Remarks by

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Commissioner Hennock, Mr. Kintner, and Ladies and Gentlemen:

I am grateful for the invitation extended to me to participate in this briefing conference on communications law and regulation. As the splendid discussion by Mr. Kintner has already shown, the topic assigned to this part of the conference serves to highlight the similarities as well as the differences in the functions of federal administrative agencies.

Under the Securities Act of 1933, and the Securities Exchange Act of 1934, the S.E.C. is generally charged with the responsibility for seeing that there is full and fair disclosure of the financial condition of corporations which register with it or are subject to its jurisdiction. It should be noted at the outset that the S.E.C. under the Securities Act does not pass on the soundness or unsoundness of the

financing of any proposed venture or of the venture itself, although as I understand it, the F.C.C. does make some such determination with respect to applications submitted to it for licenses for broadcast and telecommunications facilities. Hence the fact that the S.E.C. accepts the registration of an offering does not mean that the S.E.C. has determined that the securities involved are a suitable investment or that the proposed venture is adequately financed.

It is interesting to note that only a small percentage of applications for new radio and TV station facilities filed with the F.C.C. involve simultaneous filings of data with the S.E.C. Thus, according to the latest published F.C.C. annual report, which covers the period July 1, 1952 to June 30, 1953, some 853 applications for new AM and TV station authorizations were filed with the F.C.C. Other F.C.C. statistics indicate that more than half of its licensed radio stations have

an average tangible broadcast property of more than $120,000, and that the average tangible broadcast property for all TV stations exceeds $300,000. Nevertheless, during the calendar year 1953 fewer than 18 companies believed to be engaged in radio and television broadcasting filed any information with respect to public securities' offerings with the S.E.C. Only one of these companies filed a registration statement, the remainder either qualifying under the Regulation A exemption, which covers offerings up to $300,000 (an amount proposed by legislation pending in Congress to be raised to $500,000), or placing their securities privately with insurance or investment companies. These figures indicate that the great majority of new TV and radio stations finance the acquisition of needed equipment by means other than securities issues sold to the public in more than one

state, or that, as we have no other grounds for assuming, many of these stations fail to comply with the S.E.C. registration requirements. Perhaps, however, the attention of the communications bar should be called to the provisions of our statutes so that these may not inadvertently be overlooked in the process of qualifying new broadcast facilities. Failure to comply with the registration provisions of our statutes may give rise to criminal as well as civil actions, and substantial civil claims may seriously impair the capital needed for successful broadcast operations. If there is any doubt as to the availability of an exemption from registration under our statutes, it should be borne in mind that under a recent decision by the Supreme Court, S.E.C. v. Ralston Purina Company, the burden of proving the availability of an exemption rests upon the issuer. In this connection, it may be desirable to secure in

advance an advisory opinion from the staff of the S.E.C. as to whether a particular offering involves any requirements under our laws.

It has recently come to my attention that in connection with an application for broadcast authorization pending before the F.C.C., an objection was made claiming non-compliance by the applicant with our registration requirements and the possibility of civil liability in connection therewith. The S.E.C. cannot comment officially on the applicability of the private civil recovery provisions of our statutes, this being a matter left by statute to the parties and the appropriate courts. However, the problem presented emphasizes the desirability of securing an advance opinion from our staff as to any action which the Commission might or might not take. In this type of situation, the Communications Commission could perhaps

request the S.E.C. to participate as amicus communicatione if it requires the benefit of the S.E.C.'s views to settle the problem.

In connection with the Securities Act, it should be noted that Section 2(10) thereof defines a "prospectus" to include a sales communication by radio, and an amendment of this section now pending in Congress will make it clear that a sales communication by television is also covered. Section 5(b) requires the use of a prospectus which meets the content requirements of Section 10. Section 12 provides for civil liabilities, inter alia, for use of a prospectus in violation of section 5 or in connection with fraudulent sales of securities. Similarly, under Regulation A, which governs the availability of the exemption from full registration for securities offerings aggregating less than $300,000, a rule requiring advance submission to

the S.E.C. of communications proposed to be given by an issuer or underwriter to more than ten persons has been uniformly interpreted to require the advance submission of radio and television scripts containing such communications.

Both the F.C.C. and the S.E.C. require certain periodic financial and other reports from enterprises subject to their administrative jurisdiction. Under Sections 13 and 15(d) of the Securities Exchange Act of 1934, the S.E.C. requires issuers of securities registered on a national securities exchange, or of offerings registered under the Securities Act of 1933 which are part of a class of securities totalling more than $2,000,000, to file certain annual and current information relating to their financial and control position. The form now provided for the filing of such annual reports by such issuers, Form 10-K, can be completed

by use of the annual reports required to be filed under Section 219 of the Federal Communications Act. This provision eliminates needless duplication of effort by issuers who are required to file similar reports with both federal agencies.

Turning now to the use of facilities subject to F.C.C. regulation in connection with the advertising and sale of securities, the laws and regulations administered by the S.E.C., except as heretofore mentioned, do not specifically refer to the facilities of radio and television, but such facilities are comprehended in the phrase "means or instruments of transportation or communication in interstate commerce" which recurs in various sections and rules. The use of radio for such purposes was already prominent when the Securities Act was discussed and passed in 1933. The legislative hearings and debates are full of references to the radio

activities of the "Old Counselor," who, it was said, induced many widows and orphans to invest in speculative securities which turned out to be worthless. Currently, radio and television, of course, with their mass audience appeal, have been utilized to disseminate investment information widely and effectively. The fact that these communications media reach a mass audience which may reasonably be presumed to be less informed in matters of finance than the person who reads such news in the financial pages of his newspaper, and the further fact that on radio and television spectacular techniques can be employed which could not readily be reduced to cold print, illustrate the potential danger to the public arising from the use of these media for the dissemination of information on securities.

A case which recently was brought to a successful conclusion may serve as an example. A confidence man who peddled securities in a worthless Idaho goldmine

appropriated to his own use a legend reminiscent of that so superbly played out by Humphrey Bogart in the film, "The Treasure of Sierra Madre." According to this legend, back in the 1880's a pair of prospectors in the Idaho hills uncovered a fabulously rich gold vein with ore assessing at $8,000 a ton. Shortly thereafter the pair fell out and one shot the other. The remaining partner, out to get supplies, left a wheelbarrow to mark the location of the find. Upon returning, he found that an avalanche had covered the wheelbarrow. He was never able to rediscover the mine, which thereafter became known to other gold prospectors in the area, who unsuccessfully tried to locate it, as "the lost wheelbarrow mine." Our confidence man claimed that he had found the mine in 1935, and as proof he prominently displayed an old wheelbarrow, the skull--complete with bullet hole--and part of the skeleton of the dead partner,

and a rusty old Winchester rifle. After this elaborate buildup, the man proceeded to sell stock in the mine to hundreds of victims all over the country. His efforts were materially aided by the fact that early in 1940 he was able to get the popular radio program "We, the People" to recite to an audience of millions the legend of the lost wheelbarrow mine and his alleged discovery of the props, which in fact he had planted himself. Subsequently, the S.E.C. procured this confidence man's indictment for fraud in the sale of securities, but he slipped away to Canada where he continued to fleece unsuspecting investor victims. Last September, one of our attorneys was called up to Western Canada in connection with local complaints concerning this man's activities. Our attorney interviewed this man, who is now well along in years and apparently devoted to his family, and sought to persuade him to return to the United States and make a clean breast of his past

activities. Greatly to our attorney's surprise, the man accepted and voluntarily accompanied our attorney to the States, where he pleaded guilty to the old indictment and is now serving a prison sentence.

Dissemination of investment information over radio and television does not always employ conventional means of broadcast advertising. In a case in which the Commission obtained an injunction some time ago, a company in the Midwest had a fifteen-minute "entertainment" program on TV, entitled "The Chinchilla Story." During this program, principals of the company would appear and talk about chindilla, small fur-bearing animals, some of which were displayed during each broadcast. In reality the company used the program to sell investment contracts consisting of mated pairs of chinchilla, guarantees as to the animals' life and virility, offers of free ranching, and undertakings to

repurchase the offspring of animals sold. Substantial profits were to accrue to investors from the sale of offspring for breeding purposes. We obtained an injunction against the company for failure to register the investment contracts offered as securities and for misrepresentations in the sale of such contracts.

Another uncommon use of radio and television for dissemination of investment information was reported in a recent issue of a prominent weekly magazine. During his radio and TV broadcast a nationally-known commentator discussed new developments with respect to certain companies and suggested the effect of such developments on the price of the companies' securities. Investors who bought in reliance on the "tip" had to pay a price for the securities which was inflated due to the many amateur "buy" orders resulting from the broadcast. A short time after such inflation the price of the securities dropped back to its former level or below, with attendant loss

to the investors who relied on the broadcast "tip." The danger to the investing public is apparent and need for vigorous enforcement of our laws in this area is evident. In this connection, it should be realized that there have been instances of companies deliberately planting "news" for dissemination to the public in order to exercise manipulative or other outlawed activities with respect to their securities. And of course an unwise remark by a prominent commentator concerning the status of the market generally or of the market in a particular security, made to a large unsophisticated broadcast audience, may have disastrous results and could undoubtedly pyramid existing bullish or bearish conditions, thereby accelerating inflationary or recessive tendencies in the economy as a whole.

In those instances where communication of investment information over means of communication in interstate commerce takes the form of touting, Section 17(b) of

the Securities Act provides that the person doing the touting must disclose any consideration he may receive therefor from interested principals.

Radio and television facilities may be, and in at least one recent instance have been, used in connection with the solicitation of proxies for the votes of securities holders with respect to internal corporate matters. Such use may be unlawful where the solicitor is required to comply with the proxy rules of the S.E.C. under Section 14 of the Securities Exchange Act of 1934, where a copy of the script to be used during such broadcast has not been submitted in advance to the S.E.C. or otherwise fails to comply with the applicable rules.

Operators of radio and television stations should be aware of the dangers inherent in broadcasting information relating to investments in specified securities. Where scripts submitted for broadcast by an advertiser or

sponsor of investment information disclose on their face a possible non-compliance with S.E.C. statutes, to the extent this may be feasible, radio and television station operators may be well advised, partly to avoid incurring civil liability on their own parts, to refuse to furnish broadcast time until they obtain advice as to whether there is compliance with the laws administered by the S.E.C. for the protection of the investing public. This practice is now being followed by responsible financial and other newspapers, and it would materially serve that public interest which, in different spheres, both the S.E.C. and the F.C.C. are charged to protect.

In connection with the preparation of cases for possible criminal prosecution, the S.E.C. is often handicapped by rules of the F.C.C. which provide that telephone and telegraph carriers need only retain copies of toll slips or telegrams for six months. Criminal prosecution

under our statutes may be brought up to three years after the last known use of instruments of communication in interstate commerce in the sale or purchase of securities. Often the evidence represented by a toll slip or telegram is vital to the successful prosecution of a case and can only be obtained from the telegraph or telephone office involved. It would therefore be desirable, from our standpoint, if the F.C.C. rules with respect to the required retention of toll slips and telegram copies could be amended to provide for the retention of these items, perhaps on microfilm or in some other bulkless form, for three years instead of six months.

In this connection, you may know that in recent years a great many securities have been sold in the United States by means of telephone calls from Canada, and a large number of such securities have been sold in

violation of the requirements of our statutes, often resulting in substantial injury to American investors. Because of the often inaccurate memory of victims and the fact that they cannot prove where the calls originated, toll slips are of the utmost importance in proving the origin and extent of such calls. United States telephone carriers who relay calls originating in Canada might perhaps be required to keep toll slips of such calls, and where calls originate with a Canadian subsidiary of a United States telecommunications carrier, the carrier should be required to be in a position to obtain copies of the toll slips from their subsidiaries.

One final item relating to the use of a communications facility in the S.E.C.'s own enforcement work may be of interest to this gathering. The S.E.C. leases a ticker service which is equipped by a telegraph company under an arrangement with a subsidiary company of the

New York Stock Exchange. This ticker, which is in constant operation, carries stock exchange quotations within a matter of minutes after transactions take place on the exchange. An employee of the Commission at all times watches this ticker tape for any indication of sudden changes in stock prices or large volumes of trading which cannot readily be accounted for. Such information is reported to experts on the S.E.C.'s staff who determine whether or not any unlawful manipulative activity is shown by such transactions. The speed with which this information comes over the ticker enables the Commission to exercise constant vigilance and to nip in the bud any attempts at manipulation that might be disclosed.

I want to thank all of you very much for your patience and the courteous consideration you have extended to me here today.