

for a new television station on channel 3. At this point, a number of other developments crop up to threaten NBC's pyramid of sales and exchange agreements.

June 29, 1960 — KRON-TV San Francisco, an NBC affiliate — and fearful of losing that affiliation — asks FCC for a hearing on the various assignment applications involving NBC, particularly that relating to KTVU. Aug. 3 — WBC, licensee of stations in Boston and San Francisco, also asks for a hearing on the proposed assignments. Sept. 6 — The Chronicle Publishing Co., licensee of KRON-TV, files an application for a station on channel 4 in Washington — in competition with NBC's application for renewal of its license for WRC-TV.

These various filings had an effect: On Oct. 31, 1961, the owner of KTVU terminated the agreement to sell to NBC. As a result, applications for the assignment of NBC's Washington stations to RKO were dismissed, and the Chronicle dropped its application for a Washington station.

December 1961 — Philco Corp. was acquired by the Ford Motor Co.

Oct. 22, 1962 — The FCC hearing begins on the renewal of the NBC licenses in Philadelphia, the proposed exchange of those properties for RKO's stations, and on Philco's application for a new station on chan-

nel 3 Philadelphia. In all, 20 issues were specified.

January 1963 — NBC-RCA and Philco-Ford reach agreement to settle all outstanding differences. RCA agrees to pay Philco \$9 million for patent rights, and NBC and Philco agree to make a joint request to the FCC for the withdrawal of Philco's application for channel 3. The second agreement provided a payment of up to \$550,000 by NBC for expenses incurred by Philco in prosecuting its application. But this agreement was subject to FCC approval.

March 1963 — FCC refuses to approve withdrawal agreement, but asks Philco whether it will continue to press its application. Philco decides to stay in fight.

May 23, 1964 — Record is closed.

November 1963 — Chief Hearing Examiner James D. Cunningham issues initial decision that is complete, if preliminary, victory for NBC. He would affirm 1957 grant of renewal applications for NBC stations in Philadelphia, grant the 1960 applications and approve the swap of those stations for RKO's in Boston.

March 26, 1964 — Oral argument is held before commission en banc.

July 29, 1964 — Commission issues its decision.

And the next stop? Petitions for reconsideration filed with the commission perhaps, then the possibilities of court appeals after that.

NBC, seeking to comply with the consent decree, wanted to exchange its Philadelphia properties for RKO's Boston properties. But serious charges had been leveled against the network in connection with the WBC exchange. And the record, the commission felt, supported those charges.

Furthermore, Boston was one of the markets NBC was interested in entering at the time it acquired the Philadelphia stations. In its early negotiations with Westinghouse, NBC proposed a four-city trade — KYW-AM-TV Cleveland and WRC-AM-FM-TV Washington for WRCV-AM-TV Philadelphia and WBZ-AM-FM-TV Boston.

And the commission decided NBC should not be allowed to "retain the fruits of its misconduct and employ them as a means of gaining access to the Boston market."

True, the commission in 1955 had approved the Cleveland-Philadelphia exchange after investigating the facts. But the commission said, there had been important developments since then — the principal one being that a hearing had

been held on the charges.

The hearing was ordered by the federal appeals court in Washington as a result of a protest filed by Philco in connection with the commission's action renewing the licenses of WRCV-AM-TV in 1957.

Facts in Full — The commission felt that, for the first time, it had in a hearing record the full facts concerning NBC's conduct in acquiring the Philadelphia stations and that the facts showed that NBC used "coercive and inequitable" conduct to obtain them.

(One piece of new information the commission considered important involved a conversation between Brigadier General David Sarnoff, chairman of RCA, and E. V. Huggins, then chairman of WBC and vice president of the parent Westinghouse Electric Corp., in November 1954. In that conversation, at a time when the Cleveland-Philadelphia exchange talks were moving slowly, General Sarnoff reportedly questioned WBC's good faith and said he couldn't give assurances regarding the affiliation WBC wanted in Pittsburgh unless he was sure WBC would proceed with the

trade negotiations. These assurances were forthcoming, and a few days later NBC gave a commitment regarding the Pittsburgh affiliation.)

Consequently, the commission felt it couldn't be bound by the 1955 decision. The court, the decision said, "held that it is our responsibility . . . to 'build up a record sufficient to support [our] final conclusion.'"

The commission said it would be inequitable simply to strip NBC of its Philadelphia licenses. That would take from the network "considerably more than the fruits of its conduct."

The commission had a word of praise for the network's "many distinguished contributions to American broadcasting." But it added that the public interest demands that NBC be deprived of the product of its wrong doing and that makes the network's "broadcast record immaterial."

The commission was completely unimpressed by Philco's application. The commission noted that the company had once owned a station on the channel (WPTZ-TV) but sold it to Westinghouse in 1953 for \$8,600,000. Since then, the commission said, Philco has switched its commitments to the public interest in broadcasting on channel 3 "whenever it appeared that its interests in manufacturing would be served." The commission recalled that Philco proposed withdrawing from the contest with NBC on payment by NBC of more than \$500,000 for expenses in prosecuting the application. When the commission disapproved the agreement, Philco decided to stay in the fight. This pattern of conduct, the commission said, "effectively bars a grant to Philco."

Considering all of these factors, the commission decided that justice could be done and the public interest served "by effecting the restitution of the Philadelphia AM and TV stations to Westinghouse — by redressing the wrong which this record shows has been done." If the network refuses to accept the condition, the commission said, the applications for renewal will be denied and the channel will be opened for new applications.

Conflict of interest bill

A bill to modify conflict of interest provisions of the Communications Act was introduced last week by Sen. Warren G. Magnuson (D-Wash.), chairman of the Senate Commerce Committee.

The bill (S 3033) would liberalize restrictions on FCC members, which, the commission feels, are too harsh and tend "to discourage potential applicants from employment." The commission requested the changes in a message accompanying and explaining the draft bill (BROADCASTING, July 20).