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STATE REGULATION OF RADIO*

COL. THAD H. BROWN†

Just a word about regulation of radio by states. Radio communication is regulated by the Federal Government under the commerce clause of the Federal Constitution. As I pointed out earlier in my remarks, the courts have held that radio communications are all interstate commerce and as a practical matter it is recognized that all such communications are either actually transmitted interstate or, if possible to confine the effects of a radio station within the borders of a single state, interfere with signals coming into that state from stations located beyond its borders. This is so because of the congestion in the spectrum—each frequency being occupied and used. The United States Government, therefore, must of necessity regulate radio communication so as to prevent interference as far as possible and maintain the efficient use of radio throughout the nation. Moreover, radio is a problem of worldwide importance and treaties have been made to which the United States is signatory. This is another reason why the Federal Government may regulate radio communication to the exclusion of the states. From this, it is readily seen that there can be no place for state laws which attempt to say who may operate a radio station or what power it may employ or what frequency it may occupy. Hundreds of letters are received by the Federal Radio Commission from owners of radio receiving sets whose reception of radio programs have been impaired or destroyed through avoidable interference of a local character. One state—Maine—and many municipal governments have adopted measures for the purpose of preventing such interference. Some state have laws which provide that ordinances of certain municipalities must have the approval of the State Legislature before they are valid. An ordinance to regulate and prevent interference with radio reception was adopted by a municipality in Iowa but failed of approval by the Legislature. If the Constitution of a state will permit enactment of such a law the Legislature could authorize municipalities to adopt ordinances

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where necessary to prevent interference with radio reception by appliances and apparatus which, when operating, tend to impair such reception. It would seem that because of the diversity of causes of such interference, a state law authorizing the municipalities within it to adopt ordinances for this purpose would be preferred to a general act state-wide in scope. This would allow the municipalities to work out their own particular problems and to take into consideration the sources of such interference.

What I have said with reference to laws and ordinances having as their purpose the prevention of interference with radio reception is, generally speaking, applicable to statutes with respect to the operation of noise amplifying apparatus including loud speakers. Many cities have sought ways and means of preventing the operation of such apparatus so as not to interfere with the peace and quiet of the community and to prevent one from becoming a nuisance in wrecking the nerves of his neighbor. It is believed that such laws are desirable and they depend for their validity entirely on the Constitution and legislative acts of the several states.

Two states have enacted laws to prevent libel and slander over the radio. These states are Illinois and California. The Radio Act of 1927 makes the broadcasting of indecent, profane, or obscene language a crime. These two are so closely related that laws with respect thereto might be considered together. Although many radio stations send energy into states other than that in which they are located, the speech or music may not be received beyond the borders of the state. It is doubted, however, that the Congress may enact a valid law making libel and slander or the use of indecent, profane or obscene language a criminal offense unless the objectionable language is received in a state other than that from which it radiates. The states, therefore, may well inquire into the desirability of enacting laws to prevent such objectionable use of the radio and it is believed that laws for this purpose would find almost the unanimous endorsement of the listening public. In the case of Robert Duncan, to which I referred a moment ago, convicted in a Federal Court for broadcasting indecent, profane and obscene language in violation of the Radio Act of 1927, the evidence showed that it was received outside of the state in which the station was located as well as within it. To secure a conviction under the Radio Act for this offense, it is necessary to prove reception of the objectionable language in actual interstate transmission. The states, therefore, could render a valuable service to the millions of radio listeners by enacting laws to prevent libel and

slander or the use of indecent, profane or obscene language over a radio station in intra-state commerce. Convictions would be easier because the evidence would be more easily procured. I believe that such laws are desirable and that they should be rigidly enforced once they are on the statute books.

The Federal Radio Commission has not considered radio broadcasting stations as public utilities. Its policy, however, with respect to commercial radio telegraph stations, has been to regard them as public utilities and to impose upon a licensee the duty to serve all alike and without discrimination. The very nature of the two services necessarily makes for a different policy with respect to them. Radio broadcasting stations could not provide enough time to allow every American citizen to use them; therefore, it is not conducive to public interest that broadcasting stations be considered public utilities in the sense that they must serve all comers equally. In radio broadcasting the emphasis has been placed on the receiving end. The millions of radio listeners are interested in what they receive and the ratio between the listening public and those interested in broadcasting programs is probably twenty to twenty-five thousand to one. In commercial point-to-point radio telegraphy, however, the emphasis is placed on the transmitting or sending of the message for a particular individual and hence the difference in the consideration given to the two services.

The Radio Commission has found that the laws of many states have not kept up with the rapid pace set by science. It has been necessary for the Commission to write restrictions and conditions into licenses issued to companies engaged in commercial radio telegraphy, which might well be imposed upon the licensee by the laws of the state in which corporate charter was procured. It has, for instance, been necessary to provide in licenses that the licensee should receive and transmit in turn messages offered to the licensee without discrimination. The public is not acquainted with this service of radio to the extent it is with radio broadcasting, despite the existence of the great number of stations engaged in this character of service scattered all over the United States. If the State Legislatures would enact laws under which corporate charters are issued requiring that stations engaged in point to point radio telegraphy to assume the status of public utilities and serve every one in need of or desiring to use the facilities of the licensee, as the wire line telegraph companies are required to do, a step forward would be marked in the regulation of radio communication.