

phia radio and tv properties in exchange for NBC's Cleveland properties plus \$3 million. The Cleveland stations are now KYW-AM-FM-TV. The Philadelphia stations were Westinghouse's WPTZ (TV) and KYW. Westinghouse bought WPTZ from the Philco Corp. in 1953, paying \$8.5 million.

A highly placed NBC executive explained that NBC agreed to the consent judgment when it became apparent that the Justice Dept. was determined to use this as a test case for the application of Sec. 313 of the Communications Act. This provides that a judge may, when a broadcast licensee is found guilty of an antitrust violation, order the revocation of the license of a broadcast station as well as other penalties provided in law.

The fact that Justice apparently was prepared to go all out to attain this result, the network source explained, convinced NBC that the risk was too great—even though it felt sure it had a strong defense in the case.

Keeping a Quota • Settlement of the suit, it was pointed out, enables NBC to retain its total number of licenses, although it does have to move out of Philadelphia for the period of the decree.

To fight the suit and lose, the NBC executive explained, could have meant the possible loss of all of NBC's owned and operated stations.

This point, whether Sec. 313 permits a judge to revoke all licenses of a party found guilty of antitrust violations or only the one involved in the suit, has

not been adjudicated.

What It Means • At the FCC and among Washington communications lawyers the news of the consent decree was received with astonishment and some expressions of dismay.

A tangle of conflicting authorities over broadcast activities was foreseen by some who studied the document. This would come about, it was observed, because of the detailed requirements spelled out in the settlement that give the Justice Dept. an official position in NBC's activities involving the purchase of stations and the addition of more stations to its spot representative list.

Heretofore, it was pointed out, this has been the exclusive preserve of the FCC.

One reason for dismay in some circles was that one of the settlement's provisions specifically says that NBC must first clear with Justice on a purchase before it can file for FCC approval.

The astonishment was expressed at the wide ranging scope of the settlement. NBC salvaged no relief on any of the issues brought up by the government, it was noted.

This observation was related in several instances to the settlement of the government's antitrust suit against AT&T several years ago. In this suit, the Justice Dept. not only asked for revision of Bell System's patent practices, but also for divorcement of Western Electric from AT&T ownership. Western Electric is the manufacturing

arm of AT&T. In the settlement, AT&T was permitted to retain ownership of Western Electric.

Reaction of Regulators • FCC officials were guarded in their comments, but definitely intrigued by the nature of the settlement's details. Most commissioners were reluctant to comment on the ground they had not studied the consent decree yet.

One commissioner hazarded a guess that there was bound to be some conflict between the Justice Dept. and the FCC, since it appeared that the Justice Dept. had substituted its judgment for the FCC's.

An FCC aide expressed the possibility that the Commission might consider the settlement as a reflection on the character qualifications of NBC. The point he made was that this was the first antitrust settlement which directly involved broadcast activities. In other antitrust decrees involving broadcasters, it was some other business practice of the licensee that was involved, not broadcasting.

He recalled that the *Lorain Journal* antitrust case was the only other one where broadcasting was involved. There the newspaper refused to accept advertising from merchants who advertised on the local Ohio radio station.

In several other newspaper cases, where the newspapers owned radio or tv properties (*Kansas City Star*, *New Orleans Times-Picayune*), the antitrust suits were aimed at newspaper practices, not broadcast practices.

The obverse of this viewpoint, the same person noted, would be that if NBC submitted a potential purchase to the Justice Dept. and the court and both approved the transaction, this might be construed as "purging" the network of the implications of disqualification in subsequent proceedings before the FCC.

As a side issue in the case, the outcome of the Philco protest against the license renewals of the network's Philadelphia stations is in question. Philco had protested NBC's ownership in Philadelphia on the ground that it gave the network's parent company, RCA, an unfair advantage over Philco's home town. The FCC at first refused to accept Philco as a party in interest, but a U.S. Supreme Court decision earlier this year reversed the Commission. An oral argument on Philco's protest is scheduled to be heard by the FCC *en banc* Oct. 1.

Here's what the consent judgment imposes on NBC:

- It orders divestiture of the Philadelphia radio and tv stations no later than Dec. 31, 1962.

- It prohibits NBC from owning a Philadelphia tv outlet until after termi-



In black at last • Arthur Hull Hayes, president of CBS Radio, had good news to report as he opened the sixth annual convention of the CBS Radio Affiliates Assn. last Wednesday in New York. He said the network will make money in the last quarter of 1959, and predicted a business upswing in the coming year. Shown at the speakers' table are (l to r) William A. Schudt Jr., vice president for affiliate relations; Howard G. Barnes, vice president for network programming; Mr. Hayes; Charles C. Caley, WMBD Peoria, Ill., chairman of the affiliates assn. board. For story covering convention activities see page 124 and AT DEADLINE, this issue.