

FCC seeks court review on 'indecent' ruling

It's up to station whether \$100 or principle is worth appeal

FCC Friday (April 3) threw down gauntlet, nearly pleading for first-time opportunity to test in court its views on allegedly indecent programming. Question now is whether station involved in case will pick it up and seek judicial appeal. As of late Friday, station's attorney had not yet consulted his client.

Commission gave noncommercial WUHY-FM Philadelphia notice of apparent liability of \$100 for what it called "indecent" programming on station's *Cycle II* series. Program cited was aired Jan. 4 and featured recorded interview with Jerry Garcia, leader of California acid-rock group, and live comments by personality known as "Crazy Max." Commission said that during Mr. Garcia's wide-ranging interview he used "various patently offensive words as adjectives, introductory expletives, and as substitutes for 'et cetera.'" None of alleged offensive words was reproduced in its public notice.

Commission action was mixed—Commissioners Robert T. Bartley, Robert E. Lee and Robert Wells were in majority. Chairman Dean Burch concurred, Commissioner Kenneth A. Cox concurred and dissented in part; both issued statements unavailable late Friday. Commissioner Nicholas Johnson dissented—and his statement was available. "I believe no governmental agency can punish for the content of speech by invoking statutory prohibitions which are so broad, sweeping, vague, and potentially all-encompassing that no man can foretell when, why, or with what force the commission will strike," Commissioner Johnson said.

Since Chairman Burch's appearance before Senate subcommittee last December (BROADCASTING, Dec. 8, 1969), it was evident that commission would find test case on obscenity issue. At that time, Chairman Burch stressed need for guidelines to aid broadcasters in avoiding obscenity. Commission's one-year renewal of KRAB(FM) Seattle in February wasn't test case Chairman Burch had in mind (BROADCASTING, Feb. 23). Apparently, WUHY-FM was.

Commission said issue here is whether station can present taped interview or talk shows where "patently offensive" expressions are used on air. But it took particular pains to note that "if it has the authority," then it has "a duty to act to prevent" widespread use of such expressions because "the speech involved has no redeeming social value,

and is patently offensive by contemporary community standards."

These two criteria are evidently what commission will use in determining whether programming is indecent or not. (Question of obscenity, with respect to WUHY-FM, was apparently avoided. Commission noted that program involved did not have "dominant appeal to prurience or sexual matters.") And it emphasized that term, "indecent," should be applicable in broadcasting field. Commission pointed out that distinctions should be made between radio and other media—that is, deliberate act to buy and read books. "No one could ever know, in home or car listening, when he or his children could encounter what he would regard as the most vile expressions serving no purpose but to shock, to pander to sensationalism," commission said.

But commission carefully—and repeatedly—noted that "there is no judicial and administrative precedent for the case, and that the matter is one of 'first impression' and can only be definitely settled by the courts." It further said that, although no question of revocation or license denial is involved in this case, forfeitures were required because if it were to forego fine, "we would prevent any review of our action and in this sensitive field we have always sought to insure such reviewability." Commission said it would welcome review by courts, "since that would be only way the pertinent standards could be definitely determined."

Commissioner Johnson claimed that commission was "abdicating" its re-

NABET-NBC accord

Strike at NBC was averted narrowly last Friday (April 3) after National Association of Broadcast Employees and Technicians called off its nationwide strike set for 6 p.m. EST.

Approximately one hour before strike deadline NBC issued statement that agreement had been reached with NABET on new three-year agreement, subject to ratification by union membership. No details of the proposed contract were disclosed.

NBC and NABET negotiators had been meeting in San Diego for three weeks to frame new pact to replace one that expired last Tuesday (March 31).

sponsibilities to appellate courts. "It is our responsibility to adopt precise and clear guidelines for the broadcasting industry to follow in this murky area, if we are to wade into it at all—the wisdom of which I seriously question."

Spokesman for Kreiger and Jorgenson, Washington attorneys for WUHY-FM, said he had not yet contacted Eastern Education Radio, licensee of station, regarding commission order. But, when asked whether or not there was likelihood that station would seek judicial review, he said: "What's a \$100 in a matter of principle?"

Break on subpoenas

Federal judge ruled Friday (April 3) that *New York Times* reporter Earl Caldwell must appear before jury investigating Black Panthers, but that Mr. Caldwell will not have to reveal "confidential associations" unless government can prove that national interest requires such disclosures.

Federal Judge Alfonzo Zirpoli made ruling after hearing in San Francisco. Hearing was on motion to dismiss two government subpoenas against Mr. Caldwell. One of subpoenas was withdrawn; it would have required reporter to produce notes and tapes of interviews with Panther leaders.

CBS, *Newsweek* and the Associated Press filed in support of motion to quash subpoenas. CBS said impairment of relations between reporters and sources through use of such subpoenas cannot be justified. Affidavits were filed by CBS and its newsmen Walter Cronkite, Eric Sevareid, Mike Wallace, Dan Rather and Marvin Kalb.

WNHC-AM-FM sold

First of planned spin-offs brought on by \$110-million purchase of Triangle Publications stations by Capital Cities Broadcasting Corp., New York, was announced Friday (April 3) by Capcities President Thomas S. Murphy. Stations sold, subject to FCC approval, were WNHC-AM-FM New Haven, Conn.

AM was sold to Westerly Broadcasting Co., WERI-AM-FM Westerly, R. I., for \$850,000. FM went to Robert Herpe, present general manager, for \$125,000. Principals in Westerly are Natale Urso, president, and Carl Grande, general manager of WERI stations. Both stations were sold for 29% cash, with balance due over eight years at prevailing prime-interest rate—terms identical to those incurred by Capcities in its Triangle acquisitions.

WNHC(AM) is full time on 1340 kc, with 1 kw daytime, 250 w night; WNHC-