

ABC NOT GIVING UP ON DROP-INS

Network asks FCC to make seven markets dual operations

ABC last week attempted to breathe new life into the FCC's controversial, but dying vhf drop-in proposal.

The network suggested that the commission grant the drop-ins and at the same time authorize dual vhf-uhf operations in the 7 two-station markets.

Two weeks ago the commission voted to deny the drop-ins in Johnstown, Pa. (ch. 8), Baton Rouge, La. (ch. 11), Dayton, Ohio (ch. 11), Jacksonville, Fla. (ch. 10), Birmingham, Ala. (ch. 3), Knoxville, Tenn. (ch. 8), and Charlotte, N. C. (ch. 6). In a related action the FCC reassigned ch. 5 in Enid, Okla., to Oklahoma City, at short spacing, and modified the license of KOCO-TV, which operates the ch. 5 facility, to specify Oklahoma City (BROADCASTING, March 11).

ABC said that the commission denied the drop-in proposal by an announced 4-3 vote, but did not give any reason for making the denial. The network noted that the trade press reported the commissioners, who voted for the denial, did so out of belief that uhf channels would provide the third service.

ABC took a different view. It said the FCC's decision "will not satisfy the critical shortage of competitively equal facilities" in the seven markets. Neither will the FCC's position advance "the cause of uhf broadcasting," ABC said.

On this note the network concluded that if the commission provides for dual vhf-uhf stations, along with the drop-ins, both of the two objectives would be satisfied.

Last, But Not Least ■ ABC said that the seven proposed drop-ins are but the last of a long series initiated by the commission since 1952, when the agency adopted its plan to provide a third competitive facility in important two-station markets. ABC pointed out that in some cases the drop-ins were made without any mileage separation considerations. On the other hand, short spacing has sometimes been necessary such as ch. 13 (WAST [TV]) in Albany, N. Y. (BROADCASTING, Feb. 18).

ABC told the commission: "The public in these seven remaining markets is no less entitled to a third competitive service than it is in the other markets . . ." where the commission has provided a third service.

ABC reminded the FCC of its position when the commission denied a petition by the Assn. of Maximum Service Telecasters to reconsider its drop-in policy. The commission said, ". . . we are faced with the inescapable circumstance that in the present state of the art, the operating commercial uhf stations cannot compete with vhf stations

on anything like an equal basis."

Help or Hinder ■ ABC said that if the FCC plans "undue encouragement" to proposed applicants to apply for uhf channels in the seven markets, as a measure to aid uhf, "we agree that the action probably will contribute to its advancement. But if aid to successful uhf station operation is the criterion—as we believe it should be—the proposed action will hinder, not help, uhf."

The network said that the commission should not need to be reminded of the "scores" of uhf stations that have failed in competition with two vhf stations. But if the commission would grant dual vhf-uhf stations, the vhf could pull the financial load and support the uhf operation costs, ABC said. "Our proposal is to allow dual vhf-uhf operation with the same programming," ABC said.

The network noted that Chairman Minow and Commissioner Lee have in the past favored dual operations, but with different programming.

ABC told the commission it was willing to help uhf development. "To assist the successful applicant in the added cost needed to install and operate a dual vhf-uhf station," the network said, "ABC will, in its network compensation arrangement provide initially for more favorable terms to the station."

ABC concluded that if the commission doesn't reconsider its decision, the public in the seven markets will be "relegated to the status of second class citizens." The network added that it would be the "mid '70's" before a uhf operation would be feasible in these markets.

It has been reported that Gem City Tv Inc., a prospective vhf applicant for Dayton, is preparing to file a petition for reconsideration too. It is taking the same approach as ABC did.

FTC loses in bid for Bayer injunction

A federal judge in New York has refused to grant a temporary injunction forcing Sterling Drug Co.'s Bayer aspirin to stop using advertising that refers to results of a Federal Trade Commission-sponsored medical study.

The FTC, which has filed a complaint against Sterling and its agency, Dancer-Fitzgerald-Sample, New York, for using the study in advertising, asked for the restraining order while the case is being litigated before an FTC hearing examiner.

In a decision made public last week, Judge Archie O. Dawson of the Southern District Court of New York denied the FTC petition seeking to stop Ster-

Rogers plans new hearing

Rep. Walter E. Rogers (D-Tex.), chairman of the House Communications Subcommittee, said last week he hoped to reopen hearings on political broadcasting late this week, possibly Friday.

Expected to testify would be the chairmen of the Republican and Democratic national committees and Rep. Robert W. Hemphill (D-S.C.), who also has asked to be heard on a proposal to suspend "equal time" requirements for the 1964 presidential and vice presidential campaigns.

Broadcasters and other witnesses testified two weeks ago (BROADCASTING, March 11).

ling's use of the comparative analgesic study published in the *Journal of the American Medical Assn.*, Dec. 29, 1962 (BROADCASTING, Feb. 25). The FTC will continue prosecution of the case with a hearing scheduled to begin April 1, before Examiner Eldon Schrup.

No Difference ■ The FTC-sponsored study was made by two doctors and a city health officer in Baltimore. The investigators reported, the agency said, that there is no significant difference in the degree of relief from pain afforded by Bayer and other products tested, after 15 minutes of administration (BROADCASTING, Jan. 21).

In his decision, Judge Dawson found the FTC had not proved its case against Sterling Drug and Dancer-Fitzgerald-Sample, in each of five practices which the commission contended were fraudulent. He asserted that "if any false impressions are created about the origin of the study they are impressions created by the actions of the commission itself." Also, he said that "if the report of the experts employed by the commission is inaccurate then the commission itself is guilty of promoting false advertising."

A Sterling Drug official said that Bayer aspirin advertising will continue to use the results of the study, although current commercials do not refer to the study specifically. D-F-S said that whatever changes have been made in Bayer's ad copy were merely "a matter of good advertising practices," and not a result of FTC proceedings.

Freed pays \$300 fine

A \$300 fine was paid last week by disc jockey Alan Freed, who pleaded guilty in criminal court in New York last December to accepting a total of \$2,700 from two record companies for favoring their records on his radio show.