

## WDAY-TV GETS SEC. 315 RELIEF

The legal dilemma of broadcasters—liability for political remarks they are forbidden to censor—received major judicial recognition Thursday in North Dakota Supreme Court.

In a 4-1 decision the court held that WDAY-TV Fargo is not liable for statements made over its facilities by a candidate in the 1956 general election campaign. The decision upheld the ruling of Judge John C. Pollock, of county district court, dismissing a \$100,000 libel suit brought against the station by the North Dakota Farmers Union and A. C. Townley, a candidate for the Senate.

The Supreme Court hearing was held last Oct. 3, with Douglas A. Anello, NAB chief attorney, participating as a friend of the court [TRADE ASSNS., Oct. 7, 1957]. The Union has not decided if it will appeal.

Judge P. O. Sathre, of the Supreme Court, handed down the majority decision. It was believed to be the first time an appellate court had ruled on the liability problem created by Sec. 315 of the Communications Act of 1934, the "equal time" section. The law requires broadcasters who broadcast speeches by one or more candidates for the same office to give equal time to other candidates. It holds broadcasters may not censor speeches carried under this equal time basis, under penalty of loss of broadcast license.

In his opinion Judge Sathre said, "Since power of censorship of political broadcasts is prohibited, it must follow as a corollary that the mandate prohibiting censorship includes the privilege of immunity from liability for defamatory statements made by the speakers.

"In the instant case the defendant (WDAY-TV) was required by Sec. 315 to permit broadcast of the Townley speech. Power to censor the speech was denied by the clear and specific language of Sec. 315. We cannot believe that it was the intent of Congress to compel a station to broadcast libelous statements and at the same time subject it to the risk of defending actions for damages."

North Dakota has a state law giving immunity to broadcasters for defamatory statements made over the station by persons other than the station owner or station personnel. This law was not before the State Supreme Court in the current case.

Quenton Burdick, Farmers Union counsel, said Thursday in Fargo the Union would decide today (Monday) at a board meeting if it would take the case to the U. S. Supreme Court.

Judge James Morris, in dissenting from the majority ruling, contended that while Congress may have intended to prevent censorship of matter defamatory to candidates, this does not extend to innocent bystanders. He said, "The plaintiff is an innocent third party whose reputation has been defamed under the claimed protection of the prohibition against censorship in Sec. 315." He concluded Sec. 315 does not af-

ford WDAY-TV a defense and that the public interest is not served by making the reputation of innocent third parties subject to destruction without recourse to the disseminator.

## NTA Newark Purchase Gets FCC's Approval

The first sale of a New York market station was granted by the FCC last week to National Telefilm Assoc. Inc. with approval of the firm's \$3.5 million purchase of ch. 13 WATV (TV) and WAAT-AM-FM Newark, N. J., from Irving R. Rosenhaus and associates.

The grant was made without prejudice to whatever action the Commission "may deem appropriate in the light of any determination" of certain anti-trust suits which involve NTA. Comrs. Robert Bartley and T.A.M. Craven dissented on this decision. Comr. Robert Lee was not present.

NTA, which also owns ch. 9 KMSP (TV) Minneapolis-St. Paul, Minn., plans to change the call letters of its Newark stations to WNTA-AM-FM-TV. WAAT, which along with its fm affiliate was licensed to Bremer Broadcasting Corp., operates on 970 kc with 5 kw day, 1 kw night. WAAT-FM is on 94.7 mc with 13.5 kw. WATV, licensed to Atlantic Television Inc., began in 1948 on ch. 13, and is one of seven tv stations sharing an antenna atop the Empire State Bldg.

NTA is considered one of the larger distributors of feature films and tv film series to television. It has an agreement with 20th Century-Fox Corp. to release its pre-1948 films to tv as the company makes them available for television showing. NTA also operates the NTA Film Network, in which Fox holds a 50% interest.

Commenting on last week's FCC action, Ely A. Landau, board chairman and chief executive officer of NTA, said: "The acquisition of television and radio operations in metropolitan New York City is an important milestone in the growth of NTA. We have plans for a complete overhaul of the program structure of these stations, including the presentation of many live programs. Shortly we shall announce new and additional personnel to carry forward the plans we have been working on."

## FCC Questions KTVW (TV) Proposed Move to Seattle

The FCC last week asked J. Elroy McCaw, owner of KTVW (TV) Tacoma, Wash., to explain why a hearing should not be set on the station's application to increase power and antenna height and move the ch. 13 outlet's transmitter into Seattle.

Questioned in the FCC's McFarland letter, among other things, was whether KTVW is attempting to become a Seattle station.

Mr. McCaw's application asked for an increase in power from 100 kw to the maximum 316 kw, an increase in antenna height from 780 to 795 feet, a change in type of transmitter and a move of KTVW's trans-

mitter 26 miles north from its present location five miles east of Tacoma to Queen Anne Hill in Seattle.

The FCC said its findings indicate the proposed changes would place part of Tacoma in a shadow area because of major terrain obstruction; that the proposed site is in an area zoned as residential and KTVW has been refused the proposed site; that the outlet's proposal to use existing capital of \$55,500 and deferred payments of \$166,500 for the changes does not verify that there is an agreement for credit with an equipment manufacturer for credit terms; that KTVW's balance sheet on April 15, 1957, indicates liabilities exceed cash receivable by \$127,000, and that the FCC is unable to determine if any cash at all is available or how it can be obtained from liquid assets.

## WOV Joins Rush to Suburbs, Asks New York-Carlstadt ID

While some small-market broadcast stations aspire to be identified with nearby big cities, WOV New York has joined the great American rush to the suburbs.

That is the deduction to be made from the station's application to the FCC asking that it be allowed to identify itself as serving both New York and nearby Carlstadt, N. J. (population 5,591, 1950 Census). The management of the station, known for its programming to Italian-speaking audiences, explained Carlstadt has had a heavy influx of Italian-speaking and Negro populations in recent years.

But the FCC, its amazement and curiosity still unabated, last week sent WOV a McFarland Letter asking why a hearing should not be set on WOV's claim that an undue burden would be placed on the station if it remains a New York-only outlet.

## Enden Dandruff Claims Revised In Wake of FTC's Crackdown

Helene Curtis Industries Inc., Chicago, has entered a consent agreement with the Federal Trade Commission that it will cease claims that Enden shampoo will unqualifiedly cure dandruff. This is the second television case based on FTC monitoring to be closed.

The agreement signed by Helene Curtis is not an admission of violating the law. It follows an official complaint filed against the cosmetic house by the FTC last summer [GOVERNMENT, Aug. 5] charging that false dandruff-curing properties were claimed for Enden in network and spot commercials. The FTC approved the consent order last week.

Helene Curtis is forbidden to claim that Enden will have any lasting effect on dandruff except during regular use, according to the FTC. One other cosmetic case developed by the monitoring unit was closed when Lanolin Plus last fall signed a consent order prohibiting scare tactics and statements that competitors' detergent shampoos burn hair [GOVERNMENT, Nov. 4]. Cases against broadcast commercials for drugs, a household cleaner and other products still are in litigation.