

Nine-year history of that trade in Philadelphia

It took nine years for the NBC-Philco case to reach the unexpected juncture described in the FCC's decision last week. It has been a long journey, and an expensive one. Courts have been way stations. And the road on which the network, Philco, RKO General and Westinghouse Broadcasting Co. traveled has had twists and turns, on occasion passing through the shadows of big business dealings having nothing to do with broadcasting.

The end of the road may not be reached yet. The decision, granting renewal of NBC's licenses for the Philadelphia stations, provided the network swaps the stations for WBC's Cleveland properties, may yet be appealed by one or more of the parties involved. But how did the case reach this point? The route can be retraced by using dates as signposts.

June 15, 1955—FCC receives applications for a swap of NBC's Cleveland stations for Westinghouse Broadcasting Co. properties in Philadelphia—the stations now known as WRCV-AM-TV. Besides its Cleveland stations, NBC proposed giving WBC \$3 million.

Dec. 21, 1955—FCC grants the applications, and within a month

NBC is in business in Philadelphia.

Dec. 4, 1956—Justice Department files civil suit against NBC and its parent RCA, charging them with antitrust violation in connection with swap. Justice says network coerced WBC into making the exchange by threatening to withhold or cancel network affiliations with WBC stations.

July 18, 1957—FCC renews NBC's licenses in Philadelphia, but reserves the authority to take whatever action it regards as appropriate following disposition of the antitrust charges. These charges included a \$150 million suit brought against RCA by Philco.

Aug. 14, 1957—Philco files a protest against the renewal grants. It said the commission should consider the antitrust charges filed against NBC and RCA, as well as their trade practices. Philco also said the commission should determine whether NBC's ownership of the Philadelphia stations violates the agency's rules prohibiting concentration of control of mass media. The FCC dismissed the protest, but the U.S. District Court of Appeals, on June 29, 1961, ordered the commission to hold an evidentiary hearing. As a result, issues relating to the commission's grant of the stations' renewal for the

1957-60 period were made part of the hearing in the NBC-Philco contest.

Sept. 22, 1959—Justice Department terminates antitrust action against NBC and RCA on their agreement to dispose of the Philadelphia properties by Dec. 31, 1962. (This deadline has been extended twice; it is now Sept. 30, 1964.)

December 1959—NBC reaches informal agreement with RKO for the exchange of the Philadelphia properties for RKO's Boston stations, WNAC-AM-TV and WRKO-FM. The agreement also provided for the sale to RKO of NBC's Washington stations, WRC-AM-FM-TV, for \$11.5 million provided NBC was able to purchase one or more stations elsewhere.

March 1960—NBC agrees to buy KTVU(TV) Oakland—San Francisco for \$7.5 million from San Francisco-Oakland TV Inc. Applications covering the proposed changes in Boston, Philadelphia, Washington and San Francisco were filed with the commission in June 1960.

May 1960—NBC applies for renewal of its Philadelphia licenses, but Philco challenges the network for its TV property. Philco Broadcasting Co., a subsidiary organized that year, files a mutually exclusive application

federal court that requires it dispose of the Philadelphia stations. The judgment was entered in an antitrust suit brought by the government as a result of the exchange with WBC.

The deadline for disposing of the properties, originally set for Dec. 31, 1962, has twice been delayed; it is now Sept. 30. But commission officials are confident that in view of its ruling, the court will grant another extension.

The decision rejected the recommendations of Chief Hearing Examiner James D. Cunningham. In an initial decision handed down in November, he recommended renewal of the NBC licenses and approval of the swap with RKO (BROADCASTING, Nov. 25, 1963).

The decision, furthermore, overturned the commission action in 1955 approving the NBC-Cleveland swap. That decision was reached after a staff investigation, which turned up most of the facts available to the commission in reaching its latest decision.

Harsh Decision ■ It is also a harsher judgment than that involved in the consent decree. The Justice Department placed no requirements on how NBC

is to dispose of its Philadelphia properties.

The commission said that decree doesn't prevent it from requiring NBC to deal with WBC if it wants its licenses renewed. The consent decree, the commission said, involves antitrust matter within the competence of the court. The commission, it added, must determine whether an exchange with RKO would be in the public interest.

The decision caught officials and attorneys of all the parties by surprise. Spokesmen for NBC, WBC, Philco and RKO declined comment until they had time to study the decision in detail.

But it seemed certain that one or more of the parties would ask the commission for reconsideration and there was at least the possibility of a court appeal. Commission attorneys, however, were confident the decision could be made to "stick."

The commissioners voting in the case were Chairman E. William Henry, Rosel H. Hyde, Robert T. Bartley, Robert E. Lee, and Frederick W. Ford.

Commissioners Kenneth A. Cox and Lee Loevinger did not participate. Com-

missioner Cox disqualifies himself from sitting on all such adjudicatory matters that, like the NBC-Philco case, were in hearing while he was chief of the commission's Broadcast Bureau. Commissioner Loevinger didn't participate because he was chief of the Justice Department's Antitrust Division when it was involved in various aspects of the case.

The unusual, if not unorthodox decision, was threshed out in a series of five or six meetings in which the commissioners participated with the barest minimum of staff. The tightest security was maintained—a fact that contributed to the impact the decision had when it was finally released.

Those who participated in the discussions were still reluctant to discuss the case last week. But it appeared that the concept finally adopted could not be credited to any one individual. Several commissioners and staff people were reported to have hit upon the proposal independently.

Complex Decision ■ The commission, in its private meetings, faced this complex situation: