

Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. Radio Corporation of America and National Broadcasting Company, Inc., U.S. District Court, E.D. Pennsylvania, 1959 Trade Cases ¶69,459, (Sept. 23, 1959)

United States v. Radio Corporation of America and National Broadcasting Company, Inc.

1959 Trade Cases ¶69,459. U.S. District Court, E.D. Pennsylvania. Civil Action No. 21,743. Filed September 23, 1959. Case No. 1311 in the Antitrust Division of the Department of Justice.

Sherman Antitrust Act

Combinations and Conspiracies—Consent Decree—Television Broadcasting Industry—Practices Enjoined—Coercion—Network's Acquisition of Ownership Interest in Television Broadcasting Stations.

—A radio and television manufacturer and its subsidiary, a radio and television network, in a civil action charging them with conspiring to obtain ownership of very high frequency television broadcasting stations in five of the eight largest markets in the United States by unlawfully using the network's power to grant or withhold network affiliation, were each prohibited by a consent decree from coercing any person to sell any ownership in any station by terminating, or refusing to enter into, a network affiliation agreement with any other station controlled by that same person. Unless notice was given to the Government (thereby affording it an opportunity to apply to the court for a determination of whether or not coercion has been used), the defendants were also enjoined from (1) acquiring any substantial ownership interest in any station in any one of seven market areas, or (2) representing stations in their sale of non-network advertising to national advertisers. In an area where they had allegedly acquired radio and television broadcasting facilities by coercion, the defendants were prohibited from acquiring any ownership interest in any television broadcasting station for the duration of the decree, and any ownership interest in any standard (radio) broadcasting station for a period of five years from the entry of the judgment.

Department of Justice Enforcement and Procedure—Consent Decree—Specific Relief —Divestment of interest in Television Broadcasting Stations.—A radio and television manufacturer and its subsidiary, a radio and television network, were ordered by a consent decree to sell, exchange, or otherwise dispose of all right, title, and interest in a television broadcasting station and a standard (radio) broadcasting station which the network had allegedly obtained by coercion. The decree also provided that the disposition should be to a person or persons not controlled directly or indirectly by either defendant and in which neither of them had any substantial ownership interest. The decree further provided for the giving of written notice to the Government of the proposed disposition.

Department of Justice Enforcement and Procedure—Consent Decree—Duration of Decree.—A consent decree entered against a radio and television manufacturer and its subsidiary, a radio and television network, provided for the termination of the decree nine years after the network's compliance with a divestment provision of the decree, but in no event earlier than ten years from the date of the entry of the consent judgment.

For the plaintiff: Robert A. Bicks, Acting Assistant Attorney General, Joseph H. McGlynn, Jr., U. S. Attorney, Philadelphia, Pa., W. D. Kilgore, Jr., Charles L. Whittinghill, Bernard M. Hollander, and Raymond M. Carlson, Attorneys, Department of Justice.

For the defendants: Schnader, Harrison, Segal & Lewis (by Bernard G. Segal and Edward W. Mullinix); Cahill, Gordon, Reindel & Ohl (by John F. Sonnett); Thomas E. Ervin, Vice President and General Attorney for National Broadcasting Company, Inc.; and Robert L. Werner, Vice President and General Attorney for Radio Corporation of America.

For a prior opinion of the U. S. Supreme Court, see 1959 Trade Cases ¶ 69,284, reversing a decision of the U. S. District Court, Eastern District of Pennsylvania, 1958 Trade Cases ¶68,913; for a prior decision of the District Court, see 1957 Trade Cases ¶ 68,788.

Final Judgment

[Consent Decree]

KIRKPATRICK, District Judge [*In full text*] : Plaintiff, United States of America, having filed its complaint herein on December 4, 1956; the defendants having filed their answer to the complaint, denying the substantive allegations thereof; the Supreme Court of the United States having rendered its opinion with respect to the third, fourth and fifth defenses raised by defendants' answer, as reported in *United States v. Radio Corporation of America*, et al. [1959 TRADE CASES ¶ 69,284], 358 U. S. 334 (1959) ; and plaintiff and the defendants by their respective attorneys having severally consented to the entry of this Final Judgment without trial or finding on any issue of fact herein, without adjudication by this Final Judgment of any issue of law herein, and without this Final Judgment constituting evidence or an admission by either of them in respect to any such issues;

Now, Therefore, before any testimony has been taken, without trial or finding on any issue of fact herein, without adjudication by this Final Judgment of any issue of law herein, and upon consent of the parties as aforesaid, it is hereby ordered, adjudged and decreed, as follows:

I.

[Jurisdiction]

The Court has jurisdiction of the subject matter of this action and of the parties hereto. Defendants having agreed, solely in order to permit entry of this Final Judgment, to waive the defense asserted by them that the complaint fails to state a claim upon which relief may be granted, the Court adjudges that the complaint states claims upon which relief may be granted against the defendants under Section 1 of the Act of Congress of July 2, 1890, entitled "An Act to protect trade and commerce against unlawful restraints and monopolies," commonly known as the Sherman Act, as amended.

II.

[Definitions]

As used in this Final Judgment:

- (A) "Person" means any individual, partnership, corporation, association or other legal entity;
- (B) "NBC" means the defendant National Broadcasting Company, Inc.;
- (C) "RCA" means the defendant Radio Corporation of America;
- (D) "WRCV-TV" and "WRCV" mean, respectively, the television and the standard broadcast stations presently owned by NBC in Philadelphia;
- (E) "NBC network affiliation agreement" means an agreement between NBC and the owner of a television broadcast station for affiliation of the station with the television network of NBC;
- (F) "Broadcast station" means a station licensed by the Federal Communications Commission in the television or standard broadcast band transmitting signals intended to be received by the general public;
- (G) "National spot representation" means representation of a television broadcast station (other than such a station owned directly or indirectly by NBC or RCA) in sales by such station of non network advertising to national advertisers;
- (H) "Television network" means an organization which provides interconnection with, and a national program service to, television broadcast stations not owned by such organization and which sells advertising time to national advertisers in connection with such programs; and
- (I) "Market area" means a metropolitan area as defined by the United States Bureau of the Budget in its publication dated June 1959 entitled "Standard Metropolitan Statistical Areas"; if new issues of such publication replace the June 1959 issue, the most recent issue shall be used. To determine the population rank of a market area, the population statistics in the most recent issue of "Survey of Buying Power", a publication of the

magazine "Sales Management", shall be used. A broadcast station shall be considered to be in a market area if the transmitter of such station is located Within a radius of twenty-five miles from the main post office of the principal city in such area.

III.

[*Applicability*]

The provisions of this Final Judgment applicable to either defendant shall apply to such defendant and to each of its subsidiaries, officers, directors, employees, agents, successors and assigns, and to all other persons in active concert or participation with either such defendant who receive actual notice of this Final Judgment by personal service or otherwise.

IV.

[*Coercion—Acquisitions*]

NBC, and RCA during any period of time when it directly or indirectly controls or has a substantial ownership interest in a television network, are each enjoined and restrained from:

(A) Coercing or attempting to coerce any person to sell or otherwise transfer any ownership interest in any broadcast station to either defendant, or to any person directly or indirectly controlled by either defendant or in which either defendant directly or indirectly has a substantial ownership interest, by terminating or threatening to terminate or refusing or threatening to refuse to enter into, an NBC network affiliation agreement with any other television broadcast station controlled by the same person or in which such person has a substantial ownership interest;

(B) Acquiring directly or indirectly any substantial ownership interest in any television broadcast station in the market area of New York, Chicago, Los Angeles, Detroit, Boston, San Francisco, or Pittsburgh, unless

(1) defendants shall have given written notice of the proposed acquisition to plaintiff, affording plaintiff opportunity to apply to this Court within thirty days after such notice for a determination by the Court as provided in clause (2) hereof, and

(2) if plaintiff shall have so applied, the Court shall have determined that the consent of the other party to the proposed acquisition was not obtained by acts or conduct of NBC or RCA relating in any way to the negotiations for the proposed acquisition, which acts or conduct constitute either (a) an unreasonable restraint of trade (as to which issue plaintiff shall have the burden of proof) or (b) a violation of subsection (A) of this Section IV (as to which issue the defendants shall have the burden of proof);

Provided, however, that the shifting of a television broadcast station from one channel of the television broadcast band to another channel in the same market area, when such shifting results from a change in allocations by the Federal Communications Commission, shall not be deemed to be the acquiring of an ownership interest in a television broadcast station within the meaning of this subsection (B); and, *Provided further*, that any party hereto may at any time upon ten days' written notice to the other parties apply to this Court for a modification of the list of the seven market areas specified in this subsection (B), when the list specified, with Philadelphia included, no longer represents the first eight market areas in the United States in terms of population of the respective areas; and

(C) Undertaking the national spot representation of any television broadcast station other than those listed on Exhibit A hereto unless

(1) defendants shall have given written notice of the proposed spot representation to plaintiff, affording plaintiff opportunity to apply to this Court within thirty days after such notice for a determination by the Court as provided in clause (2) hereof, and

(2) if plaintiff shall have so applied, the Court shall have determined that NBC has not coerced the owner of such station to engage NBC for the national spot representation of the station by terminating

or threatening to terminate or refusing or threatening to refuse to enter into, an NBC network affiliation agreement with the station sought to be represented or with any other television broadcast station controlled by such owner or in which such owner has a substantial ownership interest, defendants having the burden of proof.

V.

[*Divestment Ordered*]

Defendants are ordered and directed, on or before December 31, 1962, to sell, exchange or otherwise dispose of all right, title and interest in WRCV-TV and WRCV to a person or persons not controlled directly or indirectly by either defendant and in which neither defendant has any substantial ownership interest.

Such disposition, if accomplished by exchange, shall be an exchange for a station or stations not in the Philadelphia market area and such exchange shall not be effected unless

(1) defendants shall have given written notice of the proposed exchange to plaintiff, affording plaintiff opportunity to apply to this Court within thirty days after such notice for a determination by the Court as provided in clause (2) hereof, and

(2) if plaintiff shall have so applied, the Court shall have determined that the consent of the other party to the proposed exchange was not obtained by acts or conduct of NBC or RCA relating in any way to the negotiations for the proposed exchange, which acts or conduct constitute either (a) an unreasonable restraint of trade (as to which issue plaintiff shall have the burden of proof) or (b) a violation of subsection (A) of Section IV of this Final Judgment (as to which issue the defendants shall have the burden of proof).

If such disposition is accomplished otherwise than by exchange, defendants shall give plaintiff written notice of such proposed disposition at least thirty days prior to filing with the Federal Communications Commission any application for the Commission's consent to such disposition.

NBC and RCA are prohibited from acquiring any ownership interest in any television broadcast station in the Philadelphia market area until this Final Judgment shall terminate and be of no further force and effect.

NBC and RCA are prohibited, for a period of five years from and after the date of entry of this Final Judgment, from acquiring any ownership interest in any standard broadcast station in the Philadelphia market area. Any such acquisition after five years from the date of entry of this Final Judgment shall be subject to the procedure provided in subsection (B) of Section IV of this Final Judgment for acquisition of television broadcast stations in certain market areas.

VI.

[*Federal Communications Commission*]

Nothing contained in this Final Judgment shall be construed to require this Court to pass upon any transaction of acquisition or exchange by the defendants or any undertaking by them of national spot representation except to the extent expressly stated in subsections (B) and (C) of Section IV and in Section V of this Final Judgment.

Defendants shall not apply to the Federal Communications Commission for consent to any exchange or acquisition subject to the provisions of subsection (B) of Section IV or of Section V of this Final Judgment until after expiration of the time within which plaintiff may apply to this Court for a determination as provided therein or, if plaintiff so applies, until after such determination shall have been rendered by this Court. In the event of an appeal from any determination rendered by this Court pursuant to subsections (B) or (C) of Section IV or Section V of this Final Judgment, defendants shall not, during the pendency of such appeal, consummate the exchange or acquisition involved or undertake the national spot representation involved.

VII.

[*Compliance*]

For the purpose of securing compliance with this Final Judgment, duly authorized representatives of the Department of Justice shall, upon written request of the Attorney General or the Assistant Attorney General in Charge of the Antitrust Division, and on reasonable notice to either defendant made to its principal office, be permitted, subject to any legally recognized privilege, (a) reasonable access during the office hours of such defendant to all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of such defendant relating to any matters contained in this Final Judgment; and (b) subject to the reasonable convenience of such defendant and without restraint or interference from it, to interview officers or employees of such defendant, who may have counsel present, regarding any such matters. Either defendant, upon the written request of the Attorney General or the Assistant Attorney General in Charge of the Antitrust Division, and upon reasonable notice made to its principal office, shall submit such written reports with respect to any of the matters contained in this Final Judgment as from time to time may be necessary for the enforcement of this Final Judgment. No information obtained by the means provided in this Section VII shall be divulged by any representative of the Department of Justice to any person other than a duly authorized representative of the Executive Branch of the United States, except in the course of legal proceedings to which the United States is a party for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

VIII.

[*Jurisdiction Retained*]

Jurisdiction is retained for the purpose of enabling any of the parties to this Final Judgment, and no one else, to apply to this Court at any time for such further orders or directions as may be necessary or appropriate in relation to the construction of or carrying out of this Final Judgment, for the modification or termination of any of the provisions thereof, and for the purpose of the enforcement of compliance therewith and the punishment of violations thereof.

IX.

[*Duration of Decree*]

This Final Judgment, and each and every provision hereof, shall terminate and be of no further force and effect nine years after the date upon which NBC finally disposes of all right, title and interest in WRCV-TV and WRCV, but in no event earlier than ten years after the date of entry of this Final Judgment.

Exhibit A

KOA-TV, Denver
KSD-TV, St. Louis
WCKT-TV, Miami
WAVE-TV, Louisville
WRGB-TV, Schenectady
KONA-TV, Honolulu