

tion, and reduced the ability of Westinghouse to compete with RCA and others in the sale of tv transmitter and receiver equipment.

In its discussion of NBC, the Justice Dept. said that NBC furnishes network service to about 200 "independent" television stations and the same number of radio stations, as well as to its own o&o stations. It referred to the fact that NBC also acts as advertising sales representative for all members of its owned stations as well as for some independently owned stations. Total revenues of NBC account for over 23% of RCA's total annual revenues, the government declared.

In a review of the "trade and commerce involved," the Justice Dept. began by stating that the sale of advertising is essential to the operation of television and radio networks, station groups and broadcasting stations. It added that "vigorous" competition for national spot advertising and local advertising exists among networks, network station groups, independent station groups and independent stations. It also maintained that there is competition among the networks, and between the networks and independent representatives, for representation of independent stations and station groups in the sale of national spot advertising.

"Affiliation," the government complaint said, "makes television station operations more profitable and is generally essential to the economic survival of television stations except in the three largest major markets. Time periods adjacent to popular network programs are particularly attractive to advertisers for local and national spot advertising. Station breaks, during which the broadcasting station is identified at regular intervals, provide valuable advertising for the station owner."

Networks Revenues in 1955

The Justice Dept. reported that in 1955, (including owned stations) NBC's television revenues amounted to \$159 million; in 1954, \$120 million. It cited CBS's revenues for 1955 as \$153 million; for 1954 as \$123 million; ABC's in 1955 as \$54 million, in 1954 as \$44 million. It said that in 1954 total television revenue was \$538,122,000; of which network time sales accounted for 45%; national spot 33% and local 22%.

The government also pointed out that Philadelphia is the fourth market and Cleveland the tenth market of the U. S. in terms of population and retail sales. It pointed out that in 1954 NBC owned vhf television outlets in New York, Chicago, Los Angeles, Cleveland and Washington (markets 1, 2, 3, 10 and 11) and that WBC owned stations in Philadelphia, Boston and San Francisco (markets 4, 6 and 7). The Justice Dept. stated that WBC was the only non-network station owner with three vhf stations in markets 4 through 7. It added: "In this capacity, it was an important competitor of defendant NBC and other station owners for advertising in the eight primary markets."

The government formally asked the court to:

1. Find that the "aforesaid combination or conspiracy and the aforesaid contract of May 16, 1955 (between NBC and WBC) in violation of Section 1 of the Sherman Act."
2. Order "such divestiture" of the assets

of NBC as it may "deem necessary and appropriate."

The government also asked the court that it be given "such other and additional relief as may be proper," and that the government recover the costs of the suit.

In announcing the filing of the suit, Attorney General Herbert A. Brownell Jr. said:

"The purpose of this civil complaint is to enforce the antitrust laws in the broadcasting industry. Where, as here alleged, a network has used its power to gain a competitive advantage as a station owner over its competitors, it is the duty of the Government under

AT STAKE FOR NBC

IN its complaint against RCA-NBC, the Justice Dept. asked the court to divest NBC (RCA is pointedly omitted) of such assets as the bench "may deem necessary and appropriate." This paragraph refers to the authority granted the court by Sect. 4 of the Sherman Act and Sect. 313 of the Communications Act of 1934.

Sect. 313 of the Communications Act applies all of the antitrust laws of the United States to "the manufacture and sale of and to trade in radio apparatus and devices entering into or affecting interstate or foreign commerce and to interstate or foreign radio communications."

It declares that whenever a licensee is found guilty of antitrust violations, the court may, in addition to other penalties, revoke the station licenses of the defendant.

Sect. 311 of the Communications Act directs the FCC to refuse a station license or permit to any person whose license has been revoked by a court under Sect. 313.

NBC owns WRCA-AM-FM-TV New York, WRC-AM-FM-TV Washington, WMAQ-AM-FM and WNBQ (TV) Chicago, WRCV-AM-TV Philadelphia, KNBC-AM-FM San Francisco, KRCA (TV) Los Angeles, WBUF-TV Buffalo (N.Y.) and is buying WKNB-AM-TV New Britain (Conn.). FCC regulations limit the ownership by one party to seven am, seven fm and seven tv stations (no more than five in the vhf band).

the Sherman Act to seek to remedy the effects of this offense and to prevent similar offenses in the future."

Assistant Attorney General Victor R. Hansen, antitrust chief of the Justice Dept., said:

"This is the first case filed by the Dept. of Justice under the antitrust laws involving the activities of any television network. Congress, in passing the Communications Act in 1934, expressed its policy that the antitrust laws should apply to the broadcasting industry. Accordingly, the conduct of RCA and NBC must meet the same stand-

ards of accountability under the Sherman Act as that of any other American business."

It was in June of 1955 that NBC and WBC asked the FCC to approve the exchange of the Philadelphia and Cleveland stations. Right from the start there were unofficial reports that Westinghouse was bowing to the exchange because it feared loss of its NBC affiliations not only in Philadelphia but also in Pittsburgh and Boston.

These rumors were used as a basis for a charge by WGR-TV Buffalo, N. Y., in its objection to the \$312,500 purchase by NBC of ch. 17 WBUF-TV Buffalo (later withdrawn). The charges and rumors impelled the FCC to send an investigating team to Philadelphia and New York. Later, the Commission sent both parties a McFarland letter indicating that a grant was not possible without a hearing due to the charges of coercion and questions of overlap and concentration.

Both NBC and Westinghouse replied, with covering letters by Brig. Gen. David Sarnoff, NBC chairman, and E. V. Huggins, chairman of WBC, urging approval.

On Dec. 28, 1955, the FCC announced that it had approved the transactions by a vote of six to one. Comr. Robert T. Bartley dissented, holding that a full hearing should be held. This position was countered by Comr. John C. Doerfer who issued a concurring statement, the gist of which was that WBC had exercised a "business judgment" in the matter.

It was learned at that time that on Dec. 27, the day before the FCC approval was announced, the Justice Dept.—which had been kept advised of the purported charges of coercion—informed the FCC that it was investigating the situation. The Justice Dept. did not ask the FCC to defer action.

Sent to FCC Chairman

The Justice Dept.'s communication, over the signature of then Asst. Attorney General Stanley N. Barnes in charge of antitrust, was directed to FCC Chairman George C. McConaughy.

Mr. McConaughy, appearing before the Celler committee last March, explained that the grant had been approved a week before the announcement, on Dec. 21 to be exact, and that the hiatus between the decision and the announcement was due to the need to await Comr. Bartley's dissent and Comr. Doerfer's concurring statement.

Rep. Emanuel Celler (D-N. Y.), chairman of the House Judiciary and antitrust subcommittee, pressed Mr. Barnes on why Justice had not asked the FCC to defer action on the transaction. Mr. Barnes explained that communications was a field where the FCC and Justice exercised "concurrent jurisdiction." He added that it was his opinion that the FCC action did not foreclose an antitrust suit by the Justice Dept. if one was warranted.

In June WBC President Don McGannon testified before the Magnuson committee that Westinghouse would still have owned the Philadelphia ch. 3 outlet had it not been faced with the probable loss of NBC affiliation. He said that the network intimated that if WBC did not agree to the exchange, NBC would acquire another station in