

NOW TV HAS A CONSENT DECREE

Some key network practices must stand antitrust tests from here on

The Dept. of Justice last week got itself into the regulation of broadcasting, and the end results of the move are still being debated by broadcasters and government communications administrators.

The move was through a consent judgment entered Sept. 22 in Philadelphia federal court and agreed to by NBC-RCA and the Justice Dept.

Ending the antitrust suit against NBC-RCA which resulted from the 1955 exchange of stations between NBC and Westinghouse Broadcasting Co., the consent decree puts the hobbles on the network in two areas:

- NBC cannot buy or exchange any of its stations for other properties without clearance with the Dept. of Justice. This applies to the top eight markets.

- NBC cannot add any more stations to its spot sales representative list (except its owned stations) without clearing this also with Justice.

The nub of these clearances, according to the consent decree, is a simple one: the Justice Dept. must be certain that the network has not used its affiliation powers to "coerce" anyone else into selling or exchanging stations or into agreeing to appoint NBC Spot Sales as representative. If Justice felt coercion had been used, it could refer the question to the federal court for a determination.

By implication, the judgment approved—or at least did not decry—the principle of spot representation by networks. Under terms of the judgment spot representation would become objectionable only if it were achieved by the coercive use of the network's power of affiliation.

This concept is in some degree of conflict with a proposal now pending before the FCC which would prohibit networks from spot representation of any stations other than those they own.

This was one of the recommendations made by the Barrow Report, following the FCC's 1957-58 network investigation.

Forced Sale • The consent judgment, filed Sept. 22, obligates NBC to dispose of the Philadelphia stations (WRCV-AM-TV). NBC is given a period of a little over three years to carry out this divestiture. This would be until Dec.

31, 1962.

The whole consent decree runs for nine years from the date NBC disposes of its Philadelphia stations, but not less than 10 years from last Tuesday.

This means that NBC is answerable to the court for that length of time when any items specified in the decree are involved.

The judgment specifies that the issues have not been litigated and that the terms of the agreement do not constitute an admission by NBC of the truth of the allegations.

An official NBC statement, issued on the same day that the consent agreement was filed, stated that it will acquire stations in other major markets, "thus maintaining the station ownership support needed for the continuation of an effective network service."

It also said NBC network service to

the Philadelphia area will continue without interruption.

The statement continued:

"The settlement comes at a time when broadcasting is entering into one of its most important periods—a period of vastly increased use of the new medium of color television, of new programming concepts, and of expanding activities. It is a period that calls for NBC's undivided attention and fullest energies in meeting the needs of the public, its affiliates and advertisers."

Attorney General William P. Rogers hailed the consent judgment as the "successful conclusion of the antitrust suit."

The Origin • The suit was brought in 1956 on charges that NBC had coerced Westinghouse into agreeing to the swap of stations by threatening to withhold or cancel NBC affiliations.

Westinghouse gave up its Philadel-

How it happened

The history of the NBC-Justice Dept. consent decree, filed last week in U.S. District Court in Philadelphia, covers a span of more than four years. A brief chronology follows:

May 16, 1955 • NBC and Westinghouse sign agreement to exchange stations.

June 15, 1955 • Application for FCC consent filed with Commission.

Dec. 21, 1955 • FCC approves exchange after investigation of unofficial allegations that NBC used power of affiliation to pressure Westinghouse into agreeing to exchange. Vote is 6 to 1, with Comr. Robert T. Bartley dissenting and calling for a hearing. Mr. Bartley also raised question whether FCC approval would debar Justice Dept. or other government agencies from acting against NBC on antitrust grounds.

Dec. 27, 1955 • Justice Dept., which had been kept advised by FCC of coercion rumors, advises FCC it is "investigating" charges, but does not ask Commission to refrain from action.

Dec. 28, 1955 • FCC announces approval.

March, June and Oct., 1956 •

Subject of NBC-Westinghouse swap taken up by Rep. Emanuel Celler (D-N.Y.), chairman of House Judiciary subcommittee. Topic is discussed by then FCC Chairman George C. McConaughy, then Assistant Attorney General Stanley N. Barnes and Victor R. Hansen, and also before Senate Commerce Committee by Donald H. McGannon, president of Westinghouse Broadcasting Co.

Dec. 4, 1956 • Justice files suit against NBC and RCA, charging coercion.

Jan. 10, 1958 • District Judge William H. Kirkpatrick rules Justice Dept. filed antitrust suit too late; it should have appeared as party before FCC while Commission was considering case.

Feb. 24, 1959 • Supreme Court reverses Judge Kirkpatrick, sends case back for trial. The court said it was the primary job of Justice, not the FCC, to enforce antitrust laws.

Sept. 22, 1959 • Consent judgment filed in Philadelphia District Court.