



JUSTICE DEPT. HAULS NBC INTO COURT

- Antitrust complaint charges coercion in stations swap with WBC
- Threat to entire fabric of network operations posed by action

THE Justice Dept. threw a noose around the NBC-RCA corporate neck last week. It asked the courts to draw it tight.

By week's end, other broadcast entities were holding their breath.

After 18 months of rumors, innuendos and public utterances of its concern with broadcast network practices, the department filed a civil antitrust complaint against NBC and RCA for alleged coercion against Westinghouse Broadcasting Co. in the Philadelphia-Cleveland stations swap. The suit, filed Tuesday in Philadelphia federal district court, asked the divestiture of the assets of NBC "as the court may deem necessary and appropriate."

RCA-NBC issued a statement the same day claiming that they were the victims of an inter-agency squabble over jurisdiction. They pointed out that the FCC has investigated the allegations and had found it in the public interest to approve the transfers (see text, page 29). Full page ads quoting this statement appeared in Philadelphia newspapers last Friday.

The exchange of stations between NBC and WBC was approved by the FCC last December. NBC traded its owned Cleveland outlets (WTAM - AM - FM and WNBK [TV]) for WBC's Philadelphia outlets (KYW and WPTZ [TV]). WBC also was paid \$3 million.

Although the government complaint stressed the alleged conspiracy on the part of RCA-NBC in the Philadelphia situation, the broad language of some of its sections, plus the unexplained vagueness of some of the "prayers for relief" caused alarm in many network offices.

One non-NBC network official termed the charges "frightening" in their implications.

There was no question, in other quarters, that last week's action should be considered as "only the beginning." This was more or less confirmed by government sources.

Back of the general alarm

were the months of grand jury investigation in Philadelphia on the NBC-WBC transaction and the warning given publicly last September by Asst. Attorney General Victor R. Hansen that Justice was intensively investigating the whole area of network practices. The antitrust chief made these observations before the Celler antitrust committee in New York [B•T, Sept. 24].

The Justice Dept.'s complaint last week referred pointedly to such significant sectors of network practices as the importance of affiliations to tv stations, the representation by networks of not only their owned stations but of independent stations, and the income of networks in 1954 and 1955.

The status of the Philadelphia grand jury investigation was not disclosed. It was noted by some observers that normally a government civil and criminal action is begun at the same time. In this case the civil action was filed alone.

It was observed by knowledgeable antitrust attorneys that a grand jury investiga-

tion is sometimes used by the Dept. of Justice to cross-examine witnesses and to secure documents. The Justice Dept. has no power to subpoena witnesses or documents.

One of the first casualties of the government's action was the NBC purchase of WKNB-AM-TV New Britain, Conn. The FCC on Thursday announced that on its own motion it was postponing the effective date of the initial decision favoring approval of the \$600,000 transaction. The FCC said it had insufficient time to consider the sale. Unless exceptions are noted to an initial decision within 40 days, the recommendations are made final. They would have become final Dec. 10, under these terms [B•T, Nov. 5].

One of the major questions which immediately arose following the filing of the suit was how the Justice Dept. could charge antitrust violation on a matter already considered and approved by the FCC. It was pointed out that this is not a new problem in government circles. It was observed that similar conflicts of jurisdiction had involved Justice with the Maritime Board, Civil Aeronautics Board and Interstate Commerce Commission. In one of the latest such decisions the government suffered defeat, the Supreme Court in 1952 asserting that the Maritime Board's approval of a shipping agreement removed the shipowners from prosecution under the antitrust laws (Far East Conference case).

The question also was raised as to whether the Justice Dept. had offered RCA-NBC a settlement under its avowed policy of pre-filing negotiations. This policy was made public by then Asst. Attorney General Stanley N. Barnes in an appearance before a House Judiciary subcommittee in 1955. It was understood that this policy had been honored more in the breach than in the observance and that RCA-NBC had not been approached.

It also was observed that if the government wins this suit, Westinghouse could file



HAPPY BIRTHDAY!