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Telecommunications, Mass Media, and Democracy

*The Battle for the Control
of U.S. Broadcasting,
1928-1935*

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CHAPTER 2

General Order 40 and the Emergence of Commercial Broadcasting, 1925-1930

The roots of the battle for the control of U.S. broadcasting lay in the 1920s. This chapter reviews the major developments of this decade, first looking at the nature of U.S. broadcasting as it emerged in the years 1920-1927, and then discussing the deliberations surrounding the passage of the Radio Act of 1927. The chapter concludes by evaluating the important general reallocation of the airwaves instituted by the Federal Radio Commission (FRC) in 1928, which effectively laid the foundation for the future of U.S. AM radio broadcasting. The general reallocation also provided the spark to the movement that arose to do battle with commercial broadcasting in the United States in the early 1930s.

American Broadcasting Through the Passage of the Radio Act of 1927

Most histories of U.S. broadcasting in the 1920s agree on a few basic points. First, almost all research emphasizes the manner in which radio communication was dominated by a handful of enormous corporations, most notably RCA, which was established in 1919 under the auspices of the U.S. government. RCA was partially owned by General Electric (GE) and Westinghouse. By the early 1920s the radio industry—indeed, the entire communications industry—had been carefully divided through patent agreements among the large firms. RCA and Westinghouse each launched a handful of radio broadcasting stations in the early and mid-1920s, although the scholarship tends to emphasize the American Telephone & Telegraph (AT&T) Company's WEAf of New York because it was the first station to regularly sell airtime to commercial interests as a means of making itself self-sufficient.

General Order 40 and Commercial Broadcasting

This "toll" broadcasting, as it was called, is usually considered the first step on the path to an advertising-based radio broadcasting system.¹

Second, most scholarship highlights the role played by Secretary of Commerce Herbert Hoover, who assumed the regulation of broadcasting under the Radio Act of 1912, which had been passed to coordinate point-to-point communication and did not anticipate the emergence of broadcasting. Hoover issued broadcast licenses and assigned frequency wavelengths until the passage of the Radio Act of 1927, thus establishing himself as a figure of paramount importance in the development of the industry. Adamant in his belief in the superiority of having broadcasting "in the hands of private enterprise," Hoover believed that "those directly engaged in radio, particularly in broadcasting, should be able, to a very large extent, to regulate and govern themselves." Hoover accordingly convened four radio conferences between 1922 and 1925, mostly of broadcasters and radio manufacturers, to provide him direction as he regulated the burgeoning industry. These conferences were also intended to provide the broadcasters with an opportunity to develop self-regulation, which Hoover argued would quite properly minimize the role of government radio regulation. In 1925 RCA's chief engineer wrote to Hoover:

It is a duty as well as a pleasure, to work with a division of government which shows so complete an understanding of the needs of the radio industry and so strong a determination to assist in guiding the industry to intelligent solutions of its various problems.²

Third, the scholarship emphasizes that the general public, to the extent it considered the policy issues surrounding this new technology, was generally in concert with the preceding developments, and certainly was not opposed in principle to what was transpiring. Radio broadcasting, Hoover noted, provided "one of the few instances that I know of when the whole industry and country is praying for more regulation."³ Moreover, research acknowledges how the development of broadcasting as a capitalist industry was effectively unavoidable in view of the historically unprecedented high esteem accorded private enterprise in U.S. political culture in the 1920s. In sum, the scholarship emphasizes how the loosely regulated, private, for-profit, network-dominated, advertising-supported basis of U.S. broadcasting was implicit to the system from its beginning, with public support if not outright enthusiasm. The passage of the Radio Act of 1927, which established the FRC, effectively codified these developments and removed the issues from public and congressional contemplation thereafter.

There is an element of truth to each of the preceding statements. Left alone, however, they present a distorted picture of U.S. broadcasting in the 1920s, one that makes it almost impossible to comprehend the events between

1928 and 1935. It was true, for example, that there was agreement that broadcasting should not be owned or controlled by the government in virtually all public discussions of broadcasting; this matter was seemingly closed, to the extent it was ever open, with Secretary of the Navy Josephus Daniels's failed attempt in 1918 and 1919 to have the radio communications industry nationalized.⁴ There was little sense prior to 1927, however, that private control meant broadcasting should be dominated by networks, guided solely by the profit motive, and supported by advertising revenues.⁵ Indeed, in several important respects, the nature of U.S. broadcasting prior to 1927 was markedly different from the system that would emerge by the end of the decade. A more accurate picture may result from examining these differences in addition to emphasizing the similarities.

For example, although RCA, GE, AT&T, Westinghouse, and a few other corporations effectively dominated most aspects of the radio industry, broadcasting eluded the corporate net for much of the decade. The first national network, the National Broadcasting Company (NBC), was established in late 1926 by RCA when it purchased AT&T's broadcasting properties. The other major network, the Columbia Broadcasting System (CBS), was not created until 1927. In retrospect, it is clear that when launched the two networks and their affiliated stations were the dynamic component of U.S. broadcasting. Prior to the late 1920s, however, network broadcasting was rudimentary at best, consisting of a small portion of U.S. radio stations and was barely commented upon.

So what was the nature of U.S. broadcasting in the mid-1920s? A significant percentage of the stations were operated by nonprofit organizations like religious groups, civic organizations, labor unions, and, in particular, colleges and universities. One hundred seventy-six broadcast licenses were issued to colleges and universities between 1921 and 1925; in 1925 there were 128 active college broadcasting stations. Almost as many broadcasters were affiliated with the other types of nonprofit organizations. Nonprofit broadcasters played a distinct and notable role in U.S. broadcasting throughout the 1920s; one scholar has gone so far as to term them the "true pioneers" of American broadcasting.⁶ "It is too often overlooked," commented C. M. Jansky, Jr., one of the leading radio engineers of the period, that "in the general scheme of broadcasting in the United States our educational institutions were at the start of things distinctly in on the ground floor."⁷

Even those private broadcasters that were operated by for-profit enterprises were not "professional" broadcasters in the modern sense. Newspapers, department stores, power companies, automobile dealerships, and other private concerns owned and operated most of these stations. Their *raison d'être* was to generate favorable publicity for the owner's primary enterprise, not to generate profits in their own right. There was little sense that broadcasting could be profitable throughout the 1920s. As the American Bar Association

(ABA) observed regarding broadcasting in the mid-1920s: "The conception of broadcasting as a business, with sale of time as its economic basis, was held by only a few."⁸ The unprofitable status of broadcasting was emphasized by the FRC and the networks themselves as late as 1928 and 1929.⁹ An AT&T survey of U.S. broadcasting in 1926 determined that approximately one-half of U.S. stations were operated to generate publicity for the owner's primary enterprise, while one-third were operated by nonprofit groups for eleemosynary purposes. Only 4.3 percent of U.S. stations were characterized as being "commercial broadcasters," while a mere one-quarter of U.S. stations permitted the public to purchase airtime for its own use.¹⁰

In fact, the economic instability of radio broadcasting was its overriding feature in the mid-1920s. For example, the number of stations affiliated with colleges and universities fell from 128 to 95 between 1925 and 1927, due almost entirely to a lack of funds.¹¹ Throughout these years, discussion centered on how to make radio broadcasting self-sufficient. On more than one occasion, RCA executive David Sarnoff called for broadcasting to be conducted by a national nonprofit and noncommercial network, to be subsidized by "those who derive profits" from radio set manufacturing and related industries.¹² A contest conducted by trade publication *Radio Broadcast* in 1925 to determine how best to support broadcasting awarded first prize to a plan to have the federal government administer a fund collected from an annual radio set fee, à la Britain, to subsidize noncommercial broadcasting.¹³ Even AT&T was unconvinced that its "toll" program was workable; in 1924, it briefly attempted to support its activities by having WEAJ solicit listeners for direct donations to subsidize the programming.¹⁴ As one observer noted in 1925, "the broadcasters and the manufacturers are as much at sea as anybody else as to the future."¹⁵

It is striking how infrequently direct advertising is mentioned as an acceptable source for revenues. Indeed, commercial advertising in the modern sense of the term was almost nonexistent prior to 1928. In 1925 the advertising representative of General Mills called upon twenty large broadcasters and was unable to purchase time from any of them. In 1927 the American Newspaper Publishers Association (ANPA) even assured its members, "Fortunately, direct advertising by radio is well-nigh an impossibility."¹⁶ The toll broadcasting of AT&T restricted the firms that purchased airtime "to giving their name and the name of their product." AT&T's ability to sell its airtime was undermined by the willingness of the other stations, including those owned by RCA and Westinghouse, to give time away for free.¹⁷ The basis upon which AT&T attempted to make toll broadcasting attractive was not that it would directly stimulate sales, but rather that it would bring "good will publicity" to the sponsor and "humanize" their relations with their customers. This "indirect" notion of radio advertising was held by all observers until 1927 or 1928.¹⁸ Moreover, there was widespread antipathy to

the very notion of permitting commercial advertisers access to the airwaves; even the relatively less intrusive indirect form of the early and mid-1920s met with controversy. As late as 1929, NBC presented itself first and foremost as a public service corporation that would only sell that amount of advertising necessary to subsidize first-rate noncommercial programming, "the finer things which are not sponsored commercially," as NBC President Merlin Aylesworth phrased it.¹⁹

Finally, during his reign as secretary of commerce (1921–1929), Hoover did not set out exclusively or even primarily to enhance the capitalist development of the ether, although when the hegemony of the networks was challenged during his presidency (1929–1933) he resolutely avoided antagonizing the commercial broadcasters.

As emphatic as he was concerning the need for private ownership, Hoover equally stressed the duty of the government to regulate this "great public service" in the interests of the listener. He insisted that radio broadcasters had a public service obligation beyond that of maximizing profits and he opposed having the ether become dominated by a handful of corporations. He also repeatedly criticized the large role of "amusement" in radio programming to the exclusion of public affairs and educational fare.²⁰ Although a staunch advocate of advertising per se, Hoover argued that broadcasters should minimize its role on the air since a radio listener, unlike a reader, could not "ignore advertising in which he is not interested." Otherwise, he argued, "there lies within it the possibility of great harm and even vital danger to the entire broadcasting structure." Hoover also commended college radio stations as "a step toward the realization of the true mission of radio." With little recognition of, or taste for, the eventual role assumed by advertising, Hoover pondered how broadcasting could become economically viable. In 1924 he solicited major foundations to subsidize educational programming. In the same year Hoover also called for a 2 percent tax on radio set sales to "pay for daily programs of the best skill and talent."²¹

This was the context of U.S. broadcasting in the mid-1920s. After the Fourth National Radio Conference in 1925, Hoover argued permanent legislation regulating broadcasting was now necessary for the industry to break through its impasse. Seven different bills to provide permanent regulation had been introduced since 1923, but none of them could gather enough support. A major stumbling block was partisan concerns about whether broadcast regulation should be housed in an independent administrative agency or remain in the Department of Commerce.²² When Congress failed to pass legislation in 1926, Hoover requested that the attorney general give him an opinion whether the existing licensing of stations by the Department of Commerce was constitutional. The attorney general replied that it was not, and a test case also ruled the existing regulation unconstitutional since the Radio Act of 1912 had provided no criteria for licensing. Hoover then dis-

continued all regulation, thus ushering in what came to be termed the "break-down of the law" period; within six months more than 200 new broadcasters began to operate, increasing the total wattage from 378,000 to 647,000, and many did not respect the frequencies being used by others.²³ The ether had become chaotic. Congress then moved quickly, as Hoover imagined it would, to pass the Radio Act of 1927.

The committee deliberations concerning the Radio Act of 1927 and the overall debate in Congress were what one might expect for emergency legislation. The NAB and the commercial broadcasters were instrumental in getting the legislation passed; educators and nonprofit broadcasters, on the other hand, played almost no role in its drafting. There was certainly no general sense of alarm that the bill was being passed against the interests of nonprofit broadcasting. Educational and nonprofit broadcasters who would eventually oppose commercial broadcasting contacted members of Congress to urge the Radio Act's passage in order to bring stability to the ether. To many, the purpose of the legislation was to preserve the ether as a public domain and to prevent "a monopoly in the air" by RCA and the other major radio corporations. This was, in fact, the progressive spirit in which the legislation was presented by Senator C. C. Dill (D-Wash.), its primary sponsor, as well as Secretary Hoover.²⁴

The committee hearings were dominated by concerns over the short-term business problems of the broadcasters, while the entire congressional debate over the Radio Act of 1927 ignored any discussion of fundamental broadcasting policy. One scholar concluded his exhaustive research on the debate over the Radio Act of 1927 by stating: "The 1927 radio debates stimulated only limited speculation as to the future of commercial broadcasting." Erik Barnouw has noted that while it had become clear by the early 1930s that U.S. broadcasting was a network-dominated and commercially supported system: "This system had never been formally adopted. There had never been a moment when Congress confronted the question: Shall we have a nationwide broadcasting system financed by advertising?" Moreover, few members of Congress had any sense of the issues involved at the time; the legislation was the product of but a few members of Congress, most notably Senator Dill.²⁵

At the time, however, this lack of discussion was understandable; the Radio Act of 1927, which passed Congress in February, was to provide temporary regulation to correct the immediate problem. As a compromise between those who wanted an independent agency and those who wanted to keep regulation in the Commerce Department, the Radio Act established the five-member FRC on an interim, one-year basis to assign broadcast license and bring order to the air. Certain non-policy-related functions were kept in the Commerce Department. As Secretary Hoover remarked upon the Radio Act's passage, it was now "possible to eventually clear up the chaos of

interference and howls in radio reception."²⁶ There was a general consensus that the FRC would have to reduce the total number of broadcasters so that the remaining stations would be able to broadcast effectively. The FRC would be renewed annually until 1929, when it was extended indefinitely, but the matter was not considered settled by anyone at the time. Indeed, the permanent regulation of broadcasting was an issue before congressional committees in every session until the passage of the Communications Act of 1934.

The Radio Act of 1927 did not provide specific guidelines for the FRC to use in evaluating the contending applicants for the limited number of frequencies. Rather, the legislation called for the FRC to allocate licenses on the basis of which prospective broadcaster best served the "public interest, convenience, or necessity," a phrase adopted from public utilities law. Although the phrase may well have had a distinct meaning with regard to articulating the nature of the relationship between the government and industry, Congress clearly had no particular notion as to how the term should be applied to the thorny problems of broadcasting. If nothing else, the inclusion of this phrase was thought necessary to render the FRC's licensing powers constitutional.²⁷ Senator Dill made it clear that he thought it best to grant the FRC broad powers and tremendous leeway in dealing with the difficult and controversial issue of license allocation and regulation: "Congress would find it extremely difficult, if not impossible, to legislate on all the situations and conditions that develop from time to time. For this reason, the radio law granted the Federal Radio Commission, which it established, extremely broad powers." For the regulatory body to successfully fulfill this function, Dill argued, it would require "men of big ability and big vision."²⁸

The FRC and the Reallocation of the Airwaves

The new FRC proceeded expeditiously to fulfill its mandate. On March 17, FRC member Eugene O. Sykes spoke to the nation over the radio to "acquaint" the public with the FRC and "its general plan of work." Sykes stated that the FRC would act as "traffic cops" in bringing order to the spectrum:

Our hope is to interfere with the legitimate traffic as little as we can, and still eliminate the danger of accident. We are counting on the drivers, which means the broadcasters, to help us, because it is they who in the long run are the worst sufferers from the accidents.

In short, the FRC planned to continue along the lines followed by Hoover. It would allow the industry to determine the nature of broadcast regulation as much as possible, regarding it as an ally. Almost immediately, some

nonprofit broadcasters sensed that the FRC's definition of "broadcaster" referred solely to large commercial broadcasters, rendering their existence marginal. If this is the sentiment of the new FRC, one university station radio engineer wrote, "then the broadcasting stations of the educational institutions may as well close up."²⁹

Following the Hoover precedent, the FRC convened four days of hearings between March 29 and April 1 to hear how broadcasters believed the FRC could best regulate broadcasting. All but a few of the fifty or so witnesses were representatives of commercial broadcasters, radio manufacturers, or some other commercial enterprise. The agenda for the hearings was structured around engineering concerns and the sessions were dominated by the testimony of corporate-affiliated radio engineers. The tenor of the conclave was congenial and industry-oriented, with the FRC seemingly regarding the profit-orientation of the industry as a given. As one newspaper account noted, the large broadcasters revealed a "smug confidence" toward the hearings, "content for the most part to sit silent" as the FRC was regarded as working in their interests. There was little indication that the FRC regarded itself as responsible for major policy decisions regarding the future of U.S. broadcasting. The sole "policy"-type opinion that was presented with little criticism was the opinion of one Department of Commerce official that "the success of radio broadcasting lay in doing away with small and unimportant stations."³⁰

The few noncommercial voices that appeared at the hearings took exception to this sentiment and urged the FRC to consider whether its seeming acceptance of the domination of the profit motive fulfilled the "public interest" charter of the Radio Act. Edward Nockels, a representative of the Chicago Federation of Labor (CFL), who managed the CFL's radio station WCFL, stated that radio should not be "left open to exploitation for profit," and that stations should be operated on a nonprofit basis with the direct support of their listeners. Morris Ernst of the American Civil Liberties Union (ACLU) noted that the power vested in the FRC "is the greatest power ever vested in the history of mankind by legislative act in any group of citizens." After acknowledging that his opinion would "not be popular with the gentlemen in the room," he argued that radio as a "public utility is not entirely consistent with a motive of profitmaking." Ernst called for the FRC to give preference to nonprofit broadcasters in its assignment of frequencies in order to protect the diversity of opinion necessary for democracy. Both Ernst and Nockels were received politely, although after Nockels's presentation one FRC member noted that his topic "was not in accordance with our program."³¹

In any case, the FRC did not accomplish its mandate in its first year, which scholars have termed "a nightmare for all concerned." Two of the five prospective FRC commissioners, who had been handpicked by Hoover, failed to gain Senate approval because they were caught in the partisan

political crossfire between Hoover's allies and congressional leaders, and between Republicans and Democrats. Then, coincidentally, two of the three that did get approved died almost immediately thereafter. In addition, Congress failed to approve the FRC's budget, leaving the active members without salary and encouraging one of them, Henry A. Bellows, to resign in November to accept a position as a vice-president at CBS. The FRC abandoned the initial program adopted at its April 29, 1927, meeting to develop a plan to completely reallocate the airwaves and sharply reduce the number of broadcasters.³² Instead, the FRC simply attempted to accommodate all the existing 733 stations through the sharing of the ninety frequencies. In addition, the FRC made limited efforts to set aside *clear channels*, frequencies that would have only one broadcaster operating at very high power on a nationwide basis. During the FRC's first year, the beneficiaries of the ad hoc allocation process were the largest stations, generally affiliated with the networks, while the smaller and nonprofit broadcasters continued to struggle to survive.³³

Congress was far from satisfied with either the FRC's performance during this first year or with the emerging contours of U.S. broadcasting. During the hearings before congressional committees to extend the FRC's tenure an additional year in January and February 1928, members of the FRC were repeatedly questioned about the unchecked and stunningly rapid emergence of "chain" broadcasting to its position of near dominance as well as the sharp decline in the role of nonprofit broadcasting. "A lot of the colleges are not satisfied with the places they have" on the broadcast spectrum, acknowledged the FRC's Sykes to the House Committee on the Merchant Marine and Fisheries in January 1928. "We are trying now and working to give a lot of the colleges a more satisfactory place on the broadcast spectrum."³⁴

Of the first twenty-five stations set aside for clear channels by the FRC, twenty-three had been licensed to broadcasters affiliated with NBC. This generated considerable alarm for Congress, particularly as large portions of the country were receiving the same chain program simultaneously on most of the stations available to any given area. "I am receiving letters every day from all over the country protesting bitterly," stated Representative Ewin Davis (D-Tenn.) in his interrogation of FRC member Orestes H. Caldwell. "Was that action taken because the commission believed the people of this country wanted all of the choice stations given to the chain stations?" Caldwell acknowledged that this was clearly not the intent of Congress nor of the Radio Act of 1927, but he defended the FRC's actions as being made in the best interest of the listeners.³⁵

In similar questioning by Representative Clay Briggs (D-Tex.), Sykes, like Caldwell, defended the FRC's actions and stated that the FRC, unlike

Congress, had received more letters in favor of the chains than opposed to them. Nonetheless, he acknowledged that to "fulfill our duty" to provide listeners with "as much diversity as we can" it would be imperative for the FRC to permit nonprofit broadcasters access to some of the high-power cleared channels. FRC member Harold Lafount assured a hostile Senator Dill in hearings before the Senate Committee on Interstate Commerce in February 1928 that "I am against chain broadcasting in the sense that they might occupy all of the cleared channels."³⁶ "It seems the chains are being the object of attack," the president of the NAB despondently wrote to the FRC's Lafount in January 1928, "by all of Congress."³⁷

In January and February 1928, key figures in the Senate, including Dill, threatened to block the extension of the FRC for an additional year unless Congress also passed complementary legislation that would require the FRC to break up the emerging "chain dominance," to reduce the maximum power allowances so less capitalized stations could compete, and to turn over more of the prime clear channels to independent and educational broadcasters. Working assiduously, the radio lobby and the FRC members were able to remove much of the "sting" from these proposals, but not all.³⁸ Congress ultimately voted to maintain the FRC for another year, but instead of allowing the FRC complete discretion to determine its own plan of action, it passed the Davis Amendment, so-called after its sponsor Rep. Davis, in March 1928. This required the FRC to make a complete reallocation of the airwaves in order to equalize the number of stations among five geographic "zones." This measure had considerable support among southerners and westerners who felt, with justification, that the broadcast spectrum was dominated by stations from the eastern seaboard and the industrial Midwest. In spirit, the Davis Amendment was also meant as an attack on chain domination, which explains why the networks and their allies were so opposed to it. With its passage, the FRC was forced to generate a permanent and general reallocation plan that would necessitate a complete reshuffling of stations and frequency assignments. The NAB and the networks reacted with alarm and began lobbying the FRC to permit the "natural evolution" of U.S. broadcasting with a minimum of "disturbance in present broadcasting . . . rather than radical sweeping changes."³⁹

Any concerns that the reallocation would threaten the emerging contours of commercial broadcasting would prove unfounded. Immediately after the passage of the Davis Amendment, the FRC created an allocating committee of Commissioners Caldwell and Sam Pickard to "consult with experts" and work out a general "reallocation which will comply with the legislation just passed by Congress." Lafount met with the allocating committee and served as an informal member throughout the spring and summer of 1928.⁴⁰ Prior to joining the FRC, Lafount had served as a director for several radio man-

ufacturing firms and had been in the process of opening his own commercial radio station. Upon leaving the FRC in the early 1930s, Lafount embarked upon a twenty-year career as a commercial broadcasting executive.⁴¹

Caldwell, a trained electrical engineer, had served as an editor for McGraw-Hill and had edited such trade publications as *Electrical World*, *Electrical Merchandising*, and *Radio Retailing*. He viewed his tenure at the FRC as a temporary "loan" of his services to the government by his employer, and he returned to his post at McGraw-Hill in 1929. NBC President Aylesworth had been a leading sponsor of Caldwell's appointment to the FRC, and the trade publication editor brought a genuine enthusiasm for commercial broadcasting to Washington, D.C. In a speech to the NAB annual convention in September 1927, he implored his "broadcasting friends" to "extend the number of radio listeners until we put a set in every home." Caldwell promised the assistance of the FRC to "put radio where it really belongs." As the only trained engineer on the FRC, Caldwell played a particularly large role in the development of the reallocation in 1928. "Mr. Caldwell," Lafount noted in 1931, is "wholly responsible for the present system of broadcasting in this country."⁴² Pickard, too, had a short tenure on the FRC. He would leave the FRC in 1929 to become a vice-president at CBS, where he was in charge of expanding the CBS network from some forty-seven affiliated stations in February 1929 to seventy-six stations in 1931 and ninety-one affiliates in 1933.⁴³

Although the initial confidential memorandum on the reallocation acknowledged that the FRC would determine "which stations or group of stations shall have the assignments" and which would not, the allocating committee explicitly regarded reallocation as strictly an "engineering" problem. The allocating committee accordingly met several times with a group of radio engineers to establish reallocation criteria because the FRC did not have its own staff engineer until the autumn of 1928, when the reallocation was put into effect. These experts were selected by the chief radio engineer for AT&T, and all of the engineers were employed by the government, radio manufacturers, or commercial broadcasters. The press and members of Congress were invited to one open meeting, but the balance of the sessions were closed and unpublicized. Given the emphasis on engineering and technical criteria for making the reallocation, and the secrecy of the meetings, the process was devoid of controversy.⁴⁴

The tentative report of this group of engineers was presented to the FRC on April 11 and stated that the one fundamental change that was necessary was the creation of a "considerable number" of high-powered clear channels "upon which only one station operates" nationally. Developing a large number of these "clear channel" stations was also a high priority for the networks and the large commercial broadcasters; they were the broadcasters best equipped with the capital and resources necessary to broadcast on such

a basis. The confusion regarding the appropriate course for U.S. broadcasting that had engulfed even the largest broadcasters as recently as 1926 had disappeared by 1928, at least in their private communications. One NBC executive wrote to the FRC's Caldwell in January 1928 that "the only plan" for successful radio broadcasting that "holds promise of any degree of success is the development of network systems for national advertising purposes." Nevertheless, in presenting the report, the AT&T engineer stated that there was no self-interest behind the engineers' recommendations: "The reason for this is a purely physical fact."⁴⁵

This is not to suggest any "conspiracy" by these engineers on behalf of their present or potential future employers. The FRC had specifically instructed the engineers to regard the reallocation as an engineering—not a policy—problem. In addition, the eventual opponents of the reallocation were largely oblivious to the existence of these proceedings in the spring of 1928, and they seemed to be ignorant of their general significance. There was little controversy in the air. Most important, radio engineers were arguably more dependent upon the dominant radio corporations than were their colleagues in other branches of engineering. In the first two decades of the century they had responded to the oligopolization of the radio industry by abandoning efforts to be independent "out of frustration and survival instinct." As David Noble observes, they "flocked to corporate employment in exchange for security."⁴⁶ The 1920s were halcyon days for corporate radio engineers. In June 1928 RCA's chief engineer informed the Institute of Radio Engineers, of which he also served as president, that the cooperative relationship between the radio industry and radio engineers filled "a fundamental need" and was "a provider of rich rewards both in public esteem and commercial success." The radio engineers could have thoroughly internalized the commercial basis of broadcasting as being synonymous with the highest possible "service of radio to the public." Engineering plans that turned over the best slots to the best capitalized stations appeared as common sense, and efforts to interfere with commercial domination were routinely dismissed as a violation of sound engineering principles in radio regulation.⁴⁷

At the same time, it would be difficult to exaggerate the harmonious and extensive relationship that had developed between the FRC on the one hand and NBC, CBS, and the NAB on the other hand. This relationship is all the more striking given the near total lack of contact the FRC had with nonprofit broadcasters, public interest groups that might have an interest in broadcast policy, and even members of Congress. The allocating committee was in constant touch with commercial broadcasting executives, and CBS Vice-President (and former FRC member) Bellows assisted the FRC throughout 1928 as it put together the reallocation plan. The FRC granted the NAB and the networks as well as the radio manufacturers a chance to respond to the report of the radio engineer's committee in a special hearing two weeks after

it had been released.⁴⁸ The FRC's attitude toward the commercial networks was evident in a May 1928 letter from Caldwell to Aylesworth in which he saluted NBC for its "wonderful public service." Caldwell concluded that "the fact that demagogues have a chance to attack you is due solely to lack of understanding on the part of the public of the full measure of your great contributions."⁴⁹ When Caldwell was attacked by members of Congress for being overly friendly to the "radio trust," he responded that radio had become a "football for politicians" who provided "sophistries" on the topic to win votes, but who would be best to stay away from broadcasting policy as they were uninformed on the topic.⁵⁰ Any notion that the FRC saw its role as that of protecting the "public interest" from the selfish aims of the commercial broadcasters is almost entirely absent from the records; if anything, the exact opposite was the case.

Accordingly, the FRC's reallocation clearly had the look of one that would be sensitive to the needs of the fledgling commercial broadcasting industry. In short, it would recognize, crystallize, and further encourage the dominant trends within broadcasting over the previous two or three years and make no effort to counteract these developments through public policy.

By early summer a consensus on the FRC and in the broadcasting industry emerged in favor of establishing a large number of clear channels for high-powered broadcasting in addition to having a number of regional channels that several broadcasters could use simultaneously at lower power, much like the engineers' committee had recommended in April. The engineers and commercial broadcasters favored a sharp reduction in the total number of broadcasters and, if that was not politically feasible, it was recommended that several broadcasters might share the same channel but each be assigned different times of day to broadcast. During the summer the FRC debated specific proposals to implement the reallocation and attempted to "sell" the idea behind the reallocation among the broadcasters. In addition, before the final decisions were made about which stations to favor and which to disfavor in the reallocation, the allocating committee contacted a handful of major radio editors to receive their input regarding which were the most popular stations in their communities.⁵¹

The final measure the FRC took before implementing the reallocation was to hire Louis G. Caldwell as its first general counsel in the summer of 1928. The need for a general counsel became evident when the FRC's attempt to remove 164 marginal broadcasters through General Order 32 in May 1928 had been ineffectual and had proven a procedural disaster.⁵² Caldwell, no relation to FRC member Orestes H. Caldwell, was by all accounts a brilliant and visionary commercial broadcasting attorney. He had worked for Colonel Robert McCormick's *Chicago Tribune* and the *Tribune's* radio station, WGN, in Chicago. Caldwell had been sent to Washington specifically to protect the *Tribune's* radio interests and to assist in the development of broadcast leg-

islation and regulation. Louis Caldwell was also the chairman of the Standing Committee on Communications of the American Bar Association, which was producing extensive semi-official annual reports on broadcasting policy during this period. He was a proponent of the commercial and chain development of the ether. Louis Caldwell was selected for the position of general counsel, among other reasons, because he had written a forty-two-page reallocation plan that incorporated most of the ideas of the radio engineers and commercial broadcasters. Within a few weeks as FRC counsel, Caldwell had effectively taken over the implementation of the reallocation and was making policy decisions that he acknowledged were "not strictly within the scope of the duties of the general counsel." Shortly after the implementation of the reallocation, in February 1929, Caldwell resigned as general counsel and returned to his practice as a commercial broadcasting attorney.⁵³

The FRC announced its reallocation plan in August 1928. Called General Order 40, it went into effect in November. In addition to forty clear channels and thirty-four regional channels, the plan called for the remaining frequencies to be low-power local channels that would accommodate thirty broadcasters in each zone. A full 94 percent of the broadcasters had their frequency assignments altered by the reallocation. (The 6 percent that were unaffected were chain owned or affiliated stations on clear channels.) Louis Caldwell's former employer, WGN, received a clear channel license to broadcast at the maximum 50,000 watts. The FRC's newly appointed chief engineer defended the reallocation plan as "the only reasonable solution of this dilemma."⁵⁴ In its statement accompanying the announcement of General Order 40, the FRC acknowledged that Congress had given it no indication as how to determine the meaning of public interest, convenience, or necessity. The statement asserted that the FRC had interpreted the phrase as meaning that the FRC should strive "to bring about the best possible broadcasting reception conditions throughout the United States," and thus favor those broadcasters with the best technical equipment. The FRC statement also noted that "broadcasting stations are not given these great privileges by the United States government for the primary benefit of advertisers," adding that "advertising is usually offensive to the listening public."⁵⁵

To lower the number of stations, the FRC utilized its process whereby anybody could challenge an existing broadcaster for its frequency assignment at the end of the three-month term accorded each license. In general, the FRC would have the various applicants for a particular frequency ultimately share its usage (unless there was a successful commercial broadcaster already in place, in which case its status was effectively unchallengeable) and allocate the majority of the hours to the station it deemed most worthy. In the long run, the station accorded the fewest hours on a shared channel often found it very difficult to stay on the air. Needless to say, this direct head-to-head competition for the scarce broadcast channels created great antipathy between

the contending applicants, particularly, as was often the case, when commercial broadcasters successfully challenged nonprofit broadcasters for the use of their frequencies. Indeed, in one case, hearings between nonprofit WEVD and commercial WFOX of New York had to end prematurely because the attorneys for the two sides began to engage in a fistfight. In any case, without having to actually turn down the license renewal applications of very many broadcasters, there were 100 fewer stations on the air within a year of the implementation of General Order 40.⁵⁶

In this context, the precise criteria by which the FRC elected to interpret the term public interest, convenience, or necessity would go a long way toward determining which of the various broadcasters would be favored in the general reallocation and which would be under constant pressure simply to maintain their licenses or their totals of assigned broadcast hours in the cases of shared frequencies. The FRC had to spell out its interpretation of this term in the numerous hearings, appeals, and court challenges that followed in the wake of the reallocation; it published its interpretation of public interest, convenience, or necessity in the FRC's *Third Annual Report*, which was published in 1929. The sketchy criteria touched on in the August 1928 FRC statement that accompanied the announcement of General Order 40 did not provide a strong enough fortress from which to defend the licensing decisions made in the reallocation.

Indeed, the 1929 FRC stated position regarding the meaning of public interest, convenience or necessity maintained little of the tenor of the comments regarding the meaning of the term that had been expressed in the FRC's 1928 statement. For example, the FRC only made brief mention of the need to favor stations with the best capitalization and the highest quality transmitting equipment in its legal defense of the reallocation. This explanation of the reallocation would again be offered commonly before Congress and in public forums by members of the FRC and advocates of commercial broadcasting in the years that followed, and it had a certain unimpeachable, if circular, logic. Having created forty national clear channel slots and many more relatively high-power regional assignments, the FRC argued that it was obviously in the public interest to assign these channels to broadcasters who had the equipment to take advantage of these slots. In the immediate aftermath of General Order 40, however, this defense was of partial value as some of the disfavored nonprofit broadcasters had more sizable capital investments and operations than the upstart capitalist broadcasters who were vying for the use of their broadcast channels. Hence the need to justify the policy on other grounds. Similarly, the 1929 legal defense of General Order 40 dropped the acknowledgment of the public antipathy toward advertising, as its emergence was the most immediately recognizable consequence of the reallocation.

The FRC opinion in this matter was written by Louis Caldwell and it

mirrors his comments on the subject in the ABA Standing Committee on Communications 1929 report.⁵⁷ Based upon the testimony of FRC members to Congressional committees in 1929, it seems apparent that none of them had developed their positions on this matter to the extent of Caldwell. As this interpretation of the public interest, convenience, or necessity has played such a pivotal role in U.S. broadcast policy, it merits some elaboration.

First, the FRC stated that broadcasting was not a common carrier in the sense of the other public utilities (i.e., that each station would be required to permit anybody who so desired access to their facilities if they were willing to pay a fair price). Rather, the FRC argued that broadcasters were not licensed to serve *users*, but rather to serve *listeners*. Therefore, the criteria public interest, convenience, or necessity meant that the FRC would favor broadcasters who seemed the most inclined toward serving the public and who were the least inclined toward promoting their own "private or selfish interests." The only exception to this criteria was commercial advertising, which the FRC conceded was conducted for selfish interests, "because advertising furnishes the economic support for the service and thus makes it possible." Although the excesses of advertising needed to be regulated, the FRC made it clear that it had no interest in inhibiting the financial support it brought to the industry. "Without advertising, broadcasting would not exist," the FRC stated, with apparent disregard for the several score non-commercial stations still in operation.⁵⁸

Second, the FRC determined that the stations that best served the public interest were those that attempted to serve the "entire listening public within the listening area of the station." To do this the broadcaster needed to provide "a well-rounded program" of entertainment as well as cultural programming. The FRC was not particularly interested in delineating the specifics of what constituted "well-rounded" programming. Rather, the marketplace would serve as the arbiter: "The commission has great confidence in the sound judgment of the listening public . . . as to what type of programs are in its own best interest." The FRC termed these broadcasters *general public service* stations.

The type of stations that earned the FRC's disfavor, in contrast to the general public service stations, were termed *propaganda* stations. It emphasized that the term was not meant derogatorily but, rather, to stress that these broadcasters were more interested in spreading their particular viewpoint than in reaching the broadcast possible audience with whatever programming was most attractive. It observed, "There is not room in the broadcast band for every school of thought, religious, political, social, and economic, each to have its separate broadcasting station, its mouthpiece in the ether."⁵⁹ Consequently, since every group could not have its own "mouthpiece," then, according to the FRC, *no* such group should be entitled to have the privilege of a broadcast license. Hence, ownership by any group not primarily moti-

vated by profit automatically earmarked a station to the FRC as one with propaganda inclinations. Moreover, by the FRC's interpretation, commercial advertising is deemed the *only* legitimate form of financial support for a broadcaster, as by definition any other form of support had propaganda strings attached.

This interpretation of the public interest, convenience, or necessity was a clear endorsement of the private commercial development of the airwaves. The FRC's *Third Annual Report* stated baldly that a general public service broadcaster has "a claim of preference over a propaganda station," when they contended for access to the same channel. Even if propaganda stations attempted to "accompany their messages with entertainment and other program features of interest to the public," the FRC asserted they did not merit the same treatment as general public service stations that did the same things since, among other things, the propaganda stations would be "constantly subject to the very human temptation not to be fair to opposing schools of thought."⁶⁰

Numerous nonprofit stations would fall victim to this logic and see their hours reduced and the time turned over to capitalist broadcasters, often affiliated with one of the two networks. As the FRC informed WCFL, the nonprofit "Voice of Labor" affiliated with the CFL, when it lost its hearing for more hours to the *Chicago Tribune's* WGN: "There are numerous groups of the general public that might similarly demand the exclusive use of a frequency for their benefit. There are nearly five million Masons in the United States and about as many Odd Fellows."⁶¹ By the FRC's logic, if the public desired the type of programming offered by the propaganda stations, it would make this interest known through the marketplace and the general public service broadcasters would find it in their interest to provide such programming. Hence, it would be best for educators and other nonprofit broadcasters to learn to work through the facilities of the general public service stations, rather than to attempt to develop and maintain their own facilities.

In the *Third Annual Report*, the FRC argued that its interpretation of the public interest, convenience, or necessity would best serve the interests of free speech and the desire for a balanced presentation of political views. None of the propaganda stations could be expected to bring balance so their reduction or elimination only boded well for the discussion of public issues. Furthermore, the general public service broadcasters, according to the FRC, since they had no selfish propaganda aims, tacitly recognized their "broader duty" to open and balanced debate. Indeed, the FRC proclaimed that the "great majority" of the broadcasters were going far beyond the letter of the law in their presentation of differing viewpoints on social issues.⁶²

Nevertheless, the FRC concluded its interpretation of the public interest, convenience, or necessity by addressing the concern that its policies would leave the listening public "at the mercy of the broadcaster." It argued that

this was an unfounded fear for two reasons. First, the listener could shift away from stations he or she did not like and the market would act as a corrective on recalcitrant broadcasters. Second, the FRC stated that the efforts of the networks to establish "advisory boards" of prominent citizens to monitor their public affairs programming seemed to be very effective. Thus the marketplace and self-regulation rendered extensive government intervention in the public interest unnecessary.

The Emerging Status Quo and the Reaction of the Immediate Parties

Following the implementation of General Order 40, U.S. broadcasting rapidly crystallized as a system dominated by two nationwide chains supported by commercial advertising. Whereas NBC had twenty-eight affiliates and CBS had sixteen for a combined 6.4 percent of the broadcast stations in 1927, they combined to account for 30 percent of the stations within four years. This, alone, understates their emergence, as all but three of the forty clear channels were soon owned or affiliated with one of the two networks and approximately one-half of the remaining 70 percent of the stations were low-power independent broadcasters operating with limited-hours on shared frequencies. Within two years the average independent station had a power of 566 watts, while one of NBC's seventy-four stations averaged over 10,000 watts. By 1935 only four of the sixty-two stations that broadcast at 5,000 or more watts did not have a network affiliation. When hours on the air and the level of power are factored into the equation, NBC and CBS accounted for nearly 70 percent of American broadcasting by 1931. One study estimated that by the mid-1930s some 97 percent of total nighttime broadcasting, when smaller stations were often not licensed to broadcast, was conducted by NBC, CBS, or their affiliates. NBC was the larger of the two, operating two distinct national networks, the red network and the blue network.⁶³

Network expansion was accompanied by the dramatic emergence of direct commercial advertising to a position of prominence in U.S. broadcasting. GE's Owen D. Young, founder of RCA and a guiding force behind the creation of NBC, blamed the degeneration of NBC from its "public service" origins to becoming a conduit for commercialism upon the greed of national advertisers. They came "posthaste," Young's biographers noted, "with fistfuls of money, to buy air time."⁶⁴ The evidence suggests that it was more the networks and the NAB who actively promoted the use of radio for direct advertising. (Accordingly, when radio advertising came under severe attack in the early 1930s, it was the broadcasters and not the advertising community that rallied to its defense.) For example, the NAB established a commercial committee in 1928 that was responsible for working with the American

Association of Advertising Agencies (AAAA) to establish a coherent set of guidelines and to promote the use of radio. NBC hired long-time advertising executive Frank Arnold specifically to promote radio before the advertising community and to corporate executives. Arnold noted that, with only a few exceptions, "the door of every advertising agency was closed to solicitors for radio" when he began his work in 1927. Such was not the case for long; by the end of the decade most major New York agencies had radio departments. Perhaps most important, NBC President Merlin Aylesworth personally called on many major national accounts to sell airtime on the new network. With a tremendous gift for sales, Aylesworth accomplished his mission, as one aide recalls, "with tremendous rapidity."⁶⁵

Radio advertising, therefore, which was a marginal phenomenon in 1927 with barely any national component whatsoever, accounted for \$100 million in 1930 alone. By 1934 annual national advertising expenditures alone approached \$75 million, and that was during an economic depression no less. CBS had a sixfold increase in advertising sales in fiscal 1929 alone and unabashedly proclaimed broadcasting was "the greatest media development in the history of advertising" in its 1929-1930 promotional literature.⁶⁶ One study conducted by the trade publication *Radio Retailing* in 1931 determined that, on average, fifteen minutes of every hour were turned over to explicit sales messages. The *Christian Science Monitor* estimated explicit sales talks at twelve minutes per hour. The networks shortly abandoned much of the task of producing programming to advertising agencies, which provided the shows that surrounded their clients's sales messages, thus rendering the distinction between advertising and nonadvertising time of limited value. The growth of the networks and the emergence of advertising, though distinct, were mutually reinforcing. One study has found that 80 percent of radio advertising revenue in 1929 went to 20 percent of the stations, all network-owned or affiliated.⁶⁷

Philip Rosen hardly exaggerates when he describes the period between 1928 and 1933 as one of "prosperous, almost triumphant expansion" for commercial broadcasters. Erik Barnouw has noted that in the brief period between 1928 and 1933, "almost all forms of enterprise that would dominate radio and television in decades to come had taken shape." Nor is this an assessment that requires hindsight. In reviewing the growth of the two networks, one observer concluded in 1930 that "nothing in American history has paralleled this mushroom growth."⁶⁸

The other side of the same coin, however, was reflected in the equally dramatic decline in the role played by nonprofit broadcasters in the U.S. The number of broadcasting stations affiliated with colleges and universities declined from ninety-five in 1927 to less than half that figure in 1930. The number of overall nonprofit broadcasters would decline from over 200 in 1927 to some sixty-five in 1934, almost all of which were marginal in terms

of power and impact. By 1934 nonprofit broadcasting accounted for only 2 percent of total U.S. broadcast time.⁶⁹ For most Americans, it effectively did not exist.

Most nonprofit broadcasters, who had been hard-pressed to raise funds to subsidize their efforts before General Order 40, found themselves in a "vicious cycle" where the FRC lowered their hours and power to the benefit of well-capitalized or soon-to-be well-capitalized capitalist broadcasters, and thus made it all that much more difficult for the nonprofit broadcasters to generate the funds from their governing bodies necessary to be successful. This was the scenario for most of the educational and nonprofit stations that went off the air in the late 1920s and early 1930s. The director of the soon-to-be extinct University of Arkansas station wrote:

Now the Federal Radio Commission has come along and taken away all of the hours that are worth anything and has left us with hours that are absolutely no good either for commercial programs or for educational programs. The Commission may boast that it has never cut an educational station off the air. It merely cuts off our head, our arms, and our legs, and then allows us to die a natural death.

Even the most established of the university stations, the University of Wisconsin's WHA, found itself in a struggle before the FRC to keep its hours and power.⁷⁰

Adding to the crisis facing nonprofit broadcasters was that much of what money they could raise had to be applied to pay for expenses to defend their licenses every three months before the FRC in Washington, D.C. "Ever since the new broadcast structure was put in effect in the fall of 1928," the director of the University of Illinois radio station wrote to a congressman in 1930, "we practically wasted all of the money that the university has put into our broadcasting efforts" defending the station license before the FRC, so that "it has been impossible for the people of the state, who own the University and consequently this station, to benefit from the educational features which we have attempted to give them." Another educator criticized the FRC for letting "the commercial stations compel the college stations to spend their scanty funds in sending representatives to Washington" in seemingly endless license hearings. In short, there was considerable outrage among many of the nonprofit broadcasters expressed toward the FRC during this period. One prominent educational broadcaster wrote that the FRC was giving the educational broadcasters "a very raw deal," and termed the FRC as "belonging heart and soul to the big commercial interests."⁷¹

To many educators and nonprofit broadcasters, the problem with the FRC stemmed from its strictly commercial interpretation of public interest, convenience, or necessity. As one observed,

Under that philosophy the educational station is being tolerated rather than accepted and encouraged by the regulatory body of the government. That philosophy is a purely commercial one which compels all stations to operate according to commercial standards. If such a basis of operation were to be applied to education generally the colleges and universities of the United States could not justify their existence.

"It is unfair," one college president complained, "to leave educators in a position where they have to compete against clowns." "The Federal Radio Commission," one college station manager complained, seems to believe that an "educational station ought to die" if it could not compete with capitalist broadcasters, "just as a kitten that is thrown under the feet of an elephant ought to die, if it cannot avoid being trampled to death."⁷²

Even those not connected with nonprofit broadcasting were not especially impressed by the FRC as a policymaking and regulatory body. The tenor of the congressional hearings to renew the FRC in early 1929 was as antagonistic as they had been prior to the passage of the Davis amendment. "The great feeling about radio in this country," stated Senator Dill, "is that it will be monopolized by the few wealthy interests." Moreover, the concern was not simply with network domination, but with the striking emergence of advertising. After hearing Orestes Caldwell defend advertising as the only conceivable method of financing the clear channel stations, "because the expense of operating such a station is very large," one congressman, Charles Gifford (D-Mass.), reacted angrily and asked Caldwell some fundamental questions. Do you "approve of giving over the radio to the advertisers' whims in operating these stations?" he asked. "Do you not think the principle of radio is tremendously broader than that?" Caldwell defended advertising, stating "there seems to be no other way to finance these wonderful programs," and added that the topic of advertising was "one of the broader problems Congress should take up." "The broader problems," Gifford responded, "are what I think we made a commission for."⁷³

The FRC's second general counsel had similar disdain for the commission. Bethuel M. Webster, Jr., replaced Louis Caldwell as general counsel for the FRC early in 1929 and then quit in disgust before the end of the year. Webster was unimpressed with the reallocation; in his view the FRC "gave away valuable public channels without getting anything in return." Webster regarded the major radio corporations as having undue influence over the FRC. By the early 1930s, he would become active in the ACLU's efforts to establish a coherent U.S. broadcasting policy. Webster characterized the FRC as an institution of "unparalleled mediocrity and ineptitude" whose members "knew little or nothing about radio or the law." To Webster, the FRC was comprised of "semi-retired sailors, soldiers or lawyers, men lacking the vision or energy to undertake departures from established notions and routine." Hence, the "tendency, if not the deliberate policy, of the licensing

authority has been to crystallize the status quo."⁷⁴ Few observers at the time characterized the body as anything remotely close to the "philosopher kings" that Senator Dill had envisioned. Except for the appreciation displayed by the commercial broadcasting industry, the FRC was a largely unpopular body throughout its seven-year history.

As much as the nonprofit broadcasters were hostile toward the FRC, they were every bit as hostile toward the networks and the commercial broadcasting industry. The format whereby capitalist broadcasters applied directly for frequencies occupied by nonprofit broadcasters and attempted to establish to the FRC their superiority at serving the "public interest" certainly did not lay the groundwork for cordial relations. To many educators, it seemed that commercial broadcasters would not be satisfied until all the educational broadcasters had been driven from the air. "On all fronts the commercial radio interests advanced their lines," observed the NCER, the leading educational radio organization, as it reviewed the developments between 1928 and 1930. "The two powerful chains, NBC and CBS, trained their heaviest artillery, ruthlessly ignoring protestations of smaller stations, crushing educational stations under a broad heel, spiked with hobnails of commerce."⁷⁵

Most nonprofit broadcasters had approved of the passage of the Radio Act of 1927, albeit without any great enthusiasm, and had regarded the FRC, at least initially, as a step toward stabilizing U.S. broadcasting, nonprofit and otherwise. In its earlier versions, the legislation that became the Radio Act of 1927 had included wording that would have required the FRC to *favor* nonprofit broadcasters in the allocation of broadcast licenses, but this wording was withdrawn in committee because, it was argued, such a mandate was already implicit in the term public interest, convenience, or necessity.⁷⁶ The Congress followed the leadership of Senator Dill, whose belief in giving the FRC free reign was cited earlier. Louis Caldwell had likewise approved of Congress granting the FRC *carte blanche* to interpret public interest, convenience, or necessity as it saw fit without any additional congressional "encroachment." "While this phrase may seem broad and vague," he wrote, "any more specific test would have been dangerous." Given this sort of almost arbitrary authority, some proponents of nonprofit broadcasting had hoped and even expected the new FRC to enact, as one proponent noted, "radical changes in the radio structure by way of correcting mistakes which had developed in its haphazard growth."⁷⁷

Any hopes along these lines were dashed with the implementation of General Order 40. "The battle was begun in earnest," wrote the NCER, "in the summer of 1928 soon after the enactment of the Commission's General Order 40." WCFL's Nockels termed General Order 40 "infamous" and noted that with its implementation, "the radio air has been monopolized so that the Big Power interests, Big Business, and the Big Newspaper interests have gotten all the cleared radio channels and nobody else has a 'peep-in.' "

Nor was the importance of the reallocation lost on the commercial broadcasters or the FRC. "The allocation of 1928 was of fundamental importance in this field," observed the NAB's chief researcher in 1934, and as a result "Radio began to flourish as an advertising medium" and "Network structures were extended." In 1931, the FRC's Lafount characterized General Order 40 as providing "the structure or very foundation upon which broadcasting has been built, and upon which the success or failure of every branch of the radio industry must depend."⁷⁸ As a leading radio engineer informed the NAB annual convention in October 1928, General Order 40 was "Radio's Emancipation Proclamation."⁷⁹

It is curious that when the FRC implemented General Order 40 and it became clear that educational and nonprofit broadcasters were at best being treated on equal terms with the commercial broadcasters, members of the FRC had a markedly different interpretation of the meaning of the Radio Act of 1927 than that of Dill and Louis Caldwell, as the exchange between Orestes Caldwell and Representative Gifford cited earlier suggests. FRC Chairman Charles McKinley Saltzman explained to educators in 1931 that: "The Commission wishes to help the cause of education and the plans of educators, but it can only do so in accordance with the provisions of the law that prescribes its powers." Saltzman's interpretation of the Radio Act of 1927 was not that it was the vague yet powerful instrument that Senator Dill and Louis Caldwell claimed it to be, but, rather, that in it the FRC's "powers, limitations, and functions" were "prescribed in considerable detail." FRC member Lafount would inform another conference of educational broadcasters in 1931 that "under existing law the Commission cannot favor an educational institution. It must be treated like any citizen, any other group, any other applicant. I see nothing in the law that would justify the Commission's doing otherwise, regardless of our interest in education."⁸⁰

This stance taken by the FRC upset the educators to no end. Armstrong Perry, who was one of the leading proponents of educational broadcasting, observed:

The Federal Radio Commission . . . take[s] the attitude that the radio laws compel them to consider all stations as being on the same basis, whether they are operated for private profit or as public institutions. This does not accord with the point of view of the men in Congress who made the law. It related rather to other phases of the strategy of the dominant radio group.⁸¹

Despite this claim to be neutrally administering a tightly worded statute, FRC members revealed considerable enthusiasm for network and commercial broadcasting when not addressing groups of educators. The most vociferous in this regard was arguably Lafount. "Commercialism is the heart of the broadcasting industry in the United States," he wrote in 1931. "What has education contributed to radio? Not one thing. What has commercialism

contributed? Everything—the lifeblood of the industry." Lafount termed radio "this wonderful instrument of commerce." To Lafount, the purpose of regulation was clear. "To make possible the presenting of the best possible programs," he informed the Senate Committee on Interstate Commerce in February 1929, the FRC was essentially obliged to make the operation of a broadcast station profitable and do nothing that would "endanger the revenues" of a station.⁸² After a field trip to visit Western stations in the summer of 1929, Lafount was delighted to report that "practically all commercial broadcasting stations are now operating at a profit," and that "the west is highly appreciative of the wonderful programs broadcast by the two eastern chain broadcasting companies." "Experts everywhere now agree," Lafount noted in 1931, that the U.S. broadcasting system "is as perfect as it could be made."⁸³

The only exception to the near unanimous praise for the emerging status quo elicited by an FRC member was provided by Judge Ira E. Robinson. While serving as the acting chairman of the FRC in 1928, Robinson was the only member to oppose the reallocation. He was not swayed by the "expert" opinion of the radio engineers which recommended the establishment of high-power, clear channel stations. He wrote:

True, radio engineers have testified that high power is the thing. But those who have so testified are naturally by their employment "big business minded." These engineers have, however, been so commendably loyal to those with whom they are associated, as to at no time refer to the real reason for the demand for high power.⁸⁴

After voting against General Order 40, Robinson wrote a memo to Louis Caldwell stating that "I want to go on record that I shall ever oppose the use of the air, undoubtedly belonging to all the public, being 'grabbed' by private interests." Moreover, Robinson refused to participate in any of the hearings stemming from General Order 40, deeming it "unethical and improper" to participate, "based on his opposition to the whole reallocation." Robinson described himself as "an advocate of educational broadcasting. It should not be depressed for commercial purposes."⁸⁵

If Robinson did not participate in the countless hearings that resulted from General Order 40, he did use his position to denounce the FRC policy. He went before the House Committee on the Merchant Marine and Fisheries in January 1929 and announced his opposition to General Order 40 on the grounds that it was weighted in favor of the chains and against independent and educational broadcasters. The status of radio for listeners was "better under the old allocation." Robinson had no shortage of enemies; one radio trade publication commended the "progressive members" of the FRC for overruling "Robinson's obstructive tactics" and putting through the allocation. In October 1929 an informal meeting was arranged in Washington,

D.C., between Robinson and NBC executives to clear the air. It quickly degenerated into a heated and bitter exchange between Robinson and Aylesworth on the merits of commercial broadcasting.⁸⁶ The commercial broadcasters organized a stiff opposition to his reappointment to the FRC in 1929, but elements of the industry backed off when it became apparent that if Robinson was not reappointed, it would draw unfavorable publicity to the FRC and its relationship to the industry. As former FRC member and CBS executive Sam Pickard confidentially telegraphed the White House, disposing of Robinson "would cause political stir and much bad feeling generally seriously handicapping future effort" by the FRC. Robinson was reappointed after congressional leaders went to the White House and informed President Hoover that unless Robinson was included among the nominees, the Senate would hold up the entire schedule of five appointments.⁸⁷

Although critical of the reallocation, Robinson was not opposed to the private and commercial development of the ether; rather, he was opposed to the monopolistic tendencies of network control and the lack of interest in regulating the amount of advertising exhibited by the balance of the FRC's members. Robinson did not accept the notion that the FRC was forced by the Radio Act of 1927 to favor a commercial network system in its licensing practices. "Time after time I have said I do not see why it is that the educational stations have the limited assignments given them," he told a conference of educators in 1930 in what would be a seminal speech for the movement that arose to oppose the status quo. "The present allocation is all wrong." Robinson, however, was skeptical about the ability of the FRC to reform the situation. When asked what steps educators should take to preserve and expand the role of nonprofit broadcasting, Robinson responded emphatically: "This is the only way you can do it. I know your situation." He added, "get the whole body of educators to come down to Congress as these other lobbyists do and hang around and demand."⁸⁸ This marked a critical turning point; henceforth, efforts at reform would be addressed to Congress and the public-at-large. The FRC was dismissed as hopelessly bankrupt.

By the end of the decade, the contours of the modern U.S. network-dominated, advertising-supported broadcasting system were in place. In only a few short years U.S. broadcast policy had been developed and set in place with a minimum of informed public debate or participation. At best even Congress had played a minor role, and, to the extent that it actually deliberated on the nature of U.S. broadcasting, it was not necessarily in concert with the path that the FRC pursued. Similarly, only a year after the implementation of General Order 40, the battle lines had been drawn. On one side were the two emerging networks, national advertisers, the commercial broadcasting industry, and, to no small extent, the FRC. On the other side were the displaced and disadvantaged nonprofit broadcasters, soon to be joined by several civic groups, numerous intellectuals, and organizations like the

ACLU, which were appalled by the implications of a commercially supported, network broadcasting system for U.S. politics and culture. The battle would be short and one-sided, but it provides the sole instance in modern U.S. history in which the structure and control of an established mass medium would be a legitimate issue for public debate.