand, two commissioners, Walker and Jones, dissented from the decision, citing the widespread existence of churches in America as, in itself, expressing a demand for special channel reservation:

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<sup>73</sup> Radio Commission, 16 FCC 46 (1951).

<sup>74</sup> Radio Commission, 16 FCC 46 at 47.

Long before radio and television broadcasting was invented, developed and commercialized, churches exercised a real influence in the cultural affairs of communities throughout the United States. The clergy (Protestant, Catholic and Jewish) had a real voice as community leaders in the selection of material which the community enjoyed, in education, entertainment and culture, in addition to answering the real personal, spiritual needs of the individuals of the community... . Radio and television broadcasting has been superimposed upon the community life. There is no reason why this continuing personal and public need should not be utilized primarily by the clergy in radio as suggested by petitioners. <sup>75</sup>

The Commission remained firm in its application of Section 73.503 in all future applications by church-related licensees.

A rather complex case arose in the mid-1960's when a church-related applicant reorganized as a proposed educational organization in order to qualify for a reserved channel. Christ Church Foundation, Inc., of Washington, D.C., had filed for a construction permit for 89.3 MHz. with a power of 44,700 watts. The application was returned as not meeting the requirements of 73.503. Several of the directors of that organization refiled under the name National Education Foundation, Inc., claiming a corporate charter that allowed the group to engage in educational activities. The FCC again returned the application, citing National Education Foundations's (NEF) lack of ongoing educational activities as specified in 73.503(a)(2). <sup>76</sup>

In a filing in August, 1969, NEF argued that it:

. . . proposes more than 29% educational programming, that the station would be used for the advancement of an educational program, that the educational nature of its organization is specified in its charter, that it is not incorporated as a religious organization and does not claim to be such, that it does not perform any sacer-

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<sup>75</sup> Radio Commission, 16 FCC 46 at 47.

<sup>76</sup> Pacifica Foundation, et al., 24 FCC 2d 223 (1969).



dotal functions, that the fact of church support in no way alters the organization and that the self-perpetuation of NEF's directors does not carry any religious significance . . . . .  
 . . . . .  
 (and) it would intend seeking accreditation from the National Home Study Council. 77

In 1971, the Commission again held firm in the application of Bible Moravian Church, Inc. for an FM station on 89.3 MHz. with 3,180 watts at Winston-Salem, North Carolina. In response to the Broadcast Bureau's return of the application for not meeting the requirements of 73.503, Bible Moravian petitioned the full Commission, contending that, regardless of the FCC's definitions, it was most definitely an educational institution.

In support of its request, the Church contends that the Commission oversimplifies the situation in attempting to distinguish religion and education, the result being the ignoring of the fact that education is the "quintessence" of religion. Education, mainly but not exclusively religious, is said to be a principal purpose of the church. 78

The Commission denied the Church's assertions, noting that:

. . . organizations with religious purposes can be found qualified if, as in the case of religious educational institutions, the primary thrust is educational, albeit with a religious aspect to the educational activity. 79

While the applicant's charter authorized educational activity, the Commission noted that the charter also authorized the Church to engage in publishing and medical activities as well. Yet "its purposes continue to appear to revolve around the . . . functioning of a place of worship. 80

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77 *Pacifica*, 24 FCC 2d 223 at 224.

78 *Bible Moravian Church, Inc.*, 28 FCC 2d 001 (1971).

79 *Bible*, 28 FCC 2d 001 at 002.

80 *Bible*, 28 FCC 2d 001 at 002.



The Commission ordered the application returned and the petition denied.

It should be noted that the Commission never expressed the conviction that religious groups are unworthy by their religious nature of holding broadcast licenses. The "letter of the law" has been the ruling factor in all decisions, and that factor has remained dominant in another vital area, that of discrimination in employment.

Kings Garden, Inc. On July 19, 1971, Trygve J. Anderson filed a complaint with the FCC alleging that in seeking employment as a newspaperman with KGDN(AM) and KBIQ(FM), both licensed to Kings Garden, Inc. of Edmonds, Washington, he was asked several questions regarding his religious beliefs.

He was asked: "Are you a Christian?", "How do you know you are a Christian?", "Is your spouse a Christian?", and "Give a testimony." Mr. Anderson further states that, "Such questions obviously have no bearing on a person's ability to handle a job in broadcasting, and could only be used to discriminate . . . because of religious beliefs." <sup>81</sup>

The Commission received replies from Kings Garden dated September 20 and October 12, 1971, citing the Civil Rights Act of 1964, as amended, as exempting religious organizations from non-discrimination rules. The licensee also contended that Sections 73.125 and 73.301 of the Commission's rules, which ban discrimination for AM and FM stations, respectively, are superceded by an Act of Congress. <sup>82</sup>

The licensee cited 42 U.S.C. 2000e-1, which exempts religious or-

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<sup>81</sup> Trygve J. Anderson concerning employment practices by Kings Garden, Inc., 34 FCC 2d 937 (1972).

<sup>82</sup> Trygve J. Anderson, 34 FCC 2d 937 at 938.

ganizations "with respect to the employment of individuals of a particular religion to perform work connected with the carrying on by such corporation." <sup>83</sup> Also cited was 42 U.S.C. 2000e-2(e) which provides that it is not an unlawful practice to classify an individual "on the basis of his religion, sex or national origin in those circumstances where religion, sex or national origin is a bona fide occupational qualification reasonably necessary to the normal operation of that particular business or enterprise. <sup>84</sup>

Also cited by Kings Garden was a memorandum by Senators Clark and Case, floor managers for the bill, during Senate debate, with respect to the special exemption.

This exception is a limited right to discriminate on the basis of religion, sex, or national origin where the reason for the discrimination is a bona fide occupational classification. Examples of such legitimate discrimination would be the preference of a French restaurant for a French cook, the preference of a professional baseball team for male players, and the preference of a business which seeks the patronage of members of particular religious groups for a salesman of that religion. <sup>85</sup>

The Commission replied that:

. . . in your role as a licensee of the Commission, you do not exist solely to espouse a particular religious philosophy. You are required to operate in the public interest, as defined by the Commission's rules and policies. You are also required to have a policy of making time available for the presentation of other, including non-Christian, religious views, Young Peoples Association for the Propagation of the Gospel, 6 FCC 178 (1938). Clearly, therefore, all work performed by employees of Stations KGDN and KBIQ(FM) is not connected with the carrying on of their religious activities. Moreover, the Commission does not believe that religion is a qualification "reasonably necessary to all aspects of

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<sup>83</sup> Trygve J. Anderson, 34 FCC 2d 937 at 938.

<sup>84</sup> Trygve J. Anderson, 34 FCC 2d 937 at 938.

<sup>85</sup> Trygve J. Anderson, 34 FCC 2d 937 at 938.

the stations' normal operations. <sup>86</sup>

What the Commission did allow for was discrimination on the basis of religion by Kings Garden as regards "those persons hired to espouse a particular religious philosophy over the air." <sup>87</sup> Since station sales personnel were calling on the general business community, and could not be included under the Civil Rights Act exemption, discrimination could not be practiced in their hiring. Kings Garden was given twenty days to affirm a non-discrimination policy, except as allowed above.

The FCC's decision was rendered May 3, 1972, several months after Mr. Anderson's complaint and Kings Gardens' replies were filed with the Commission. In March of 1972, the Equal Employment Opportunities Act of 1972 was approved, and it included an amending of the wording of the 1964 Civil Rights Act. The 1964 exemption now was changed to allow discrimination by religious organizations in hiring those "to perform work connected with . . . (their) activities." <sup>88</sup>

Kings Garden not only filed for continued exemption on the basis of the new law, but also sought rule making to amend sections 73.125 and 73.301 to exempt religious organizations. Kings Garden asserted that the FCC rules should be brought into conformity with the federal statute.

In reply, the Commission declared:

The Civil Rights Act and amendments to it are not part of our enabling statute, and the former does not encompass the whole of

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<sup>86</sup> Trygve J. Anderson, 34 FCC 2d 937 at 938.

<sup>87</sup> Trygve J. Anderson, 34 FCC 2d 937 at 939.

<sup>88</sup> Kings Garden, Inc., 25 RR 2d 1030 at 1032.

the public interest standard imposed upon us by the latter. This is obvious from the fact that our rules differ from the requirements of the Civil Rights Act. For example, our rules, other than reporting requirements, apply to all licensees regardless of the number of employees. <sup>89</sup>

At the time of the decision, the Civil Rights Act applied only to employers with twenty-five or more employees, and, after 1973, to those with fifteen or more employees.

The Commission cited its earlier statement on discrimination in employment, 13 FCC 2d 766, where it asserted that discrimination in employment indicated that a licensee was not operating in the public interest.

In its filing, Kings Garden raised an issue that had never been directly raised in the entire period of existence of either the FRC or the FCC, the Commission's right to define "religious activities" and "religious philosophy." In such earlier cases as Gospel Broadcasting Company of Terre Haute, Indiana, (17 FCC 2d 130), and in rulings on FM reserved channel applications, the Commission had discussed the nature of religious activity, and had, on occasion, been challenged on First Amendment grounds, but never as regards the separation of church and state clause of that amendment. Kings Garden challenged the FCC on exactly those grounds, asserting that the discrimination rules inhibit free exercise of religion. <sup>90</sup>

The Commission concluded that its rules are permissible since:

. . . the Supreme Court has stated, " . . . it is necessary in a free exercise case for one to show the coercive effect of the

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<sup>89</sup> Kings Garden, Inc., 25 RR 2d 1030 at 1032.

<sup>90</sup> Kings Garden, Inc., 25 RR 2d 1030 at 1033.

enactment as it operates against him in the practice of his religion." . . . We note first that Kings Garden can practice its religion without holding a broadcast license. Second, there is no "coercive effect" here, since we did not compel Kings Garden to become a licensee. . . . Kings Garden, having voluntarily sought a license and the privileges that go with it, can not now be heard to argue that it can avoid the public obligations imposed on all licensees because it is "coerced." If Kings Garden is not willing to accept its obligations, as set out in the rules in question, it need not retain its license. <sup>91</sup>

Kings Garden appealed to the Court of Appeals of the District of Columbia in 1973, and on May 6, 1974, that court not only affirmed the Commission's decision, but held that the revised discrimination clause of the 1972 equal employment opportunities act to be unconstitutional. <sup>92</sup>

National Religious Broadcasters. Of concern to the Court of Appeals was the potential complexity of the exemption granted by the FCC to licensees as regards discrimination in hiring those who espouse specific religious views over the air. Its concern was deepened by a Commission response to a request for a declaratory ruling by the National Religious Broadcasters (NRB).

NRB sought exemption for those who write, research and prepare such over-the-air espousals of religious philosophy. The Commission granted the request. <sup>93</sup> The Commission did insist that the writers and research personnel be such, and that, for example, a typist for the script not be exempt merely by changing his or her title to "writer" or "researcher." How the FCC would enforce this requirement was a concern of the Court.

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<sup>91</sup> Kings Garden, Inc., 25 RR 2d 1030 at 1034.

<sup>92</sup> Kings Garden vs. FCC, 30 RR 2d 258 (U.S. App. DC, 1974).

<sup>93</sup> National Religious Broadcasters, Inc., 27 RR 2d 875 (1973).

## D. SUMMATION

### 1. Issues Considered

The regulatory history reviewed in this chapter reflects no specific trend in thought on the part of either the FRC or FCC. Clearly, both the present regulatory agency and its predecessor sought to avoid involvement with the First Amendment issues of free exercise of religion as much as possible, and all regulations and decisions stemming from them appear to carry this out. As discussed in Chapter I (p. 9), however, the issues that once faced only church-owned or church-related licensees may now come to affect secular licensees engaged in religious programming.

The growth in number of both secular and sectarian religious-programmed stations has resulted in growing concern, both within and outside of the broadcasting profession, as to not only First Amendment issues, but as to such general broadcast issues as the Fairness Doctrine and the Equal Time Provision.

In Chapter III, discussion will turn to both these doctrines, as well as the Milam-Lansman Petition. The review of decisions and rulings presented here in Chapter II should guide the reader through a discussion of issues that are likely to be raised in many future regulatory rulings.

## CHAPTER III

### CONTEMPORARY REGULATORY ISSUES REGARDING RELIGIOUS LICENSEES

#### A. INTRODUCTION

In this chapter, consideration is directed at issues either recently or currently involved in regulatory proceedings and issues that seem likely to involve religious licensees in such proceedings at some future date.

The bulk of this chapter is addressed to the Milam-Lansman rule-making petition, RM-2493, which was rejected last year (1975) by the FCC. The final portion discusses such issues as equal time and the Fairness Doctrine.

Chapter I has set down, and Chapter IV will briefly summarize and highlight, the importance of the issues raised in Chapter II and this chapter because of the rapid growth of church-related broadcast stations and commercial stations with religious formats. With few exceptions, the cases considered in Chapter II arose from either the licensee or the Commission, with little outside involvement from the general public. Milam-Lansman represents the first significant attempt by someone other than a licensee or FCC official to challenge the validity of licensing of religious-oriented broadcasters. While Milam and Lansman do not specifically raise fairness doctrine issues, it is likely someone will soon; thus this chapter is more concerned with presenting groundwork for understanding future regulatory confrontations than in understanding past actions, as was the case in Chapter II.

## B. THE MILAM - LANSMAN PETITION

### 1. Background and Summary

On December 5, 1974, Jerry D. Lansman and Lorenzo W. Milam, both of whom had extensive backgrounds in both sectarian and secular non-commercial broadcasting,<sup>1</sup> filed Petition for Rulemaking RM-2493 with the FCC.

The petition, hereinafter referred to as either Milam-Lansman or RM-2493, made three specific requests:

. . . that the Federal Communications Commission delete paragraphs 73.240(b) of the Commission Rules and Regulations which permit non-commercial educational licensees exemption from duopoly regulations . . .

. . . that a "freeze" be imposed, immediately, on all further applications for reserved educational FM and TV channels - not only for state and local governmental bodies - but, as well, by any and all "Christian," "Bible," "Religious," and other sectarian schools, colleges, and institutes . . .

. . . (that) concurrent with this freeze, we would like the full Commission to investigate those sectarian institutions which are presently licensed for educational channels to discover whether these licensees are actually living up to the Fairness Doctrine in presentation of matters of controversial importance; and whether these groups are presenting educational, truly educational, programming on their outlets; or whether they are relying solely on music and talk which is tainted with ennui so characteristic of American Fundamental Religion.<sup>2</sup>

While mention is made of the Fairness Doctrine, no attempt follows in the text to really discuss the petitioner's belief that it is being violated. The bulk of the text attacks programming content, and, as may become apparent in this discussion, and the consideration of the Fair-

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<sup>1</sup> "The Attack," Religious Broadcasting, Summer, 1975, p. 22.

<sup>2</sup> Ibid., p. 23.



ness Doctrine in the last portion of the chapter, Milam-Lansman had another form or meaning of "fairness" in mind.

The FCC set January 17, 1975 as the deadline for comments on the petition, and later extended the deadline to March 17, 1975, upon request of the National Religious Broadcasters (NRB), a trade association. Partly in response to more than 300,000 letters received by the FCC, the original petitioners asked for and received a reply extension to June 2, 1975, on which date they filed a sixty-five page statement in defense of RM-2493. <sup>3</sup>

On August 1, 1975, the FCC voted unanimously to dismiss and deny the petition. No appeal has since been filed.

There might be speculation that the Commission acted in an effort to skirt any complex Establishment Clause debates, but it is more likely that Milam-Lansman failed on two grounds: (1) lack of showing by the petitioners, as required by Section 1.401(c), that their interests would be directly affected by the relief sought, and (2) lack of a cohesive argument for such relief, save for frequent ad hominem attacks.

On the first point, RM-2493 clearly states that:

. . . (the petitioners) are acting independently, and not as part of any group or corporation, and envision no pecuniary gain to themselves if the suggestions herein are enacted by the Commission. <sup>4</sup>

As to the second point, the following discussion will show evidence of emotional uses of language, invective and ad hominem attacks. It is noteworthy that the Office of Communication for the United Church of

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<sup>3</sup> Ben Armstrong, "From the Editing Block," Religious Broadcasting, Summer, 1975, p. 1.

<sup>4</sup> "The Attack," p. 22.

Christ, prominent in many civil liberties cases, opposed the petition primarily because of the interperate language it contained. <sup>5</sup>

## 2. The Petition's Demands

As already mentioned, the petition sought an end to duopoly exemption by all non-commercial educational stations, a freeze on the granting of such station licenses to governmental bodies and religious groups, and an investigation of the programming of such stations. The duopoly rule exemption allows a single licensee to hold licenses to more than one station of a single kind of service (AM, FM or TV) within the same market. Most of RM-2493's attacks in this area were against governmental and publicly supported licensees that, for example, are allowed to operate two TV or two FM broadcast services in the same city, but with different program emphases for each. That portion of RM-2493 is not relevant to this paper, and will not be considered further.

The second demand, for a "freeze" on licensing, and the third demand, for a programming investigation, appear to be connected with some logic. Yet each raises different issues. As to the "freeze," the FRC and FCC have both used such limitations on the filing of applications for particular classes of services in order to (1) re-define policy regarding licensing of that particular service in question, (2) to give more careful consideration to competing applicants, or (3) physically recover clerical order by bringing the application caseload up to date. Such freezes have been, however, at the request of regulatory bodies rather than by demand of outside parties.

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<sup>5</sup> Armstrong, p. 2.

The third demand, however, raises other questions. Section 29 of the Radio Act of 1927 and Section 326 of the Communications Act of 1934 expressly forbid censorship by the Commission created by each act. It was noted, however, that these sections have not denied the FRC or FCC the right to consider proposed or past programming in licensing procedures. But Milam-Lansman is not asking for the FCC to consider the matter of percentages of varied types of programming, but the nature of those types of programming, forcing the Commission into a potential position of prescriber of appropriate program content.

### 3. The Petition's Claims

Milam-Lansman's first request, for an end to duopoly exemption, is directed, as mentioned, primarily at governmentally supported stations, but the claims the petitioners make in support of the request set the tone for their arguments in support of the other two requests of the petition, both directed more toward religious licensees.

4) Petitioners have found that many schools, colleges and quasi-governmental boards will program their radio and television stations as if controversy were dangerous and repugnant. As well it might be: financing of these stations comes from school boards and legislatures that hold the spirit of fresh inquiry to be anathema. They obviously fear that robust, wide-open programming might destroy governmental income sources, proving that monetary stability is closer to their institutional hearts than a diverse and lively radio and television.

5) It is bad enough that these fearful groups should be licensed in the first place; it is trebly bad that there should be no restriction on the number of outlets permitted in a given market. . . .<sup>6</sup>

The petition's next six paragraphs continue in a similar vein, decrying monopolistic control in all areas of American life, but failing

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<sup>6</sup> "The Attack," p. 22.

to cite any specific examples to support their claims.

In paragraph 12, the petitioners become more specific as to what they mean by a lack of "robust, wide-open programming," as directly applies to religious broadcasting:

12) Freedom of Religion should not presume a sacred duty to program only the most bland and inoffensive; and to enrich the licensee excessively by promulgating a comfortable, blond Aryan view of the Godhead. Rather, Freedom of Religion should involve a positive duty to investigate the challenges of men and their gods, to utilize the arts and creativity to define this relationship, this dialogue between the men and the divine. Until the religious broadcasters of America learn this simple truth, we must protect ourselves from the wanton growth of senseless, inhumane, apostolicism which clutters so much American radio and television. <sup>7</sup>

In the next three paragraphs, Milam-Lansman makes direct attacks that were in great part responsible for both the quantity of the reply comments and the emotional content that characterized them.

13) Religious broadcasters have shown a remarkable cancer-like growth into the "educational" portions of the FM and TV bands . . . They . . . thrive on mindless banal programming aimed at some spiritless, oleaginous God, and show the same spirit as McDonald's Hamburger Co. in their efforts to dominate American radio and television.

14) It is dreadful enough that Oral Roberts, Family Radio, and the Church of the Four Square Gospel invade the "commercial" band, but, not satisfied with that, we have such doubtful "educators" as Moody Bible Institute, Miami Christian University, Nazarene Theological Seminary, Southern Missionary College, Pacific Union College, Western Bible Institute, among others, rushing to crowd the narrow FM band set aside for non-commercial, educational stations.

15) Moody Bible Institute has started applying for 100 kilowatt FM stations in the reserved band outside its home territory of Chicago. With each new grant, the radio band will be that much poorer in diversity, interest, in-depth public affairs, and true education of the whole man. <sup>8</sup>

In support of their claims, the petitioners offered the Commission,

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<sup>7</sup> Ibid., p. 23.

<sup>8</sup> Ibid., p. 23.

in paragraph 25, several hours of tapes of programming from random broadcast days of several stations, including WMBI, the Moody station in Chicago, and WDYN, the Tennessee Temple College station in Chattanooga. <sup>9</sup>

Some indications of what the petitioners consider the education of the whole man was found in paragraph 16:

. . . Most religious broadcasters seem to loathe the vitality and robust programming which should be their obligation. They regularly and systematically ignore the Fairness Doctrine, sabotage wide-open programming, and even in their musical programming, deny the fullest flowering of Western Christian Music (Bach, Handel, Telemann, medieval and renaissance church music) and by all means, they ignore completely the musics of other religions (African religious songs, Japanese temple music, Indian hymns to Lord Vishnu). Their programming is in no way "educational," rather it is narrow, prejudiced, one-sided, blind, and stultifying. <sup>10</sup>

The petitioners do assert that this "is not a blanket condemnation of all 'religious' broadcasters." <sup>11</sup>

While it appears that Milam-Lansman is concerned that religious stations are too concerned with only one religion, the attacks go deeper, striking directly at the worthiness of Christian programming to be aired at all:

23) It seems to us that that particularly American institution "back to the Bible" fundamentalism, the Gospel, is ultimately vacuous when it comes to knowledge, history, the spirit of learning because of its dependence on only the Bible, and its exclusion of the ideas, commentaries, and thoughts of man through history through time. This may explain its peculiar hold on the American poor and country folk; it demands no other resource than Belief with Bible in hand. <sup>12</sup>

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<sup>9</sup> Ibid., p. 23.

<sup>10</sup> Ibid., p. 23.

<sup>11</sup> Ibid., p. 23.

<sup>12</sup> Ibid., p. 23.

What alternatives the petitioners suggest for reserved band programming is indicated in paragraph 27:

27) Over the past decade, Petitioners have shown dozens of community minority groups how to apply for FCC permission to establish open-access, free-forum radio stations that serve the Whole Man with curiosity, humor and delight of knowledge. It saddens us to see a rampant growth and squeezing out of our (necessarily) poorer groups . . . by large institutions, and a further deterioration of the band by religious groups locked into a bleak, self-centered and miasmic view of man's capability for knowledge.<sup>13</sup>

The petition's appendix lists nineteen sectarian stations currently operating in the reserved FM band, and seven applications being processed for such stations. Interestingly, the list does not include one of the groups attacked in paragraph 14, Southern Missionary College of Collegedale, Tennessee, licensee of WSMC(FM). While the text of the petition classified the institution as a "doubtful 'educator'," it should be noted that, for several years, the programming of WSMC(FM) has consisted primarily of classical music and public affairs broadcasts, and that WSMC(FM) was one of the first stations sanctioned by National Public Radio for network affiliation and Corporation for Public Broadcasting funds, largely on the strength of its past and proposed programming. No acknowledgement of this fact is made by the petitioners.

The main thrust of the petition appears to be to enforce greater diversity in the broadcast programming through enforcement of the Fairness Doctrine. As this paper's discussion of the Fairness Doctrine, and the review of reply comments to the petition featured in the next section, will indicate, the Fairness Doctrine does not apply in cases where the petitioners would like it to, namely matters of religion.

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<sup>13</sup> Ibid., p. 24.

#### 4. The Response from NRB

On March 1, 1975, Dr. Ben Armstrong, Executive Secretary of the National Religious Broadcasters, filed a reply on behalf of NRB with the FCC. Armstrong presented five basic reasons for rejection of the petition: (1) No supportive material was presented to establish that the public interest would be served, (2) the petition discriminates against sectarian and publicly supported schools, (3) the petition seeks censorship of religious broadcasters, (4) religious broadcasters are fulfilling a definite need in the community, and (5) existing Commission rules are adequate to protect the educational channels from improper utilization. <sup>14</sup>

Lack of supportive material. Armstrong charged that Milan and Lansman totally ignored the requirements of Section 1.401(c) of the FCC Rules and Regulations by not showing (a) that the public interest would be served by positive FCC response to the petition, or (b) that the interests of the petitioners would be directly affected by such a response. The second charge is supported by the petitioner's admission that they were acting independently, with no anticipation of financial gain. While they did claim that the public interest would be served by the petition, the only supportive material consisted of "aircheck" tapes which the petitioners claimed would demonstrate the poor quality of sectarian programming.

#### Discrimination against sectarian and publicly supported schools.

According to Dr. Armstrong:

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<sup>14</sup> "NRB's Answer to the 'Attack'," Religious Broadcasting, Summer, 1975, p. 25.



The broad, sweeping relief sought by Petitioners is clearly discriminatory against sectarian groups and publicly supported organizations as well as contrary to the public interest. Religious orientation of an applicant should not be used as a basis for determining its eligibility for a Commission license . . .

. . . . .  
The First Amendment demands "neutrality" of treatment between religious and non-religious groups . . . (and) to place a freeze on all such applications merely because it is religiously oriented would clearly be a violation of the Equal Protection Clause and contrary to the public interest. <sup>15</sup>

Armstrong cited the U.S. Court of Appeals ruling in the Kings Garden case as ruling that a criterion of discrimination based on the religious nature of an organization "not only lacks a rational connection with the legislative purpose of serving the public interest, but is also inherently suspect." <sup>16</sup>

Censorship of religious broadcasters. Citing the petitioners' offer to supply aircheck tapes, Armstrong asserted that Milam-Lansman sought to involve the Commission in activity expressly forbidden by Section 326 (the anti-censorship clause) of the Communications Act of 1934.

. . . (T)he Commission is neither in a position nor has any power to act as a censorship board or to review programming for the purpose of awarding "prizes." The Commission has long recognized that its tastes may not be the same as the audience in the community served by the licensee. . . . The Petitioners, with an obvious antipathy toward religious programming, have obviously failed to grasp this point. <sup>17</sup>

Armstrong further noted, as has been discussed in Chapter II of this paper, that it is the licensee and not the Commission who should exercise judgment as to what programs shall be selected and broadcast

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<sup>15</sup> Ibid., p. 25.

<sup>16</sup> Kings Garden v. FCC, 498 F 2d 51 (1974).

<sup>17</sup> "Answer," p. 25.



and "for the Petitioners to suggest otherwise is clearly contrary to dictates of the First Amendment." 18

Service to the community. Here Armstrong argues that, while educational reserved channel licensees do not have to submit periodic ascertainment of community need studies, such licensees do serve their communities with specialized religious, ethnic and cultural programs not available or feasible on commercial outlets. He cites no specific examples, and thus could be subject to the same charge he leveled at Milam-Lansman, i.e., lack of concrete examples.

Existence of adequate safeguards. Armstrong's claim here is that Section 73.503 of the FCC rules, setting standards for reserved channel licensees, is an adequate safeguards against improper use of the reserved channels. He does not cite any specific cases, but several have been discussed in Chapter II (p. 40 and p. 61 et. seq.).

Armstrong called for rejection of the petition on grounds that:

The only thing that the Petitioners have clearly demonstrated is their distaste for religious and educational programming, both on commercial and non-commercial stations. This however is a matter of personal taste(.) . . .

. . . . .  
In brief, no more than the Petitioners' personal opinions, not documented in any fashion, have been offered in this petition. 19

##### 5. Other Reply Comments

More than 300,000 letters and briefs were filed with the FCC in response to RM-2493, and they will not be considered here except in

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18 Ibid., p. 25.

19 Ibid., p. 25.

summary. The responses ranged from detailed statements by such groups as the NRB to very emotional, and often derogatory, diatribes directed at Messrs. Milam and Lansman. Milam and Lansman, as will be indicated in the next section, devoted most of their final filing on June 2, 1975, to the latter responses, often in very sarcastic and flippant tones.

#### 6. The Final Comments from the Petitioners

The reply of Milam and Lansman was a sixty-five page document comprising (1) a restatement of the petitioners' requests, as expressed through their attorney, (2) a personal statement by Jeremy Lansman, (3) a section entitled "Reply Comments of the Original Petitioners," and (4) a personal statement by Lorenzo W. Milam.

The first section states that:

The Petitioners did not suggest that the Commission censor or even review individual programming judgments of religious or any other broadcast licensees . . . (and) it was never suggested that sectarian organizations be barred from owning or operating broadcast facilities. <sup>20</sup>

A summary of the original requests followed, but one point, regarding the proposed enquiry into programming practices, appeared to differ markedly from the original petition, claiming that RM-2493 requested that the Commission:

(i)nstitute an inquiry into the restrictions on free speech regularly practiced by the above-mentioned groups (publicly controlled and sectarian licensees) on existing "educational" radio and television stations. <sup>21</sup>

For contrast, paragraph 18 of RM 2493 is repeated in full:

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<sup>20</sup> "Reply Comments to RM-2493," Religious Broadcasting, Summer, 1975, p. 27.

<sup>21</sup> Ibid., p. 27.

18) Concurrent with this freeze, we would like the Commission to investigate those sectarian institutions which are presently licensed for "educational" channels to discover whether these licensees are actually living up to the Fairness Doctrine in presentation of matters of controversial importance; and whether these groups are presenting educational, truly educational, programming on their outlets; or whether they are relying solely on music or talk which is tainted with ennui so characteristic of American Fundamental Religion. <sup>22</sup>

Milam and Lansman, speaking through their attorney, apparently felt that the two sections cited above are just two different ways of saying the same thing, yet the first would appear to direct itself only to an examination of program planning procedures, something often considered a valid area for review by the Commission, as in its requests for records of past programs, and detailed proposals for future programming. The second would appear to call for a review of programming content, not only in review but in advance of broadcast, the latter area (advance review) being removed from Commission jurisdiction by Section 326 of the Communications Act of 1934. The petitioners appear to believe otherwise.

In summary, any analysis of the comments filed by religious broadcasters or a review of their programming, in its entirety, illustrates its nonpublic character. . . . The FCC is (not) barred from insuring that licensees on the reserved band broadcast "broad public," and not sectarian programming. <sup>23</sup>

Here again, there is a continuing assumption, both implicit and explicit, that religious programming does not serve the public.

Unlike the detailed analysis presented by the attorney, citing several Commission and Court of Appeals decisions, the comments of Milam and Lansman were very informal in nature, almost conversational.

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<sup>22</sup> "The Attack," p. 23.

<sup>23</sup> "Reply Comments," p. 28.

Milam's comments consisted of descriptions of the aforementioned aircheck tapes, concentrating upon a 24-hour tape of WMBI, the Moody Bible Institute station in Chicago.

For 24 hours, they begged, pleaded, demanded, asked, requested, intoned, suggested, whispered that I should come to Christ. For 24 hours, without surcease, except for some tawdry UPI newsflashes and stories, without pause, without interruption, without any hesitation, they told me of the happiness in Christ's world, the delights of the Bible . . . For 24 hours I was jingled and jangled in the voices - not unlike Dean Martin or Judi Collins or Perry Como or Doris Day or Brasil '66 - non-stop singing Fox Trot, Mambo, E-Z Listening, 2/4 time melodies of His Love, His Word, His Flesh, His Sacrifice, His Need for Me, My Need for Him, Everyone's Need for Salvation . . .

There were no readings from or discussions of the Koran. This is an educational station. I heard nothing about the Talmud. This is an educational station. There was no mention of the words or teachings of Lord Vishnu, or of Lao T'se. This is an educational station? <sup>24</sup>

The final section, "Some Other Comments," appears to quote from unnamed sources, apparently from letters received in response to the petition, and gives brief, and often sarcastic, replies to each. In answer to the claim that religious broadcasters are fulfilling a need, the Petitioners reply that evidence of need fulfillment based on volume of mail received by religious broadcasters is not valid, for

Quantity has never and should never be confused with quality. . . . Lawrence Welk was inundated with mail - he taught us very little that was neither plastic nor contrived. <sup>25</sup>

As to the claim that religious programming on sectarian stations is already open to all religions, Milam and Lansman assert that

(v)ery few religious groups or individuals have the requisite sophistication to realize that FCC policy requires some access, and

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<sup>24</sup> Ibid., p. 31.

<sup>25</sup> Ibid., p. 32.

that one-view stations are contrary to the practice of the Commission. Or to put it another way, it would probably never occur to the head of Temple Emmanuel in Chicago that he could go to WMBI and ask for time to do a regular program. It would never occur to him, and Moody Bible Institute ain't about to call him up and tell him or (better still) tell him and everyone else, regularly, on the air, that the station belongs to all of us. That profession of access most certainly would not occur to 98% of American broadcasters, religious or no. <sup>26</sup>

Milam and Lansman are especially weak in their reply to the charge that the public interest would not be served by enactment of the petition's proposals.

We file herewith as Appendix "A" a flyer put out by a turkey group called "Christ the Light of the World." This was part of the propaganda distributed during the National Religious Broadcasters Convention earlier this year. We submit it to the Commission because it demonstrates explicitly (albeit crudely) that: A) Religious broadcasters see no distinction in the slightest between commercial and "reserved" channels, B) Their concern is over the "narrow path," and C) Radio Stations are a "tremendous investment." <sup>27</sup>

Perhaps the crudest reply is to the statement, "If Jesus Christ came back to earth today and applied for an FM channel, he would be denied by the FCC because of his radical views." Milam and Lansman's response is that "we can think of no appropriate response to this original and compelling suggestion." <sup>28</sup>

The final paragraph contains some most telling phrases and reasoning:

If we were convinced that Moody Bible College or Miami Christian University or Pacific Lutheran Institute, or Western Bible Insti-

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<sup>26</sup> Ibid., p. 33.

<sup>27</sup> Ibid., p. 33.

<sup>28</sup> Ibid., p. 33.

tute were setting about to bring to the air the voices of the dispossessed, the wondering, sometimes discontented, of amazing and vital vox populi, . . . if we were convinced that those religious and bible colleges and institutes were really concerned about the wonder of men's minds, rather than a bizarre and narrow view of some mythic god, then we would be helping them endlessly. . . .

. . . . .  
If we were convinced - if that were their divine mission. But it is not. We know better; we know that despite the verbiage and pleadings and filings, that their perspective is about as wide as this: (.) and therefore we must continue, until their day of enlightenment, to oppose them. 29

#### 7. The Commission's Response

The FCC's denial and dismissal of RM 2493 on August 1, 1975, was unanimous, with the FCC adopting several points contained in Armstrong's NRB reply: (1) that sectarian groups are entitled to the same rights as non-sectarian groups, (2) that the petition was totally lacking in supportive material, (3) that adequate protection against abuse of the reserved channels already exists, and (4) that adoption of the petition would involve a prohibited discrimination against religion. 30

The Commission also reasserted its belief that religion in the common meaning, e.g., church services, prayers, devotionals, and religious music, does not constitute a controversial issue under the Fairness Doctrine.

#### 8. Limitations

That the Milam-Lansman petition struck a sensitive nerve among religious broadcasters and their faithful listeners is obvious. The 300,

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<sup>29</sup> Ibid., p. 33.

<sup>30</sup> John H. Midlen, Sr., "Washington Scene," Religious Broadcasting, January, 1976, p. 20.

000 replies received by the FCC between December 5, 1974, and July 2, 1975, broke the all-time record of over 100,000 pieces of mail received in response to an Action for Children's Television rulemaking appeal seeking a ban on commercials during children's shows. <sup>31</sup>

Yet, it is worth noting that, even if all provisions of the Milam-Lansman petition had been granted, the immediate area affected would still be limited to the reserved FM band of twenty lower channels, and selected TV channel allocations. Many persons and groups filing replies were perhaps unaware of the real nature of RM-2493, although many who understood its demands were concerned about the precedents that such a rulemaking might establish.

There is something of a paradox here, for while the FCC continues to declare that religion, in and of itself, is not a controversial issue, the quantity and emotional quality of both RM-2493 and the responses it generated clearly indicate that religion is controversial, but that basic controversy centers in great part around whether or not religion is controversial. For the believer, contends Milam-Lansman, there is no controversy. For Milam and Lansman and others, any claim to revealed truth itself raises issues of controversy, though the believer sees only revealed truth and not controversy. The final section of this chapter is a consideration of the actual regulatory position on the question of controversy and fairness as it is to be practiced by broadcast licensees.

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<sup>31</sup> Armstrong, p. 3.

## C. CONTROVERSY AND FAIRNESS

### 1. Confusion over Rulings

In recent broadcast history, two of the most frequently confused issues are those of "equal time," and "fairness." Under both FCC rules and general practice, the two are related but distinct. Both are likely to continue to cause confusion as sectarian broadcasting grows and the fallout from Milam-Lansman continues.

### 2. Equal Time

Early legislation. The Radio Act of 1927 was the first broadcast legislation to consider the matter. In Section 18, the Act declared:

If any licensee shall permit any person who is a legally qualified candidate for any public office to use a broadcasting station, he shall afford equal opportunities to all other such candidates for that office in the use of such broadcasting station, and the licensing authority shall make rules and regulations to carry this provision into effect: Provided, That such licensee shall have no power of censorship over the material broadcast under the provisions of this paragraph. No obligation is hereby imposed on any licensee to allow the use of its stations by any such candidate. <sup>32</sup>

Section 315. The Communications Act of 1934 carried forth this basic language. Today, Section 315 also requires that all qualified candidates be charged the "lowest unit rate" applicable to the time purchased, and the section specifically exempts bona fide news coverage of events involving the declared candidates from equal time requirements. It must be stressed that the requirements of this section apply only,

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<sup>32</sup> Lawrence F. Schmeckebier, The Federal Radio Commission: Its History, Organization, and Activities (Washington, D.C.: Brookings Institution, 1932), p. 97.



specifically, and exclusively to qualified candidates for political office.

Perhaps the confusion over equal time or equal opportunities was compounded by the 1959 amendment to Section 315, which, in addition to enumerating the news-related exemptions from the equal-time rule, went on to declare:

Nothing in the foregoing . . . shall be construed as relieving broadcasters, in connection with the presentation of newscasts, news interviews, news documentaries, and on-the-spot coverage of news events, from the obligation imposed upon them under this Act to operate in the public interest and to afford reasonable opportunity for the discussion of conflicting views on issues of public importance. <sup>33</sup>

### 3. What is Fairness?

As Sydney Head notes in Broadcasting in America, before the issue of fairness was formalized into doctrine and into law, it was not uncommon for many broadcasters to allow time for opposing viewpoints in issues of controversy, as when CBS in 1931 offered a clergyman time to reply to rebut pro-Communist statements broadcast by George Bernard Shaw. <sup>34</sup> But such instances likely reflected a broadcaster's desire to maintain the loyalty of his audience by balancing ideas they might not want to hear with ones they would agree with. It might often seem the safest route to avoid controversy altogether. The FCC, apparently aware that broadcasters might reason thus, took action in the mid-40's.

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<sup>33</sup> Communications Act of 1934 (Washington, D.C.: U.S. Government Printing Office, 1971), p. 52.

<sup>34</sup> Sydney Head, Broadcasting in America (New York: Houghton-Mifflin, 1972), p. 439.

The Blue Book. The FCC tackled this issue in the so-called "Blue Book," (name for the color of its cover) a policy statement on public service obligations of licensees, issued in 1946.

The problems involved in making time available for the discussion of public issues are admittedly complex. Any vigorous presentation of a point of view will of necessity annoy or offend at least some listeners. There may be a temptation, accordingly, for broadcasters to avoid as much as possible any discussion over their stations, and to limit their broadcasts to entertainment programs which offend no one.

To operate in this manner, obviously, is to thwart the effectiveness of broadcasting in a democracy. <sup>35</sup>

In 1949 in a report on broadcast editorializing, the FCC made fairness and official doctrine, citing

. . . the affirmative responsibility on the part of the broadcast licensee to provide a reasonable amount of time for the presentation over their facilities of programs devoted to discussion and consideration of public issues . . . and the Commission has made it clear that in such presentation of news and comment the public interest requires that the licensee operate on the basis of overall fairness. <sup>36</sup>

It should now be clear that the thrust of Milam-Lansman was the assumption that sectarian stations were presenting a controversial issue, i.e., religion, and were not allowing a fair amount of time for opposing viewpoints.

In the Red Lion Broadcasting of Pennsylvania case, which actually involved the issue of personal attack, rather than fairness in the discussion of controversial issues of public importance, the Court of Appeals upheld an FCC assertion that

(t)here is nothing in the First Amendment which prevents the govern-

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<sup>35</sup> Head, p. 439.

<sup>36</sup> FCC, "Editorializing by Broadcast Licensees," 14 Fed. Reg. 3055 at 3056 (1949).

ment from requiring a licensee to share his frequency with others and to conduct himself as a proxy or fiduciary with obligations to present those views which are representative of the community. <sup>37</sup>

The question still remains for the licensee and the public as to what is controversial, and therefore, what issues involve invoking the Fairness Doctrine.

Robert Scott. In 1946, Robert Harold Scott, an atheist, sought the denials of renewals of three California stations for not allowing him time to reply to attacks on atheism featured in various religious programs. The FCC denied the petitions, basically on the issue of Section 1.401(c) of the Commission rules, under which a petitioning party must demonstrate direct personal involvement with the proposal. Since Scott himself had not been directly attacked, reply time was not warranted. But in answer to the stations' claims that allowing Scott airtime would be obnoxious to the views of the stations' listeners, the FCC cautioned that

any rigid policy that time should not be provided for the presentation of views which have a high degree of unpopularity is contrary to the public interest and not consistent with the concept of free speech. <sup>38</sup>

While not denying the licenses, as Scott had requested, the Commission did stress that "an organization or idea may be projected into the realm of controversy by virtue of being attacked." <sup>39</sup>

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<sup>37</sup> Red Lion Broadcasting v. FCC, 381 F. 2d 908 (1967).

<sup>38</sup> Robert Harold Scott, 11 FCC 372 (1946).

<sup>39</sup> Scott, 11 FCC 372 at 374.

## CHAPTER IV

## SUMMATION AND PROJECTION

## A. SUMMATION

The cases and issues considered in Chapters II and III span almost fifty years, from the earliest days of the Federal Radio Commission to 1976. But what, if any, have been the observable trends in federal regulation?

1. The Early Years

Even where issues of programming were introduced, the bulk of early cases involving sectarian licensees considered by the FRC, and several decided by the FCC, were resolved on basically technical grounds: the FRC removed several low-power church-owned stations from the air to facilitate better use of the spectrum; and the FCC denied renewals on grounds of inadequate equipment, inadequate hours of service, and related issues of spectrum use and potential interference.

In selected cases, such as Young Peoples Association for the Propagation of the Gospel (p. 34 and p. 51), the FCC denied applications because the applicant or licensee proposed to restrict access to the airwaves; but any sectarian applicant proposing and pledging open access was granted a license, assuming financial and technical requirements also were met.

Even in cases, such as KGFF (p. 21 and p. 47), and WIBK (p. 36 and p. 53 et. seq.) where the issue was past program performance, the standards applied were those applied to non-sectarian applicants as well.

## 2. Contemporary Cases

Even in such recent cases as Kings Garden (p. 41 and p. 63 et. seq.), the exemption granted to the licensee regarding employment was derived from federal legislation that applied to areas other than religion.

Additionally, the rejection of Milam-Lansman was based on grounds originally cited by the NRB, all of which are based in established communication regulation in the Communications Act of 1934, and in the Bill of Rights, most notably the First, Fifth, and Fourteenth Amendments.

## 3. Conclusions

Until such time as the FCC, wisely or unwisely, considers the basic issues of the nature of public interest, and perhaps reconsiders the position that religion "as generally understood" is non-controversial, there will continue to be litigation regarding religious broadcasting.

It could be said that the FCC is merely following the maxim of old-fashioned etiquette books that one does not discuss religion or politics.

Several questions are not settled:

(1) Is religion "as generally understood" really non-controversial? The FCC may be on reasonably firm ground as regards the Fairness Doctrine, in that the discussion of particular religious concepts need not involve personal attack, and thus does not require allotted time for reply. The Commission could further argue that, in requiring licensees to offer religious programming responsive to their particular communities, it is obviating the matter of fairness and balanced treatment. But requiring such a balance implies that religion is indeed a controversial issue.

(2) What, if any, is the distinction between religious programming and educational programming? The ancients considered without resolution the question of what makes an educated person. If education is the accumulation of knowledge and its application, then cannot a sermon on scripture and its application to life be considered educational? It should also be asked, as regards FM reserved channels, if an accredited institution is indeed more educational than one which is not accredited, and does not offer a formal course of study. The difference, as the FCC sees it, is that the former may operate on a reserved channel, while the latter may not.

(3) What, if any, basic human need is met by religion and religious programming? Religious programming has always been expected of any licensee, just as has news, public affairs, and entertainment. Here it might be asked if anyone knows the real nature of religion itself.

(4) What is religious programming? Is gospel music religious programming or entertainment programming? May preaching in some instances also be public affairs programming?

(5) What about non-Christian religious programming? Also, when one considers the many non-Christian religions, where does one draw the line between religion and philosophy, between questions of metaphysics and faith and questions of rationality and fact?

The hesitancy of the FCC and judicial bodies to consider these questions may be understandable, but is nonetheless frustrating to the proper resolution of many issues raised in Chapters II and III.

## B. PROJECTIONS

The continued growth of sectarian broadcasting, as cited by Dr. Ben Armstrong in Chapter I (p. 2), and the continued efforts that can be anticipated by such individuals as Milam and Lansman, call for a new awareness on the part of all broadcasters, especially sectarian licensees.

Each licensee needs to consider (1) if the proposed or current programming is indeed controversial, aside from any assurance from the FCC that it is not; (2) whether attacks on atheism or other creeds, contained in certain religious programs, are perhaps not subject, in reality, to the Fairness Doctrine; and (3) whether a licensee can consider such programs, on the basis of law and regulations, and not on the basis of conscience, to be truly serving the public interest, convenience and necessity.

Although politics is beyond consideration of this paper, no subject involving governmental regulation and judicial oversight is free of political ramifications. Greater consideration of religious license and programming issues will yield greater political consideration of such issues, and one must be prepared to confront any resulting rhetorical, primarily emotional and non-rational, actions that might result.

It is hoped that the material gathered here will aid in clarification and the obviation of obfuscation of issues in such an important area of American life.

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## VITA

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He received his A.B. degree from Hamilton College, Clinton, New York, in June, 1967, having majored in philosophy with a minor in classical languages.

In September, 1967, he moved to Knoxville, Tennessee, to begin work on a Master of Arts degree in philosophy, a project that was never completed.

From 1967 until 1975, he worked as an announcer and program director at various East Tennessee and Atlanta, Georgia, radio stations. He was hired as Creative Director for WATO(AM) and WUUU(FM), Oak Ridge, Tennessee, in July, 1975, and was named Operations Manager for both stations in May, 1976.

He is active in the Jaycees, the Oak Ridge Exchange Club, the Oak Ridge Soccer Association, the Oak Ridge Playhouse and Tennessee Valley Unitarian Church in Knoxville.

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