NATIONAL DEFENSE AND PAYOLA

The tv quiz scandal and the resultant cry for increased responsibility on the part of broadcasters added significant "between the lines" meaning to remarks FCC Comr. Robert E. Lee made to NBC radio affiliates in New York last week. He was talking about the obligation stations have to cooperate with the government in defense planning through the Conelrad plan—a familiar theme on which he has barnstormed frequently.

COMR. LEE

One page into his text Comr. Lee had this to say:

"Some elements of your industry have yet to recognize the integral relationship which they have with other elements and with the government in the interests of national defense. They have yet to recognize and appreciate their positions as temporal tenants in the public domain. I am pessimistically confident that there are those among them who have yet to read the Communications Act under which authority their licenses were granted and their livelihood depends. . . .

"May I remind those elements that they enjoy the use of an asset belonging to the people as a privilege, contingent upon their operating in the public interest, convenience and necessity. So that there will be no misunderstanding as to where I stand, let me categorically state that operating in the public interest includes cooperation "with . . . the FCC, the military and civil defense organizations at all levels."

In a departure from his principal theme about defense planning among radio stations, Comr. Lee directed brief attention to the forthcoming investigation of payola — payment of money or other considerations to station personnel either for playing certain records or for "free plugs" of products. Comr. Lee advised licensees to read the pertinent sections of the Communications Act requiring appropriate announcements of sponsorship (Sections 317, 3.119, 3.289, 3.654 and 3.789).

Non-compliance with these provisions, the commissioner said, would "raise very serious questions" about the qualifications of a licensee. Ignorance of employes' activities would not excuse violations of the law, he said, ending his treatment of the issue with the comment that "a word to the wise is sufficient."

within the Commission that this hearing should be wide-open to all, including the public.

The FCC statement referred to the Commission's authority over programming "in the light of the censorship provision in the Communications Act and court decisions reversing its attempts to regulate certain types of programs including lotteries and giveaway programs."

The Communications Act's Sec. 326 forbids the FCC to censor individual programs. This has been a key plank for those who maintain the FCC must keep hands off programming.

The court decisions to which the Commission referred include the 1954 U.S. Supreme Court ruling that the Commission's lottery regulations were illegal and the 1957 U.S. Court of Appeals decision holding that a bingo-type game was not a lottery.

The lottery rules propounded by the FCC in the late 1940s would have banned giveaway programs as lotteries. The decision was appealed by ABC for its *Stop the Music* radio show. The case went all the way to the Supreme Court, which ruled in 1954 that such a program was not a lottery since listening to the radio could not be considered "consideration" in the legal sense.

Under the law, a lottery must involve a participant giving something of value (consideration), the winner must be chosen by chance, and the prize must be of value.

This viewpoint was bolstered in 1957 when the Court of Appeals in Washington reversed an FCC cease and desist order against a West Coast tv station in the *Play Marko* case. Attacked in court by The Caples Co., Chicago advertising agency and originator of the bingo game, the Commission was reversed—on the same grounds as the 1954 *Stop the Music* case—lack of consideration.

Long History • The basic question whether the FCC has the authority to consider programming has had a long and controversial history.

Actually the only programs to which the FCC has taken serious umbrage has been the broadcasting of horse racing news. License revocation actions have been taken again several stations on the charge that race information was being used by gamblers.

Otherwise, no stations have lost their permits because of programming formats or because of individual programs. Many have had license renewals postponed while the Commission raised questions of program imbalance or overcommercialization, but none ever failed to be renewed finally.

The authority of the FCC on programming has been asserted and questioned almost from the beginning of radio regulation.

The U.S. Supreme Court's 1941 decision in the case involving NBC's challenge of the Chain Broadcasting Rules is considered a landmark in this topic.

In a decision written by Associate Justice Felix Frankfurter, the Supreme Court said that the FCC has the right to consider the composition of the traffic broadcast by licensees as well as to act as a traffic cop on facilities.

The Blue Book • The FCC's apogee in efforts to assert programming control was reached in 1946 when the now-notorious Blue Book, "Public Service Resposibility of Broadcast Licensees," was issued.

This staff-written document made the point that the Commission should not only keep an eye on programming but should require licensees to live up to programming proposals made in their original applications—unless good reasons were given for changing formats.

It also urged that the Commission intervene to insure that broadcasters devote a substantial amount of time for public service programs, mainly unsponsored.

The Blue Book controversy came to a head when newspaper columnist Drew Pearson and associates filed for the frequency used by the Hearst-owned WBAL Baltimore. This station had been singled out among others in the Blue Book.

After a full, evidentiary hearing the Commission renewed WBAL's license. This was considered the death-kneel of the Blue Book philosophy.

From that time on the Commission's attempts to assert jurisdiction over programming have been erratic.

Recent Activity • In the last few years, the subject of programming was an issue in only four significant instances.

In 1956, the issue flared in the application by multiple broadcaster Todd Storz to buy WQAM Miami, Fla. A sharp internal Commission controversy raged over Mr. Storz's high-pressure, audience-building promotions. The purchase was finally approved, 4 to 3, with Chairman George C. McConnaughey and Comrs. Bartley, Richard A. Mack and Craven in favor.

Opposed were Comrs. Doerfer, Hyde and Lee. They wanted a hearing.

Mr. Doerfer, in a dissent, expressed