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THE PROPOSED MERGER OF THE AMERICAN BROADCASTING COMPANY
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DISSERTATION
Presented in Partial Fulfillment of the Requirements for
the Degree Doctor of Philosophy in the Graduate
School of the Ohio State University

By
Gregory Kent Schubert, A.B., M.A.

The Ohio State University
1972

Approved by

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The conglomerate and large corporations have had a long and varied association with the broadcasting industry. Westinghouse and General Electric, two giant manufacturing organizations, have been associated with broadcasting, in a sense, since its historical beginnings. Due in part to their manufacturing interest in broadcast equipment, this relationship in the early years was encouraged as the actual air signal was viewed as a test vehicle for technological experimentation in the areas of transmission and reception.

The Radio Corporation of America, as its name implies, was also quick to enter broadcasting and by the early 1940's had not only achieved a reputation in the areas of technological experimentation and design of equipment, but one in the field of station ownership and network broadcasting as well. It was these developments which prompted the first government action in the area of major corporate control of broadcasting interests. In 1943, the United States Government ordered the Radio Corporation of America to divest itself of one of its two broadcast networks, arguing that it had a virtual monopoly in the field of broadcasting.1

This was a result of a four year, comprehensive study of network broadcasting practices and activities in the
United States which had been undertaken by the Federal Communications Commission. This study led to the issuance of the Commission's report on "Chain Broadcasting" and the adoption of the network regulations.²

Of its dual operations, NBC selected to sell its "blue" network to candy manufacturer Edward Noble who subsequently changed its name to the American Broadcasting Company.³

Some twenty-two years later the American Broadcasting Corporation was again to become involved, in connection with a major corporation in manufacturing and communications, in actions before the Federal Communications Commission and the Federal Courts. But this time, acquisition, not divestiture, was the major issue—the proposed merger of the American Broadcasting Corporation with the International Telephone and Telegraph Corporation.

Among the contested issues were the protection of programming autonomy from corporate control, effects of foreign interests, and the anti-competitive possibilities posed by the merger. The consideration of the proposed merger involved two FCC hearings, pressure from Congress, and a suit filed by the Justice Department. It was the largest single proposed transfer of licenses in the Commission's history.

The purpose of this study is twofold: first, to provide historical documentation of the events surrounding the merger and, secondly, to develop the issues that arose
in the discussion of the merger as they pertain to conglomera­
erate and large corporate broadcast activities.

Descriptive in nature, the study drew heavily upon
the voluminous filings of the applicants available to this
writer in the Washington offices of the Federal Commu­ni­
cations Commission. The complete public record, F.C.C.
Docket #16828, contains, in its forty-plus volumes, all
public correspondence, transcripts of hearings and con­fer­
ces, and exhibits pertinent to the merger considera­tions.
This resource material representing over 27,500
pages of relevant information, was invaluable in compiling
the factual documentation necessary to prepare a full
account of the sequence of events in the ABC-ITT case.

In addition this writer drew heavily on the trade
publications, especially Broadcasting magazine for secondary
materials and comment. The latter publication was espe­cially helpful as recording industry response to the
deliberations.

I would like to acknowledge the assistance and encour­agement provided by my advisor, Dr. Walter Emery, during the
preparation and writing of this study. Additional thanks
are directed to Dr. Franklin Knower and Dr. Robert J.
Wagner who offered their time and penetrating questions in
assisting this writer in consolidating the materials for
this study. Next, my deep appreciation to Dr. Duane E. Tucker for his encouragement and support and to my late parents, Mr. and Mrs. Frederick O. Schubert, for their love and faith in me. And finally to my wife, Lynn, and my daughter, Kelly, who were the real motivating factors in my decision to undertake the challenge presented by this study, and who displayed great forebearance in dealing with the occasional personality changes I developed during the preparation of this work.
FOOTNOTES

PREFACE

1NBC vs U.S. 316, U.S. 447.


VITA

June 10, 1940

Born - Chicago, Illinois

1963

B.A., Miami University
Oxford, Ohio

1963-1964

Graduate Assistant, WMUB-TV-FM
Miami University, Oxford, Ohio

1964

M.A., Miami University
Oxford, Ohio

1964-1966

Producer-Director, WBGU-TV,
Bowling Green State University
Bowling Green, Ohio

1966-1968

Operations/Production Manager,
WBGU-TV, Bowling Green, Ohio

1968-1972

General Manager/Program Director,
WBGU-TV, Bowling Green, Ohio

PUBLICATIONS

Wrote, Produced, Directed "Show Me," a one-half hour film
on teaching motor locomotion skills to retarded children.

Script writer for "Children of the Seasons I and II," two
one-half hour color documentaries on State supported
instructional programs for children of seasonal workers
in Ohio.

"Broadcasting Unions: Structure and Impact," Broadcasting
and Bargaining, Co-Author, Dr. Allen E. Koenig, University

FIELDS OF STUDY

Major Field: Radio and Television Communications

Studies in Broadcast History, Professor
James E. Lynch
Studies in Communications Theory. Professor Franklin H. Knower

Studies in Communications Research. Professor Robert R. Monaghan

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INTRODUCTION

An early public notice of the discussions concerning the possible merger plans of ABC and ITT appeared in an article in the New York Times on December 2, 1965. Though rumors had persisted that ABC was looking for a corporate partner, no official statements by the company had appeared until this date.

The major reason, initially, cited for the desirability of a merger for ABC was the network's need for additional funds with which to improve its financial stature in relationship to the other two networks and thus improve its programming posture.

Broadcasting circles believed that the proposed merger would be a natural and would tend to strengthen ABC in the telecasting-broadcasting competition with Columbia Broadcasting System and National Broadcasting Company, each of which has strong financial backing—CBS from its own corporate structure, and NBC from its parent, Radio Corporation of America.

At the time of the announcement, ITT was described as "a giant international telecommunications and electronics and electrical manufacturer" with assets at the end of 1964 of over $1.6 billion. The latter figure, when compared to ABC's worth at the end of the same year, $226.6 million, underscores the potential attractiveness of the merger to the network.
But there was another issue that was suggested in the trade press as having prompted ABC's search for a partner. Norton Simon, a West Coast industrialist and art collector, owned 400,000 shares of ABC stock representing 9 per cent of the shares outstanding. He had been making clear his intentions, as the largest single stockholder, of having a greater say in the management of ABC. This, however, was not a part of the master plan for the company developed by Leonard Goldenson, President of ABC, and his executive staff. It was reasoned that with the joining of the giant conglomerate corporation, ITT, and the accompanying stock transfer and merger, Mr. Simon's influence could be considerably diluted.

At the time of the announcement there was speculation on the reaction of the FCC to a merger of this magnitude, since it would involve the transfer of ABC's seventeen broadcast properties. Inherent in this transfer was the subject of conglomerate control of not only the ABC owned and operated stations, but of the network and its programming. These were to become major issues in the long deliberations, not only on the part of the FCC, but on the part of the Justice Department's anti-trust division.

Almost anticipating the problems he would face on these issues, ABC President Goldenson addressed himself to
the problem of ABC autonomy. In a letter to ABC employees discussing the possible merger he said:

While I cannot at this time discuss the nature of these continuing negotiations, I thought that you would like personally to know that a prerequisite of any proposed merger, as far as I am concerned, will be the continued autonomous management and operation of American Broadcasting Companies, Inc., and its divisions and subsidiaries.

This was believed to have been done to answer any early fears on the part of the Commission concerning ABC's independence within the ITT superstructure.

The announcement seemed to have a stimulating effect on one of the ABC competitors, Columbia Broadcasting System, Inc. Though a larger company with more working capital, CBS would have most certainly dropped to third in terms of available capital should the ABC-ITT marriage have been approved. But it was felt that if the FCC approved the merger, it could hardly deny a petition from CES for approval to make a similar move.

Reports persisted last week that CBS is negotiating on merger transaction with large company, following pattern of pending ITT-ABC consolidation. But on high authority it was stated that no discussions had reached 'eye-ball-to-eye-ball' stage. There was no denial that preliminary conversations had been initiated, although companies were not identified. Heretofore such companies as IBM, General Electric, and Xerox had been mentioned as possible conferees.

Approval of the merger by the board of directors of the two companies was announced on February 15, 1966.
A 'Needy' ABC, Inc.? 

The announcement seemed to buoy the spirits of ABC and was reflected in the mood of executives of the firm. 

ABC was depicted last week as having pushed out of the phase of 'just staying alive' and emerging as a network to be reckoned with in television's mainstream. 

ABC's new muscle was described during a free-wheeling 'summit' meeting held for four-and-a-half hours in New York last Wednesday at the call of ABC officials and attended by representatives of top management of influential stations and groups. 

Though the financial plight of the ABC broadcast division was later to become a prime consideration in evaluating the benefits of the merger arrangement, everything appeared to be bright with the release of ABC's 1965 annual report. Among some of the highlights were the glowing comments on the financial health of the company. The annual report showed that ABC had enjoyed the most successful year in its history with revenue up to $476.4 million and a year end profit of $15.7 million. The same positive attitude was reflected in the report's discussion of ABC's programming gains, which pointed out that the network's nighttime audience had reached a historic high, and that the number of affiliates had increased to 130, giving the television arm of the company an expanded reach covering 93 per cent of the potential television audience. The Report did note, however,
that ABC-TV was still behind CBS and NBC in both reach and revenue. These points were to gain a certain notoriety during the Commission deliberations on the merger.

Also of special note were the gains the network had managed in the evening news race. The report pointed out that the Peter Jennings' newscast represented ABC television's best effort in audience size and affiliate clearance, as well as in sales, in the network's history.

The report did not ignore other aspects of the improving ABC, Inc. prospects. It pointed to not only increased radio sales and new advertisers, but to an increase in radio affiliates and, in eight instances, to increases in station power. And, though the network operations were still not financially independent, the report showed that the owned and operated stations had enjoyed record revenues which had more than balanced the losses suffered by the network operations.

Other ABC, Inc. operations were singled out and the yearly document showcased gains made by other ABC subsidiaries, a division that acts as a buying agent and sales representative for a number of foreign television stations, had added four new clients bringing their total to twenty-five countries serviced by the division. ABC films also showed increased revenues, and the ABC-Paramount theater wing had dropped twenty-eight marginal theaters, added seven
properties, six of which were new and located in shopping centers, and had twenty-two more theaters under construction.

The report was short of euphoric in proclaiming for the reader ABC's firm position both financially and in product.9

Plan Ahead

Though the transfer application had not been delivered to the Commission for study and action, ITT did announce some of the modifications planned in the structure of the new ABC-ITT Corporation. ITT announced that the board of directors of the parent company would be increased by four to accommodate President Goldenson and ABC Executive Vice-President, Simon B. Seigle, and two other ABC appointees. ABC's board would be enlarged by two to allow for representation on that board by ITT representatives.10

On March 28, 1966, ITT President, Harold S. Geneen, wrote to ABC President, Goldenson, outlining his philosophy on the autonomous status of ABC in the ITT corporate framework. As was indicated earlier in discussing statements by the head of ABC to his employees, this issue was to take on significance. The letter from Geneen said, in part:

As is the case with ITT and its other subsidiaries, it will be our purpose to see that ABC operates with the highest standards of public service and we look to you and your management to maintain the high standards of public service for which ABC under your management has been well known and which you have so capably done in the past.
The broadcasting operation of ABC will be kept separate from other ITT operations and the obligations of ABC as a licensee will be performed unaffected by commercial or other similar interests of ITT.\textsuperscript{11}

The stage had been set, and the rather placid nature of the events leading to the merger filing with the Commission most certainly did not reflect what was to ensue.
INTRODUCTION


2 Ibid., p. 59.

3 Ibid., p. 60.

4 Ibid., p. 60.


CHAPTER I

THE COMMISSION BEGINS CONSIDERATION OF THE MERGER

Barring unforeseen complications, ITT-ABC merger should clear the FCC processing in the next few weeks.¹

On March 31, 1966, several cardboard cartons containing the applications for transfer of the seventeen ABC broadcast properties to ITT arrived at the FCC Washington offices accompanied by a modest amount of appropriate fanfare for a transaction of this magnitude. At the time of the filing, the composition of the Commission was somewhat different from that which would exist when the Commission would rule on the proposed merger; the chairman was E. William Henry, and serving with him were Rosel H. Hyde, Robert T. Bartley, Robert E. Lee, Kenneth A. Cox, Lee Loevinger, and James J. Wadsworth.

Primarily technical in nature, the filing carried information on the programming policies of the owned and operated stations, attachments containing letters and exchanges of memoranda on the merger, and appropriate financial information. What the filing attempted to do was anticipate potential hazards and point out to the Commission that these had been solved or were in the process of being
dealt with. It should be noted that some of the adjust­ments made or in progress were major ones and suggest that at the time of filing neither ABC nor ITT anticipated many of the barriers they would encounter.

Some of the changes were necessitated by rather com­plicated corporate situations. For instance, J. Patrick Lannan, an ITT director, was also on the board of Crowell, Collier and Macmillan, Inc. which was the licensee of KFWB, Los Angeles; KEWB, San Francisco; and KFWB, Minneapolis-St. Paul. Since the proposed merger would have brought owner­ship of stations in both Los Angeles and San Francisco under the ITT umbrella, this would have been in violation of the FCC's duopoly rule.²

ABC indicated in the filing, however, that Crowell, Collier, and Macmillan, Inc. had sold the stations in Los Angeles and San Francisco and were awaiting final Commission approval on the license transfers so the pro­blem was a moot one.

They also noted that an ITT vice-president had been, until March 21, 1966, a director of the Polaris Corporation, a group of broadcasters; but they pointed out that Polaris was merging with J. B. Fuqua's Nateo Company in addition to selling some of its broadcasting properties.³

The applications also dealt with the possible problems created by the Commission's "top 50 rule," which stipulates
that no sale of more than two VHF outlets in any of the top 50 markets may take place without Commission approval (all of the ABC stations were VHF and all were located in the top 50 markets). However, ABC felt that "the transfer applications for its five television stations do not constitute an actual change in ownership and since existing holdings were grandfathered in by the Commission, the FCC should waive this policy." 4

There was also the matter of cross ownership of broadcast properties to contend with as many brokerage houses owned both ABC and ITT stock; and if the merger should be consummated, the chance existed that, via the stock transfer, some of the brokerage houses and mutual funds might hold more than 5 per cent of ITT stock. This, too, would have been in violation of the Communications Act of 1934. 5

Anticipating this, ABC filed letters from the outside parties concerned showing that their holdings would still be less than 5 per cent should the merger be approved. 6

One other issue remained unsolved and that was the application filed by Hubbard Broadcasting, owners of KOB in Albuquerque, for 770 kc, the frequency on which WABC-AM operated. This clear channel assignment had been a subject of conflict between ABC and Hubbard Broadcasting for almost twenty-five years. Hubbard would receive slight notoriety
as being the only initial negative voice, outside the Commission, to oppose the merger.7

One other major issue was inherent in the proposed transfers and that was the possibility of antitrust violations. From the outset of the Commission's consideration of the merger, an attempt was made to keep the Justice Department's antitrust division informed. Their role in the eventual outcome of the merger considerations would prove to be most pervasive, but an initial response from the Department was not immediately dispatched.

But, perhaps the most important document in the filing was ABC's submission of the rationale for the merger and why it was vital if ABC was to continue to compete with the other networks. The case made for the merger rested heavily on projected ABC-TV financial needs. In doing so, it continually made reference to the RCA-NBC combination and to CBS with their variety of interests and resultant additional income. This document served two purposes: first, it pointed out that conglomerate companies can operate broadcast properties. This was evident in the constant references to RCA-NBC. And, secondly, it helped to convey the impression of ABC as the "poor kid in town" financially.

ABC pointed out that if the Commission was truly interested in having three viable, strong, competitive networks, then the only way to accomplish this goal was to
allow ABC to merge with the significantly larger company with its greater resources. It should be noted here that nowhere in the first transfer filing is there an indication of the size and type of support that would be provided ABC by ITT. This too would become a most important factor in the deliberation of the Commission.

The reasons for the additional capital were numerous. ABC pointed out that the increased costs for color conversion and the need to upgrade existing network facilities were costly. They indicated that capital would be needed for increased expenses for program production and for the acquisition of feature films. The document outlined the need to secure additional funds for upgrading ABC's news operations and public affairs and special events coverage. All this would be needed if ABC was to improve its competitive position and, thereby, gain more primary affiliations in the top 100 markets. And in doing so, thus increase their potential audience reach.

This discussion by the network of its belief in the Commission's desire to see ABC improve its competitive status had historic precedent. In 1952, ABC had appeared before the Commission and, at that time, a merger was also the topic under discussion. ABC and Paramount Theaters wished to merge and only after lengthy Commission scrutiny was the marriage approved. At that time the Commission:
used, as one of its major arguments in supporting the merger, the improved competitive posture and financial base that would accrue from a positive vote.

It is interesting to note, in light of the previous ABC merger with Paramount, that one of the details in the application for transfer in the ITT case indicated that in 1954, 60 per cent of ABC's total $188.8 million revenue came from its theater holdings. In contrast, for 1965 only about 16 per cent of ABC's total income of $476.5 million could be attributed to its theater activities.9

And inherent in this improved ABC position in the market place were the benefits that would be passed on to the public. This ultimate goal of better service and programming for the public good, as in the previous ABC-Paramount case, was again to be a major argument in the ABC-ITT debates.

Once the filing was accomplished, the staffs of the various Commission bureaus went to work on the contents. Their purpose was to prepare for the Commission, recommendations for FCC action.

The Interim

Business continued as usual for both ABC and ITT. In a forty-minute meeting, April 27, 1966, the ABC stockholders officially voted on the merger proposal. It was overwhelm-
ingly approved with only 38,796 of the total 873,144 shares voting against the merger.\textsuperscript{10}

ITT stockholders were also swift, taking only two minutes more to approve the merger.\textsuperscript{11} In the meeting, ITT President Geneen addressed himself to some of the merits of the merger for both ITT and ABC. In discussing the positive benefits for the ITT stockholders, he pointed out that ITT would rise from its ranking of thirty-first nationally to "'a rank within the top twenty'" in the United States and would produce combined revenues in excess of $2.5 million.

In discussing the benefits that would be enjoyed by ABC, he said:

Most importantly, the general consumer public will gain the increased public service and the improved competitive position of the ABC Network. He added: ABC will gain from the addition of our resources, both technical and financial, and the overall cross fertilization of ideas that such a combination can bring to many fields such as education, transmission of news to the home and other real possibilities of the future.\textsuperscript{12}

And, in a letter to President Goldenson, reacting to the spector of the autonomy issue, Geneen stressed the fact that ITT planned to assure "to the fullest possible extent" the continued autonomy of ABC and the continuation of its management policies and procedures.

As is the case with ITT and its other subsidiaries, it will be our purpose to see that ABC operates with the highest standards of public service and we look to you and your management to maintain the high standards of public service for which ABC under your management
has been well known and which you have so capably done in the past. The broadcasting operation of ABC will be kept separate from other ITT operations and the obligations of ABC as a licensee will be performed unaffected by commercial or other similar interests of ITT.\textsuperscript{13}

In June, 1966, ABC held its annual affiliates meeting to apprise them on forthcoming programs. Though ITT's possible financial assistance was not given as the reason, several changes in the schedule were announced. The major announcement dealt with Peter Jennings and the News, ABC's early evening news program. Though both CBS and NBC employed the half hour format for their evening editions, ABC had been airing only fifteen minutes each night. At the meeting, ABC chieftains announced to the assembled that Jennings would go to a half hour format. The ABC staff said, however, that the program could not be produced in color for at least six months. After protestation on the part of the affiliates to the length of time necessary to colorize, network executives met and shortly thereafter announced at the meeting that the program would be produced in color on the date of the initial airing of the expanded news format. Broadcasting magazine, in describing affiliate reaction to the announcement, said, "The cheer that went up would have put a Girl Scout troupe's reaction to the Beatles to shame."\textsuperscript{14}

At the end of the meeting, when asked what the major event of the conclave was, Berton B. LaDow, chairman of the ABC affiliates organization told Broadcasting that the
announcement of the color production of the Jennings' newscast produced the most positive response. In addition he said, "...That the affiliates could not feel fully competitive to other network stations until the early evening news went both to a half hour and into color."\(^1^5\)

That seemed to reflect what was truly a problem for the network and underscored the statements made in support of the merger in the filing materials. It is quite possible, though it is only an assumption, that the influx of capital that ABC hoped would result from the merger was a prime force in the decision to colorize more rapidly than had been anticipated.

July 1, 1960, must be noted as a date of some significance in the merger proceedings for that was the first day on the job for Commissioner Nicholas Johnson. He was appointed to fill the position vacated by Rosel Hyde who had been promoted to the chairman's position. At the time it was thought that the Lyndon Johnson appointee was being considered as a possible successor to the chairman's position when Hyde reached retirement. Broadcasting doubted that the fiery ex-Maritime Commission Director was interested.

As for Mr. Johnson he's said to have no aspirations other than to return to campus life. He taught law at University of California Law School at Berkley as acting associate professor in administrative law and oil and gas. He would like to follow in his late father's footsteps on the faculty of a major university.\(^1^6\)
Interested in considering the merger at their August 17 meeting, the Commission continued to maintain lines of communication with the antitrust division of the Justice Department but had yet to receive any reaction to the proposed consolidation of the two companies from them. In a mid-July meeting, the Commission took up the best methods for dealing with the merger proposal. Following what must have been heated discussion, the Commission voted by a four-to-two margin to ask ITT and ABC for additional information. Commissioner Cox and Bartley voted in the minority and the newest member of the Commission, Nicholas Johnson, opted for abstension.

Among the items concerning the majority members, and in a sense of interest to the minority, was the matter of financial support available to ABC and the nature of any restrictive guidelines imposed by ITT on such capital underwriting, as well as, whether the Board of Directors of ITT had discussed the matter of capital availability for the smaller company. They also expressed concern over the issue of ABC "autonomy."

However, neither dissenting Commissioners Bartley nor Cox felt that the letters requesting further information went deeply enough into the issues under discussion, especially in light of the magnitude of the proposal and the complexity of the considerations they felt surrounded the
merger. It should not be forgotten, they reasoned, that
the proposed corporation would be a $2.5 billion conglomerate corporation with holdings of a communications nature ranging world-wide, extensive electronic manufacturing interests, and activities in the fields of auto rentals, consumer financing and life insurance, and airport parking as well as broadcasting. (See Appendix)

They also pointed out, in light of the above, that the potential for conflict of interest between a corporation, which has the potential to dominate and deals with foreign companies and even governments, and the use of its broadcasting subsidiary for public relations purposes was a most important aspect of the case. As Commissioner Bartley said in his dissent, the Commission "...is not dealing with a single station in a single community, but with a whole complex of broadcast facilities—including a television network which reaches, and permeates the thought of the entire country."17

The main thrust of the Bartley-Cox dissent was the need for a full evidential hearing by the Commission on the merger and its ramifications. Among Bartley's concerns was that ABC's contribution to the overall profits of the much larger ITT would represent only 13 per cent of the corporation's total income thus minimizing ABC's relative importance to the larger firm. And with about 60 per cent of ITT's
income generated overseas, the parent company would be more likely to protect and guard the source of the greatest profits. He pointed out this relationship in order to bring into "...focus the apprehension I feel that in the case of a conflict of interest the 13 per cent broadcasting tail will not be permitted— or perhaps from the point of view of the responsibility of ITT's management to its stockholders, cannot be permitted to wag the 87 per cent non-broadcasting dog." 18

In issuing his dissenting opinion, Commissioner Cox highlighted the shear magnitude of the transfers requested. In his statement he said that while he had:

...the highest regard for the principals of both parties involved, he felt that 'the issues posed by this proposal are so significant and far reaching that the Commission should hold a hearing on them.' 19

Acknowledging that the Commission was sharply divided on the matter of a hearing, Chairman Hyde issued a statement indicating that the vote to request more information from the participants did not negate the possibilities that a hearing would be held.

'We will take another look at the applications in light of the responses (to the Commission's queries) before deciding on whether a hearing is needed,' he said. He also said the Commission would have to consider the Justice Department's views on the merger—if they are to be submitted. That department is being closely advised of the Commission's deliberations.' 20
The replies from the two corporate parties could be best described as swift and responsive to the questions asked. However, there was some disappointment on the part of the Commission that ABC and ITT, in their replies, had not developed responsive materials on the common carrier aspects of the merger. This was, it should be mentioned, not requested by the Commission. However, there were some on the Commission staff who felt that ABC-ITT should have dealt with the matter as some conflicts between the common carrier and broadcast divisions in a conglomerate corporation such as the one proposed by ABC-ITT could well be expected.

Indeed, in an earlier appearance before the Commission, ABC had challenged Comsat's right to be sole operator of U.S. launched communications satellites. ABC wanted to create a $21.5 million system to link affiliates with New York similar to synchronous orbit Early Bird. ABC figured costs at $5.9 million a year as opposed to AT&T's $11.9 million for land lines. ITT was the second largest investor in Comsat, surpassed only by AT&T.

ABC had also complained to the Commission about the rates charged by ITT, which had provided the networks with transmission capability from the carrier WASP during the early Gemini flights. In their responses, the two corporate presidents pointed out that the concern expressed by the Commission that
a large, highly diversified conglomerate would manipulate its broadcast interests had no precedent. Among those companies listed as examples by ABC President Goldenson were: RCA, General Electric, AVCO, and General Tire. He also included in his listing, companies with interests in broadcasting which also had publishing properties: Meredith, Triangle, Hearst, Scripts-Howard, Time-Life, Chicago Tribune, Cowles, Cox, and Newhouse. His reasoning was that in these types of corporations, one could well anticipate conflicts of interests, and yet there had been no evidence that the broadcasting activities had been subordinated to the publishing arms.

In direct response to Commissioner Bartley's concerns, Goldenson said:

In no instance of which we are aware... has the Commission later encountered any instance in which the broadcasting activities were being subordinated to other interests of the companies. In fact, many of these licensees are among the outstanding licensees.23

The ABC president also, in addressing himself to the autonomy question, said that there would be as much autonomy for ABC within the corporate structure of ITT as had been enjoyed by United Paramount Theaters after its merger with ABC.

The broadcasting operations of ABC will be kept separate from other ITT operations and the operations of ABC as a licensee will be performed unaffected by commercial or other similar interests of ITT.24
He continued by discussing the financial outlook for the network, and ITT's ability and willingness to provide assistance "as needed." This, Goldenson continued, would allow ABC to expand its programming services and make the network more "viable." He disclosed that the network operations as an entity apart from the other ABC subsidiaries, had lost $18.6 million over the previous three-year period.

Geneen in his response indicated that ITT had "...very large and ample credit and capital resources available" to assist ABC. He noted that ITT's annual earnings were approaching $100 million, and that it had assets in excess of $2 billion. He also pointed out that ITT's line of credit was $140 million and that the company had $30 million cash on hand.25

He also said that the ITT board, in a meeting on April 18, 1966, had voted to approve the "undertakings" necessary to improve ABC's position, and that funding would be provided "as needed." He did, however, say that each and all specific requests would have to be dealt with by the board and approved. Thus, to this point neither Goldenson or Geneen had indicated that any specific amount had been or would be committed to the network.

Goldenson was quite specific on the company's need for money, and included in his letter, nine major areas of
financial need which the capital resources of ITT would provide for:

1) It will enable ABC to innovate. 2) It will permit ABC to present more spectaculars. 3) It will permit ABC to provide still more news, special events, and public affairs. 4) It will enable ABC to continue feature film presentations. 5) It will enable ABC to expand its sports programming. 6) It will speed ABC's conversion to color. 7) It will enable ABC to meet other increased program costs. 8) It will enable ABC to be more competitive. 9) It will further the growth of UHF.26

The Man at the Top: Harold Geneen

It is pertinent, at this time, to examine more minutely the man who would, if the transfers were approved, have the ultimate responsibility as the licensee of seventeen broadcast stations.

A major article in the July, 1966, issue of Television magazine spent considerable time in profiling Harold Geneen, who, through merger and acquisition, had brought ITT to the eminence it enjoyed at the time of the merger discussions.

Geneen joined the ITT staff in 1959, and his early background as an accountant served him well. In five years with ITT, he had doubled ITT's sales and profits and established the company as growth oriented. Primarily through good management practices, and mergers and acquisitions, ITT had seen steady growth. Geneen believed that a company was a good investment if the basic business was sound but in need of ITT's managerial expertise and abilities. Usually,
employees on the managerial levels were retained, assuming they were able to reach the standards of excellence that Geneen demanded. "Those standards have become storied." 27

This was apparently not the case when he arrived at ITT, as in his first five years with the company he had either fired or accepted the resignations from all of ITT's top fifty managers. His aim was to improve the performance of ITT, and,

He set about improving that prospect, chopped down a somnolent executive hierarchy and tightened Manhattan headquarters' control over ITT's loosely run overseas divisions and subsidiaries. 28

It must be accepted as fact that Geneen did not share some of the pessimism of President Goldenson on ABC's situation financially, as this would have meant a complete abrogation of the business acumen that had brought ITT, under his leadership, so far.

Geneen was not a dour man, but was first and foremost company oriented.

Geneen, 56, can shake hands and smile as well as the next businessman, but in the rounds of glad-handing he has at times looked uncomfortable. He puts in sixteen-hour work days and they are not usually spent in backslapping. The world of show business he now enters is rather alien to him. He would rather examine its books than its faces. 29

Some question had already been raised about the ability of ABC to remain an autonomous operation and, protestations to the contrary, it would seem that the
possibility of interference in ABC affairs would have been inevitable. In describing ITT's business philosophy, Geneen had said:

There's the old kind of company you run from headquarters. Then there's the holding company that owns a bunch of companies and just sits back and waits for them to send in their dividends. We're neither the first nor the second, but a stage in between. We support our companies constructively, in the things they can't do themselves. And, if support isn't enough, we use discipline.30

But for all his success in building the fortunes of ITT and overseeing its tremendous growth, Geneen had failed in one area, one that he was most conscious of.

The sophisticated investors know us, but not the public. You can stop fifteen people on the street and no one will know what ITT is. That bothers me. We have to get identification through products or companies.31

That ITT could gain access to instant publicity if the merger were approved is evidenced by the announcement heard often on AVCO owned stations, "The preceding program was produced by WLW-C, a subsidiary of the AVCO Corporation."

Unfortunately, his pronouncements on what the role of television should be are somewhat contradictory. In discussing television as a most important communicative tool, he said:

There is a change in the basic recognition of what television is. It has got to become a permanent source of information—to reach growing populations throughout the world—to inform and to educate.32

However, later he said, and perhaps more importantly:
People want to be entertained, not instructed. That, too, is where the money is. ABC will have its entertainment.

There can be no question as to the strong relationship that existed between the personal strength and abilities of Geneen and ITT's growth as a corporate giant. This, too, would be another of the many considerations in the merger discussions.

The stage was now set for the oral hearings, unique to previous FCC practice. Initiated at staff suggestion as a means for eliciting opinions on the merger from "interested parties," the oral hearings were to last two days and later would provoke heated discussions on the efficacy and completeness of such an approach.

Broadcasting magazine, which would become increasingly more antagonistic toward the Commission's lengthy deliberations, summed up the feelings of the industry toward the proposed Commission procedure for examining the merger, prior to the oral hearings.

If, in the eyes of the parties involved, the FCC seems to be taking its time in finalizing approval of the merger of ABC and ITT, it is for sufficient reason. Transactions involving values of nearly $400 million do not cross the FCC threshold too often.

Even though the voluminous filing of the merger applications last March seemed to be responsive to a fault, it is easy to understand why the FCC wants to conclude with the limited hearing it scheduled for next month.
The proceedings will not be an oral argument in the usual sense, since it won't be confined necessarily to presentations by lawyers only. Executives of the companies involved, the Department of Justice or others who might feel that they have a relevant interest are free to appear.

Since the merger promises more effective competition among the major networks it should pass muster of those concerned with antitrust aspects.

The ABC-ITT merger really establishes no precedent since the relationship will be almost identical with that of RCA to NBC, which RCA had created in 1926 as its broadcasting subsidiary. Normally an individual transfer case takes about six weeks to two months to complete the regulatory hurdle. The ITT-ABC merger, as distinguished from a transfer, has been under consideration about five months.

Only in the unlikely event that the novel 'oral hearing' exposes new facts warranting further study would there be any reason to delay approval of the merger.34

The Oral Hearings

Both the Broadcast Bureau and the Common Carrier Division of the Commission had been involved in a pre-hearing study of the merger and, at the direction of the Commission, had been instructed to provide that body with pertinent areas for questioning. Among the staff concerns were the questions of autonomy, possible anticompetitive problems, international influence, and the overall, important question of whether the merger would be in the public interest.
In addressing himself to that matter, Louis Stephens, head of the Broadcast Bureau, said during the testimony on the first day,

Recognizing fully the flexibility which is reasonable and desirable in planning and proposing broadcasting operations, the staff believes that the parties should provide the Commission with a more concrete showing than the record yet contains of the programming gains the public could reliably expect to realize from approval of the merger.35

He pointed out that Section 310 of the Communications Act of 1934 provided the real test for the Commission in that they would have to be convinced that the public interest would be served by the transfers.36 (See Appendix—Section 310 of the Communications Act of 1934)

He went on to point out that, with three exceptions, the merger considerations were more of a policy nature than ones concerned with points of law. The three legal concerns he enunciated were: 1) possible antitrust violations, 2) the KOB frequency challenge, and 3)

...the adequacy of ITT's provisions for the discharge of its ultimate broadcast licensee responsibility as the sole stockholder of the company which would carry on ABC's station and network operations.37

In the order issued by the Commission following their decision to hold the en banc hearing, the Commission's majority outlined the areas of its concern.

The Commission requests the parties to address themselves to the general issues whether the proposed transfers will: (a) Increase unduly economic concentration in any market or field; (b) affect
competition in broadcasting and whether such effect would be consonant with or contrary to the public interest; and (c) generally serve the public interest. The applicants may also desire to supplement, or otherwise cover, matters raised by the Commission's inquiries of June 20, 1966, and the replies thereto. In addition, the applicants should, insofar as possible, be prepared to address themselves to all issues of law and policy which may be raised for discussion by the Commission or any part to the proceeding.38

The same document also acknowledged the lack of any evidence of a "factual nature" which could prevent the merger from taking place.

The great bulk of data supporting the application is factual and statistical in nature. The Commission's review of such data has not indicated any questions of fact concerning the proposed transactions, nor has any such question been raised or called to our attention by any interested party.39

In dealing with the KOB objections, the Commission ordered dismissed as not relevant for discussion at the oral hearings, the KOB request for a ruling on the ABC-AM clear channel assignment. KOB had requested the allocation be modified to allow KOB to share the frequency. The debate between ABC and KOB had been raging for over two decades. In discussing the issue, the Commission order stated:

In this regard we note that the KOB opposition does not raise any broad question or factual issue concerning the merger plan as a whole, but rather a specific issue of right to a comparative hearing on a single frequency, which right we believe can fully be protected irrespective of any comprehensive action taken on the merger proposals.40
But the Commission concluded that,

...the pending proposals do raise legal and policy decisions of substance and significance which require the Commission's further consideration in an oral hearing before it en banc. Such a hearing will provide a further opportunity for the exploration of such issues on a formal record which should materially assist the Commission in its consideration of an action upon such issues.41

Among the concerns that plagued the minority members of the Commission was Bartley's contention that the hearing should be formalized, and that the Commission should hold a full evidentiary proceeding. The majority had rationalized.

We follow such a procedure on our present conclusion that no evidentiary hearing for the adjudication of contested facts is required, and that we can appropriately compile a full and accurate factual record without such hearing on which to base our legal and policy determinations on the matter.42

This viewpoint was not shared enthusiastically by all the commissioners. Though both Cox and Johnson had voted in favor of the "oral hearing" as a method of expediting the decision-making on the merger, they felt compelled to issue an opinion concurring with the decision of the majority but reflecting support for Bartley's minority point of view. Cox in his statement said:

I concur in setting this matter down for oral hearing. It poses issues of too great importance to be handled in such a routine fashion. However, I believe the applicants should address themselves very carefully to the issues which Commissioner Bartley has indicated he believes should be explored in a full evidentiary hearing. While
the procedure adopted here is intended to expedite
disposition of this matter, it should, nevertheless,
permit exploration of these important questions in
broad outline at least.\textsuperscript{43}

Bartley remained consistent throughout. His dissent
to the oral hearings was based on his desire to have a more
thorough and exacting examination of the issues he had
raised.

The order and notice of oral hearing is unique
in that it is neither an oral argument pursuant to
the Administration Procedure Act nor an evidentiary
hearing pursuant to Section 309 (e) of the
Communications Act, yet it gives the appearance of
both.

The order and notice of oral hearing is, in my
opinion, inadequate and ineffective, since it will
elicit opinion rather than evidence tested in the
crucible of a formal hearing where the applicant
must meet the burden of proof on specific issues,
which is necessary to a resolution of the serious
social, economic, commercial concentration, and
other public interest questions here obtaining.\textsuperscript{44}

Still awaited at the time the Commission issued its
order on the oral hearings was some statement from the
Justice Department on possible antitrust questions. Up to
this time, the most recent communications the Commission had
received from the Justice Department had simply said that
"...it is still studying what it considers a very complex
case."\textsuperscript{45}

The oral argument constituted a type of middle ground
in Commission procedure. It was an attempt to satisfy the
hopes of ABC and ITT for a favorable and swift transfer
approval, but it also allowed for opinions, other than those of a factual nature, to be heard publicly in connection with the transfer applications. And, the oral hearing would cut down on the time-consuming procedures necessitated by a full evidentiary hearing. The Commission, in order to elicit as much pertinent materials as possible, did state that interested parties who wished to submit additional materials were free to do so and that opportunity for objecting to the new material would also be available.

Both majority and minority opinions had asked the parties to address themselves to several issues. Troubling Commissioners Cox, Johnson, and Bartley were the spector of ITT's potential for dominance and possible program control. Since the proposed corporation would rank in the top twenty in the nation and operate a major television network, it was reasoned that ITT would be in a position to influence public opinion. They also noted that 60 per cent of ITT's revenues came from outside sources, and that one half its domestic income was derived from space and defense contracts. In addition, ABC's financial needs were questioned.

Prior to the hearings the principals submitted additional documentation to the Commission. Most of the materials submitted were in the form of graphs and charts and were not accompanied by narrative of any substantial nature. Among the objectives of these additional submissions
were to show that ABC's financial needs were great, that its posture nationally was that of a distant third network and that additional capital was necessary for any attempt at achieving parity with their rivals.

In order to underscore their financial situation and need for ITT capital, ABC went to great lengths to document its need.

In the process, ABC revealed more of its financial data than most broadcasters care to make public. One exhibit disclosed that of the annual average total-television revenues of $1,710,400 reported in the 1962-65 period, ABC received $232.7 million, or 13.6 per cent, while NBC and CBS had revenues of $649 million or 37.9 per cent.

The network offered a further breakdown showing that of annual average TV-network revenue of $680 million during the same period, it took in $182 million or 26.8 per cent.

They also dealt with ABC's competition. One document, for example, pointed out that ABC owned stations in markets that had from twenty-five (Pittsburgh) to forty (New York) AM and FM broadcasting operations. In TV, the disparity was not quite as great, with ABC-TV facing competition ranging from the four-station San Francisco market to ten TV outlets in the Los Angeles area.

Though most of the exhibits stressed television, some material was submitted concerning the radio operations of ABC which indicated that that area of the company had been proportionally, economically sounder.
Of an annual-average industry radio revenue total of $671.9 million over the 1962-64 period, ABC took in $17.2 million, or 2.6 per cent, while CBS, NBC and MBS took in $50.9 million, or 7.6 per cent.

But while all radio networks had annual revenues averaging $34.4 million over the same period, ABC had revenues of $7.2 million, or 20.9 per cent. The average revenue figures for ABC's owned radio stations ranged over the 1962-64 period from $2,638,000 in New York (7.2 per cent of the total of $36,443,000) to $813,000 in Pittsburgh (11.1 per cent of the total of $7,293,000).

The exhibits also showed that the owned and operated television stations did much to contribute to the overall profits of the company, negating to some extent the losses incurred by the network. For the period between 1962-1965, WABC-TV (New York) garnered 14 per cent of the total revenues available in that seven station market, KABC (Los Angeles) got approximately 15 per cent of the total spent on ten outlets in Los Angeles, WBKB (Chicago) took almost 20 per cent of the total spread out over six stations. KGO-TV (San Francisco) took in over 26 per cent in competition with three other stations, and WXYZ (Detroit) enjoyed 30 per cent of the revenues earned against four other stations.

Also included in the additional ABC submissions was a statement from Dr. Raymond Saulnier, who had at one time been Chairman of the President's Council of Economic Advisors under President Eisenhower and, at the time of the merger, was a Professor of Economics at Columbia University.
In his statement he tried to answer many of the challenges proffered by Commissioner Bartley. He felt that the danger of economic concentration was not valid as ITT had no other broadcast interests and was primarily a manufacturing and distribution concern. He also pointed out that ITT was so diversified in both interests and by geography, that improper influence would be most difficult to achieve.

Neither is there any reasonable expectation that ABC interests would be subordinated to those of some part of the ITT system, either to the sales of some product line outside of broadcasting or to sales in some country outside the United States.... ITT sales are spread so wide geographically and by product line that there could be no economic or business justification for subordinating ABC interests to the interests of some other part of ITT total business.50

He also saw the merger as not impeding the establishment of a fourth network, a concern voiced by the minority, and indicated that the lack of available unaffiliated stations was the main barrier impeding the development of a fourth network.

He also addressed himself to the contention that ABC might be subordinated to the nonbroadcasting activities of the parent company and said that it was obvious that ITT was interested primarily in having ABC...stand on its own feet, and succeed in it's broadcasting and other activities, and thus contribute to the growth and profitability of the overall company.51
And he also reflected on the problem facing ABC in its competition with the other two networks.

The crucial fact concerning ABC's position in network broadcasting is that, although it has of late made significant progress in improving its industry position, there is still a wide disparity between its position and that of the two longer-established and larger networks in the three network TV broadcasting industry.52

The trade press still showed positive interest in the merger considerations, and in an issue published the day the hearings commenced, Broadcasting enunciated what questions it thought would be of prime interest to the Commission. Among these were:

What improvements, extensions, or enhancement of ABC's programming services to the public may be reliably expected to result from its merger with ITT?

Is ITT prepared to assure the Commission that during some specified period of years (as reasonable for such a forecast) annual financial provision will be made at some stated, approximate, minimum level for the defrayal of programming costs beyond levels already reached by ABC? Will ITT provide to the Commission more concrete indications than have been furnished so far of the programming enhancements it is prepared to assure in the event of Commission consent to the pertinent license assignments and transfers?53

Other items on the agenda, included questions concerning the advisability of fusing into one company identity both the common carrier and broadcast functions, an examination of diversity of control of broadcast facilities, possible reciprocity problems in placement of advertising
on the ABC network and stations, and the possible snowball effect the merger might produce, resulting in a merger move by CBS and thus furthering concentration of control of the mass media.

The hearing, expected at first to last only a day, ran two full days and was highlighted by Commissioner Nicholas Johnson's often fiery questioning of the witnesses. He pressed hardest on the question of foreign influence on ABC's programming activities should the merger be approved. At one point he said:

Here you are joining up, or proposing to, with a corporation that earns 60 per cent of its income from foreign sources. It earns roughly half of its income from domestic sources, from defense department and space efforts and yet I gather that you are representing and want the Commission to accept simply on your declaration that these facts would never have any influence whatever on you or your news department, or any producer connected with your company, in selecting what to program or what not to program, how to play a story....

In another instance, while questioning Harold Geneen on the same issue, his intensity was so great that Geneen inadvertently answered, "Yes, Professor," to one of Johnson's questions. To all questions relating to the autonomy issue, the witnesses for ITT and ABC responded that assurances had been given to the network by the giant corporation, and were sufficient guarantee that ABC would not be subjected to the control of the larger corporation. They pointed repeatedly to correspondence between Geneen and
Goldenson, public utterances on the subject, and prior testimony as additional evidence that ABC autonomy would be held inviolate by the parent corporation.

It was under persistent questioning by Johnson on the latter subject that led ITT President Geneen to finally make a commitment in dollar's to ABC. Until this time, the two company heads would only say that ITT would support ABC, but had not proffered a firm dollar figure. However, Johnson's queries forced the parties into a corner and following quick calculations by Goldenson, Geneen pledged a minimum of $50 million to ABC for expansion and service improvements. Earlier, John A. McConne, the only ITT director to appear (he had been past head of the Atomic Energy Commission and Central Intelligence Agency), had admitted that specific amounts had not to his knowledge ever been discussed.

Though the hearing was a most serious proceeding, some lighter moments were recorded. One came during questions directed toward Geneen concerning ITT's financial support of ABC.

...While attempting to help Mr. Geneen satisfy Commissioner Johnson's curiosity as to the specific amount of money ITT would make available to ABC,... Commissioner Lee Loevinger asked whether Mr. Geneen had promised to support his wife when he married her and whether he had made a specific commitment.

Mr. Geneen answered 'yes' to the first question; 'no' to the second. He also said in answer
to another question, that he had probably provided more support for his wife over the years than any amount he might have specified at the wedding ceremony.

But, asked Commissioner Kenneth A. Cox, 'Was the minister required to make a public-interest finding?'

It was Mr. Geneen, however, who had the last word. If that had been the case, he said, 'I am sure I would never had got the merger through.'

In his testimony, Goldenson also directed himself to the problem the network faced from a competitive standpoint and pointed out that because it had fewer affiliates than the other two networks, its potential audience was reduced by approximately three million fewer TV homes.

'How is a merger with ITT going to put ABC in a better competitive position, if your problem involves getting better affiliates?,' Commissioner Johnson pressed.

'Reduced to its essence,' Mr. Geneen told FCC, 'the plan of the combined ITT-ABC is to establish a network that is truly competitive with NBC and CBS—in terms of homes reached, share of audience, share of billings, hours of programming per day and, most importantly, in news, special events and public affairs.'

This will mean more affiliates, many in the UHF band. It will probably mean some expansion in our operating schedule into the early morning hours, assuming that our affiliates agree.

To the question of whether the merger would force CBS into seeking a partner, Goldenson said:

The conceivable effect on CBS or on the development of a fourth network is speculative, remote, and uncertain while the advantages to competition
in broadcasting from approving the merger are immediate, substantial and probable, almost to the point of certainty...

If you deliver us equal facilities in the market place, we will deliver you a competitive network.58

ABC-TV testimony stressed the networks pointing to the fact that disadvantage in audience reach, it not only had fewer prime affiliates, but also was not able to have all its programs on the air at the scheduled network time. At the time of the hearing, forty-four stations, representing about 4 per cent of the total TV homes, carried ABC programs on a delayed basis. An even greater problem was faced by the network in obtaining clearance for its news program. ABC news was carried by only 109 outlets while the CBS effort was carried by 185 affiliates and its NBC counterpart was carried by 187 stations.59

This disparity in affiliates and consequent audience reach was also evidenced in the totals of affiliates each network had. At the time of the merger discussions, ABC had 134 affiliates which covered 93.4 per cent of the population, NBC had 205 covering 99 per cent, and CBS had 192 which took in 99.2 per cent of the population.60

In his testimony, Goldenson also discussed the anticipated needs of the company. He pointed out that the network, unlike NBC and CBS, had actually lost $5.6 million in 1965 and that only money made from the owned stations and from
other ABC divisions provided for the ABC corporate profits at the end of the fiscal year.

He said that ABC planned for an expenditure of $34 million for color conversion and another $90 million for studio complexes in New York and Los Angeles. He said that earnings and additional loans could offset some of the capital demands faced by the network, but that either a merger or sale of stock was needed to provide for all the financial needs of ABC. He felt that a stock sale would be undesirable.

He also discussed future programming plans and their relationship to ABC's financial picture. News costs would be increased from the $26 million expenditure anticipated in 1966 to $40 million in 1968, which would allow ABC to provide fuller coverage of the national conventions, and election and pre-election activities of that year, possibly in color. He also said that production costs for sports coverage were rising, and that the network anticipated spending $38 million in 1968 as opposed to the $20 million budgeted for 1966. Part of the sports increase was due to expenses that would be incurred during coverage of the 1968 Olympic Winter and Summer Games.61

Goldenson's testimony also indicated that unlike its more affluent counterparts, ABC's size and lack of diversity
had caused financial problems as far as anticipating future needs and expenditures was concerned.

ABC is a smaller company, with far fewer shares of stock outstanding than either of its two network competitors, Mr. Goldenson explained. Its business activities are largely limited to entertainment—a highly volatile and cyclical business. As a consequence, a drop in program ratings, even of a relatively small amount or of a temporary duration, can have a major impact on its publicly traded shares, causing substantial dips in stock prices.

The knowledge that this can readily occur places a restraining influence on management's ability to incur important long-range commitments essential to program improvement and tends to keep innovation, with its attendant high risks, at lower levels. It also exerts pressure to keep to a minimum the losses invariably incurred in news, public affairs, and special events programs.

Also of a financial nature were the veiled hints, during questioning by Commissioner Johnson, that Mr. Goldenson had a substantial personal interest in the merger since his personal ABC stock holdings were substantial. At the time the merger was announced, Mr. Goldenson held $7 million worth of stock in ABC. On the basis of the merger, 0.57 of ITT common and 0.57 ITT preferred stock would be exchanged for each share of ABC stock. Thus increasing the dollar value of Goldenson's holdings to $7.8 million.

Geneen's interrogation by the Commission brought out ITT's activities in the field of technological experimentation. This area had been one alluded to by ABC testimony as being a fringe benefit for the network in the merger. Geneen
indicated that among other activities, ITT engineers were exploring the possibility of three dimensional television, but he hastened to add that any ITT innovations and developments would be available to the entire broadcasting industry.

The oral hearing also produced a reiteration of ABC's contention that precedents existed for big business ownership of broadcast facilities, and numerous instances of ownership which could be considered potentially vulnerable to conflict-of-interest charges.

In discussing these matters, Marcus Cohn, attorney for ABC attempted to draw parallels to examples already existent in the industry. His goal was to illustrate the large number of advertisers who were licensees, in addition to the number of corporations whose total revenues were quite large in relation to that percentage contributed by their broadcast operation.

This goes directly to the question of the tail wagging the dog argument that Commissioners Bartley and Cox were concerned about in their July twenty-first dissent, and what it proves is that as far as these particular corporations are concerned, the major activity was non-broadcasting, but their renewals have been granted perfunctorily insofar as this issue is concerned.

John McKenna, another of the ABC-ITT witnesses, also addressed himself indirectly to this same issue.

Commission Cox, I think we would be able to make a far less good case before you if we were here just asking for the transfer of the seventeen licensees.
I think the real merit of the case lies in the fact that the network is involved, and that experience has show that whatever theoretical considerations may apply to diversification and undue concentration, they are not present in this case.64

Though constant reference was made to the need for the FCC to approve the merger, technically this was not their role. That prerogative, by statute, belonged to the Justice Department and its antitrust division. All the FCC was considering was the license transfer and subsequent control by a conglomerate of a national network.

In their questioning of witnesses, it was evident that neither Commissioner Cox nor Johnson was sufficiently convinced that financial need had been established. Their comments throughout the two-day hearing, often underscored their belief that, in being the third network in terms of revenues and resources, ABC had to take a more innovative and creative approach to programming rather than seeking funding. During questioning, Marcus Cohn, in response to a statement by Johnson that the network might better serve the public by being forced to scramble on its own out of third place said, "That's like saying an injured football player will play better because he tries harder.65

This somewhat at odds with the spirit of the testimony offered by Goldenson during a similar exchange with Johnson. Alluding to one of ITT's subsidiaries, Avis Rent-a-Car, the Commissioner asked, "Are you satisfied with being No. 2?"
"No, indeed," Mr. Goldenson replied, "I want to be No. 1. If any one at ABC is satisfied with less, then they better get themselves a new man."

But for all the testimony, the volumes of exhibits, and the statements by the participants, the issue still was primarily "would the public interest be served by the merger?" Perhaps the statement of ITT board member, John McCone, best summarizes how those in favor of the merger felt.

I look at the merger of these two corporations as an action which will prove beneficial to the public at large. A blending of ITT's technical background with ABC's nationwide broadcasting capability will result in extensive research and development programs to bring to the consumer new and improved components and systems.

This mirrored earlier testimony by Louis Stephens, representing the Broadcast Bureau, who was in charge of gathering information and determining issues for Commission consideration. Stephens had, following the oral hearing, said that the staff did not find any "scary facts" or "identifiable injury" in the merger proposal. Their concerns were not about the transfers, but about the prospect of a major change which would involve the "control of a network by a non-network entity."

Marcus Cohn during his counter testimony said that it was unfair for the Commission to require the applicants to prove a negative: that no harm to the public would result
from the merger. The following exchange between
Commissioners Johnson and Cohn highlights the debate on
who, ultimately, was responsible for the "burden of proof"
in the public issue question.

Johnson: ...As to your suggestion that the
burden of proof is on the Commission rather than
on the applicant, I think with all respect,
Mr. Cohn, you have it backwards. If there are
suspicions, it is your burden, Sir, to demon­
strate that the suspicions are ill-founded.

The burden is not upon the Commission to come
forward with the evidence that demonstrates either
that the public interest demands this or permits
this exchange or that it precludes it.

It would seem to me rather that the burden is
yours to demonstrate that this transfer will serve
the public interest rather than the Commission's
burden to demonstrate that it will not.69

Later, Cohn was to respond:

I suggest to you that you have an obligation
once we have met the burden of proof by telling
you what our intention is going to be in the
future, to rely on those representations, take
them at their face value and dispel those sus­
picions which you may have in your mind.

And in the event, in the future, those
representations turn out to be either false or
having misled you, then you have other sanctions
at your disposal.70

The two-day hearing concluded on the afternoon of
September 20, 1966, without an appearance of a representa­
tive from the Justice Department whose eventual role was to
be of paramount importance. Nor had any information or opini­
on from that Department been received in regard to the merger.
It was because of this lack of communication between the
Justice Department and the Commission that speculation arose that the Commission would probably act within weeks on the merger without the assistance of that agency.\textsuperscript{71}

\textbf{Congress Intervenes}

The merger hearings were unique and had no exact parallel in other transfer cases. Designed to both expedite the consideration of the merger and to allow for all voices to be heard, the hearings had received wide attention; however, no one objecting to the merger, save for Hubbard Broadcasting, had indicated an interest in participating. It was not until the hearing had been concluded that the first dissonants began to emerge. The first salvo fired at the Commission, concerning the manner they had chosen to employ in public consideration of the merger, came from Congress.

In a letter to the Commission dated September 22, 1966, Senator Gaylord Nelson (D-Wisc) chided the Commission for what he considered to be an inadequate method of studying the issues. Faulting the "oral hearing" approach, Senator Nelson, Chairman of the Monopoly Subcommittee of the Senate Small Business Committee, urged the Commission to hold a full public hearing and "detailed examination" before acting on the case.\textsuperscript{72} In a follow up letter, he wrote that an evidentiary hearing
...would seem a helpful adjunct to the limited testimony recently given the Commission by the presidents of ABC and ITT. Regardless of your ultimate decision, the public is entitled to the assurance that all the facts have been thoroughly presented and examined in depth and that all the implications have been clearly understood.\textsuperscript{73}

Much of Senator Nelson's concerns mirrored those of the dissonant commissioners, Cox, Johnson, and Bartley. In a news release, Senator Nelson said that ABC was not in as perilous financial shape as the network indicated and that the future prospects for the network were optimistic. He also expressed concern over the amount of domestic revenue ITT received from Government contracts, and the possible danger of government influence on ABC programming. "'The only apparent advantage of this merger to ABC is a large increase in the value of Mr. Goldenson's stock...'.\textsuperscript{74}

His concerns were not limited to United States Government interference, but to the spector of interference by foreign interests because of ITT's vested interest abroad and high percentage of revenues from foreign sources. He also wondered whether, because of ITT's manufacturing interests, the merger would give ITT a "'...protected market, with a consequent adverse affect on smaller independent manufacturers'.\textsuperscript{75}

Admitting that he had not become aware of all the facts in the case until after the hearings had been concluded, he also suggested that in addition to the Justice
Department, the Federal Trade Commission should be called to participate in a more formal hearing on the transfers.

In a fourth letter to the Commission, in what was becoming an extended series of correspondence on the matter, Senator Nelson cited two documents he felt applicable to the merger considerations. One was a ten year old report by the House Antitrust Subcommittee calling for close liaison between the Justice Department and the FCC in merger matters involving broadcast interests. The other was a letter dated July 23, 1956, from Senator Warren G. Magnuson, Chairman of the Senate Commerce Committee to the Commission, which cautioned the Commission from permitting licenses, "...to fall into the control of those who are only interested in the profits which can be derived from broadcasting, or in using them for self-aggrandizement of large corporate owners."76 In defense of the Commission, it must be underscored that everything possible was done to maintain lines of communication with the Justice Department prior to the hearings and the weeks following their conclusion.

Some question arose over the propriety of the Congressional correspondence with the Commission. Broadcasting reported:

Among court cases commissioners have researched in considering how to treat the congressional mail is one in which the U.S. Court of Appeals in New Orleans court earlier this year reversed an order of the Federal Trade Commission at least in part
because a Senate Subcommittee had involved itself in the merits of the case under consideration. At issue was a FCC order requiring Pillsbury to divest itself of assets allegedly acquired in violation of the antitrust laws. The court upheld that the subcommittee, by getting into the merits of the case, had deprived Pillsbury of procedural due process.

Another case cited involved a rule making to reassign channels in Springfield, Illinois, and St. Louis, Missouri. The court vacated the Commission's decision after evidence of ex parte representations was presented, and said: 'Interested attempts to influence any member of the Commission... except by the recognized and public process go to the very core of the Commission's quasi-judicial power...'77

The commissioners also decided that they would not discuss the pending merger publicly as a precautionary measure until they had arrived at a decision.

Commissioners also have cases to cite in defense of their determination not to discuss the proposed merger—with members of Congress or anyone else not authorized to participate in the discussions. It involves a court decision to vacate an FTC order because of a speech Commission Chairman, Paul Rance Dixon, had made on the matter under consideration. The court held that the chairman's speech, while the matter was pending, indicated he had already made up his mind on the subject. 'We conclude,' the court said, 'that Chairman Dixon's participation in the hearing amounted in the circumstances to a denial of due process which invalidated the order under review.'78

In his replies to several of the legislator letters, Max Paglin, executive director of the Federal Communications Commission, followed standard procedure for handling such off the record contacts. In his response to Senator Morse, "...Mr. Paglin pointedly referred to the proposed merger as a 'docketed, adjudicatory' proceeding, and said it would
be inappropriate for the Commission to answer his letter.”

Additional Problems of ABC

The congressional flack was not the only ill omen. ABC was having additional problems of its own. Coverage of the 1968 Winter and Summer Olympic Games was to be one of the highlights of that broadcast season but unexpected problems, coupled with a major financial commitment, arose. Broadcasting alluded to the ABC plight.

ABC-TV, which is paying $4 million for exclusive privilege of covering 1968 Summer Olympic Games, is having difficulties with host country, Mexico. Problem is that U.S. network has been unable to get details of logistics and technical coverage. Additionally, one story has it that all Mexicans would give ABC for its money its rights to hold down a few geographic locations.

To add to their mounting grief, ABC was one of the parties accused of monopoly practices in Florida. A request was made by Antwin Theaters, Inc., operators of a drive-in theater in the greater Miami area, to the FCC requesting an order requiring ABC (and Wometoc Enterprises, Inc.) to divest themselves of their owned or controlled broadcast properties—a total of nine in Florida. It was not the companies broadcast activities that had caused the request but the operation of their theater properties. The charge was that because of the sizable broadcast and theater holdings each of the companies had in the greater Miami area, they were able to
prevent Antwin Theaters from obtaining first run feature films. Antwin felt that distributors had succumbed to veiled threats by the two companies indicating that if Antwin Theaters were to get first run features, ABC and Wometco would take their theater and television film rental business elsewhere. ABC had nine theaters in the greater Miami area, alone, and fifty in the state.

Antwin wanted to "call for and deny" the license renewal applications of all ABC's owned and operated television stations. 81

The merger and its implications, along with growing congressional commotion, had created a complex situation for the Commission, as well as for the parties concerned. To further complicate their situation were the factual errors which had begun to appear in the press concerning the Commission's considerations of the merger. In an article on this particular phenomenon, Broadcasting magazine said:

The FCC, which has in the past managed to make itself look bad without any help from outsiders, received a considerable amount of help last week from the daily press in its coverages of and comment on developments in the proposed merger of ABC and the International Telephone and Telegraph Corporation. 82

Among some of the more notable examples was the attempt in an article in the New York Times by Fred P. Grahan to highlight the unique nature of the Commission's two day September hearing. After describing it to provide the
necesary contrast, he wrote that the Commission "...routinely assigns an examiner to take voluminous testimony before transferring the ownership of a single station. In practice, however, it is the exceptional case, where there are disputed facts, which is dealt with at length by the Commission. Most transfers or assignments are dealt with in paper pleadings rather than in formal or informal oral presentations. Morton Mintz continued the error in a Washington Post article the following day.

The Washington Post did not depend entirely on mistakes made by other newspapers but managed one of its own. In an editorial entitled "No Need to Rush," which pointed out that the merger was much too important to hurriedly approve, they scolded the Commission for denying opportunity for opposition views to be heard. Though the Commission had taken pains to open the oral hearings to "all interested parties," the Post wrote:

Thus far... the FCC has limited its investigation to two days of hearings in which adversaries had no opportunity to state their views.

Earlier, following the Commission's decision to issue ABC and ITT letters requesting more information prior to the hearings, UPI had said:

It was a 4-3 vote that resulted in only two days of hearings on the merger.

Actually, the vote was 6-1. Commissioner Robert T. Bartley was the lone dissenter, arguing
for a full evidentiary hearing. Commissioners Kenneth A. Cox and Nicholas Johnson... concurred in the vote for the oral hearing.

There was no mistaking the Commission's reaction to the amount of adverse criticism it was receiving, especially to the charge that it was attempting to ramrod the merger approval through without due consideration.

Broadcasting magazine described the lengths the Commission had gone to to prevent such accusations.

Commission officials, who bristle at the implications they are attempting to stack the deck in favor of the merger, note that the staff presented the Commission with an exhaustive analysis of the applications. They also point out that all interested parties were invited to participate in the hearing and that, although the case had received considerable publicity since merger talk was just broached almost a year ago, no opponents of the merger came forward.

Through the early days of November, this was still true of the Justice Department whose correspondence with the Commission had been non-committal. Staff members had taken this as an indication that the antitrust aspects of the merger were not substantial enough to prevent the finalization of the merger and, therefore, the Justice Department did not wish to go on record with the Commission before it acted.

However, in mid-November, the first of the cautionary letters was received from Donald F. Turner, chief of the Justice Department's Antitrust Division. Though he did not
say that the division had concluded that the merger was in violation of the antitrust laws, he did recommend that the FCC not make a final decision until after the Department was able to conclude its investigation. The Turner letter prompted Senator Gaylord Nelson, (D-Wisc), who had carried on a substantial amount of correspondence with the Commission requesting a delay in an FCC decision until the Justice Department had pronounced their verdict on the transfers, to announce the "vindication" of his position. He also questioned "...the logic of one federal agency approving a merger while another is trying to decide whether that merger is against the law." 87

ITT responded rapidly to the implied suggestion that the Justice Department might have an antitrust case against it. In an article concerning this turn of events, Broadcasting magazine reported that:

ITT said it was 'unaware of any reason why the Justice Department should question the merger of ITT and ABC.' Company said it has 'cooperated fully' with the department 'from the beginning, providing them with voluminous information in every facet of our operations, both domestic and overseas.'

ITT also said its counsel, 'after extensive research,' had concluded that 'there are no violations of the antitrust laws of any sort inherent in this merger.' 88

FCC Commissioners Reassert Their Dissent

On the day the Turner letter to Chairman Rosell Hyde arrived, a letter was leaving the FCC bound for ITT
President Harold Geneen. Its authors were the same dissonant voices heard for some time in the merger deliberations: Cox, Johnson, and Bartley. In their letter they expressed continuing concern over the effect of ITT's foreign holdings and activities on the operation of a network and a large number of broadcast facilities. It noted that the September hearings had touched on this issue but that there had not been sufficient time to explore them in "depth." The letter reflected the concerns expressed by Senator Wayne Morse (D-Oregon) who had written to the Commission as Chairman of the Senate Subcommittee on Latin America. In his letter, Senator Morse had said, "ITT's 'substantial overseas commitments in 188 countries raise unexplored issues as to the desirability of giving it control of a major radio and television network.'"89

The letter from the three commissioners requested information in six areas:

1) A list of all confiscations or expropriations by a foreign government of ITT property since the companies inception. ITT claims to the U.S. Government for losses incurred overseas are to be included, as well as other litigation involving foreign governments, other foreign public entities or foreign corporations.

2) A list of the ten largest owners of ITT stock in each country where ITT does business, additional foreign owners of over 100 shares of stock, and total shares owned by foreign citizens, governments and entities.

3) A list of ITT's foreign subsidiaries and affiliates, along with names, nationalities, and
significant business interests and government connections of all directors and principal officers, as well as the major stockholders in other than wholly owned companies.

4) A list of joint ventures and significant agreements between ITT or its affiliates and any foreign company, foreign government or other public body. Any rights which such interests have in ITT operations in case of emergency are to be enclosed.

5) Long-range contracts or other long-term agreements with such foreign entities.

6) Any employee of ITT or its subsidiaries whose duties included liaison with foreign governments.

ITT Responds

In responding, ITT noted that much of the information the commissioners had requested was already a part of the public record. The statement reported that as of October 31, 1966, foreign holdings of ITT stock amounted to only 6.8469 per cent of the total 22,079,853 shares outstanding of both common and preferred. The largest single foreign holdings were by Swiss interests which owned 1.46 per cent of the total.

In his response, Geneen pointed out that after the merger, only 5.5 per cent of the stock would be held by foreign interests. He also provided a list of the ten top stockholders in each foreign country and a list of each stockholder with 100 shares or more. This latter information
he requested not be made public in keeping with the company's policy.

He also noted that ITT held a majority of the voting securities in 187 separate companies (in most cases more than 90 per cent) and that it owned at least 20 per cent of the available stock in eleven other firms.

Geneen also offered a few musings on the character of ITT for the consideration of the three commissioners, in light of their worries over foreign control of the programming of the network and the stations it proposed to own and operate. He said that he felt that if the United States Government could trust ITT on the "most sensitive security program in the free world," the company could be expected to operate its broadcast arm with responsive and responsible programming in the public interest. He continued by pointing to the fact that the Government had given ITT contracts which would be inconsistent with the possible influence of foreign interests on the company. He noted that ITT had been chosen to construct the "hot line" between Moscow and Washington, had been involved in the development and execution of the Distant Early Warning (DEW) Line, and had installed the communications system for the allied forces in Europe. 92

He continued by stressing that ITT was still involved in sensitive security programs and added:
I would submit that these assignments were earned on the basis of the most thorough scrutiny of personnel involved, their ability to perform and their unquestioned loyalty to act in the national interests.\textsuperscript{93}

He also stressed that ITT had no employees whose duties included liason with foreign governments other than those necessary for the normal transaction of business.

He dealt with the contention that foreign interests would have a possible influence on the news activities of the network and stations.

Certainly no foreign interests would be so important in dollars by any other standard so as to affect the ability of ABC to report the news in accordance with our American tradition.\textsuperscript{94}

He said it would be extremely difficult and "fool hearty" to attempt to influence the media because of the intense competition existing between the three networks. Any attempt at news management would not go undiscovered, and the revelation of such interference would cast ABC in a most unfavorable light, creating serious credibility problems on all levels and resulting in economic disaster.

All the delay, though favored by the minority commissioners and by those legislators who had shown an interest in the merger, was not viewed favorably by Broadcasting magazine which chose to remark editorially.

Anyone familiar with the folkways of Washington knows that senators do not erupt spontaneously on such prosaic matters as company mergers.
Yet that's precisely the scene in the capitol where the FCC is considering the ITT-ABC merger. Three senators have written half-a-dozen letters to the Commission protesting what they imply would be a hasty action if the FCC approves the merger now.

The facts are that the merger agreement has been widely publicized for a year and the actual transfer applications were filed eight months ago. After due public notice an oral hearing was held in September, satisfying the requirements of FCC procedures. The Antitrust Division of the Department of Justice was practically implored to participate in the proceedings but didn't. Its statement of last week that it is studying the matter came a little late and only after prodding from the hill.

Then why all the turmoil after the record had been closed? The legal fact is that those senators, obviously goaded by one or more of the professional staff involved in antitrust matters, actually are in violation of the rules of conduct. If other than members of Congress were involved, there would have been no question about what the FCC would have done routinely; the letters would have been returned as 'untimely filed.'

But, ex-parte or not, the letters obviously have had an upsetting effect.

--Few transfers go to hearing, magnitude of transfers dictated unusual oral hearing with plenty of opportunity for dissenting voices to be heard--both ABC, ITT qualify for holding licenses, assured by parties of ABC autonomy, only prob monopoly.

--The Antitrust Division had its chance. It can have another, we assume by going to court if it's so minded, after the FCC approves the transfer, which it should do forthwith.95

Complete as Geneen's response might have been, it was still not sufficient for Commissioners Cox and Johnson who fired off another letter to the ITT President. Commissioner
Bartley was out of town and thus could not affix his signature to the newest request for information. The two commissioners felt that Geneen's answers left "...some information unclear and incomplete," and they posed a hypothetical question in response to his statements indicating that it would be most unlikely for foreign influences to affect ABC news programming. The problem they posed was this:

ITT owns a telephone utility in a country ruled by a military government, and ABC news has prepared a documentary series on the poverty and repression in the country. The government than says to ITT: Either kill the program or face action adverse to the utility—discriminatory taxes, cancelled contracts or if necessary expropriation.

How would ITT react in such a situation?

Assuming ITT-ABC News is cognizant of the need for integrity of the news process, what of ITT's necessary responsibilities to its shareholders in preserving their investment?

Furthermore, they requested a country by country breakdown of ITT's assets and revenues, copies of ten foreign license and sales agreements which involved the highest gross revenues, copies of all agreements with foreign countries, and documents related to franchises and concessions to foreign governments. They also wished to have Geneen explain the "...'apparent inconsistency' between his statement that no foreign countries held substantive rights in ITT and a proxy statement sent to shareholders that indicated that
governments in which ITT communications operate are 'in some cases empowered to acquire the property of those companies or their respective concessions in certain cases without compensation,'" 97

They also wished to have clarified the Geneen's statement that ITT companies owned 91.79 per cent of the Chilean Telephone Company and one made to stockholders that ITT and the government had agreed "...that the Chilean Government and public investors will over a period of time acquire 49 per cent interest in the common stock of the subsidiary." 98

Finally they requested details of ITT's World War II losses, the nature of the losses, and amount of damage claimed and amounts of compensation received.

This second letter to Geneen, on the foreign control aspects of the merger, caused a modest uproar and one commissioner, Lee Loevinger, was particularly incensed at not only the letter but the method employed by the commissioners in announcing this newest piece of correspondence. As with all matters before the Commission, materials of this nature are entered into a docket and preserved as a part of the public record. But, Commissioners Cox and Johnson went a step further and had copies made available to the press through the Commission's public information office.
Loevinger accused both Johnson and Cox of

...trying an adjudicatory proceeding by press release—a practice he labeled highly improper, extremely improper. --There's a difference between a judge ruling from the bench and a judge calling in reporters to tell them what he thinks about a case.99

It was suggested at this time by some of the trade press that Mr. Johnson's popularity among his colleagues was beginning to wane due to his highly independent spirit.

Nicholas Johnson, FCC's neophyte member who navigated in hot water during his two-year stewardship as Federal Maritime Administrator, again is encountering rough seas. After five months at FCC, at least four of his six colleagues reportedly have just about convinced themselves that if 32-year-old Iowa Democrat should by some quirk become FCC Chairman, they would resign.100

And Broadcasting magazine reacted to the newest Cox-Johnson missle to Geneen with great umbrage.

Only in the unlikely event that they might stumble upon something rotten in Denmark, Belgium or elsewhere can there be justification for the fishing expedition being conducted by Commissioners Nicholas Johnson and Kenneth Cox into the ITT-ABC merger, and both gentlemen seem to dote on it.

Messrs. Johnson and Cox know that they are outvoted. They should know that the administration wouldn't relish action that would frustrate more aggressive competition among the three major TV networks...

Mr. Cox should know, even if his 32-year-old disciple, Mr. Johnson, does not, that the FCC has ample authority to move in case public-interest questions arise after the merger is approved. First there is the opportunity to review performance at license renewal time, which occurs every
three years for ABC's broadcast licenses and every five years for ITT's common-carrier licenses. Since both ABC and ITT are and have been qualified licensees, there are no questions of character of financial responsibility involved.

And, if there should be an extreme case, such as that "hypothetical" news-documentary fantasy authored by Messrs. Johnson and Cox, the FCC could institute revocation proceedings and bring them to the bar almost instantly.

RCA, which created NBC as the first network forty years ago, has succeeded in building what it calls the world's largest news organization without ever encountering anything approaching the Johnson-Cox "hypothetical." It has won world prestige and renown for its journalistic excellence and enterprise.

Messrs. Johnson and Cox should quit looking under rocks and get on with their own sworn assignments of providing a more effective and competitive communications service in the interests of all the people.101

The Congressional Flack Continues

It was a tempestuous period for the Commission and to add to the brouhaha, a new voice was heard, adding to the uproar. In a series of letters to the Commission Chairman, Senator Wayne Morse took exception to the fact that eight members of the ITT board were members of the "President's Club," and suggested that there had been some improprieties in connection with intra-company campaign contributions. The President's Club consisted of individuals who had contributed large amounts of money to the Democratic Party. In exchange for this financial largess, $1000 or more, the member would officially receive "...occasional briefings by
Cabinet members, a presidential handshake and autographed photo, and sometimes invitations to White House functions. Unofficially, it was charged, membership benefits for those who gave substantially to the party included access to the President and favoritism in dealing with government related business and contracts.

Morse added his vote for a fuller, adversary hearing, implying that the heavy ITT membership in the President's Club was indication that the merger was being approved as a favor and not on the merits of the application for transfer.

Only prompt action by the Federal Communications Commission to hold a formal adversary hearing before a trial examiner can avert a conclusion on the part of many that special and favorable treatment is being extended to heavy contributors in defiance of the public interest.

And the September hearings, he said, reflecting the views of his colleague in the Senate, Gaylord Nelson, were simply inadequate.

The FCC owes it to the public to investigate fully and on public record all the facts concerning the proposed merger and the arguments for and against it. If this merger is approved on the basis of the superficial hearing held in September, public confidence in the integrity of the FCC will be badly shaken.

ITT pointed out that all eight men had been members of the President's Club prior to the merger announcement but there was some cause for question. One member of the Club and an ITT director, Eugene Black, was a close friend of
President Johnson and a former President of the World Bank. And at the time the merger was being considered, he was serving as Johnson's special advisor for development and economics in Southeast Asia. He was also an advisor on the Supersonic Airliner Development Program. He had been among those suggested by Geneen as a member of the executive committee of the proposed merged firm.105

Another presidential friend of longstanding, George R. Brown, had also been named to serve on the ITT-ABC executive committee. His firm had been most interested in the Mohole project to drill an exploratory hole through the earth's crust. However, "Congress scuttled the project after it was reported Mr. Brown donated $24,000 for the President's Club after it became known the project was in jeopardy."106

Morse's other charge centered on the allegation that Bill Marx, a senior vice-president of ITT, had in October of 1960 solicited from other members of the ITT staff contributions to the Texas Business and Professional Men's Committee for Johnson for Vice-President. The checks were then supposedly turned over to the notorious Bobby Baker. The charge was allegedly made by J. T. Naylor, an ex-ITT vice-president, in a sworn statement submitted to the Justice Department and to the Senate Rules Committee during the investigation of Bobby Baker in 1964. The statement was
not included, however, in the published committee report on its hearings. The Justice Department declined to comment on the availability of the document but, "...it is understood that the Department checked into the allegations but found nothing on which to base a case." 107

Also, ITT officials declined the opportunity to comment on the charges.

It's known, however, that under ITT Chairman and President Harold S. Geneen, the company follows a policy of urging executives and employees to participate in the civic and political life of their communities and the country. 108

As an example, in both 1960 and 1964 the company issued "Good Citizens Kits" containing materials urging employees to register to vote and play an active role in the election process—to become involved. A 1962 memo to the employees of ITT from Geneen urged them and the executive staff to participate in political activities and to contribute to the party of their choice. In 1966, ITT held a seminar for the chief executives of its U.S. based subsidiaries on the importance of becoming politically active and involved. 109

To this point, public utterances and correspondence from Capitol Hill had been limited to opponents of the merger in the Senate. In early December, the first congressman to speak on the issue voiced his opinion; Representative Silvio O. Conti (Rep-Mass), Chairman of the House Small
Business Committee, urged the Commission to hold fuller hearings and described the Commission's September effort as having "exhibited an indifference" to the public interest in the case as reported in Broadcasting.

He said that thanks only to the Senators, minority commissioners and the press has testimony critical to the issue been made part of the public record. He noted such issues as the competitive aspects of the merger, the impact of ITT's far-flung foreign interests, and ITT officials' membership in the President's Club were unanswered questions needing an answer.

Justice Department Responds

On December 20, 1966, Rosell Hyde received the long awaited letter from Donald F. Turner, head of the Justice Department's Antitrust Division, with the Department's determinations on the merger.

In the five-page document, Turner said that the Justice Department had come to three conclusions. The first two were regarded by the commission majority as the "green light" for the first of their official decisions, but the reader should note the third statement.

3) On the other hand, we believe the possibilities of adverse effects (of the merger) are significant enough that we should call them to your attention, and that they deserve full and serious consideration by the Commission in making its determination whether, in light of these and other pertinent factors, the acquisition of ABC by ITT would serve the "public interest," convenience and necessity.

Admitting that the antitrust aspects of the merger were "speculative," Turner based his concerns on the possible
anticompetitive atmosphere that could be created by the merger. It was the Department's feeling that ITT might have entered the broadcasting field, either in CATV, or as a station(s) owner or even as a possible fourth network had ABC not been available for acquisition. The Department felt that it was conceivable, if the merger were not approved, ITT might still enter the broadcast field, thus enhancing competition. Turner also felt that the merger might stifle any innovative technological experimentation and development, if it posed a threat to ITT's existent broadcast interests. Among those suggested were satellite-to-home transmission and nationwide CATV networking.

A second fear of the Antitrust Division was the assumption that a network "...unintegrated with common carriers or equipment manufacturers are most likely to bargain down the price of trans-shipment services and equipment." Without this type of bargaining, the opportunities for lower rates were lessened, thus possibly preventing another network from being formed.

A third concern of the Justice Department was the possible effect the merger might have on advertisers who were also suppliers for ITT. A large diversified company like ITT, suggested the Department, could conceivably apply enough covert or implied pressure to induce reciprocity as
a method for assuring strong revenues for its network subsidiary.

They also discounted the seriousness of the ABC financial woes and suggested to the contrary, it was ITT who would benefit the most. Turner pointed out that ITT's estimates suggested that ABC's earning growth rate over the coming five-year period would be 16 per cent. He added that ABC was expected to yield a cash flow approaching $100 million between 1966-1970, almost all of which was "...thought by ITT to be available for reinvestment in other fields than the television business."\(^\text{113}\)

**Reaction by ITT & ABC**

The following day, December 21, 1966, the applicant's reaction to the Turner letter was received by the Commission. Marcus Cohn, lawyer for ITT-ABC, replied to each one of the Turner questions and was most adamant in his defense of ITT on the anti-competitive issue broached by Justice. The entrance of ITT into broadcasting would only be via the acquisition of ABC, he wrote, and discounted Turner's suggestions to the contrary. ITT, scried Mr. Cohn, ...never intended nor did it ever have any plans or studies prepared on the possibility of its entry into nationwide radio or television networking—whether by broadcasting or CATV, through internal growth or new construction.\(^\text{114}\)
In the afternoon of the same day, the Commission approved the transfers by a four to three vote. As many observers had surmised earlier, the commissioners taking a negative attitude were Cox, Johnson, and Bartley.

A little over a year had passed since the first public announcement of the possibilities of the merger, and almost nine months had elapsed since the initial ITT-ABC filings. However, after the receipt of the Justice Department's letter, the Commission spent only a brief twenty-four-hour period before acting. As Commissioner Johnson was to declare acidly in his dissenting opinion, "...at least the letter could have been read slowly." 115

It is important to consider the Justice Department's position since it was to play a most important role in the "to be continued" scenario. The majority of the Commission, by taking such rapid action, gave indication that they were satisfied that all criteria had been examined and the merger should be approved, save for a reaction from the Justice Department on the anticompetitive aspects of the case. Since the Department concluded that the possibilities in this area were at best "speculative," the Commission felt released from any further obligations which might have prevented them from taking action.
FOOTNOTES

Chapter I


3 Ibid., p. 66.

4 Ibid., p. 66.

5 Procedure on Transfer and Assignment of Licenses, 4RR342.


7 4FCC 2d, Docket #16828, August 17, 1966, p. 710.


9 "Merger Filed," Broadcasting, p. 66.


11 Ibid., p. 61.

12 Ibid., p. 61.


15 Ibid., p. 48.


73
18 Ibid., pp. 56-57.
19 Ibid., p. 52.
22 Ibid., p. 42.
23 "Fast, Fast," p. 36.
28 Ibid., p. 24.
29 Ibid., p. 23.
30 Ibid., p. 46.
31 Ibid., p. 46.
32 Ibid., p. 46.
33 Ibid., p. 46.
36 Ibid., p. 11.
37 Ibid., pp. 606-607.
43 Ibid., p. 713.
44 Ibid., pp. 711-712.
47 Ibid.
48 Ibid.
49 Ibid.
51 Ibid., p. 89.
52 Ibid., p. 79.
56 Ibid., p. 48.
58 Ibid., p. 74.
59 Ibid., p. 74.
60 Ibid., p. 74.
63 Ibid., p. 131.
64 Ibid., p. 203.
65 Ibid., p. 132.
66 Ibid., p. 233.
67 Ibid., p. 138.
68 "ITT Merger to Make...," Advertising Age, p. 74.
70 Ibid., p. 385.
71 "ABC-ITT Awaits," pp. 49, 52.
74 "Hearing Urged," p. 44.
75 Ibid., p. 44.
76 "Sand in the Gears," p. 28.
77 Ibid., p. 29.
78 Ibid., p. 29.
79 Ibid., p. 29.


82 "All the News That's Fit to Print--and Then Some," Broadcasting, November 7, 1966, p. 29.

83 Ibid., p. 29.

84 Ibid., p. 29.

85 Ibid., p. 29.

86 "Sand in the Gears," p. 28.


88 Ibid., p. 9.

89 "Sand in the Gears," p. 28.

90 Ibid., pp. 27-29.


93 Ibid., p. 42.

94 Ibid., p. 42.


97 Ibid., p. 62.

98 Ibid., p. 62.

99 Ibid., p. 62.


Ibid., p. 70.

Ibid.

Ibid.

Ibid.


Ibid., p. 54.

Ibid.


Ibid., p. 4.

Ibid., p. 5.


The Merger Is Approved

...What was needed was not a hearing record of factual data already available to us, but an effective means for critical review of its legal and policy implications...1

The approval of the merger was never seriously in doubt, though little was available on the record to indicate how the majority felt toward those concerns being voiced loudly by the minority commissioners and the Justice Department. In the majority opinion approving the merger, they addressed themselves to the various aspects of the merger and the ramifications that could ensue, as well as taking an occasional exception to the material contained in the minority dissenting statements.

They defended the September hearings and enunciated, with a modest amount of pique, the rationale behind the decision to proceed as they did.

Moreover, since what was needed was not a hearing record of factual data already available to us, but an effective means for a critical review of its legal and policy implications, we chose not to have oral proceedings conducted in perfunctory fashion before an examiner, but arranged instead for the Commission en banc to hear interested parties as well as any objectors who might come forward. None did.2
They pointed out that they had departed from routine procedures by assigning a staff member the task of making an independent determination in the case and providing, for public consumption, all questions of law and policy pertinent to the merger deliberations. The majority said that this procedure, combined with the open hearings afforded "...maximum opportunity for consideration of every pertinent fact. The hearings were held and occupied two unusually long days."³

They were also apparently impressed by the arguments made by ABC and ITT during the September hearings on the issue of ownership of broadcasting properties by manufacturing concerns. They acknowledged that the minority view on the matter had merit, and that the potential for ITT misuse was existent, but said:

It is too late in the day to argue that such outside business interests are disqualifying.... We could not in good conscience forbid ABC to merge with ITT without instituting proceedings to separate NBC from RCA, both of which are bigger than the respective principals in this case.⁴

The majority view also dwelt at some length on the matter of possible influence by foreign interests on ABC news and public affairs programming, anticipating the minority opinion on this matter. They noted that ITT had long been associated with the Commission and had a virtually unblemished record in its dealings with the FCC. They also
dealt with the fact that, even though ITT's foreign holdings were substantially greater than those of RCA (NBC) and CBS, there were still parallels and that denying the merger on the presumption that foreign interests might exercise influence on programming would be inequitable. The majority said:

We know from our experience... that many of our large broadcast licensees and the two other television networks also have substantial foreign interests, including subsidiary corporations in many countries. We have seen no evidence at any time that any of these foreign interests have influenced any of the programming presented in this country. There is no reason to assume or suspect that any such influence will occur in the case of ITT.

In regard to the financial assistance ABC would receive from ITT, the majority anticipated enhanced competition, and thus better production and improved public good. They felt that the funds would allow ABC to significantly expand their news and public affairs programming, allow them to be more responsive to special types of creative and innovative program development, and assist in the growth of UHF by providing the audience with programming improvements that would strengthen ABC's audience draw in cities where the network had UHF affiliates.

The majority pointed out that the affiliation with a corporate giant like ITT would increase ABC, Inc.'s stature and subsequently give rise to possible ABC domination of the industry. But they countered, although the merger would
help ABC increase its share of the national revenues, they felt that there was "...no visible prospect that it would enable ABC to dominate the market." Attempting to put the topic of network revenues into perspective the majority opinion continued,

Television networks exist in a world of economic giants. The largest television advertiser (Proctor and Gamble) spends almost as much annually on television advertising 'as ABC Television Network takes in during a year.'

Pointing out that if denied the opportunity to merge with ITT, ABC would remain financially crippled, the majority said:

In the absence of the financial assistance that it will receive from the proposed merger, it appears that ABC will be at a substantial competitive disadvantage and will be handicapped in its effort to provide the programs and services to the public that it seeks to provide.

They also dealt with the news autonomy issue and the capability of the network and broadcast operations to remain aloof from possible ITT Corporate pressure. The majority was, however, confident that the promises made by the principals in regard to the autonomy question were sufficient.

We rely, in reaching our decision, upon the multifold assurances on this record that the freedom of ABC's programming from the intrusion of considerations stemming from ITT's numerous and important nonbroadcast interests will be zealously and effectively protected by every available means.
They recognized the importance of the continuance of journalistic freedom and indicated that the Commission would maintain a continuing vigilance to assure that there would be no significant departures from ABC's traditionally high journalistic standards.

As for the Justice Department's concerns over the possible anticompetitive aspects of the merger, they felt that sufficient examination of the possible problems in this area had been executed and indicated that they were assured that there was no cause for concern. They emphasized that, in anticipation of the Justice Department's concerns, they had subjected the issues to exhaustive Commission scrutiny. And, in discussing the impeding of possible developments in the field of CATV, which might be occasioned by the approval of the merger, the majority opinion dismissed the issue summarily: "In any event, we do not find any realistic relevance to this proceeding of the CATV matters mentioned." ¹¹

In the matter of the "Top 50" rule, which had received little mention, the majority said that it did apply since five VHF stations in five top fifty markets would change ownership. There had been some confusion on the applicability of this rule to the merger during the September hearings, and no definite decision had been reached by the
Commission until the majority opinion was published. The rule, which called for a hearing, the majority felt had been satisfactorily dealt with via the two days in September.\textsuperscript{12}

In twenty-two pages, the majority had set forth their rationale for approving the largest transfer of broadcast properties to be presented for Commission consideration.

The minority opinions took up considerably more space and were substantially more vitriolic.

The Dissent of Commissioner Nicholas Johnson

Over a span of eighty-five pages Commissioner Johnson ranged over all the issues, discussing the merits of the majority opinion and the statements of the principals. He then dissected and discarded them as being an abrogation of responsibility to the public interest and, at best, "naive." He saved his most acid prose for the majority, and much of his dissent was directed toward their opinion.

This case involves the largest transfer of broadcast properties in the history of the world. It is probably the most important this Commission will confront in the foreseeable future. If my estimate is at all accurate, then the majority opinion is indeed a remarkable document. For the opinion stands as little more than an unconvincing rationalization for the quite inadequate procedures which, to date, have unearthed facts clearly insufficient to justify the proposed merger.\textsuperscript{13}

Earlier, in the introductory portion of his dissent, he foreshadowed what was to be his main theme when he opined.
The majority's treatment of this case, in my judgment, makes a mockery of the public responsibility of a regulatory Commission that is perhaps unparalleled in the history of American administrative processes. He also indicated that the majority decision came as no surprise and suggested that nothing the Commission foursome was confronted with would have changed the majority's opinion. He observed, "From the outset, the outcome of this case has been a foregone conclusion." And he continued by suggesting that the majority opinion led one "...to ask if they even believed the merits relevant to their decision."

In opposition to the majority view, he felt that the strong foreign ties of ITT would influence ABC programming, that competition would not be enhanced, and that the merger would not increase either the number of ABC affiliates or their audience. That assurances to the contrary, men are mere mortals and that reciprocity was bound eventually to occur in ITT dealings with concerns that relied on television for a portion of their advertising activities. He also took strong issue with ABC's financial need plea.

Some of his most caustic language was reserved for the September hearings, in which he participated with some degree of gusto, describing them as "unprecedented and bobtailed." He said that it was only through the questioning of three of the seven commissioners that any meaningful information was brought to light. And that the "scant two
days" of hearings was hardly sufficient for an examination of the complex issues surrounding the merger proposal. He also directed some of his pique at one member of the Commission, who he maintained attempted to discredit the testimony of a Commission staff member and implied that the result of the interrogation had been of greater assistance to ITT council in making their case during the hearings than it had been as a method of eliciting pertinent information. This exchange had occurred during the Broadcast Bureau's presentation of possible antitrust problems by Louis Stephens who was subjected to a fierce cross-examination by Commissioner Lee Loevinger. Loevinger had at one time served as head of the Justice Department's Antitrust Division and was a proponent of the merger.

Johnson also said that the opportunity, while discussing possible influence on programming, to reprimand the majority for their "simplistic" faith. Reliance, he said could not be placed "...on assurance, albeit sincere, of interested parties who may be gone tomorrow." He continued by pointing out that the kinds of decisions the merger "...will encourage are not susceptible to scrutiny even by the most vigilant agency." 21

He also felt his colleagues had acted rather swiftly upon receipt of the Turner letter. He said he was "...simply stunned and bewildered that the majority of this
Commission could receive such a letter after 6 p.m. one evening and resolve a case of this magnitude before 10 a.m. the next morning.  

In discussing the rationale of his colleagues, comparing the proposed ITT-ABC combine with its RCA-NBC counterpart as a precedent for approving the merger he wrote:

That ownership, (RCA-NBC) however, antedated this Commission's existence. It certainly cannot be cited as an excuse for allowing a second network to come under the control of a similar company. To say that, since RCA owns NBC, ITT must be allowed to acquire ABC, is to say that things are so bad now there is no point in doing anything now to stop them from getting worse.

On the financial need issue he felt that ABC parity with the other networks would not necessarily improve competition, and in discussing revenues, said:

What little price competition that presently exists among the networks would disappear. Furthermore,... the merger would remove ITT as a potential owner of a new network and would make more difficult the entry into the business of a fourth network.

He continued by saying that the problem ABC faced in challenging the other two networks was not contingent on money but was the result of the networks' smaller lineup of affiliated stations, a situation he felt would not be abided by the merger.

On this point, as well as many others, he was joined by fellow Commissioner Robert Bartley who also issued a
strong dissent. Bartley joined with Johnson in denouncing ABC's claims to financial need. In his dissent, he said that there

"...is no persuasive showing that ABC, with a working capital of $90 million in 1965, could not secure an additional $50 million over a three-year period through other means."

Bartley suggested that there were other options open to ABC to achieve greater resources and suggested that perhaps a merger with a company that did not pose the same problems as the one with ITT, or a possible stock issue, might better solve their dilemma. Less biting in tone, Bartley's dissent contained much of the same response to the majority's action as those found in the Johnson document. Among the items of concern to Bartley were the rapid action taken by the Commission following the receipt of the Justice letter, the questions surrounding ABC's abilities to remain autonomous from the larger parent company, and the issue of ABC's competitive position.

In a subsection of his dissent entitled, "Deficiencies in the Majority's Memorandum Opinion and Order," Commissioner Bartley took time to dissect the majority arguments. In reference to the question of reciprocity, he said that the specter of reciprocity is great because of the power of television." He pointed out that the burden of proof was on the applicants to prove that the merger
would be in the "public interest, convenience, and necessity" and that they had failed to do so. 27

He, too, questioned the value of the oral and written commitments by ITT and ABC officials on the autonomy question and said that such "commitments are nice but meaningless." 28 But the major thrust of the Bartley dissent was directed toward the procedures followed by the Commission in evaluating the merger. He remained constant in his call for a full, evidentiary formal hearing on the matter. As to the September gathering, he said:

Neither the Broadcast Bureau nor the Common Carrier Bureau was made a party to the proceedings for the usual purpose of presenting witnesses, expert or otherwise, or engaging in cross-examination of the applicants' witnesses. Consequently, the proceeding was an array of witnesses for the applicants only, with self-serving statements unchallenged in the crucible of an adversary case involving cross-examination, except for independent questions by some of the commissioners. 29

Unlike his compatriot in dissent, Nicholas Johnson, Commissioner Bartley did add one item to his dissent: a call to Congress to develop and define national policy on licensing broadcast stations to "corporate conglomerates" like ITT. 30

The Aftermath of the First Decision

Though the merger had been approved, the debate and rumor surrounding it did not abate.
Now that FCC approval of ITT-ABC merger has emerged, ... insiders are still speculating on who tried to blow the whistle, delaying action that was practically set weeks ago. It's freely hinted that one of ITT's competitors in domestic independent telephone and manufacturing wasn't unhappy when Department of Justice raised antitrust questions.

And, without naming names, story is that ITT several years ago didn't discourage antitrust inquiry into acquisitions by same competitor.\[31\]

One party who was upset by the announcement was Hubbard Broadcasting which had been contesting the frequency held by WABC-AM. Contending that the merger would impede, even negate completely, their attempts to acquire the contested frequency, Hubbard took the matter to court. In their order approving the merger, the Commission majority had rejected the Hubbard renewal challenge leveled at WABC-AM. They indicated that they were renewing the license without prejudice to Hubbard's rights or to the issues in the case.\[32\]

Hubbard was later convinced by ITT-ABC lawyers to delay court action after being assured that the merger would not be consummated for thirty days. This afforded Hubbard time to file with the Commission a petition for stay pending a decision on their appeal. There had been speculation that the matter would have been settled out of court. It was thought that anxious not to have anything further hold up the merger, ITT might be more willing to compromise with Hubbard than ABC had been during previous discussions.\[33\]
Congress Reacts to FCC Approval

Congressional reaction to the merger approval was swift and negative. Philip Hart (D-Mich), Chairman of the Senate Antitrust and Monopoly Subcommittee, said that it was "...particularly disturbing to learn that the Commission majority was unwilling to take the time to study closely the many serious public interest questions raised by the Department of Justice." He called for a re-evaluation of the Commission approval and suggested that court action against the Commission might be considered. And, he described as inconceivable the thought that the FCC would approve a merger of such magnitude after holding a hearing that one Commissioner (Nicholas Johnson) had described as an "unprecedented, bobtailed oral hearing."

Gaylord Nelson, (D-Wis) a member of the Senate Small Business Committee, also expressed amazement at the Commission's action. He said that he had been reluctant to pass judgment on the case, especially on procedural matters, contending himself with role of Devil's advocate. He had hoped, however, that the Commission would handle the case judiciously and with wisdom. He found it difficult to believe that the Commission would not have attempted to reach more of a consensus on the merger proposal.

...But instead, a one-vote majority of the Commission elected to ram this case through without
even satisfying the procedural objections of three FCC members.\textsuperscript{36}

He continued by saying,

The willingness and ability of the FCC to consider the public interest in such cases has been thrown open to serious question. ...It would appear that this is just another regulatory agency that has become the willing tool of the industry it is suppose to regulate.\textsuperscript{37}

Senator Wayne Morse, also a member of the Senate Small Business Committee, added his voice once again to the legislative cacophony. He said that the method of evaluating the merger and the vituperative nature of the dissenting commissioners"...should cause the American people grave concern as to the judicial competency of the majority of the Commission."\textsuperscript{38} He also said that the Commission had a past record of attending to the will of the industry and called for congressional action.

In the past the FCC lost the confidence of the public by its early compliance with industry demands and the failure of Congress to exercise appropriate supervision over one of its agents. I hope Congress will not again allow the FCC to fall to such low estate by allowing the public airwaves to be disposed of with only... superficial investigation.\textsuperscript{39}

He went on to charge that the

...Precipitate action by the FCC on the most important merger to come before it has not served the public interest. It can only suggest that the bigger corporate interest, the fewer the questions, and the faster the FCC moves to oblige it. Surely no small-scale merger of local stations
would have been handled with so little inquiry and so much disregard for normal FCC procedures.\textsuperscript{40}

Not content to chastise only the Commission, he also had a comment to make directed toward the Justice Department which reflected upon their investigations of earlier political-interference charges which had been leveled against ITT by Morse.

I am satisfied that the political history of this case emits an offensive odor which the Department of Justice has tried to deodorize.\textsuperscript{41}

Congress was not the only body to express surprise at the rapidity of the merger approval. In an article dealing with the role of the conglomerate in broadcasting, The Economist mused.

Although this is the largest application to transfer broadcasting properties ever to come before the FCC, a majority of four of the seven commissioners approved it in less than eight months--one of the fastest moves in FCC history.\textsuperscript{42}

A harbinger of things to come, in retrospect, were statements attributed to Justice Department officials which, indicated that the merger was still under consideration by the agency even though the FCC had approved it. This refers to the statements contained in the Turner letter which did not say or imply that the Justice Department had completed their evaluation of the marriage.\textsuperscript{43}

The stakes in the merger were great and the ITT-ABC complex was a most impressive one. An international
corporation with assets of $2.5 billion, the new entity would be the nation's twentieth largest corporation and the largest of the three owning networks. RCA, parent company of NBC, had nonbroadcast assets of $1.269 billion at the end of 1965 and CBS could boast of $469 million. Combined with the totals derived from their broadcast operation, however, both still fell short of the hypothetical ITT-ABC total income for 1965 with RCA-NBC accounting for $2,057 billion, and CBS with a total of $700 million. 44 ABC which had been "...forced to scramble to stay in sight of its competitors, CBS and NBC... was the new giant in broadcasting." 45

ABC President Goldenson was quick to react to the merger approval. In a statement issued after the Commission's action he said,

We shall do our utmost..., now and in the future, to live up to the vote of confidence given to us by the majority of the Commission. We believe the merger will make it possible for ABC, in the public interest, to bring to the people of the nation the best of programming in entertainment, in sports and news, and public information. 46

Other ABC officials were also pleased with the news, but they had additional reason to feel festive. The arrangements in the merger agreement called for each share of ABC stock to be exchanged for .57 of ITT common and preferred stock or, more simply stated, one share of ABC stock equaled
1.14 of its ITT counterpart. On the day after the FCC announcement was made, ITT's stock was selling at 75 7/8 which made each share of ABC stock, in merger terms, worth about 91 or 6 per cent above the selling price of ABC on the same day. A brief look at the stock holdings of a few of the network executives is one method of examining this additional reason for glee.

As of March 1, 1965, Leonard Goldenson, ABC President, owned 97,061 common shares of stock in the company; Simon B. Siegel, ABC Executive Vice-President, owned 18,937 shares; and ABC-TV President, Thomas Moore, held 8,659 shares. In addition both Seigel and Moore held options at $60 per share on 10,000 and 8,500 shares respectfully. The rise in the ABC stock price was closely allied to its merger discussions and plans with ITT. Before the first announcement of merger talks ABC stock had sold for 54. On December 2, the day the possible ABC-ITT merger was announced the stock rose eight points. On December 9, when the merger plans were announced officially, the stock reached 74 where it hovered until the time of the Commission's approval.

The first rumblings that Congress planned to do more than grumble about the merger of the two companies came in early January. Representative Silvio Conti (R-Mass), who had been critical of the proposed merger prior to its approval, suggested that either the House Small Business Committee or
the House Commerce Committee investigate the FCC's handling and approval of the case. In a response to Conti's request, Joe L. Evins (D-Tenn), Chairman of the Small Business Committee, said that he would have the matter placed on his committee's agenda for "study and investigation." In his reply to Conti, Evins wrote:

In my view the consolidation of these two corporate giants poses certain questions which do not appear to be answered sufficiently by the opinion or ruling recently released by the FCC.

Following the announcement of the merger approval, Conti had said that,

Sufficient doubts have arisen over the impact of this action on small-business competitors to warrant a more thorough examination of the details and possible consequences.... On the basis of published reports and the lack of depth reflected in the text of the final ruling itself, there are grounds to suspect that the FCC has failed to deal with the matter in as careful and as responsible a manner as the American public has a right to expect.

The Justice Department Intervenes

On January 22, 1967, only two days before the merger was to become official, the Justice Department petitioned the Commission to reopen the case and hold a full evidentiary hearing in which the Department could participate. It asked that the hearing be held within sixty days. In their petition the Department said that the Commission had ignored some of the most significant Justice concerns, especially
those dealing with the anticompetitive aspects of the merger.\textsuperscript{53} They also scored the ITT rationale for acquiring ABC.

Rather than planning to invest large amounts in the capital improvements of ABC, ITT appears to have expected ABC to produce a large cash flow which would be available for use outside the broadcast industry.\textsuperscript{54}

The move caught both the Commission and the ABC-ITT principals somewhat by surprise, especially since they had come so close to consummating the merger. The Commission, in the majority opinion, had addressed themselves to the Justice Department's concerns and had felt that they had dealt fairly with the points raised by the Department. However, Justice did not concur. They felt that the merger approval meant,

The possible elimination of ITT as a potential competitor in network broadcasting; possible elimination of ITT as an operator of numerous and extensive CATV systems which might eventually be capable of competing with conventional network broadcasting; and possible elimination of ITT as an independent source of basic technological development which might multiply channels of access to the public and provide the basis for new entrants into network broadcasting.\textsuperscript{55}

ABC had also contended that its financial needs would be met through funds from the larger company; however, the Justice Department stated:

The documents reflecting reconsideration of this transaction by the management of the two companies do not suggest that this was a significant factor leading to their merger decision.
Moreover, rather than planning to invest large amounts in the capital improvement of ABC, ITT appears to have expected ABC to produce a large cash flow which would be available for use outside the broadcasting industry.\textsuperscript{56}

Calling for a full hearing on the proposed merger, the Justice Department cited the Communications Act of 1934 which suggests a full evidentiary hearing whenever a "substantial issue of fact is presented." And in implying an abrogation of responsibility on the part of the Commission majority, the Department said:

\begin{quote}
We respectfully submit that in a matter of such great public importance—involving as it does the largest merger in the history of the broadcasting industry—the Commission has a duty not merely to take the record as it finds it but rather to act affirmatively so that the record is truly informative on all aspects of the public interests.\textsuperscript{57}
\end{quote}

They continued by pointing out the weaknesses of the September hearings and chided the Commission for not having witnesses and testimony from parties opposed to the merger.

\begin{quote}
There was no adversary party to the proceeding actively asserting the public interest in effective competition,\ldots Important issues remain unresolved, and the Commission's record, as it now stands, does not permit them to be resolved in an informed manner.\textsuperscript{58}
\end{quote}

To underscore their wish for the Commission to stay its approval of the merger the Department also pointed out that the merger was still under review by the Antitrust Division.
While we have been aware of, and are sympathetic with, the Commission's wish to dispose of the pending applications promptly, we have found no shortcuts in probing the competitive aspects of a merger of such size and complexity.59

The letter from the Assistant Attorney General did little to improve relations between the two federal agencies. The Commission had attempted to keep the Justice Department informed and had made a concerted effort to keep lines of communication open. They had hoped that the Justice Department would participate in the September hearings.

The language of the letter calling for reconsideration was cutting in its criticism of the Commission's procedures, and did not assist in mitigating any possible ill feeling on the part of the Commission and staff to what many considered to be a last minute intervention by the Department.

Justice also did not contribute to a congenial atmosphere for discourse in suggesting that if the Commission did not heed the requests of the Department, it would consider possible court action; though it did not say pointedly that it would pursue that option.

The Justice Department had said that it based its request for a stay on new information received. Shortly after their request for reconsideration, they announced to the Commission the source of their new materials. Some had come from the principals at the request of Justice, and
additional supportive material was in the form of new
testimony from interested third parties. Justice declined
to tell the Commission who the third parties were, however,
and said that the names would be given at "an appropriate
time" prior to a hearing. 60

Broadcasting, which had devoted considerable space to
the merger deliberations, was quick to react editorially to
the newest move by the Justice Department.

It is hard to believe that the Department of
Justice was acting wholly on its own initiative
when it asked the FCC last week to reopen the
ABC-ITT case. That the Department would wait so
long to apply for entry as a participant suggests
that it was pushed into an action that it had been
unwilling to take when earlier invitations were
extended.

For the time being, however, the motivation
of the Department may only be conjectured, and
indeed it is secondary in importance to the
effects that could flow from the kind of procedure
that the Department has proposed. What Justice is
attempting here is a short cut to enforcement of
its current antitrust philosophy, without going
through the difficult course of prosecution in the
courts under the antitrust laws. If this short
cut leads to Justice's desired ends, it could
easily become the road to nowhere for any large
company that seeks to enter broadcasting through
the acquisitions of existing properties.

The Justice Department has based its petition
to the FCC entirely upon what it regards as poten­
tial injuries to competition in broadcasting. It
implies that, if admitted to the case, it will
attempt to persuade the FCC to deny the merger on
the grounds that the anticompetitive affects would
be against the public interest.

Undeniably, the FCC has broad powers to grant
or refuse broadcast licenses according to its
appraisal of the public's interest in the outcome. It may even have the legal power to do what Justice asks. But in this case it is being urged to reverse its own decision that the public interest would be served by a union of ABC and ITT. And it is being urged to change directions on a very narrow interpretation of the nation's antitrust policy.

Now antitrust law is very complicated—so complicated that the Justice Department itself, the government agency that is most expert in the subject, loses a good many cases that it prosecutes. Neither by design nor practice is the FCC competent to sit as a court in the trial of an antitrust matter. And that may be the very reason for the Justice Department's selection of the FCC as the forum for attacking the merger of ABC and ITT.

By Justice's own admission, the department has been investigating the merger for more than a year. By now it ought to know whether it has a case that would stand up in the orderly procedure of a federal court trial. If it thought it had one, it could have filed in federal court an appropriate suit to enjoin the merger.

There is every indication, however, that Justice would prefer to queer this deal without risking embarrassment in court. Last November 3, Donald Turner, the antitrust chief, asked the FCC to defer action on the merger until the department could complete investigation. Mr. Turner said the investigation "indicates a sufficient possibility of significant anticompetitive effects to indicate that substantial antitrust questions are presented. On December 20, Mr. Turner advised the FCC that there were anticompetitive problems that the FCC ought to consider, but he said his department had failed to turn up evidence conclusive enough to justify the filing of an antitrust suit. Last week's petition to the FCC suggests no accumulation of new evidence.

It will take uncommon courage for the four-man majority of the FCC that approved the merger last month to stick by its position, but stick by it it must. The essentials of the case before the FCC have in no way been changed by the Justice Depart-
merit's earlier letters or its petition of last week. Justice's own actions have been only a hindrance to the Commission's disposition of the matter.

If Justice truly believes that the merger violates the antitrust laws, it can test its belief in the forum that the law provides, the federal court system. 61

ITT also responded immediately to the Justice actions, and in a statement, released the day after the Commission received the letter from the Justice Department, said:

International Telephone and Telegraph Corp. will vigorously oppose the attempt of the Department of Justice to reopen the Federal Communications Commission proceeding.

ITT regards yesterday's action by the Department of Justice before the Commission as wholly inconsistent with the conclusion of its letter of December 20 to the Commission in which it stated that though it saw the possibility that some anticompetitive consequences could conceivably flow from the merger it saw no present reason to bar the merger.

The areas enumerated were, in our opinion, immaterial and inconsequential and we agree with the department, based upon our own plans, that the conclusions drawn were speculative and neither imminent nor realistic.

Specifically, the Department of Justice letter of December 20 to the Commission said: 'The possibilities of such anticompetitive consequences seem sufficiently speculative that we are not presently contemplating an action under the antitrust laws to enjoin consummation of the merger.

Yesterday's petition was only a reiteration of these same speculative consequences that the department raised with the Commission one month ago before it issued its order authorizing the merger.
The Commission did not rule after it received the Department of Justice letter of December 20.

The intention to merge was announced by both companies more than a year ago. Voluminous information about both companies was supplied to the FCC which has conducted a construing investigation during all that time.

The Commission held public hearings which were publicized in advance along with invitations to all interested parties to attend.

Despite this opportunity, no significant opposition to the merger was raised. The Department of Justice neither asked for a delay of these hearings nor appeared at them.

It is quite clear from the Commission's opinion that all of the facts and considerations raised by the Department of Justice were the subject of careful consideration by the Commission in approving the merger.

We are advised by legal council that the proposed merger will not be a violation of the antitrust laws. Instead, as the Commission has found in an opinion, the merger 'promises unquestionable public benefits' and will enhance rather than lessen competition in the field of communications.

Therefore, on the basis of the record we will request the Commission to reject the Department of Justice's petition.62

The action by the Justice Department pleased some congressmen who had chided the Commission earlier for approving the merger. Among those commenting was Gaylord Nelson who said, "'It is scandalous when the Justice Department has to intervene to protect the public interest against the actions of a public agency!'"63 He sought an immediate move
by the Commission in the direction of a full hearing, a cause he had championed earlier. "'If these things are not done,' he added, 'the President ought to ask for some resignations from the FCC!'"\(^{64}\)

Senator Wayne Morse, another detractor of the merger, also commented on the Justice move. He described it as "...a welcome recognition of the damage the FCC has done to itself and to the public interest by its handling of this case."\(^{65}\) In remarks made on the floor of the Senate, Morse took the Commission to task for not considering the earlier questions posed by the Justice Department and commented on the foreign influence factors that had concerned the dissenting commissioners. He found it difficult to believe that the programming of the ABC news department would not be affected by the merger. And he again reiterated his charge that the Commission didn't delve deeply enough into the charges of a political nature directed at ITT.

I do not suppose the FCC made any effort to learn what the Justice Department may or may not have done to investigate the possibility of violations of the law in connection with campaign contributions.\(^{66}\)

A new senatorial voice, Ralph Yarborough (D-Tex), was also added to the congressional dissonants. He commended the Justice Department for having interceded in the Commission's action.
...So that the public and the Congress might learn what is involved in this $2.5 billion merger before this hasty 4-to-3 Christmas Holiday-December 21-decision becomes law of the land.\textsuperscript{67}

But not all the congressional comment on the Commission's merger approval was negative. Senator Thurston Morton (R-Ken), a member of the Senate Commerce Committee, took exception to criticism of ITT's foreign involvements. He pointed to ITT activities for the U.S. Government and Military "...as testimony to the firm's patriotism and ability to work as a partner in the defense of the free world."\textsuperscript{68} Others siding with the Commission were Representatives Fred B. Rooney (D-Pa) and Ross Adair (R-Ind). Rooney said he felt,

The entire regulatory process is endangered by this late action.... What the Department of Justice is in effect saying to the FCC is that we do not have a case but we think you should reverse your decision. There is positively no basis for this action and I believe that the duties, responsibilities and integrity of the members of the FCC must be upheld.\textsuperscript{69}

He entered into the \textbf{Congressional Record} a copy of the \textbf{Broadcasting} editorial on the Justice Department's intervention, after the decision of the Commission had been announced (See page 100, Chapter II of this paper).

Adair was upset by the Justice move and said that the Department had posed only "...speculative questions which have already been answered."\textsuperscript{70}
Senator Burke B. Hickenlooper also entered the fray and called the Justice move "astonishing." He took exception to the delay of the Department in apprising the Commission of its concerns and their last minute intervention and queried, "What kind of government process is this?" He suggested that perhaps the Department was attempting to force the Commission to work in the Justice vineyards, and that the concerns raised by Turner had been sufficiently considered to the satisfaction of the Commission majority.

Senator Hugh Scott (R-Pa), a member of the Commerce Committee and Communications Subcommittee, also questioned the last minute intervention of the Justice Department, especially since they had been offered the opportunity to object throughout the merger deliberations by the Commission. He also reflected on the propriety of a federal department threatening possible court action against an independent governmental agency.

Senator Russel Long (D-La), also a member of the Senate Commerce Committee and Communications Subcommittee, defended the Commission majority and concurred with the majority opinion that the merger would make ABC more competitive with CBS and NBC. He chided the Department for waiting until the last minute to ask for Commission reconsideration, and singled out Commissioner Nicholas Johnson for special mention. Indicating that he hoped the maverick
reputation that Johnson had earned as the one-time Maritime Director would not characterize the Johnson term on the Commission, Long described Johnson

...as having made himself so unpopular with the maritime industry that his removal from that position was dictated by virtue of the fact that he had made countless enemies, both for himself and the Johnson Administration.74

He said that the Commission had discharged its responsibilities with competence as opposed to the Justice Department which, he charged,

...has embarked upon a course of action which is inexcusable for its lack of substance, lack of fact, lack of judgment, and lack of carefully considered evidence. Perhaps it is the Justice Department who should be taken to task, not the FCC.75

ITT and ABC responded to the Justice petition with a filing of their own asking that the Commission deny the Department's request. In their pleading, they also scored the Department for waiting so long to participate, and declared that the Justice document represented "...an unprecedented attack on the competence and administrative integrity of the Commission."76

Further, they charged, the Justice Department was attempting to "maneuver" the Commission and asserted that the Department had based its request for a stay on very weak grounds. They added that the Department could not
...conceivably justify upsetting the balanced public interest judgment of the Commission. It inevitably follows that any reopening would accomplish nothing but enable the department to vent its pique against the Commission.??

The ABC-ITT position on the anticompetitive issue reiterated the same points that had been made earlier, during the testimony in September: 1) That ITT had no intention of entering broadcasting in any other form should they be denied their request to merge with ABC. 2) That discussions on possible entry into CATV or purchase of broadcasting properties had ceased long before the ABC acquisition request. They also attacked the Department's assertion that ITT might wish to slow down the pace of their technological development, development that might lead to greater competition in broadcasting, if its broadcast interests were threatened. They said that a theory like that was "...sheer speculation and contrary to common sense. It would be absurd for ITT to adopt the shortsighted and self-defeating policy conjured up by the Department."??

There were many others who might have had good personal reason to be piqued at the Justice Department's decision, and Senator Morton alluded to it in his Senate floor condemnation of the Department's actions when he mentioned the $67 million loss suffered by ABC stockholders following the Justice intervention.??
On the day following the Department's announcement (January 19, 1967) the price of ABC common stock plummeted 14 3/8 points to 79. ABC had closed the previous day at 93 3/8, up 1 7/8 in anticipation of what most observers felt was the imminent consummation of the merger arrangements. Paradoxically, ITT closed on January 19 at 80 1/2, up 1 1/2 for the day. 80

The Commission Responds to the Justice Petition

The Commission was the center of a storm of controversy surrounding the merger approval and the subsequent petition from the Justice Department. Accused of a multitude of evils, there was even the suggestion that the Commission should be the object of continued scrutiny by an ombudsman of some sort. Robert Lewis Shayton wrote in the Saturday Review,

The recent approval by a majority of the Federal Communications Commission of the merger of American Broadcasting Companies, Inc. (ABC), into the International Telephone and Telegraph Corporation (ITT) is a sobering reminder of the portentous need in this country for a national organization that will ably represent the public by continually scrutinizing the actions of the FCC. People will stir up storms over a single dubious program. Yet the largest transfer of broadcasting properties in history was made without the slightest whisper of public understanding or protest. 81

Recognizing the position they were in, the Commission decided to act and in early February, 1967, issued an order
requesting that the Justice Department provide the "new" information that was a part of their rationale for asking for a hearing. They would, the Commission said, consider the Justice materials and then come to a decision as to whether they would hold a hearing on the merger or allow their original decision to stand.

They directed the Department to file all documents pertinent by February 15, including in their submission the names and addresses of witnesses Justice was prepared to call and statements of testimony they would give. In addition, ITT and ABC were asked to file by February 23, their own additional evidence regarding the merger. The Department would then be given until March 6 to file any rebuttal documents it wished. The Commission would then study all the submitted materials and come to a decision on their course of action.

The request for information was made following a 5-2 vote of the Commission with Commissioners Wadsworth and Bartley dissenting. Bartley voted against the order as he felt the Justice Department's request for a full evidentiary hearing should be honored immediately. This had been his position since the early days of the merger considerations. James T. Wadsworth voted against the order for a much different reason. He felt the Justice petition should have been denied. The Commission had, however, chosen a middle
course of action, giving them breathing room, and providing them with the time to consider the Justice request.\textsuperscript{83} Wadsworth, in an individual statement, said that the Justice Department was attempting to substitute its judgment for the expert judgment which the Congress has commanded this agency to exercise. He said the Department's attempt to intervene 'is incompatible with our own independence, the integrity of our processes and the principles of law that we are charged to uphold and preserve.'\textsuperscript{84}

Lee Loevinger, voting for the order, said that he felt that the Justice Department's petition should have been denied, but that "practical" considerations dictated that Justice be allowed to submit its evidence.\textsuperscript{85} The ex-director of the Antitrust Division of the Department of Justice continued by saying,

The Department of Justice and the Antitrust Division should stand and speak plainly against all attempts to influence the adjudicatory process by any means other than the prescribed process of law, and should not appear to acquiesce in, encourage or employ such means.\textsuperscript{86}

Commissioner Johnson sounded a pessimistic note. Even though he favored allowing the Justice Department to file additional evidence against the proposed merger, he doubted that it would have any effect on the majority members who had approved the merger earlier. As he pointed out, "'What reason is there to suspect the new, more voluminous filings will have any greater influence?'"\textsuperscript{87}
Broadcasting wrote as follows:

In a polite way the FCC has told the Justice Department to put up or shut up on the merger of ABC and ITT. No matter how Justice reacts, the Commission has considerably solidified its own position in any litigation that may ensue.

If the Justice Department is to be given the hearing it demanded, it must show evidence to support its charges of anticompetitive dangers in the merger. It has already admitted that its evidence is insufficient to win an antitrust case in court. If that is so, the evidence is hardly sufficient to justify an FCC reversal of its decision to approve the merger.

But Justice cannot now say that the FCC rejected its petition summarily. It has been given a chance to show its hand, despite its late entry into a game that, by all established rules, was already over.88

The materials from Justice began arriving at Commission headquarters and were often identical to other documents previously submitted on the proposed merger. However, they seemed to prompt a subtle change in the tenor of articles dealing with the merger in Broadcasting, whose posture on the marriage had been evidenced by the language and tone of both editorial and reportorial materials. Broadcasting, which had supported the merger vociferously and had reserved some of its most caustic language for discussing their disagreement with the dissonant voices, wrote concerning the new material.

But from the documents available ITT emerges as an aggressive company, one always on the lookout for new ventures to acquire; a wealthy one,
able to talk about possible acquisitions that could cost more than $1 billion; and a prudent one, careful to move into a field only if it has been carefully explored.89

The preceding echoed what the minority had been long advocating and supporting, and a major argument of the Justice Department: that ITT looked upon ABC as a profit enhancing enterprise and was not really that interested in their broadcast functions. Thus, there was a question as to whether the giant company would be concerned enough to assure that the stations (and networks) would be operated in the "public interest, convenience and necessity."

For instance, new documents concerning ITT's previous interest in acquiring CBS, indicated that the company's interest in the profitability of broadcasting properties and their desirability as acquisitions had been significantly more important in the ITT building program than ITT President Geneen's testimony in September had indicated. Included in the document were numerous studies made of CBS by ITT analysts and estimates of purchase costs versus investment return. However, there was nothing to indicate that ITT and CBS officials had ever formally considered a merger.90

The Justice Department's filing also included materials showing ITT's interest in acquiring other broadcast properties, and emphasized that the Justice Department's concerns about ITT's entrance into the broadcast industry if the ABC
merger was not approved had more than just passing merit. Among these were documents showing ITT's interest in the Travelers Insurance Company which was the licensee of WTIC-AM-FM-TV in Hartford, Connecticut. There were also materials indicating that the company had evidenced interest, in 1964, in WATE-AM-TV in Knoxville, and documents highlighting ITT negotiations at one period, with the H. Gross Telecasting Company.  

The Justice Department's submissions dealt, at some length, with the ABC financial need issue. Basing much of their argument on a report prepared by ITT financial analysts, the Justice petition indicated that by 1970, ABC could be expected to generate a cash flow of $100 million which could be used by ITT for further investments, conceivably outside the broadcasting industry. ABC and ITT officials, in explaining the disparity between ABC figures and those of the Department countered that the Justice figures did not represent ABC dividend expenditures nor capital needed immediately for colorization of the network, which would bring ABC production and broadcast up to parity with their competition. Nor did the figure reflect other capital expenses the network and station anticipated.

As could be expected, the delaying tack employed by the Commission evoked mixed reactions from Congress.
Gaylord Nelson, who had pressed earlier for a full hearing, said,

> For some unexplained reason, four of the seven commissioners have been determined to rush this measure through to completion without taking any testimony on the most crucial public questions involved.\(^\text{93}\)

He also restated his contention that Congress should examine the role of network broadcasting and its relationship to conglomerate ownership.

Some discussion of a possible investigatory hearing on the matter had been initiated earlier by Representative Silvio Conti who had asked the House Small Business Committee to initiate a study of the merger, and this was followed by a rumor that Chairman Harley Staggers (D-W, Va) had planned to have the merger studied by the House Commerce Committee.\(^\text{94}\)

In addressing himself to the foreign influence issue, Senator Ralph Yarborough, a newcomer to the fray, said that

> Objective, careful and thorough news collection and analysis are so vital to a free society that every precaution should be taken to shield the mass media from any possibility of undesirable influence from external economic interest.\(^\text{95}\)

The decision to examine additional information, he felt, would help prevent hasty decision making, especially when examining the issues of potential foreign influence.

Some of the Congressional dissent to the Justice Department's position could be attributed to ABC affiliate contacts with legislators.
Senator Gordon Allott (R-Colo), a member of the Senate Appropriations Committee, criticized Justice's handling of the case after, an aide said, he received a potful of correspondence, including a letter from an ABC affiliate in his state. The Senator expressed his criticism in a letter to acting Attorney General Ramsey Clark.

Senator Jack Miller (R-Iowa) described ABC affiliates in his state as being "up in arms" over the delay in the merger and the intervention of the Justice Department. He said, in a letter to FCC Chairman Rosel Hyde, that one affiliate manager had written to him complaining of the conflict in standards being applied by the FCC and the Justice Department. Miller also said that the Commission should deny the Justice Department's petition and force it to go to court if it wished to stop the merger. He said that a procedure such as that "...would be welcome news not only to the business community but to members of Congress who wish to point to the FCC as an example of how an independent agency should operate."  

An article in Broadcasting reported that,  

One surprise in the file was the appearance of letters from Governor Paul Johnson of Mississippi and Justice Thomas P. Brady of the Mississippi Supreme Court. Both officials, who have had their problems with the Justice Department in other matters, expressed their opposition to the department's petition, and urged the Commission to 'stand fast.'

All correspondence to the Commission, however, was sent to the Executive Director's office in accordance with
the Commission's ex-parte rules for handling this type of material in adjudicatory matters. 99

Another form of pressure was suspected of being applied by Justice Department officials who allegedly had announced in an article in the Wall Street Journal that they would take the Commission to court if a hearing was not held, and might exercise that option even if a hearing were held and the Commission reaffirmed its positive decision.

However, after E. J. Garrity, Senior Vice-President of ITT in charge of public relations and advertising, wired the Department asking for clarification of the statement, he was told by Clifford Sessions, director of public information for the Justice Department,

... that no authorized spokesman for the Department of Justice has issued any statement concerning possible Department action should the FCC either decline to order a hearing on the ITT-ABC merger, or after a hearing affirm its approval of the merger.

Pending the FCC decision, there of course has been no determination of what action the Department would take in either of these events. 100

Though false, the article did precipitate a modest amount of bad news; ABC stock dropped 4 1/2 points. 101

Another group of those interested in the merger, who had become a continuing and disquieting influence, were the members of Congress who had been requesting a legislative
hearing on the merger. Merger proponent, Senator Russel Long (D-La), anticipating such a course of action requested a legal memo from FCC general council, Henry Geller, on the availability of the commissioners for possible testimonial appearances before Senate hearings on the merger, as well as the legality of such actions on the part of the commissioners. In his response, Geller said that any commissioner who appeared as a Senate witness would be disqualified from any further deliberations on the case. This was in keeping with an earlier FCC study of public utterances by commissioners while considering the merits of the merger. The response to Long put concern over a possible congressional investigation to rest. Long who at the time, was assistant Senate Majority Leader and Chairman of the Senate Finance Committee was a most powerful voice on the Senate floor. He had said that the merger would result in more, rather than less effective competition because ABC does not presently have sufficient power, money and prestige to compete effectively with NBC and CBS. The merger might well result in three strong networks instead of two.

However, the House Small Business Committee did vote to hold a "preliminary inquiry" into the case. As a study, however, whose purpose was to decide whether a hearing should be held, the decision of the group would not be announced until after the Commission had made its final determinations.
In February, 1967, perhaps with the thought that it might be psychologically effective, ABC filed with the Commission the announcement that it planned to borrow $25 million from ITT to meet a "critical cash shortage." Placing the blame for this on the Justice Department's delaying action, ABC said that under the terms of the agreement, the loan would be paid back in five monthly payments of $5 million each and would start in March of 1968. ABC cited operating costs and financing limitations imposed on them by other agreements for the shortage of available cash. The network said that they would pay 6 per cent ($1.5 million) to ITT for the use of the funds.\textsuperscript{105}

One might assume that the two companies were still sure that the merger would be approved since "the pending agreement \textsuperscript{[on the loan repayment]} would, reportedly, be virtually unsecured--'no more than a gentleman's word' would bind it according to one source."\textsuperscript{106} However, the loan agreement did take into account both merger and non-merger situations. If the merger remained approved, the $25 million would be regarded as partial payment on the $50 million promised by ITT President Geneen in the September hearings. If something should go wrong with the merger plans, the interest charges would be set at 1/4 per cent above prime interest or 6 per cent mentioned earlier.\textsuperscript{107}
By February 15, 1967, the date set by the Commission for submission of the new Justice evidence, some 260 documents had been filed with the Commission. Predictably, they all supported the Department's earlier contentions and contained few surprises. In their petition for reconsideration, the Justice Department reiterated its charge that they had found several "inconsistencies" between their findings and those of the Commission majority, and that "gaps" existed that could only be satisfactorily dealt with through a full evidentiary proceeding. Among their contentions was the strong belief that ITT viewed the ABC acquisition as a financially sound move, and that the smaller broadcasting company was expected to generate substantial capital for the ITT coffers, which would not necessarily be set aside for its broadcast division.\textsuperscript{108}

The filing also indicated that, contrary to protestations from ITT, the merger would remove the possible entry into broadcasting and/or CATV of ITT, and that this would in effect lessen the chances for increased competition in broadcasting. And, though ITT officials had indicated that reciprocity was against company principle, the Justice Department found some reason to cast doubt on the ITT statements. In its submission, the Department claimed its evidence showed that "ITT is highly aware of the possibili-
ties of economic leverage in its conglomerate position, and seeks to take advantage of them. 109

The Department was also concerned that the approval of a merger involving a conglomerate engaged in common-carrier activities with a company whose prime function was broadcasting would lead to a lessening of debate on matters where there was a conflict of interest between two divisions. Though ITT, in declaring its intention to allow ABC to remain essentially autonomous, had stated that they expected ABC to continue to argue strongly the broadcasters' points before the FCC, the Justice Department was not convinced. In their brief they contended that ITT "...was aware of, and determined to prevent conflicts between the interests of various subsidiaries and affiliates." 110

They also dealt with conglomerate control of broadcast properties by a company engaged in technological development and sales. In their petition, the Department stated that such combinations with a variety of interests tended "to lessen the diversity of creative efforts by others in communications technology." 111

In addition, they addressed themselves to the existing RCA-NBC combine with the admonition that since one such giant already existed, the addition of another might serve to "retard procompetitive technological changes." 112
They also, as the FCC had requested, submitted a partial list of witnesses they planned to call in the event an evidentiary hearing was scheduled by the Commission. Among the names was that of Dr. Joseph V. Charyk, president of the Satellite Corporation, who would offer testimony on ITT's important technological contributions to the industry and discuss the advent of more significant uses of satellites for communications.

Another witness the Department intended to call was Paul Visher from Hughes Aircraft who would deal with the importance of keeping separate, companies involved in technological development and those with communications interests. In his statement, Visher indicated that ABC was one of the leading proponents of a scheme to replace AT&T long-lines for signal transmission with a domestic satellite. Significantly, Hughes had approached ABC with the proposal after being turned down by Comsat.113

The Justice Department seemed to concede that the material it was presenting, internal memoranda and assorted financial data, was not necessarily sufficient in and of itself to force a hearing. Their request for consideration, the petition said, "Is not primarily based upon the persuasiveness of the material not now in the Commission's record." But they insisted,
The existence of critical issues which have not been adequately considered requires reconsideration even in the absence of any new evidence. 114

The ABC-ITT response to the Justice plea was biting, often bitter, and charged the Department with serious improprieties in their selection of "evidence" to support their allegations. They accused the Justice Department of distortion of material which ITT-ABC contended was the result of the Department's inability to make a solid case. The evidence, submitted by Justice, they charged, "...demonstrates that the Department has utterly failed to make out a case for reopening, much less a case for overturning the Commission's decision." 115

The ABC-ITT counter filing said that there was a great disparity between the earlier "trumpeting" of interviews Justice had conducted, and "the inadequacy of its evidentiary showing [which had forced] the Department to resort to tactics of desperation." 116 The ABC-ITT response also contended that the Department submissions confirmed their suspicion that the Justice case against the merger was based on "...no more than its own speculation" and that no oral testimony is needed to refute the department's misguided contentions... no hearing is required to dispose of them... the department's petition should be denied. 117
They also accused the Department of ignoring materials submitted by the principals which refuted the Justice arguments, and of distorting information, in some instances, to bolster their plea for reconsideration. One such document was an estimate, submitted by the ITT-ABC principals, indicating that the cost for colorization of the network was approximately $50 million. Justice had used this figure in refuting ABC's charges that the broadcast company was in need of capital assistance from the larger company. ABC-ITT charged that the Justice Department had chosen to ignore a later letter submitted on February 11, 1967, which represented the "complete plan" and put the price tag for total conversion at $113,470,000, more than twice the Justice Department estimate.

They also charged that the Department had withheld notes taken at an ABC board meeting, when the merger was first under consideration. The notes, taken by ABC Executive Vice-President, Simon Seigel, purported to show that at that early date, ABC was concerned about the cost of color conversion and felt that ITT was an excellent answer to the problems inherent in the colorization project: "Engr.--color and modernization--great expense and they manufacture equipment and lot more know how." 118
They also charged that the Justice Department had ignored another document which refuted the Department's concern with possible reciprocity activities between ABC and ITT suppliers. The document was submitted to the Justice Department by ITT, attached to a list of suppliers and was alleged to be a policy statement on ITT's purchasing arrangements within the company:

It supposedly stated that since ITT's purchasing functions are decentralized, purchasing managers have a 'positive incentive' to purchase all supplies and services 'at the lowest total cost available in the market.'

Even the Justice witnesses were not immune to ITT-ABC scorn. The companies charged that the Justice Department's case was "glaringly insufficient" in regard to the prepared statements of the witnesses. They also said that there were no witnesses submitted who supported the Department's claim that ITT might be a possible entrant into broadcasting or CATV, "...two of the issues claimed by the Department to be 'most significant.'" They continued by saying that this lack of available testimony either indicated that the Department was unable to find individuals to support their charge or that Justice, in interviewing possible witnesses, could find only testimony favoring the ABC-ITT side of the discussion.

They also suggested that the Department was confused about the Commission's role in the transaction under
consideration, and that antitrust procedures were being foisted on the Commission. They said that the question of would the public interest be better served by some other "disposal" of the licenses under consideration was not the statutory prerogative of the Commission.\textsuperscript{122}

The ITT-ABC rebuttal also discounted the Justice contention that ABC would be loath to oppose ITT, if the merger were approved, in matters concerning common-carrier rates, stabilization of costs, satellite transmission and other matters where a conflict of interest might exist.

The parties noted that the Commission had looked into this question and found that ABC's increased ability to deal with AT&T and to cope with the complexities of evolving communications technology outweighed 'the minor possibility' of conflict of interest in connection with international communications rates.\textsuperscript{123}

They also questioned the lack of witnesses for the Justice position that the merger might impede the desire of ITT to continue to experiment and develop innovations which might be detrimental to its broadcast activities. They pointed out that the RCA-NBC combination had been responsible for the development and standardization of color broadcasting, a benefit to the entire industry, and that a similar symbiotic relationship would thus serve to make ABC even more competitive.\textsuperscript{124}
In a speech on March 4, 1967, to those assembled for the dedication of the new facilities of ABC affiliate WLBW-TV in Miami Beach, ABC President Leonard Goldenson took advantage of the opportunity to take his case to the public.

We at ABC have a merger approval still pending before the FCC. That body had decided favorably for the merger. As you know, it is the independent federal agency empowered by Congress to deal with regulatory matters affecting the broadcasting industry.

The merger has now been delayed by a last-minute attempt by the Antitrust Division of the Department of Justice to inflict their opinions on the independent agency in lieu of an admitted absence of any valid antitrust case in the courts.

We are exercising a maximum of patience and fortitude for we are confident that the merger is in the public interest and will be determined soon with fairness and with justice. Incidentally, that last word 'justice' had a lower case, not a capital J.

I beg your indulgence for injecting ABC's corporate problems into this happy occasion. But I just could not resist the temptation to make a personal, almost an aside, remark directed to the honorable members of the Congress who honor us with their presence this evening. I would hope that they would look with disfavor on any undue encroachment by any division of the executive branch of the Government upon the powers and prerogatives of any independent agency, which, after all, was specifically created by the Congress to do the job assigned to it—particularly when such an executive division publicly admits that it does not have a case under its own powers and jurisdiction. I would think the orderly process of government deserves the concern of all of us.125

An almost petulant tone was evidenced in the filings of both the Justice Department and ITT-ABC. And the second
Justice filing, answering the counter arguments made by the principals was no exception. Justice took the opportunity to restate their view that an evidentiary hearing was the only way to deal with the questions and concerns that had been presented. They acknowledged that they had not attempted to prove their case in the fillings alone, but only wished to underscore the important information relative to the questions they had raised about the proposed merger.126

They also counter charged ABC-ITT with obfuscation of information and claimed that the parties had "incorrectly" quoted from one of the documents the Justice Department had chosen not to include with its first petition. In addition, they charged that ABC-ITT had ignored a portion of the same document that was significant. The document under discussion was the copy of the notes taken at the board meeting by ABC Vice-President Seigel which listed "Reasons Why Combination [of ITT and ABC] Good":

Justice said that the parties' statement neglects to point out that the first word 'Engr.' had been underlined, demonstrating that the category relates to engineering advantages of the merger, not the financial advantages.127

They also said that the portion of the document ABC-ITT had failed to mention,

...plainly indicates that the financial benefit described to the ABC board was a tax saving, not ABC's alleged critical need for capital financing.
The portion of the document cited by Justice reads: 'Financial—they have earnings abroad and foreign tax credit problem; decrease in combined tax rate if more ITT earnings in U.S...'

As for the document that the principals had characterized as the "complete plan" for anticipated capital expenditures for colorization, the Department acknowledged having received it, but that it was not offered as evidence because it was "still being reviewed and analyzed."

They also said that the financial pleas of ABC, and ITT's acknowledged expertise and record in previous acquisitions, suggested that a dichotomy existed in the situation.

It is indeed amazing that the transaction thus negotiated was not drastically altered if ITT thereafter became aware that ABC in the near future would be an enormous drain on ITT capital rather than a prolific source of funds.

The parties had also, in their rebuttal filing with the Commission, referred to another document submitted by them that dealt with the autonomy issue and which was offered as evidence that the autonomy question had been one that both ITT and ABC had been considering since the early days of negotiation. The memo, according to ABC-ITT, had been submitted on February 11, 1966, to the Justice Department; however, the Department pointed out that it was submitted on February 11, 1967, one year later than that suggested by the principals.
The Department also admitted that the policy statement concerning ITT's position on the reciprocity question had not been forwarded as evidence because the Department felt the document was only "self-serving" and "duplicative" of the principals' previous assurances.\textsuperscript{132}

The Commission Considers the Justice Request

All the conditions had thus been met. Justice had filed, ABC-ITT had been allowed to counter-file, and the Department was offered the opportunity to again respond. It was now the Commission's responsibility to act on the materials concerned with the Justice request for a hearing, and the possible consequent reconsideration of the merger approval. Broadcasting felt the course of action available to the FCC was reasonably obvious.

An opinion could be written arguing that there is nothing in evidence warranting a further proceeding. The point would undoubtedly be made that although Justice originally claimed it had 'important information' not in the Commission's files, it was forced to concede that its petition for reconsideration wasn't primarily based on the persuasiveness of its evidence.\textsuperscript{133}

However, during the month of March a change was made in the hierarchy of the Justice Department that might have had a mitigating effect on the eventual Commission actions. William Ramsey Clark was appointed U.S. Attorney General. Clark had been acting Attorney General since October of 1966.
when he filled in for Nicholas Deb, Karzenbach who had moved to the State Department: "It was rumored that he [Katzenbach] had during his reign, 'aggressively supported' Don Turner in attempting to persuade FCC to reopen the case."134

The Commission was not in an enviable position as the possibility of court action against them by the Justice Department was quite real and could result in long and drawn out pleadings.

The speculation that a hearing is a foregone conclusion is fed not by the feeling that the arguments presented by Justice are persuasive. Commission staffers and members are privately scornful of the case the Department has thus far made for its argument that the Commission failed to consider the anticompetitive consequences that might flow from the $2.4 million merger.

Rather the speculation grows out of the conventional wisdom that a rebuke to the Justice Department will be overturned on appeal to the U.S. Court of Appeals—and in probably scathing language at that.135

With the probability of holding a hearing strong, the Commission was forced to consider the three avenues available to them for dealing with the merger. First, they could hold a conventional hearing with an examiner appointed from the FCC staff present to take evidence; or it could select a panel of commissioners to preside over hearings with an examiner or chose to hear the evidence themselves. Finally, they could select to hold a formal hearing with the Commission en banc.136
It was the first course of action listed above that the Commission elected to follow. However, in a 4-0 vote, Commissioners Loevinger, Lee, and Wadsworth abstaining, the Commission directed the hearing examiner to relay the record of the hearing directly to the Commission instead of preparing an initial decision as is customary in most hearing cases. The FCC was concerned about, and aware of, the length of time the ITT-ABC merger proposal had occupied and alluded to this in their instructions to the hearing examiner. In asking for an expeditious proceeding, they requested that he

(i) ...exclude irrelevant, immaterial or unduly repetitious evidence, and (ii) ...limit examination or cross-examination of witnesses, where he deems that the matter is carried beyond any useful purpose.

These instructions will facilitate expedition in the hearing process, without in any way derogating from the full record we seek.137

It was suggested that the vote to hold a full hearing had been positive not because of the strength of the Justice arguments, but because the possibility of court action loomed as a distinct alternative. This opinion was reflected in an article on the decision in *Broadcasting* which said,

*It is understood that Chairman Hyde had not been persuaded, either, by the Department's arguments on the need for a hearing. However, he is believed to have felt that as chairman, he should not deny the request of another government agency. It's also understood that he felt a rejection of*
the Department's request would very likely be overturned if it were appealed to the U.S. Court of Appeals. 138

The three commissioners who chose to abstain in the vote issued a statement which dealt with their rationale for not participating.

The showing which has been made does not warrant a further hearing. But since a majority of the Commission has decided to hold a further hearing, we will abstain from opposition and give appropriate consideration to any further evidence adduced. 139

Among the items the Commission wished to be considered were: 1) What benefits would accrue to the public, 2) What detriments to the public interest existed, and 3) Would the public interest be served by approving the merger? 140 In the order announcing their decision, the Commission also denied a petition by Gerald Gottlieb to appear as "amicus curiae" but did give its approval to the ACLU to file a statement of "amicus curia" (for Commission consideration) within ten days of the close of the hearing record. 141

The parties involved would have five days following the completion of the hearings to submit their proposed findings and any legal considerations they might have to offer for additional Commission consideration. Oral presentations on this material would be heard fifteen days after the close of the formal hearing record "... or as soon
thereafter as possible. The Commission will issue a decision determining whether the Memorandum, Opinion and Order of Dec. 21, 1966, should be affirmed, modified or set aside. 142

The Commission order further underscored the desire to reach a decision as quickly as possible. This important matter has been before us for a considerable period of time and has been the subject of a final decision. The present posture of this proceeding is highly unsettling and affects planning in the vital national network area of the broadcasting industry. 143

The decision was looked on by some as a blessing rather than a curse on the ITT-ABC hopes, as it was felt that a decision affirming the merger following a formal hearing by the Commission would make a successful court challenge virtually impossible. 144

ABC needed some positive thoughts as, in an economy move, it announced that it was abolishing its Western regional network, "ABC Radio West." The network had consisted of fifty stations serving ten states with regional news and sports. 145 Though it was an acknowledged financial albatross for the company, the announcement, coinciding with the Commission's decision to hold a hearing, could have been viewed as further proof of the company's stated fiscal insecurity.
Coincidental with the hearing announcement, the Justice Department released their official list of witnesses.

Dr. Joseph V. Charyk, Pres. of Communications Satellite Corp.; Sidney W. Dean, Jr., Member of R-TV Committee of the ACLU; Albert G. Hill, Prof. of Physics at MIT; Floyd C. Holmes, an economist employed by the Department's Antitrust Division; Bogden R. Snack, manager of the applied communications program in the operations analysis department of the Standford Research Institute, Menlo Park, Calif.; and Paul Visher, assistant division manager of Hughes Aircraft Co., El Sequendo, Calif. They also announced that they planned to cross-examine Geneen and Goldenson.146

Both companies involved issued statements on the FCC decision to hold an evidentiary hearing which indicated that the Commission could expect their full cooperation. In its statement ITT said,

From the first announcement of plans to merge with ABC, we have endeavored to supply complete information to the FCC. In these new hearings we will continue to furnish any information asked for as quickly as possible and as extensively as requested.147

ABC also expressed its willingness to

...submit whatever information or witnesses are required in the expedited hearing.... We have always contended that the merger between ABC and ITT is in the public interest and we welcome the opportunity to demonstrate it further to the complete satisfaction of the FCC in the public record.148

In the first of two prehearing meetings, Examiner Cunningham exhibited his determination to proceed, per Commission instructions, expeditiously.

In response to moans and groans from some of the attorneys worried about meeting the short
deadlines, [Cunningham said], 'We're all under the gun—we've got to extend ourselves.'

The first prehearing confrontation also posed a problem in regard to some ITT documents which the company wished to keep confidential. The Commission had delegated to Examiner Cunningham the authority to decide on these matters, and he asked that lawyers from ITT meet with those representing the Justice Department to determine which materials would be kept confidential. He also ruled that any material submitted by the company that was to be considered confidential be accompanied by a statement indicating how disclosure of the document would seriously injure ITT business activities.

At the first conference, Cunningham also granted a request made by the Justice Department to delay the start of the hearings for two weeks to allow them to better prepare. The Department maintained that the delay would, in the long run, expedite the proceedings. The request was opposed vigorously by lawyers for ABC and ITT who contended that the Justice Department had already had ample time to prepare for the event. The hearings, scheduled to commence on March 27, were delayed until April 10, 1967, by a 5-0 vote of the Commission (Loevinger and Wadsworth were both absent when the vote was taken).
That the pace of the hearings would be brisk, was again evidenced by Cunningham's instructions as to the course of the hearings. There would be no "delays or recesses" once the hearing convened, and he felt that a "complete case record" could be in the hands of the commissioners "in no more than ten business days." The hearings were to commence daily at 9:00 a.m. with a lunch break at 12:30, lasting a hour and one half. The hearings were to conclude at 5:00 p.m. Cunningham also suggested that, if necessary, there might be weekend sessions.152

Also, during the first prehearing gathering, the lawyers from the contending parties had an opportunity to engage in what almost seemed like an "Alphonso-Gaston" routine over the issue of "news management."

The question involving the possible impact of ITT's far-flung business interest on ABC's news judgment— one that has dominated the thinking of most critics of the proposed $2.4 million merger— was introduced in an almost diffident manner by Justice Department lawyer Lionel Kestenbaum.153

But, Kestenbaum said, the Department did not wish to deal with the matter, and only had some evidence that it wished to turn over to the Broadcast Bureau, who had been assigned the responsibility of assuring a complete record on the hearings. The Bureau responded by saying they would have to study the Justice materials before making a decision as to
their potential worth. Justice, however, was not sure if they would pursue the matter if the Bureau decided against handling the issue.

The evidence is said to consist principally of the names of witnesses prepared to testify on the issue. Justice received the names from several sources including the American Civil Liberties Union, whose petition to intervene in the case was denied.154

Both ITT and ABC were against the introduction of the new material and resented the suggestion that the issue be dealt with during the hearing, as they felt that the issues the Justice Department had submitted for consideration at the hearing did not include the question of news autonomy and thus precluded any further discourse on examination of the issue. Marcus Cohn, representing ITT, said,

There can be no doubt that the Commission intended to reopen the record to permit Justice to present evidence on those six issues only.... It comes at a late date for Justice to say there's a six-and-a-half or a seventh issue.155

Chief Examiner Cunningham had the final word on the matter and ruled that the Commission wished to resolve the merger debate as quickly as possible "...but not at the expense of relevant information. It's clearly relevant and deserves to be explored."156

The second prehearing conference was primarily concerned with procedural matters and the ordering of witnesses. It was decided that the Justice Department would begin the hearings with their direct case, and that the first week
would be reserved for testimony by witnesses for all the parties involved. The second week of the hearings would be used for rebuttal testimony.

The meeting did have one notable feature. Lionel Kestenbaum, chief counsel for the Justice Department, registered a "small complaint." He said that an ITT lawyer had attempted, during the course of a two hour telephone conversation, to "improperly" induce a Justice witness to alter his previously submitted prepared statement when called upon for his live testimony during the hearings. Though Marcus Cohn said that he was not aware of the incident, and conversation on the matter was quickly ended, this issue and other allegations of information tampering by ITT personnel were to be a most important part of the formal hearing record.

But questioning was not to be confined to the participants in the hearing, for shortly before they were to commence, the Commission received its own list of questions authored by Representative John E. Moss (D-Calif). Among the items Moss wished information from the Commission on were queries pertaining to the ITT-ABC merger and to the charge that the Commission renewed licenses automatically. Broadcasting suggested that many of the questions may have been supplied by someone else.
There is still conjecture about the source that planted Mr. Moss's questions. One trail leads to FCC commissioner who has repeatedly raised questions of who represents public in FCC proceedings--and that Mr. Moss covered in his list.\textsuperscript{157}

The reference was to Commissioner Nicholas Johnson, and the statements by the magazine were hotly contested by Representative Moss who countered,

...that he had been around a long time, that questions stemmed from his independent judgment and that none were planted. He particularly disclaimed the observation that 'one trail leads to FCC commissioner who has repeatedly raised questions of who represents public in FCC proceedings--and that Mr. Moss covered in his list.'\textsuperscript{158}

The formal hearings would produce, as Broadcasting would later point out, "more heat than light," though some excitement would be generated in conjunction with the question of ABC's ability to remain autonomous if the merger with ITT was upheld. But for the most part, the hearings would only serve as a platform for reiteration of arguments and issues and add to the already cumbersome public record.
FOOTNOTES

Chapter II

2 Ibid.
3 Ibid.
4 Ibid., p. 18.
5 Ibid., p. 16.
6 Ibid., p. 22.
7 Ibid., p. 12.
8 Ibid.
9 Ibid., p. 11.
10 Ibid., pp. 10-11.
11 Ibid., p. 6.
12 Ibid., p. 7.
13 Ibid., p. 61.
14 Ibid., p. ii., (Introduction to Dissenting Opinion of Nicholas Johnson).
15 Ibid., p. iv.
16 Ibid., p. vi.
17 Ibid., p. iii.
18 Ibid.
Communications Act of 1934, Sec. 310. (See Appendix).


Ibid., p. 22.

Ibid., p. vi.

Ibid., p. 72.


Ibid., p. 11.

Ibid.

Ibid., p. 3.

Ibid., p. 8.

Ibid., p. 1.


Ibid.


Ibid.

Ibid.

Ibid.

Ibid.

Ibid.
40 Ibid., pp. 24-25.
41 Ibid., p. 26.
44 Ibid.
46 Ibid., p. 22.
49 Ibid.
50 Senate Critics," p. 25.
52 Ibid., p. 24.
54 Ibid., p. 3.
56 Ibid., pp. 28-29.
57 Ibid., p. 29.
58 Ibid.
59 Ibid., p. 30


64.Ibid.
65.Ibid., p. 32.
66.Ibid.
68.Ibid., p. 57.
69.Ibid.
70.Ibid.
71.Ibid.
72.Ibid., p. 56.
73.Ibid.
74.Ibid.
75.Ibid.
76."FCC Nears Moment of Truth," p. 54.
77.Ibid., p. 55.
78.Ibid.

Ibid.

Ibid., p. 46.

Ibid., p. 45.

Ibid., p. 46.

Ibid.


Ibid.

Ibid.

Ibid., p. 48.


Ibid.

Ibid., pp. 49-50.


Ibid.

Ibid., p. 50.

Ibid., p. 52.

Ibid., p. 50.

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103Ibid., p. 28-29.
104Ibid., p. 28.
107Ibid.
108Ibid.
109Ibid., p. 28.
110Ibid., p. 29.
111Ibid., p. 28.
112Ibid.
113Ibid., p. 29.
114Ibid., p. 27.
116Ibid.
117Ibid.
118Ibid.
119Ibid.
120Ibid., p. 89.
121Ibid.
122Ibid.
123Ibid.
124Ibid.
127 Ibid.
128 Ibid.
129 Ibid., p. 49.
130 Ibid.
131 Ibid.
132 Ibid.
135 "Down to the Wire," p. 69.
136 Ibid., p. 68.
138 Ibid., p. 56.
139 Ibid.
140 "FCC Sets Time Table for Justice Hearing on ITT-ABC Merger," Advertising Age, March 20, 1967, p. 3.
141 "Hyde's Vote," p. 57.
142 Ibid.
143 Ibid.
144 Ibid., p. 56.
146 "Hyde's Vote," p. 57.
147 Ibid.
148 Ibid.
150 Ibid., p. 68.
151 Ibid., p. 66.
152 Ibid.
153 Ibid.
154 Ibid., p. 68.
155 Ibid., p. 66.
156 Ibid., p. 68.
CHAPTER III

THE FORMAL HEARINGS AND COMMISSION OPINION

...I regard it as improper to comment at this time except to answer that we have made no effort to manage the news. We at ITT believe wholeheartedly in the right of free speech and we have the greatest respect for members of the press and other news media. Historically, the company has been able to communicate its views to the press without any difficulty.\(^1\)


The April 1967 Hearings

One of the Justice Department's major contentions was that ABC was not financially dependent on the merger with ITT. That in fact, the prospects for the network were good and that if capital was needed, there were many alternatives, other than a merger, which could be employed to generate the necessary funds. One of the first Justice witnesses to appear at the evidentiary hearing was Professor John C. Burton, a Columbia University faculty member who specialized in security analysis and had served as financial consultant for several banks. In his testimony, he agreed that the figures supplied by ABC seemed to indicate that the company would suffer a deficit of $105 million over the coming five-
year period. However, he said that there were five possible methods the network could employ to generate sufficient capital, which precluded a merger. Two of the plans he advanced were of the straight debt type, another was a combination financing debt plus issuance of subordinated convertible debentures, a fourth offered the possibility of borrowing as well as the issuance of stock, and the final plan was solely premised on a major stock issue. He did acknowledge, under cross-examination by ABC-ITT counsel, that the final plan was the weakest of the five he had suggested because of its potentially adverse effect on the earnings per share of existing stock.\(^2\)

One document offered as evidence by Justice, refuted the ABC financial need contention, was an ITT projection which indicated that by 1970, ABC could be expected to generate a cash flow exceeding $100 million which could be used as capital for "expenditures outside the television business."\(^3\) Robert H. Kenmore, the ITT Vice-President responsible for the preparation of the study, said he had based his calculations on the best public information available to him during his analysis of the possible benefits of the merger with ABC. According to his calculations, the company would have an earnings growth of 16 per cent a year, which was even better than that enjoyed by ITT.\(^4\) He
did, however, admit that his estimate for capital expenditures was extremely low. He also stated that the analysis he prepared was the only document before the ITT Board of Directors when they voted to approve the merger on December 7, 1965.5

In rebutting the Kenmore statements, Leonard Goldenson countered that the ITT board was well aware of the network's needs before the formal merger agreement between the two companies was signed on February 14, 1966. And he said that the estimate that Kenmore prepared didn't "make sense," pointing out that the capital expenditures necessary to achieve parity with the competition were sizable. He also discussed the relationship between ABC and ABC-TV; the latter, in his words, "...never returned a dime to the parent company." All the network losses had to be covered by income and profit returned by the owned and operated stations and other subsidiaries of ABC, Inc. Goldenson reiterated some of the problems confronting the network in its attempt to be competitive. He again stressed the affiliate gap and the anticipated expenditure of $34 million for colorization, $90 million for studio complexes, and $17 million to pay for the new corporate headquarters in New York.

It was against the background of these factors that he derived as making no sense the ITT
document predicting that ABC would generate a cash flow of some $20 million annually through 1970, even assuming the network continues to trail CBS and NBC. "I don't see how anyone can make any appraisal of cash flow in an ivory tower without taking into account the needs of a company," he said. 6

Goldenson's testimony differed diametrically from that offered by two of his colleagues. Simon Seigel, Executive Vice-President of ABC and Julius Barnathan, ABC Vice-President for operations and engineering, admitted under cross examination that no really firm estimate of need had been made until after the merger agreement had been signed in February. The first "rough estimate," they stated, was not made until the Spring of 1966 at the request of company attorneys; however, they did state that ABC was aware of the basic expenses facing ABC should colorization and other capital improvements be undertaken.

One of the contentions made during the September hearings, that Goldenson had used as a rationale for the merger, was that the company's borrowing power had been severely limited through prior agreements with previous sources of funds. For instance, under the terms of an agreement with Metropolitan Life Insurance, who had lent $70 million to ABC, Goldenson had testified that the ABC, Inc. was limited to borrowing additional sums not to exceed 50 per cent of its tangible assets. He maintained that the company was fast approaching that limit and thus would be
unable to fund, through additional loans, the capital improvements desire.

However, Mr. Goldenson conceded in the hearing Thursday that, contrary to the impression he left with the Commission at the September hearing, the agreement does not provide for such a limit. He said that was his impression at the time but, subsequently, he learned that Metropolitan had issued a warning that 'we were getting up to the 50 per cent mark and they could not lend us anymore.' He did not consider this discrepancy sufficiently serious to correct his statement to the Commission.

Other testimony, however, indicated that ABC's borrowing power was not limited, and that ABC would have little difficulty in obtaining funds if it so desired. Charles C. Charbonnier, a vice-president of Metropolitan Life Insurance, in his testimony, described ABC as a "specialized borrower" not restricted as others might be in limits of indebtedness. He pointed out that ABC's debt limitations had been waived on three different occasions, the third time to enable the network to borrow $25 million from ITT. Questioning led to the subject of whether the company he represented would allow ABC to borrow additional capital, but the Justice Department objected to the witness responding, citing his corporate position as not being sufficiently authoritative to speak to the question.

Under further interrogation, Goldenson did not deny that borrowing the necessary funds was a possible answer to
the company's capital expenditure quandary, but he said that such a course of action might place the firm in a precarious financial position. It would, he pointed out, increase the company's indebtedness to $185 million which could lead an expense conscious board of directors to curtail many innovative activities and force the abandonment of the two studio complexes the company wished to construct. In addition, such a board might choose to curtail activities in unprofitable areas of operation such as news and radio networking.¹⁰

Though ITT Vice-President Kenmore had conceded that in his report on ABC as a merger possibility, he could have underestimated ABC's capital needs, Goldenson further refuted the notion that ITT was unaware of the company's financial plight. He said that he had notified ITT President Geneen of ABC's financial requirements shortly after merger negotiations had commenced, placing the figure at $75 million. He continued by testifying that he had even suggested that the two companies appoint a liason man to develop an even more precise estimate of what ABC would need to accomplish its objectives. This, he testified, was prior to the formal agreement reached in February of 1966.¹¹

Under questioning from the Justice Department's Milton Grossman, Professor Burton had also discussed the question.
of ABC's financial need. In response to one question, he said that the company was economically sound since it was "...favorably situated in the economy—in the entertainment business, which is enjoying a substantial growth." He also agreed that the provisions of the Metropolitan Life loan had been waived on other occasions, and that Metropolitan might be even more anxious to secure additional funds for ABC if the insurance concern felt that the additional loan would enhance ABC's competitive position.

Another item in the Justice Department's case dealt with the possible anticompetitive aspects of the merger. They had contended that by being denied acquisition of ABC, ITT might be enticed to enter broadcasting or an allied area in another manner, thus increasing possible intra-industry competition. The testimony of John J. Graham substantiated ITT's prior interest in the industry. Graham, previously an ITT official and company director, and a vice-president of General Dynamics, said ITT had at one time been quite interested in acquiring a full compliment of broadcasting stations (7 AM, 7 FM, 5 VHF, 2 UHF stations). He testified that ITT President Geneen had reacted very positively to acquiring broadcast properties as a potential course of action. In earlier testimony, Geneen had acknowledged that he had considered purchase of an AM-FM-TV facility in
Hartford, Connecticut, but that he had decided against it, considering the $35 million price tag excessive, and indicating that at the time, he felt a group purchase might be a better course of action for ITT. However, on file with the Broadcast Bureau was a draft copy of a letter from Geneen offering the requested $35 million. 13

The Graham testimony also dealt with the interest of ITT in acquiring WJIM-AM-FM-TV in Lansing, Michigan. This came in response to questions relating to statements made earlier by Stanly Luke, and ITT Vice-President, who had said that he was interested in seeing the company get into the broadcasting industry, but that no one on the decision making level had agreed with his suggestions. Graham, who had been Luke's superior at the time the WJIM discussions were underway, disputed the supposed corporate disinterest in the Lansing stations.

'We were interested in WJIM. It was an excellent property.' Mr. Graham added that although the idea was still in the 'exploratory stage' when his duties were changed at the end of 1963, Mr. Geneen 'appeared favorable' to it. 14

The Justice Department also indicated that ITT might have some interest in becoming involved in possible network activity and had viewed the acquisition of a group of stations as a first step. However, this notion was attacked by Howard Stark, a station broker, who testified that he had
initiated a search for a suitable group after a conversation with a friend (an ITT official) but had discontinued his efforts after several of the major groups expressed disinterest. He also said that at no time did any of the ITT officials with whom he talked ever mention the company's desire to commence a network operation.\textsuperscript{15}

The Justice Department also called on a witness to bolster its charge that ITT had been interested in developing new technology which could pose a threat to the success of a broadcast division because of possible competitive influences. Arthur Levy, President of Skiatron Co., who had developed a pay-TV system used by Subscription Television in California, said that ITT officials had seemed interested in his system. This testimony, however, had been discounted by earlier ITT information which indicated that Levy had only received a brief response in reply to his solicitations from ITT during the period he said he was negotiating with the company.\textsuperscript{16}

Also related to the question of ITT's interest in technological innovations, that could conceivably be in conflict with broadcast interests, were the comments of Dr. Joseph V. Charyk, President of the Satellite Corporation, who testified that direct satellite to home transmission could be accomplished quite quickly if a company was able
to devote a major share of attention to the problem. His implication was that ITT could develop the capability if they had no station interests, as a licensee, to protect.

However, during his testimony, Arthur Cookson, ITT technical director, said that the problems inherent in this type of transmission had, for the most part, been solved and that an organization like NASA could have a satellite relay system operable if time and money were available, but that the project was too costly for a smaller company like ITT to undertake. He also pointed to a number of ITT developments which had rendered obsolete some of the company's own products and services, and suggested that ITT would continue to innovate even at the expense of its other divisions. 17

Another witness for the Justice Department on the matter of technological development was Albert G. Hill, a physics professor from the Massachusetts Institute of Technology. In attempting to illustrate the potential inhibiting effect the merger might have on innovative developments by ITT, Hill testified that

'...there is a lack of incentive' on the part of the present television industry and its technology, and 'there is no evidence that the [proposed] new organization would have incentives different from its competitors.'18
He did concede, however, under questioning, that ITT had indeed developed equipment that had made other company gear obsolete.

Shortly after the hearings were concluded, an interesting article appeared in Broadcasting which suggested that far from stifling technological innovation, the proposed merger could nurture an increased corporate incentive to become more involved in broadcasting technology.

The interest of International Telephone & Telegraph Co. in ABC, now the source of controversy between the Department of Justice and the FCC, is having one fall out that may very well prove beneficial to all broadcasting. That's the several broadcasting equipment items that ITT is planning to put on the American market, all the result of ITT's awakening to the needs of ABC, and of all broadcasters, for new and improved apparatus.19

Among the items referred to were a new type of UHF transmitter, a light weight color camera which operated on a very low light level, a smaller UHF tuning device, and a method for transferring TV tape to film which employed laser beams.

Also in dispute was the question of ABC's ability to remain autonomous in the area of programming, especially in their news and public affairs efforts. Testimony during the second hearing elicited very little new information, with the principals continuing to repeat their assurances of a
protected news operation. ITT President Geneen did admit that the ITT board would review ABC requests if they were of a major nature, and conceded that he and another ITT executive would sit on the ABC board; but he did not feel that that would lead to program control. He also testified that if control were to exist at all, it would be in budgetary matters, not on the cost of individual programs or documentaries. 20

James C. Hagerty, who had been press secretary under President Eisenhower and was at the time of his testimony, ABC Vice-President for news, also argued that autonomy was virtually assured. His contention reflected statements made in the September hearing and was premised on the assumption that deception and pressure on the news and programming areas would be difficult, if not impossible, to hide from those in the industry. In an interview on the subject of possible news tampering, during the course of the hearings, he said that if such action were to occur,

There would be mass resignations. Anyone who thinks otherwise just doesn't understand the news profession... proud and dedicated people who won't stand for monkey business.

A policy decision that smacked of censorship 'would only have to happen once and then we'd be ruined,' Mr. Hagerty said. 'The word would get out immediately, and we'd never be trusted again.' 21
Charges of Tampering Leveled at ITT-ABC

In discussing the assurances of autonomy, the New York Times touched on what was clearly to be the most singular revelation made during the two hearings.

Maybe those promises will, indeed, be sufficient to preserve the networks' news integrity. But if ITT ever succumbs to the temptation to try tampering, it can be hoped the company will find ABC's newsmen as resistant to news management as are the reporters and editors who have been covering the merger case.22

Charges of press management and manipulation were directed at ITT and ABC by Stephen M. Aug, a reporter for the Associated Press, Jed Stout of United Press International, and Eileen Shannahan, staff writer for the New York Times. And some question of impropriety was broached in connection with a conversation between an ITT representative and a Justice Department witness.

The witness in question was MIT Professor Albert Hill, who during his testimony, indicated that he had been contacted by Kenneth Townsend, a lawyer employed by one of the firms which formed a part of the ITT legal team for the hearings. He said that Townsend, in a two-hour phone conversation, attempted to get him to modify his testimony.

He said 'yes,' he had been asked to make some changes—he had been asked to eliminate a sentence stating there is no evidence indicating the new company would develop new technology, but he refused. He said he agreed to one or two other clarifying changes.23
The other charges of news tampering were even more serious. In February, when the Commission was pondering over reopening of the case, both ITT and ABC, anxious to put their best collective foot forward, had contacted staff writers at the New York Times, The Wall Street Journal, The Washington Post, and representatives of two of the press wire services to bemoan what ITT and ABC considered erroneous reporting.

The complaints were made through calls and letters to reporters and editors, and at meetings with editors here and in New York. Occasionally factual inaccuracies were alleged, but more often the complaints were that reporters weren't writing balanced accounts or were obtaining information from unreliable sources.

Another time an ITT official did suggest to a UPI reporter that he write a story knocking down a Wall Street Journal report quoting antitrust authorities as saying it was safe to assume the Justice Department would go to court to stop the merger unless the FCC reopened the case. The UPI man declined the suggestion.

Some of the most serious charges of attempted news management were leveled at ITT by Eileen Shanahan. She said that on one occasion an ITT press relations man had contacted her and asked that a particular development in the case, which had not been particularly favorable to the Justice Department, be given headline treatment. This was shortly after the Times had given similar distinction to an incident "...in which ITT was embarrassed." She also
charged that on another occasion she was contacted by John Garrity, a vice-president of ITT, who said that Commissioner Johnson was working with Senator Gaylord Nelson on legislation which would prohibit newspaper ownership of broadcast facilities. Placing Johnson in the villains role, she said Garrity added,

that she ought 'to pass this information' on to the publisher of the Times, which owned WQXR-AM-FM New York, 'before you write anything further on Johnson's opinion.'

The allegation that such legislation was being considered was denied both by the Commission and Senator Nelson.

She said that in another incident, an ITT public relations man had telephoned, criticizing her for a page one article on a subject unfavorable to ITT which "wasn't worth the story." The story had dealt with the filing of the Justice evidence with the Commission.

The ITT official further 'questioned my integrity and that of the Times,' Miss Shanahan said. He denies that, saying he merely had 'objected to one or two sentences in the article.'

Another of the reporters called to testify was Jed Stout who alleged that he had been contacted by John V. Horner, director of news media relations for ITT in Washington, D.C. Horner had taken exception to an article in the Wall Street Journal suggesting that the Justice Department would go to court if the Commission refused to
reopen the merger deliberations: "'As I interpreted it he was asking me to write a story knocking down the *Journal* article," Mr. Stout said. "I declined to do so."

The attempts at managing journalists had been a failure and the potential for the harm it could have caused both ABC and ITT was substantial.

'It's incredible that guys like this want the right to run ABC's news operation,' says one reporter, relating the irrate call his editor got from ITT about his news story.

But the attempts at tampering were not restricted to journalists and college professors, nor was it confined to the lower eschelon corporate administrators. Both the Broadcast Bureau and the Justice Department introduced evidence, in the form of a memorandum dated July 11, 1966, that suggested that even ITT President Geneen was not adverse to applying a little pressure if he felt it necessary. The memo was directed to Vice-President Garrity and dealt with the possible elimination of the thirty market rating survey conducted by the rating firm of A. C. Neilson. The cessation of this weekly survey could have had a debilitating effect on the ABC sales staff, as the network had affiliates in all those markets and consequently fared better in that rating battle, than they did in the larger surveys. The latter included markets where ABC had no affiliates or was affiliated with a UHF station in competition with VHF stations whose allegiance was to the other networks.
In the note to Garrity, Geneen suggested President Authur Neilson be contacted to verify the report and to ...suggest in a gentle way that since ABC is in the under dog position that the elimination of those ratings at this point would have a serious effect on its advertising presentation capability and 'we wouldn't blame them at all' if they wanted to react with a congressional inquiry or whatever thoughts you come up with that might make him think twice about doing it.31

The importance to the network of the Neilson thirty market survey was evidenced by the testimony of Paul Sonkin, Director of Research for ABC. Refuting the claims of the Justice Department that ABC was sufficiently competitive without ITT's assistance, Sonkin pointed out that in order to achieve national rating parity with NBC and CBS, ABC had to lead them by 1.3 and 2.7 points respectively in the thirty market ratings. This was due to fewer and, in some instances, weaker UHF-ABC affiliates. Had the disparity not existed, Sonkin claimed, the network could have raised its rates and enjoyed gross revenues approaching $37 million more than they had earned the previous year.32

The evidence Sonkin presented was somewhat convincing. He pointed out that in the majority of the top 150 markets where one network affiliate was at a disadvantage, either because it was a UHF station facing VHF competition or because its transmitter was located away from the
population center, that station was probably an ABC affiliate. This was true in fifty-four of seventy-one cases.33

Testimony during the second hearing also elicited an admission from President Goldenson that ABC might have played a modest role in exciting the congressional ire that had been directed at the Justice Department following their challenge of the merger approval. The Bureau had asked for copies of documents sent to affiliates calling for their assistance in the ITT-ABC-Justice Department fray. Among those submitted were a wire sent to Attorney General Ramsey Clark and Rosel Hyde from the ABC affiliates' organization indicating that the board of directors of that organization had reaffirmed their merger endorsement, as well as copies of all ABC press releases sent to affiliates which had dealt with the merger. However,

the only communication actually calling for affiliates to contact their senators and congressmen as well as Attorney General Ramsey Clark, was signed by Burton B. LaDow, chairman of the ABC Affiliates Association. The message was transmitted over ABC's teletype on January 24, 1967, at a time when members of Congress were criticizing the Commission for approving the merger.34

Another set of documents requested were the complete minutes of the board meetings of ITT at which discussion of the merger had taken place. The Justice Department claimed that the extracts of the meetings which had been provided by
ITT were difficult to put into intelligible context. ITT contended that Justice wished this additional material solely to continue what ITT characterized as a "fishing expedition." A compromise, however, was arrived at and, under the procedure agreed on, only the extracts were turned over. But a department attorney was permitted to examine the complete sets of minutes relating to the ABC acquisition. In the event he finds materials he feels should be made part of the record, a request will be made.35

One witness who had been previously withdrawn by the Justice Department was allowed to testify. From the Justice point of view, it might have been better had he been left off the list of witnesses. In his statements, Sidney W. Dean, Jr., an advertising executive and a member of the ACLU's radio-TV committee, testified that he felt the merger would have a bad effect on the industry. He asserted that broadcasters tended to stay away from programs which conceivably might offend advertisers or have an adverse economic effect on them. He also felt that the merger would prevent potential advertisers from dealing with a network owned by ITT, and that it could possibly inhibit the birth of a fourth network.

In cross examination conducted by Marcus Cohn, however, he was forced to admit that he was not certain whether the networks had done controversial programs with Ralph Nader, which could cause advertiser concern, though he was aware
of some that had dealt with the smoking and health issue. He also said that he did not know if the NBC owned stations carried advertisements for competitors of RCA, the parent company. And he admitted that he hadn't realized that UHF development and improvement (a benefit of the merger proffered by ABC-ITT) might be a conceivable result of the ITT-ABC union.  

Interestingly, while the hearings were in progress the United Network, primarily affiliated with UHF stations, commenced its first programming adventure. On May 1, 1967, the "Las Vegas Show," a two hour evening variety program debuted to mixed reviews and low spot sales. Its life and that of the network were to be short lived.

The television network's non-profitability and lack of available capital had been prime contentions of ABC, and they attempted to discredit opposing witnesses by providing testimony more favorable to their own viewpoint. One of the witnesses whose testimony was most damaging to their case had been Professor Burton, who said that according to his calculations ABC was extremely sound financially and further stated that the contentions of ABC to the contrary were not based on fact. One witness for ABC took strong exception to the Burton testimony. Wilber Ross, a member of the brokerage firm of Faulkner, Dawkins and Sullivan, said that Burton's
alternate financing plans were unsound and in error. He charged that the professor had not taken into account all of the ABC long term debt commitments, had failed to recognize refinancing charges necessitated by some of his plans, and expressed concern at the risk of a considerable drop in the price of ABC stock if the merger was not approved. Ross suggested that the most practical and sound procedure for the company to follow was the one it was pursuing: a merger with a company with available capital. He felt any other course of action would, in addition to seriously affecting the value of ABC stock, make more severe any potential lender-imposed restrictions on ABC's use of its resources. 38

Following his testimony, Burton had been exposed to a thorough cross examination conducted by ABC counsel, Herbert Bergson, who referred to Burton's variety of alternate methods of obtaining capital as an "exercise in arithmetic" and suggested that the professor's suggestions were solely "...various ways of coming up with the money ABC needs without regard to how the money would be obtained." 39

Bergson also attempted to have Burton's testimony stricken from the record on the grounds that he failed to qualify as an expert. (The Justice Department had issued a similar request of Wilber Ross). Bergson claimed that the professor had no practical experience and that his background
in money market matters was based primarily on conversations with friends and reading he had undertaken on the subject.

In answer to the Justice challenge, Ross had maintained that he assisted corporations in searching for additional funds, but admitted that it had been four years since he had acted in that capacity for a broadcast network. 40

The requests for the exorcising of testimony was placed in the hands of the hearing examiner for consideration.

Examiner Cunningham subsequently accepted the advice of Broadcast Bureau Attorney, Thomas Fitzpatrick. He said that he didn't think 'either one' qualified as an expert but added that their testimony should be allowed to remain in the record for whatever consideration the Commission wished to give it. 41

Cunningham also granted the three parties in the hearing, ITT-ABC, the Justice Department, and the Broadcast Bureau, an extension of the deadline for the submission of proposed findings. Originally, the findings of each group were to be in Commission hands by May 1, 1967, with the oral arguments before the Commission ten days later. The extension gave all parties until May 22 to file findings with the oral arguments postponed until early June. 42

The hearing had lasted thirteen working days, with many of the sessions running far past the scheduled adjourn-
merit time of 5:00 p.m. Testimony from eighteen witnesses had been taken, and the hearing record ran over 4,000 pages. In addition, 554 exhibits had been introduced, 356 of which were attributed to the Justice Department. However, little of import, save for charges of impropriety in dealings with outside parties by ITT-ABC, had been elicited during the two week period.

The Parties File Post Hearing "Findings"

That the proposed findings submitted by the various parties contained nothing new is not surprising. Since the September hearing both ITT and ABC had remained firm in their convictions, arguments, and counter charges.

The Justice Department, who had filed a statement with the Commission stating its concerns, and thus prompted the second hearing, had received the opportunity to challenge the merger before a Commission examiner. The testimony, as shown in their filing, had not changed their opinions. It would cause the most stir and interest as they had not been heard from since the September conclave.

...The Broadcast Bureau's findings hit with greater impact, both because they represented the first comments expressed on the merits of the case by the Commission staff and because the Bureau's role in the hearing was that of a neutral representative of the public interest. (The Justice Department has taken on the coloration of the prosecutor in the case).
ABC argued predictably that after two hearings, the Commission must now be convinced that:

unquestionably public benefits will result from the merger and that no detriments have been demonstrated which properly can lead to denial of the merger.45

They reiterated the "cash need" argument, stating that their anticipated cash requirements over the coming five-year period were $372,720,000, with ABC able to generate only $308,850,000 of the total. After borrowing, the net deficit would be $122,370,000 which ITT, if the merger were approved, would be able to provide.46

Using the bromide, "it takes money to make money" to argue their point, they said that,

the ability to plan long range, without regard for revenue dips occasioned by the vagaries of program ratings, is essential to the full development of a network program service.47

To plan most effectively, they could not be hampered by the limitations short term financing would force upon them, especially with the need to continue to program in areas that were not profitable.

And the filing by ITT-ABC continued to protest the allegation that interference in program control, especially in the news area, would result from a merger with ITT.

ABC News will continue to exercise its own editorial judgment without any interference, direct or indirect, from any ABC or ITT management source.48
And they pointed out that the testimony presented in their behalf had,

...served to support the widely recognized independence and integrity of the press and responsible professional journalists.49

Little had changed in the Justice Department's concerns either; however, one point had been added which dealt with the credibility of the witnesses. The charges were serious and indirectly cast doubt on the whole body of testimony and evidence presented by the parties requesting the license transfers.

The Justice Department cited as one area of inconsistency in Mr. Goldenson's earlier testimony (and described it as "incredible") his statement during the second hearing that, denied ITT financial assistance, the radio and television networks would have to cut back in their news operation, reduce radio networking efforts, cut salaries or eliminate some staff positions, and possibly reduce stockholder dividends. The Justice Department noted that in a July 25, 1966, letter to the Commission, Mr. Goldenson had said that if ABC was denied the financial resources of ITT, it would have to make reductive adjustments only in the modernization plans for the broadcast operations.

The Department also charged that Goldenson had given an "incorrect representation of facts" in regard to ABC's national coverage problems. In addition, they cited
Mr. Goldenson's conflicting statements on the loan restrictions imposed by Metropolitan Life, charging that he had been less than candid. The Justice brief expressed concern over the length of time it had taken ABC to correct the record, especially in light of the fact that Goldenson had been apprised of his error shortly after he had made the incorrect statements to the Commission during his September appearance.

They also challenged the accuracy of ITT President Geneen's testimony concerning ITT board commitments. The Justice Department charged that Geneen's commitment of $50 million to ABC had the effect of "...exaggerating the existence and definiteness of the ITT board action." During the course of the hearings, Geneen had also testified that he had sought legal counsel to confirm that the validity of the commitment he had made in the September hearing was legal. Assured that it was, he had submitted a letter to the Commission to that effect. However, the Justice Department found it strange that the letter from ITT counsel arrived "...three days after Mr. Geneen's testimony and offer of proof." (emphasis added)

The Department also felt, protestations on the part of ABC-ITT aside, that ITT was not at all shy about attempting to influence the mass media, as reflected by the
testimony of the newspaper reporters. They said that it was obvious that ITT was prepared "... to interfere with the editorial judgment of independent news media when it believed such efforts would advance its interests."

The applicants had anticipated this charge, and in their findings had rebutted the allegation and said,

Notwithstanding what may have seemed overzealous comments to Miss Shanahan, the isolated instances which she described are not characteristic of the relationships between the New York Times and ITT press representatives generally.

The Broadcast Bureau Findings

But it was the filing of the Broadcast Bureau that was awaited with anticipation, for as indicated earlier, they were the only party who had not been publicly heard from since the September hearing. The Bureau questioned the validity of the rationale made by the applicants, especially ABC, for approval of the transfer and merger. Though the ABC claims, primarily those of financial need and increased competitiveness, had been most important to the Commission majority when they approved the merger in December, the Bureau questioned the amount of money the company said it would need and felt that there were avenues of financing available to ABC that would not necessitate a merger. In their findings, they also postulated the theory that it was not a question of money that would enhance
competition as much as invigorated programming ingenuity. Justice had also advanced the same conviction.54

They continued by saying that ABC was well advanced in its colorization plan and that not only was the Hollywood studio practically finished, but that one New York studio had already been completed and work was well underway on the others. They also submitted that if ABC were to delay further colorization activities for a year, ABC could reduce its peak cash deficit from $85.5 million in 1969 to $57.5 million, a more manageable deficit. If they spread construction out even further, the Bureau felt ABC could reduce their debt proportionately.

In that connection, the Bureau noted that the decision to construct and complete the $78 million installations in New York and Hollywood before 1970 apparently were made in 1966, after the announcement of the merger, and resulted in the rejection of a "more modest" modernization plan proposed by the Austin Company, a consulting firm.55

The applicants, in their filing had addressed themselves to the financial need question, and had rebutted the contention made by the Bureau that their estimates of need were exaggerated.

Detailed planning has been underway [for facilities] continuously since early 1965. The current cost estimates for these projects were largely assembled in late 1966, well before the Department filed its petition [for reconsideration] and no evidence has been offered to show they are unrealistic. In fact they may be on the low side.56
The Bureau did not agree with one Justice contention, that the merger might prevent ITT from developing innovative technological advancements.

The Bureau noted that ITT has expressed an interest in a number of broadcast related projects—such as UHF-reception improvement, direct satellite-to-home transmission, large-screen, high-definition, three-dimensional color television—as a result of its impending merger with ABC.57 In fact, the Bureau suggested that the situation might be counter to that feared by Justice.

If ABC were not a part of ITT, the company (ITT) would have to re-evaluate the profitability of some of these projects, since ITT would not benefit by the improvement of ABC's competitive position.58

If anything, the hearings would have appeared to seriously undercut the applicants case for the merger. The Justice Department position was strongly against approval, and the Broadcast Bureau's filing indicated that the earlier Commission passage had been based on considerations which were now in doubt. The contending parties would have one more chance to state their case, at the oral hearings.

The Final Oral Hearing

Again little new was offered in the oral hearing and both the Justice Department and Broadcast Bureau agreed on virtually every point but three. First, the Bureau felt that there was no evidence to substantiate the contention of the Justice Department that, denied the merger, ITT would
enter broadcasting either as a major CATV owner or as the developer of a fourth network. The Bureau also did not feel that ITT would attempt to control the programming of ABC, though they did express some concern over the testimony that indicated ITT had attempted to influence newspaper reporters.

In reference to those events, the Justice Department had said in their proposed findings that the episode

"...reveals a total insensitivity to the rights and responsibilities of the independent press," It added that this tampering, "all the more significant because it came at a time when one would have expected ITT to make its best efforts to respect the independence of the press."59

Finally, as mentioned earlier, the Bureau saw no threat to technological development by ITT should the merger approval be upheld.

The oral presentations produced an exchange between Lionel Kestenbaum, the Justice Department lawyer, and Commissioner Lee Loevinger on the merits of the Justice Department's contention that the merger would induce certain anticompetitive elements. During questioning, the commissioner asked the Justice representative, "Is the burden on the applicants to prove the negative of the question of impact on competition?"60 Kestenbaum replied, "The applicants have the burden of proving the benefits outweigh the detriments."61 Later he was to further define the
Justice Department's role in the deliberations by saying that "we have the burden of raising questions." 62

During the interaction of the two men, Loevinger referred frequently to an article in the *Harvard Law Review*, authored by Antitrust Chief Turner, which outlined the minimum conditions necessary before questions of an anti-competitive nature could be raised. Under these conditions, Loevinger insisted, no grounds for denying the merger existed. At one point Loevinger asked Kestenbaum, "At the present time you recognize the author as a leading antitrust expert?" 63 Kestenbaum's response indicated that perhaps his boss, Turner, had revised his original thoughts: "You learn a lot of things when you run the Antitrust Division." 64

The Broadcast Bureau's oral presentation, made by FCC Counsel Fitzpatrick, underscored the Bureau's negative attitude toward the merger. The Bureau's findings still indicated that the financial need plea was exaggerated and that other methods of obtaining the necessary capital expansion funds existed. And he suggested that the merger would not significantly improve the network's competitive position. In his personal view, in response to a Commission question, Fitzpatrick said that he did not think that the public interest would be served by the merger. However, in
their prepared findings, the Bureau did not address themselves directly to that question. 65

In their presentation to the Commission, the lawyers for the ABC-ITT cause denounced the credibility charges leveled by Justice at Goldenson and Geneen. And they contended that in attempting to discredit the two presidents, the Justice Department had overlooked many of the more important sections of their testimony. 66

They continued to argue that the merger was necessary if the competitive position of ABC was to be improved. Acknowledging that profits were up, the ABC-ITT counselors pointed out that ABC was still falling further behind CBS and NBC in percentage of total revenue. They also contended that the merger would help negate the problems the network had in markets where it was affiliated with a UHF, in competition with VHF outlets. To highlight this argument, the lawyers traced previous pro-competitive items which had received Commission scrutiny that could have eased the ABC problem, but which had never been acted upon by the Commission. 67

The ABC-ITT lawyers also continued to contend that without ITT assistance, the network would be forced to consider cut backs in service. This, they implied, was the
antithesis of what the Commission wished: a network that could afford to lose money on unprofitable public service programming. ⁶⁸

Concomitant with the theoretical arguments for and against the merger was the introduction of a bill in the House of Representatives that would have severely altered the role of the networks in programming and broadcasting. Introduced on June 5, 1967, HB 10481 would have put the networks under the regulatory jurisdiction of the Federal Communications Commission and would have stripped them of equity in programs they did not produce. In addition, the bill proposed a limitation on the amount of network prime time programming offered and would have made it illegal for a network to own a professional athletic team. It would have also made both Section 315 and the Fairness Doctrine applicable for networks, required the filing of all station-network contracts with the Commission, and established a set of financial penalties for violation of Commission rules by a network. ⁶⁹

One trade magazine continued to watch the deliberations with interest. Aware of the Commission's desire to see ABC become more competitive, as well as cognizant of the Commission's desire for significant public affairs programming, Broadcasting wrote:
Present disposition of top management is (1) to cut TV and radio network overhead to bone; (2) chop plans for gavel-to-gavel TV coverage of political conventions, for which out-of-pocket is estimated at $10 million; (3) go for rating-oriented programming and leave to other networks major burden of underwriting non-profitable specialized programming.

Would ABC Inc. look for merger with some other entity? Present disposition is negative. Management shys from risk of another Justice Department onslaught and Capitol Hill fulminations with consequent demoralizing effects on staff, stockholders and sales and programming incentives.

Whether this appeared as a news item or a propaganda statement for the approval of the merger cannot be measured, but it did synthesize many of the arguments the proponents had cited for a reaffirmation of the earlier positive Commission decision.

In a mid-June letter to the Commission, antitrust director Turner served notice that should the Commission reaffirm their original decision, the Justice Department would consider taking the matter to court. They also requested a thirty-day delay of the order should the Commission approve the transfer. This, the Justice Department said, would give them time to study the facts in the case and decide whether to take the decision to court for an appeal. However, before the Commission had reacted to the Turner letter, both ABC and ITT agreed to delay the merger for the requested thirty days, assuming a second positive decision by the Commission.
The Commission Reaffirms Its Earlier Merger Approval

The second order approving the merger was almost anti-climactic. By an identical vote of 4-3, the Commission reaffirmed the decision made six months and one day earlier. In the majority opinion, the argument employed previously, that the increased competitive strength of ABC would be improved as a member of the ITT corporate group, was again a hallmark of the opinion.

It is our firm judgment that this merger, by providing ABC with a stronger financial base, will significantly assist ABC in making the necessary long-range plans, and in taking the risks in this area so important to the American public.72

In addition, the majority, perhaps anticipating court action on the part of the Justice Department, addressed themselves to those antitrust questions which the merger might possibly prompt. The opinion cited a number of then current antitrust court decisions, and concluded with the posture that the merger would not preclude new competition in the broadcast field.

The majority also made note of the assurances of ABC that they would begin to drop their secondary VHF affiliates, replacing them with primary affiliations with UHF stations where possible. They also requested that ABC prepare a yearly report for the Commission, over a three-
year period of time, to allow the Commission to evaluate the effect on ABC of the merger.

The majority opinion discounted the possible management of ABC programming activities by ITT and said that its position had been reaffirmed by the greater examination of the proposed merger.

Despite the most wide-ranging inquiry and examination of this issue, no evidence was offered tending to show that ITT would... attempt to impose its position on ABC...73

The majority admitted that the evidence of attempted manipulation of newswoman Eileen Shanahan might have been improper but felt that ITT, in the case of the news service reporters "did no more than ask reporters covering the proceedings to be factually accurate...."74

They also dismissed the "lack of candor" charges leveled by the Justice Department at Geneen and Goldenson. The majority attributed the mistakes and errors of testimony to the size and complexity of the merger considerations.

It would be quite unwarranted to draw inference as to candor or character from such relatively minor aspects of the testimony and proceedings.75

In dealing with the Justice Department's contentions, they acknowledged the Department's assistance, but concluded that their concerns were "simply... to speculative or slight to weigh heavily in the balance."76
It is evident that one major change of attitude had, however, been experienced by the majority. The issue was ABC's claim of financial need as a major component in their request for merger approval. They conceded in the opinion that "there is a substantial dispute as to whether ABC, as a practical matter, must rely on the merger for... financial help." But they also thought that the long range security provided by the resources of ITT would enhance the network's position: "We think it desirable to promote the best possible environment for ABC operation, both to serve the public interest and to compete with CBS and NBC."  

The majority and minority opinions showed agreement in only one area—that the merger might give ABC an advantage in dealing with advertisers who were also ITT suppliers. The relative importance of this "advantage" was considered far more meaningful to the minority, however.  

The minority agreed with the Justice Department contention that the evidence indicated that the prior interest of ITT in broadcasting was pronounced. They agreed that, if the merger had not been approved, ITT might have sought another method of gaining access to the industry, thus increasing competition. They also reiterated their earlier charged that ABC was financially sound.
But they saved their most explosive rhetoric for the "candor" issue. They said that the testimony of the applicants

...has been so lacking in candor, so careless of the need to inform us in a honest and forthright way, that it is simply incredible that the majority can place such abiding faith in their every word.79

And they described as "probably the most serious example" of this, Goldenson's September testimony on the borrowing restrictions imposed on ABC by Metropolitan Life Insurance. In testimony during the April sessions, Goldenson admitted that he had been in error and had been alerted to his error shortly after he had finished testimony on the question during the September 1966 oral hearing.

The minority described ITT President Geneen's "testimonial legerdemain [as] slightly more subtle but no less disingenuous" than that of his ABC counterpart.80 The minority charged that Geneen had seriously understated the interest of ITT in broadcast properties and in CATV. They also contrasted Geneen's September statements, describing the "substantial autonomy" ABC would enjoy as a division of ITT, and his statements made in the April hearing that "ITT was one of the most tightly and centrally run conglomerate companies in the country.81
Continuing to be concerned over possible program management and interference, the minority said that a conglomerate like ITT

...whose daily activities require it to manipulate governments at the highest levels is likely to be left with little more respect for the role of a free and independent press in a democratic society than for the role of conscientious government officials fulfilling the broadcast public interest of their nation's citizenry.82

Further, the majority charged the ITT attempts at press manipulation,... "demonstrates an abrasive self-righteousness in dealing with the press, a shocking insensitivity to its independence and integrity..."83 This could only lead them to the conclusion that

there is a very significant danger that ITT's other interests will be allowed to intrude on the journalistic functioning of ABC and subvert the proper use of this electronic outlet...84

Post Reaffirmation Action

The responses to the merger approval by the principals were not surprising. Geneen reaffirmed his opinion that the merger "will be in the public interest," and greeted the announcement with "satisfaction." A "gratified" Goldenson reiterated the improved financial and technological position the company would enjoy and listed ABC broadcast projects that could now commence. Among these were the acquisition of two UHF stations to bring the network to
maximum FCC limits on station ownership, as well as the acceleration of its search for primary affiliation with UHF stations, and the start of an early morning newscast.85

It was, however, premature to celebrate as the specter of possible court action by the Justice Department still existed. The parties had agreed not to consummate the merger for thirty days and the result of any delaying tactic on the part of the Justice Department or anyone else had been the subject of earlier speculation.

There is a strong possibility that ITT would abandon the merger if a stay were granted. Harold S. Geneen... is understood to be anxious for a resolution of the ABC matter, which has been pending before the Commission since April, 1966; ITT is said to have postponed action on other business ventures pending the outcome of the ABC case. And Mr. Geneen, following the Justice Department's petition in January asking the Commission to reopen the case, was reportedly close to a decision to scrub the merger effort then.86

Taking a swipe at both the Commission minority and possible Justice intervention, Broadcasting expressed its editorial pleasure at the merger approval.

The FCC, despite inordinate pressures, is still running its own--but by the narrow margin of one vote. Four of the seven members stuck to their guns in reaffirming the ITT-ABC merger after a six month delay.

It took fortitude for the majority to hold fast. Its opinion was temperate, lucid, and in court judgment unassailable insofar as the criteria customarily applied to station transfers--whatever their dimensions--are involved.
It is not the FCC to decide whether there are antitrust dangers or infractions. That responsibility, by law, reposes in other arms of government.

Now that the FCC has acted, after full hearing, we hope this will end the costly foot-dragging, permitting ABC to move ahead full-tilt with its new partners to provide full-schedule, three-network competition.87

Following the Commission go ahead, counsel for ABC-ITT met with Antitrust Director Turner to discuss the Justice Department's findings. A week later, July 14, 1967, a second meeting was held, and this time Attorney General Ramsey Clark was in attendance. At the meeting, Kestenbaum made a presentation of the Justice opinion. Following this second gathering, Turner turned the matter over to Clark, "with rumors, that he had recommended that the Department appeal the FCC decision."88

On July 21, the Justice Department filed an appeal in the U. S. Court of Appeals in Washington, D. C. However, a decision on whether Justice could seek a stay of the Commission order was dependent on whether the principals would agree not to merge until after the court had an opportunity to rule on the appeal. The Justice Department assured the applicants that it would attempt to expedite court procedures so that a decision could be reached before the December 31, 1967, merger agreement termination date.89
The schedule devised called for the Department's brief to be filed in court by September 7, 1967, with the Commission and applicant filings due on October 2. The Justice Department would then have until October 11 to file reply arguments prior to the court hearing, scheduled for the week of October 16.90

Had the court found the arguments advanced by the Justice Department persuasive enough, the case could have been remanded to the Commission for further hearing and consideration. If the Commission decision, with ABC-ITT as intervenors, had been upheld, the Justice Department could have asked the Supreme Court to review the case.91

The appeal, filed by Justice at 4:45 p.m., came just one day before the thirty day, Department requested, merger moratorium was to have expired. The Justice Department appeal indicated that it could find nothing specific of an antitrust nature under provisions of the Clayton Act, but requested a court review of the proposed merger and arguments, pro and con. In a letter to Senator Gaylord Nelson, Turner had admitted that antitrust considerations were moot points.

The FCC will be reviewing the proposed acquisition under its broad 'public interest' standard.... It might well be, therefore, that the Commission would consider it appropriate to disapprove the acquisition even though it did not constitute a violation of the antitrust laws.92
It was assumed, at the time, that the Department's brief would advance the arguments it had used during the Commission hearings, but, as with the merger consideration itself, the filing by the Justice Department was unique: "Never before has the FCC found itself as second half of United States of America vs Federal Communications Commission."\(^93\)

However, the Justice Department had intervened before with Federal agencies so the filing was not precedential. It did pose an interesting problem, however:

One point raised is whether Department of Justice, which is 'lawyer' for entire Government, should sue 'expert' agency such as FCC. Moreover, if case should go from appellate court to U. S. Supreme Court, Solicitor General, Government's chief trial lawyer, might find himself in quandry. Before FCC can appeal to Supreme Court it must get approval of Solicitor General—who presumably would be bound to represent Justice Department.\(^94\)

Critics of the Justice Department decision were moved to charge that pressure from Congress and not the merits of the case had been responsible for the court move. Turner denied the allegations.

'This is the Department of Justice,' he told a reporter who asked him. 'We did exactly what we thought we should' and allowed as how he 'always planned to do something.'\(^95\)

The delay did not dampen, on the surface, the desire by ABC and ITT to consummate the union of the two companies.
Shortly after the Justice Department made its announcement, a spokesman for ITT said,

'We are faced with a delay of indefinite duration,' then added, 'ITT is unable to comment on its future course of action until it has had an opportunity to study the details of the Department's appeal.'

Perhaps, to bolster his own spirits, as well as indicate ABC's confidence in their position, President Goldenson said,

We shall contest their [the Justice Department] action in the court, confident that we are right and that the court, in its judicial wisdom, will uphold the FCC in our position.

Broadcasting in an editorial on the Justice move expressed uncharacteristic charity toward the Commission, often the subject of its scorn and condemnation.

Big as it is, there's much more involved than a $2.7 billion merger in the litigation initiated by the Department of Justice to prevent the fusion of ABC and ITT.

A decision supporting the Antitrust Division could freeze a hitherto free market place in the trading of substantial broadcast interests and probably would make it impossible for a big company to enter broadcasting though the acquisition of existing licenses.

If the Antitrust Division's theory prevails, it would in fact become a super licensing authority because no important transfers of licenses could be effectuated without its prior acquiescence.

The Antitrust Division, as its title clearly denotes, is under mandate to prevent growth of monopoly power. This is not an issue in ABC-ITT.
The FCC was created by Congress to administer a law that has the "public interest" as its touchstone. A FCC majority found not once, but twice that the ABC-ITT merger was in the public interest.

ABC isn't in imminent danger of going under during the pendancy of the case. Admittedly it faces a tougher assignment, not only because of a tight money market but because its executives, preoccupied as intervenors, will not be able to devote their full energies to the intensely competitive battle for leadership in the new season.

Neither ITT, constantly on the merger-acquisition trail, nor ABC, which has demonstrated remarkable staying power with restricted resources, has lost its ardor for the merger. It is hoped that they will remain resolute.

Certainly the FCC majority with its authority challenged by the Antitrust Division and its integrity questioned by its own minority, cannot afford anything less than all out resistance. It is the fight of its life.

Though the remarks made by ITT would certainly not have been cheering to ABC, who had made a definite point of expressing their need for the merger, the company could at least be assured that ITT would not decide against going ahead with the merger. For ITT to drop the plans before the expiration date of the formal agreement, without ABC consent, would have involved a breach of contract and a possible damage suit that could have cost both companies a staggering amount.

The effect of the Justice Department's decision was evidenced on Wall Street. On Thursday, the day the Justice Department filed its court appeal, the price of ABC stock
had soared to 102, bolstered by the expectations that the merger would be consummated the next day, with the expiration of the thirty-day waiting period. On the West Coast, where the market did not close until after the announcement, the stock plummeted 22 points to 80. The stock had opened the week at 87. ITT fared better than its counterpart and rose a few points.

It appeared that individuals and financial houses which had sold ITT stock to pick up ABC shares in the expectation the merger would be consummated, were reversing the process.99

On August 18, Morton H. Wilner, Washington, D. C., counsel for the ABC Television Affiliates Association, filed a petition with the Court of Appeals requesting the opportunity to intervene in the merger case deliberations.100 The Justice Department filed their opposition on August 25, contending the affiliates association could not contribute materially to the court consideration of the case. They added, however, that the association could, if they wished, file with the court a brief as friends of the court, and that the Justice Department would have no objections.101

ABC wasn't quiescent during the waiting period imposed by the Justice Department's court move, and in late August, the company announced that it planned to move into theatrical production and distribution. In association with Cinerama, ABC would produce from ten to twelve feature films
before 1969, using the three-camera cinerama process, primarily designed for theater showing. Thirty million dollars had been allocated for the first phase of the operation, and it was announced that the company had already acquired 50 per cent of two projected films, "Custer of the West" and "East of Java." Plans called for these films to be reduced for television use after they had received theatrical distribution.102

When queried as to financing for their theatrical venture, Goldenson said that an interim method of funding would be employed, and that firm financing would be negotiated after the court had reached a decision on the pending merger. He did not elaborate on company plans if the court remanded the merger approval back to the Commission.

This move by ABC may have augured the ABC management philosophy on the outcome of the merger deliberations. Broadcasting magazine may have also sensed what the future would bring when it wrote:

If ABC-ITT merger isn't fulfilled, either because of court action or expiration of agreement, what's likely course for ABC? Best guess is that network will expand from within and undertake financing to permit it to diversify into new or related fields. ABC has had its hands tied for the past two years because of pendency of merger and resultant litigation.103

In early September, the ABC affiliates association again challenged the Justice Department's position denying
them an opportunity to participate in the court proceedings. They contended that the rules in a dispute of the nature to be considered by the court provided for intervention by "interested parties," and they asked who could be more interested than affiliates of ABC.\textsuperscript{104}

In another, somewhat controversial move, ABC also announced a major change in its radio networking operations and programming. This was one area that ABC had suggested as a possible victim should any economy moves be necessitated by a merger denial. The radio services of ABC had been pared once before during the merger deliberations.

The company, in an innovative move, which must have pleased those who had contended that was the way to be competitive, said that they would offer affiliates four different radio network formats to choose from. Formats were designed to fit more closely to a variety of programming approaches and were designated as the American Contemporary, Information, Personality, and FM Networks. Each individual network would be served by a general sales staff but would have specialized news formats. It was welcome news to station personnel.

Generally, station men contacted after the briefing characterized the concept as daring and, as one station owner put it, 'The first real attempt to get radio networking off the dead center on which it has rested for years.'\textsuperscript{105}
The industry, however, chose to take a "look and see" attitude at this new approach to radio network programming and sales technique. Broadcasting magazine said,

Whatever else may be said about ABC Radio's new multinetork concept—and a great deal is being said about it—the idea is daring and provocative.

Success or failure will depend on advertiser acceptance. That in turn will depend on the sort of lineups ABC puts together. And that, of course, will depend upon what success or failure always depends upon in broadcasting—aptness and quality of the service that is provided.

It is an exciting and daring concept, but it is too early for objective assessment of how it will work.106

The Justice Department Goes to Court

Per the time table, on Thursday, September 7, 1967, the Justice Department filed its brief with the court. The document was signed by Donald F. Turner, Chief of the Antitrust Division, Lionel Kestenbaum, Director of the Justice Department team during the April Commission hearings, and four members of the Antitrust Division staff.107

In what was described as an "unusually typewritten, doubled-spaced, 171 page document," the Justice Department scored the FCC decision. The brief also sought the court's permission to submit the document, as court rules limit the length of such briefs to fifty pages.
The Department contended that the Commission had "erred egregiously" in approving the merger, based on five of the Justice inspired issues, and that the Commission, in light of the evidence generated in the April hearings, was remiss in reapproving the merger. 108

The brief dealt with the candor issue and challenged the testimony of both Geneen and Goldenson, indicating that their testimony often contained discrepancies and vagaries which were misleading, and at time improper. This, Justice felt, should have played a more important role in the Commission majority findings.

The filing noted that the FCC had, in its first decision approving the merger, indicated that their understanding of ABC's financial need had been $140 million for color conversion. But that loan agreements had limited ABC's borrowing ceiling to $6 million. However, the second Commission majority opinion, the Department noted, indicated no specific dollar amounts and "...failed to determine whether ABC can borrow funds elsewhere without having to merge with ITT." 109 The Department contended, that far from being a distant third in the network scramble as had been maintained by ABC witnesses, ABC had achieved both financial and rating parity with NBC and CBS. The Department said that the company's profits from television alone amounted to $125 million during the period 1960-66, and that
in terms of affiliate clearance and ratings, ABC was on a par with the other two networks. They also charged the company with having "greatly exaggerated its actual requirements for capital expansion expenditures." \(^{110}\)

They maintained that there was no substantial financial benefit to the merger which would enhance the public good. And further, they contended that if ABC wished for additional capital, they had avenues available to them which would allow ABC to obtain the funds without having to merge. \(^{111}\)

They also reiterated their attack on the autonomy promises of ITT and ABC officials and maintained that the evidence was quite strong that interference would exist on several levels. They said that this would be manifest in the regulatory field, in the advertising market, and in the network's public affairs and news programming.

Assurances were not sufficient for the Justice Department, and the brief suggested that their doubt was premised on testimony dealing with control and ownership.

The Justice brief also took exception to Lee Loevinger's claim that there were no antitrust questions. In discussing possible advertiser manipulation they wrote:

...The Commission's refusal to see that ITT could apply weight in the advertising market, by pressuring its suppliers, for instance, to advertise on ABC, does not jive with accepted antitrust law.
Court decisions have held, it noted, that the notion of 'significant probability' is sufficient to require weight to be given in the field. 112

Another prominent concern of the Justice Department was the potential for program control and manipulation as a result of ITT's extensive foreign investments and vested interests. They said that "there is no valid basis" for accepting the notion that the foreign influence would not effect the networks news and public affairs activities. 113

They again rejected the Commission's majority view that the merger would be a positive influence on the development of UHF broadcasting. And they dismissed the majority "conditions" approving the merger, which Justice found to be vague and virtually impossible to police. They charged the Commission with, in effect, "...imposing conditions to create the benefit and then citing the benefits as a reason for the conditions." 114

They restated their exception to the Commission majority findings which had indicated that ITT would not, in all probability, enter the field of broadcasting if denied the opportunity of merging with ABC. To the contrary, the Department said, the chances of ITT entering the industry were quite good and that by approving the merger, the Commission had severely limited this possible new competition.
In addition, they added, the paucity of stations and networks had political as well as economic ramifications and that

...a high premium should be placed on fostering additional entrants into network broadcasting to enhance competition and diversity.\textsuperscript{115}

Pointing out that broadcasting was a "highly concentrated industry," the brief went on to say, "the existence of only three networks... has serious adverse consequences for competition..."\textsuperscript{116} Still on the subject, the Department took advantage of the situation to chide the Commission for saying one thing then doing another.

Instead of acknowledging the disadvantages of the existing tripoly... the Commission majority has expressed general satisfaction with the present structure and performance of the three-network industry. The majority seem to suggest that networking is a kind of natural oligarchy necessarily limited to three companies.\textsuperscript{117}

They also maintained this posture in discussing the Commission's rationale that possible program cuts would have to be made if ABC was denied the greater wealth afforded by ITT. They maintained that in developing this sort of argument the Commission was acting

...as if such programming was an act of magnanimity by a network for which the public must pay the price of high profits and great corporate size.\textsuperscript{118}
Broadcasting, in describing the Justice brief, was obviously offended by the attitude of the Department and indicated its displease in describing the tone of the filing.

The document, almost papably patronizing, with an elder brother's attitude toward a smaller member of the family, claimed that the FCC's first decision approving the merger in December, 1966, was based on 'a wholly inadequate record,' without a hearing 'in uncritical reliance upon the companies' representations.'

As if the Department's charges were not deleterious enough to the principals' hopes, another charge of tampering was leveled at ITT. This time the offended party was a staff writer for the New Republic, James Ridgeway, who had authored an article for the magazine which cast the ABC-ITT merger in a most unfavorable light. According to the New Republic, a man who identified himself as James Mackey, acting, he claimed, "at the behest of ITT," commenced an investigation of Ridgeway. An employee of Army Times Publishing Company, Mackey had quizzed a New Republic receptionist over the phone about the New Republic staff writer. When contacted, the Army Publishing Company indicated that Mackey's employment had been terminated the day after he made the call, but claimed the dismissal was not related to the ITT matter.

Mackey had claimed the request had been made through one of the advertising agencies retained by ITT, but a
spokesman for the Army Publishing Company said that it would have been "impossible" for an agency to make a request of that nature. Officials of Needham, Harper and Steers-West, Weir, and Bartell, and Doyle, Dane, Bernbach, all of whom handled ITT accounts, denied having made the request.

ITT was also quick to issue a denial.

Spokesman, John V. Horner, who is in charge of ITT public relations in Washington, was categorical in denial that ITT was behind Ridgeway snooping.120

The hearing requested by the Justice Department was held in mid-October in a two and one half hour session before a three judge panel composed of Warren E. Burger, Carl McGowan, and Spottswood W. Robinson III. Predictably, there was nothing new disclosed and the arguments were a reiteration of what had been proffered earlier. Only one judge queried the participants to any degree.

Judge McGowan peppered the Department of Justice and to a lesser degree FCC counsel with argument. Judge Burger asked a few clarifying questions; Judge Robinson, none.121

The Justice Department maintained that the Commission had erred seriously in approving the merger. ABC-ITT countered that the FCC had acted sagaciously.

Hugh B. Cox, Washington lawyer, arguing in behalf of both ABC and ITT, stressed that the judgment by the FCC majority was reasonable and was neither arbitrary nor capricious. The Commission, he noted, listened to all the arguments, considered the evidence and made its judgment on substantial grounds.122
The Justice position was also attacked by FCC Deputy General Counsel, Daniel E. Ohlbaum, who accused the Justice Department of attempting to reargue the case using some issues and ignoring others. He also accused the Department of foisting its procedural and policy opinions on the Commission. And in answer to the charge that the FCC did not study alternate methods advanced during the hearing, which would have provided ABC with another means of obtaining capital, Ohlbaum pointed out that the Commission was not required to study alternate means which the company could employ.123

Justice characterized again as "ludicrous" and unsupportable the Commission's conclusion that ABC's autonomy would be assured and reintroduced the issue of ITT tampering with members of the press.

Kestenbaum repeated the charge, contained in the Justice brief, that the Commission, in reaching its decision, ignored the testimony offered during the April hearing, and that they had failed to come to the correct conclusions on the items the Justice Department considered vital: the benefits and drawbacks of the merger; the effect on CATV, UHF, and other areas of communications technology; the loss of ABC's independence; the lack of candor on the part of the principals; and the financial need of ABC.124
The various options were plainly evident to those involved in the merger considerations.

Should the court sustain the FCC, there is some speculation that the Department of Justice may ask the U.S. Supreme Court to review the case, although there appears to be some doubt that this would be done if the decision is unanimous. If the appeals court, on the other hand, rules against the FCC, there have been reports that ITT may not consider it feasible to continue the long litigation.125

The period was tempestuous one for ABC. Expected to acquire its seventh and last station, ABC was negotiating with Lester Lamin for KXYZ-AM-FM in Houston, Texas. The $30 million deal was expected to involve an exchange of stock. The network had been searching for another property and, in addition to the Houston complex, had explored possibilities in Boston and Dallas.126

Of a more troublesome nature was the strike being waged against the network Owned and Operated stations by the National Association of Broadcast Employees and Technicians. The strike, which by November 6, 1967, had lasted forty-five days, centered around the terms of a three-year contract. The network had been forced to file charges of unfair labor practices with the National Labor Relations Board after NABET had picketed a sponsor in an attempt to get them to curtail advertising on one of the ABC stations.127

According to the union, some sponsors had agreed to participate in the advertising boycott. Among these were:
Thom McAnn Shoes, McDonald Hamburgers, J.C. Penny, Stella D'Cro Coffee, Ballentine Beer, Lion Van and Storage, Gill-Hile and White Front Stores.\textsuperscript{128}

And to further compound the list of ABC woes was the announcement that the net earnings from operations for the third quarter of the year were down 60 per cent from the same quarter the previous year. The drop from $3.88 million ($\cdot83 per share) to $1.51 million ($\cdot32 per share) contributed to the total 20 per cent loss the company had suffered over the first nine months of the year.\textsuperscript{129}

\textbf{The Merger Is Terminated}

The decision to cancel the merger plans was made by the ITT board on New Years Day, 1968. Provisions of the agreement between ITT and ABC gave either party the right to cancel after December 31, 1967. ITT President Geneen attempted to contact ABC President Goldenson to inform him of the board's decision, but Goldenson was on vacation and unavailable. Formal word of the dissolution was received by ABC Executive Vice-President, Simon Seigel.

In a statement issued later that day, ITT said that the decision had been reached in

\ldots light of the long delays that have ensued since the announcement of merger in December, 1965--delays over which neither company could exercise control--and the indication of further delays in the future.\textsuperscript{130}
The release continued,

This action has been taken by the ITT board with reluctance and concern for the time and effort both companies have expended to carry out an agreement which was entered into by them as a constructive step in the public interest.131

The ITT decision was not surprising. Rumors of their disenchantment with the merger had been circulating from the onset of the initial Justice intervention. There was a more practical consideration as well. To continue to engage in the legal maneuvering necessitated by the Justice Department action would have been time consuming. And even if the merger was eventually approved, the cost to ITT had become prohibitive. The merger called for an exchange of stock which, at the time of the merger cancellation, would have been vastly beneficial to the ABC stockholders but costly to ITT; ITT stock had gone up nearly 75 per cent since December, 1965, while ABC, which had fluctuated greatly, had returned to approximately its original level.132

On December 1, 1965, when the word of negotiation between the two firms was first announced ABC was selling at 62 and ITT was at 66 5/8. On January 2, 1968, ITT closed at 116 which would have meant, under terms of the agreement, that ITT would have had to pay the equivalent of $132.24 for each share of ABC stock for a total of $661,200,000 for five million ABC shares. The difference between what ITT
would have paid on December 1, 1965, and what it would have cost them on January 2, 1968, was $281,450,000.

However, ABC stockholders who had stood the most, at this time, to gain from the merger were not too badly damaged by the ITT decision. On December 29, before the termination deadline, ABC common stock closed at 66. On the day following the ITT announcement, the stock opened at 61 and by the following Thursday had risen to 65 1/2.133

ABC staff reaction to the move was mixed and some described the ITT decision as "cavalier" but morale was described as high. There was the wish, expressed by some, that it would have been nice to wait until a court verdict had been reached before cancelling the merger.

We won't know what the decision would have been, but it would have come fairly soon. We were more than willing to wait a reasonable amount of time.134

In the wake of the cancellation, ABC, ITT, the FCC, and the ABC Affiliates Association filed a motion with the Court of Appeals that asked in light of the cancellation, that the Justice Department's petition against the merger approval be dismissed as "moot" and said, "There is no longer any controversy to be determined by this court."135

However, the Justice Department did not accept the rationale of the parties concerned and filed a rejoinder with the court suggesting that the court remand the case back to the Commission for reconsideration, so that the
Commission could reverse itself, implying that without such action the approval would still stand.\textsuperscript{136}

The fact that the merger had been dropped did not silence earlier critics. Senator Gaylord Nelson, who continued to challenge the networks and the question of conglomerate control, said,

The whole question of ownership of the three national television networks should be carefully explored by the FCC and the Congress. If the owners of the networks are to be companies with a wide variety of business holdings, a serious question is raised as to their capacity for objectivity in the presentation of news.\textsuperscript{137}

And the FCC continued to receive Congressional flack. Representative John Dingell, a critic of the merger and a member of the Commerce Committee, noted his earlier concern over FCC procedures and suggested that he might pursue the issue during the forthcoming session of the House.\textsuperscript{138}

Broadcasting magazine devoted a portion of its editorial ire for an impassioned warning to broadcasters of the spector of greater regulatory interference by the Justice Department. But they also managed to place a great percentage of the blame for the merger imbroglio on one civil servant.

The collapse of the ABC-ITT merger gives the Government a new tactical means of enforcing antitrust policies that may be fancied at the moment but are untested in the courts. In the outcome of this case the private cause of certain
functionaries in the Justice Department and other Government quarters has been served. Justice, in the larger meaning of the word, has not been.

The new tactics, as pioneered in this case, go as follows. The Justice Department takes a dislike to a given proposal for a broadcast transfer. It cannot find in it, however, the grounds for an antitrust suit that it is likely to win. It therefore, intercedes with the FCC to prevent the transfer in the public interest—a standard that is, of course, infinitely vaguer than the antitrust laws.

If, as happened in ABC-ITT, a majority of the FCC rules against the Justice Department, the decision may be appealed—again not on the question of whether the antitrust laws may be violated but on the FCC's findings that the public interest would be served. If appeal fails in the Appellate Court, there is always the Supreme Court to turn to. There may never be a case that is taken all the way through that legal process. As Justice discovered in ABC-ITT, it is possible to queer a deal before courts act at all.

If legal maneuvering goes on long enough, businesses and business conditions are almost certain to change. ITT withdrew from its ABC contract last week because the package it had submitted to the FCC nearly two years ago was no longer as attractive to ITT stockholders. Over a similar period of delay in any future case, circumstances are also likely to alter. Thus simply by its intercession in a case Justice may impose the threat of delay that can discourage mergers and acquisitions.

This situation would be unjust enough if it involved only the Justice Department. The trouble is that the new tactics can be instigated by still other elements of government. Although Donald Turner, the Justice Department's antitrust chief, has firmly denied that his division acted in the ABC-ITT case in response to political pressure was applied.

As a story, never denied, in Television magazine reported, the hard opposition to the ABC-ITT deal
was originally stirred up by ingenious civil servants in the Congress. Indeed one economist on the staff of the Monopoly Subcommittee of the Senate Small Business Committee took credit for provoking influential senators and congressmen to outburst against the merger. The economist, Ben Gordon, admitted he had help from a few other staff employees on the Hill [see "The Great Washington Fumbling Match," in Television, August, 1967]. But he did not minimize his own role, 'One little staff guy, opposing those two corporations,' he told the Television writer.

There will always be Ben Gordons in the government, as indeed there should be. Mr. Gordon's philosophy is clear and his sincerity unquestioned here. But by themselves they must not be allowed to make policy through political manipulation. If government is to be orderly, policy must be made by open legislative action and interpreted by expeditious consideration in the agencies and courts. In the ABC-ITT case policy has been made by bureaucratic connivance. The loss is as great to the democratic process as to the stockholders of ABC and ITT.139

Whether Mr. Gordon's actions were significant factors or not, FCC staff members attributed the merger collapse and confusion to the swift action on the part of the Commission following the receipt of the second Turner letter, which in a sense, had received only cursory attention from the Commission. In addition, they suggested that the rebuke contained in the first majority opinion approving the merger, chiding Justice for being slow to participate, left Justice with the necessity of engaging in some face-saving. Many felt that if a full hearing had been held prior to the
first approval, there might not have been a Justice Depart-
ment challenge: "We won't make the same mistakes again," said one FCC staff member. 

The Justice Department, which had received its share of criticism over its handling of the case, also may have learned something about the handling of other matters with similar parameters.

In any case, it's likely that the Department would attempt, next time, to avoid the kind of criticism its tactics took in the ABC-ITT case—specifically, the charge, voiced privately by some FCC officials as well as by representatives of the applicants—that the Department employed 'delatory tactics' to kill the merger.

But it was obvious that the Justice Department had felt proper in their watch dog capacity, and there were some indications that the Department would continue this type of involvement. A spokesman for the Justice Department said,

...There appeared to be 'more interest' in the Department in 'the general problems of regulatory agencies' and that, as a result, there is more interest in going before agencies and dealing with matters involving anticompetitive problems in that fashion.

There was some speculation, however, that in other cases which involved a merger approval by a regulatory agency, the Department might wish to appear before the agency involved rather than file a court suit. One attorney said,
"I can't say that it will always happen, but that it can happen; that this is an appropriate way of proceeding."

Ex-antitrust director, Commissioner Lee Loevinger, had other thoughts on the Justice pronouncements and intervention in the ITT-ABC merger approval. He said that the Department's move,

...suggests the possibility of an unhappy trend developing. ...The only losers in the case are ABC and the public. The outcome is a real blow to the vigor of competition.

**ABC "Goes It" Alone**

ABC now had to decide on a course of action, and ABC President Goldenson suggested that the possibility of a merger was still potentially a viable solution to the ABC financial problems. He acknowledged that the company regretted the ITT decision but said that

...Termination of the merger now frees ABC from its obligation under the agreement and permits us to start immediate discussions with compatible companies that have privately expressed an interest in being acquired by our company. Up to now, ABC in good conscience, was not able to enter into any such discussions while the merger was still pending.

He said, 'ABC will move vigorously and forcefully to strengthen and expand our companies interests and growth. We will have further announcements in the future.'

There had been speculation that a larger company such as General Electric, Litton Industries, and Sears Roebuck had been interested in acquiring ABC, but spokesmen for the
company suggested that ABC might initially search for smaller companies to absorb, with an eye toward eventual merger with a larger concern. In fact the company admitted that it had already commenced its search for suitable properties.

ABC spokesmen said that top officials of the company had already embarked on earnest negotiations which if fruitful, could result in ABC’s acquisition of smaller “compatible companies.”

ITT’s departure had left ABC with sizable loan obligations which would have to be met, including one of $25 million advanced by ITT.

ABC faces 1968 with total loan obligations of $128 million, aside from annual cash requirements for operating expenses and future planning according to information on file at the FCC.

In 1965, the network borrowed $70 million from the Metropolitan Life Insurance Co., later $27,500,000 from the Manufacturers Trust Co., and three other banks; $10 million in a short-term credit from the same four banks, and $25 million advanced by ITT.

The Metropolitan Life loan, now reduced to $66,250,000, is for 20 years at 4.55 per cent interest yearly, payable semi-annually at these sums—$1,250,000 to Jan. 1, 1971, $1,625,000 to Jan., 1985, and $10,750,000 on July 1, 1985.

On the bank loans, ABC borrowed $25 million in 1966, and another $2.5 million in January 1967. The note is payable in equal, quarterly installments that began June 1, 1967, and end on March 1, 1972. Remaining to be paid is $25 million.

Details of the $10 million short-term credit were unavailable last week.
The ITT loan, made toward the end of 1966, provided for $25 million to be advanced to ABC in five monthly installments beginning in February last year. It is unsecured and subordinated to the Metropolitan Life and bank loans. Interest is at the 1/4 of 1 per cent above the prime bank rate. ABC is obligated to return the $25 million cash working funds.

Five-Year Plan. In a five-year projection that ABC submitted to the FCC, the network showed that it had committed $33,266,000 in the broadcasting field and had planned to spend $113,470,000 mostly for color and for feature films. Other prospects in that period: new theaters, $23,300,000; ordinary replacements in theaters and all other operations, $9,520,000. Also mentioned for that period is ABC's contribution of $5 million for Marine World, a Redwood City, Calif., marine exhibit that is under construction.

The same exhibit showed that ABC had a cash flow of $19,859,000 in 1966, but anticipated a cash deficit for the other four years of $53,550,000; $63,500,000; $85,801,000 and $75,111,000. This, the network noted, was exclusive of normal requirements of cash working funds of $20 million each year.

ABC put its total cash requirements over these five years at $372,720,000—and with the network only able to generate $208,850,000 of this. The net deficit, even after borrowing was put at $122,370,000.

These figures were disputed by both the Justice Department and the FCC's Broadcast Bureau. For example, the Broadcast Bureau calculated that by delaying construction of the $78-million studio installations for one year, the network could reduce its peak cash deficiency from $85.5 million (in 1969) to $57.5 million. 148

In February 1968, Goldenson addressed himself to the lower earnings per share issued by the company for 1967. Citing expenses for colorization as a prime factor, he also
pointed to the costs of the extended coverage of the June, 1967, Middle East Crisis, labor disputes, and a "lack of flexibility in planning and operations because of the long delay of the proposed ITT merger."¹⁴⁹ He said that prospects were bright for 1968, however, because program changes and subsequent audience increase had made the sales picture more promising. He also said that because of the aborted merger

...certain economy measures have been undertaken in all operating areas, particularly with respect to network programming, and news and public affairs.¹⁵⁰

In the 1967 Annual Report, ABC listed their operating earnings at $11,759,000 ($2.50 per share) compared with the $17,860,000 ($3.81 per share) the previous year. Total earnings for the year, including capital and nonrecurring gains, were $13,529,000 ($2.88 per share) in 1967 and $18,066,000 ($3.85) for 1966. Total revenue figures for 1967, however, reveal that the fiscal picture had not been as dim as the above figures would indicate. In 1967, ABC's total income was $574,952,000, up from $539,972,000 the previous year. Of the total, the broadcast division accounted for $431,325,000 in 1967 compared to $413,684,000 contribution the previous year. Theater revenues were also up from $82,390,000 in 1966 to $84,877,000 in 1967. Other activities and subsidiaries accounted for $58,150,000 in 1967, as opposed to $43,898,000 in 1966.¹⁵¹
The company's report also indicated that not all of
ABC's interests were in the United States and reported on
minority interests in broadcast properties in Australia,
Canada, Lebanon, Japan, the Netherlands, Okinawa, and the
Philippines. It also contained information on the other
areas of company involvement including tourist attractions
in Silver Springs and Weeki Wachee, Florida, and Marine
World which was under construction in Redwood City, Cali­
ifornia. The company was also involved in the publishing
business and owned The Prairie Farmer, Wallace's Farmer,
and the Wisconsin Agriculturist.152

Reflecting the contentions of the Commission minority
and the Justice Department, in February 1968, ABC announced
a refinancing plan that would enable them to repay some of
their debts. The company planned to issue $75 million in
convertible subordinated debentures which would fall due in
March of 1993. This, the company announced, would allow
them to repay the loan from ITT and cut back their debt at
various banks. About $53 million would be used for loan
repayment with the balance reserved for capital expenditures.
The Metropolitan Life Insurance Company, however, was not
listed as one of the parties to benefit from the potentially
new available funds.153

The company also made some personnel adjustments
described by Goldenson as
...designed to add strength and new vitality to our broadcast division. They are an essential part of the overall plan which we are launching to expand the corporate growth of our company.154

The shuffling of personnel was accompanied by an ABC presidential directive which hinted at possible employee release.

ABC personnel... received what one executive called a "strong command" from Mr. Goldenson to trim unneeded expenditures, and some employees braced themselves for possible personnel cut backs.155

Indications were that the spector of possible unemployment was on the minds of a number of ABC employees.

--Some "service" employees in non-income-producing areas expressed a fear that due to the cancellations, an austerity program would be introduced which might put them out of work.156

Among those affected in the realignment of the ABC hierarchy were Thomas W. Moore, ABC-TV president, who was named vice-president of the regrouped ABC divisions; Elton Rule, vice-president and general manager of KABC-TV in Los Angeles, was brought in to replace Moore. Theodore F. Shaker, group vice-president for the Owned and Operated stations was named assistant to Executive Vice-President Seigle in charge of Corporate planning and responsibility.157

More changes were implemented when Edward Bleier, vice-president for public relations, resigned in February. Under his jurisdiction were ABC-TV's marketing, advertising,
and public relations departments. Following his departure, all these departments reported directly to Vice-President Rule. 158

Additional changes were made in the programming department, spurred in part by the resignation of Ted Fetter, Vice-President and Program Director for ABC-TV, and Harvey Bennet, who was director of film projects on the West Coast. Fetter was replaced by Martin Starger, who had been program director for the West Coast and Bennet by Steve Mills, ex KABC-TV Program Director.

Mr. Goldberg [ABC VP in charge of television network programming] formally attributed the changes to the shift in the television business requiring the skills of people who not only 'make network programming work' but 'relate it to today's times and today's audiences.' He said it insures even more creative program development and supervision for ABC. 159

Shortly after the merger termination, spokesmen for the TV network indicated that an attempt would be made to preserve the 7:30-9:00 p.m. revenues during the summer political conventions, staying with regularly scheduled programs and going to convention coverage later in the evening. This was the strategy eventually followed.

The convention coverage was not the only public affairs offering to fall victim to the non-merged status of ABC-TV. "Scope," a half-hour weekly news program was dropped from the schedule. The program had suffered from affiliate
clearance problems. The last program of the four year old series aired January 28, 1968. However, all but ten members of the program staff were absorbed by other ABC-TV departments.160

ABC-TV was trapped by a political Presidential election year, into unusual programming expenditures but kept their coverage of the primary activities to a minimum. For example, in the New Hampshire and Wisconsin primaries, ABC limited itself to superimposed vote tabulations over regularly scheduled programs with a special half hour summary at 10:30 p.m. For the Nebraska and Oregon outings, they had special news bulletins during the evening with a fifteen minute summary at 11:15 p.m.

But the network did air, prior to each convention, a two consecutive evening examination of the mood and issues expected to play important roles in the convention drama. They also expanded "Issues and Answers," the network's weekly interview program, to one hour during the period September 1 - November 3, 1968.161

Also reflecting the Commission and Justice charge to innovate, the news department began to make some changes in their content approach. In an intra-office staff memorandum, William Sheehan, Vice-President and Director of TV News, exhorted his staff to "go after the stories that grab people" as well as covering the hard news. He continued,
We're going to try a new direction, one that will tax your imaginations, your skill and your patience.

Our number-one mission is to cover the day's news. Number two is to present it interestingly. And number three... is to make ABC evening news enough different in its presentation to attract attention away from the competition.162

When queried by Broadcasting to expand on his concept he told the magazine,

We'll continue to cover the stories, but from now on out, we'll be paying more attention to the "back-of-the-book" stuff, the stories that may not be "hard" news. Mr. Sheehan indicated the search for different angles had already begun.163

The decision to make cuts and adjustments in news and public affairs programming was due to a directive from ABC President Goldenson which set a limit on spending in this area. Some estimates of the budget trim ranged from $10 - $15 million off an original budget of $40 million. By limiting the evening convention coverage, the company estimated it would be able to save approximately $3 million of the $10 million allocated for political programming alone.164

The decision to pare the convention coverage by the network was ABC's first departure from gavel to gavel coverage since television first presented the gatherings in 1952. Though obviously an economic move

ABC news president, Elmer Lower, said net had received an increasing mail response from viewers and affiliated stations questioning why all three networks had to carry simultaneous gavel-to-gavel
coverage. It is our opinion that viewers have been requesting a choice and this year we decided to provide one.

The budget cuts and adjustments combined with optimism for a successful Fall, 1968 season were major contributors to the confident, aggressive attitude displayed by network officials at a gathering of ABC affiliates at the 1968 National Association of Broadcasters convention. In discussing the economic future of the network, ABC-TV President Rule told the assembled:

"Prime-time," he said, "is our prime business activity. The second quarter is sold out. As a matter of fact, by March 22, we had written more dollar business for the second quarter than we had for the entire quarter last year. We are well on our way to the same position for the third quarter."

"In addition," he said, "we have already written over $125 million in business for next season, including orders for more program sponsorships \( \text{as opposed to participation} \) than ABC has had in many years."

"We are matching our competitors order-for-order," Mr. Rule declared. "The outlook is healthy three-network economy next season and we are entering it confidently."

Earlier lamentations on the networks inability to compete successfully seemed to be forgotten in the heady atmosphere the network management attempted to create. Rule also maintained that, indeed, ABC-TV was prepared to make it a true three network contest in the Fall, not only in sales but in ratings,
'...and win we will.' He also noted that 'we have a lot of good things going for us' including younger audiences, increasingly strong daytime line-ups, a healthy sports schedule and 'big prime-time business.'167

Goldenson also addressed the affiliates and answered industry rumors that the network intended to phase out its news and reduce the number of prime-time programming hours. He assured them that to the contrary, ABC-TV would not cut back on programming hours and that the news was the subject of much study. But, he said, the emphasis was on innovation not emulation: "We're going to compete but we're going to do it differently."168 Elton Rule had also underscored this theme when he told the affiliates that in the long run, ...

prime-time news may enlarge our scope of service to your audiences and it may prove competitive counter-programming. He told affiliates 'our future approach to prime-time or fringe-time network news will be the subject of much discussion and study both individually and collectively.'169

It was during the NAB Convention of 1968 that Goldenson also reported to the affiliates that the $75 million financing plan developed earlier to solve some of the company's funding problems had been temporarily abandoned. Instead, the company had made arrangements with the banks to prevent the necessity of making a public stock offering as intended, and the institutions had assisted by extending some of the deadlines for fulfilling loan repayment.
obligations. This news came at the same time the company announced that there might be some redirection of payments to stations for broadcasting network programs as part of the continuing economic restraint.\footnote{170}

Goldenson's desire to ease the financial plight of the network without issuing additional stock was undermined by his desire to have available to the company a cash reserve. In April, 1968, he asked the stockholders for permission to issue two million shares of preferred stock if the need arose.

'The company has no present plans for issuing any of the preferred shares, but such stock would be available to finance possible acquisition as well as other capital requirements,' the company said.\footnote{171}

On April 29-30, 1968, the network held its official affiliates meeting. The earlier optimism exhibited by ABC officials at the NAB meeting, it was feared, had not infused the station representatives with as much enthusiasm as had been hoped. This was quickly remedied at the affiliates gathering.

The ABC-TV Network, beset with financial and programming problems, faced with defections in the station ranks, coming off a season of frustration, held its annual meeting of affiliates in Los Angeles last week and managed to turn a potential grass roots free-for-all into a real nice clambake.

'This meeting turned a new page in our network relations,' said Robert Doubleday, Chairman of the ABC-TV Affiliates' Board of Governors. 'There wasn't a scream heard in the whole thing.'\footnote{172}
Some of the affiliate antagonism and doubt had been engendered by the use, at the earlier "get together," of terms like "unconventional" to describe the changing approach to news and other programming the network was developing. Rule told the affiliates that the term did not mean

...bazarre, kooky or farout nor ignoring basic bread and butter elements of our medium that help pay the tariff.

But we do intend to be venturesome. We intend to put all the accepted ideas under a bright light—and hopefully see our way clear to doing them differently and better.

I want to see this network stand for something vital in the viewers' eyes. I want them to naturally associate ABC with innovation and imagination in all areas.

'Unconventional' for ABC means being competitive with other networks—without being a carbon.173

With the dissonant elements silenced temporarily, Goldenson appeared at a May, 1968, meeting of ABC stockholders. The stockholders had earlier approved a request made by the company president for the issuance, if necessary, of two million shares of ABC preferred stock as well as an additional $10 million in common shares, if necessary. He also said that the issuance of convertible debentures was again under consideration as an answer to the company's need for long range capital expenditures.174
At the meeting he also announced that a method had been arrived at which would allow ABC-TV to acquire a feature film inventory on a pay-as-you-go basis. The plan employed the assistance of several financial institutions, who secured the television rights to the motion picture package for $52 million. The financing institutions would then lease to ABC-TV, the films as they were used by the network thus releasing the network from the problem of a sizable initial cash outlay.

This arrangement will free (ABC) of the obligation of making approximately $52 million in prepayments which would otherwise have been required by the end of 1968. This will enable us to repay the ITT loan and add to funds available for corporate use.175

Almost six months had passed since ITT cancelled the merger, and the network was beginning to take the avenues it felt would bring it financial, programming, and rating parity with its two competitors. Only the future would prove whether these moves would be successful. This matter will be dealt with at greater length in the conclusions of this paper. However, in the January 10, 1972, issue of Newsweek magazine, Elton Rule, who had been appointed ABC Vice-President shortly after the merger termination, discussed the effect of the twenty-four month merger deliberations.

'During those two years,' recalls Elton Rule, who now presides over the ABC Broadcast Group, which includes all radio and TV operations, 'everything at ABC ground to a halt while we awaited the cavalry from ITT. Suddenly, we found out we had to go it alone.'176
ABC's success at doing so was reflected in the same article.

"...ABC has all but erased its most debilitating competitive handicap--its featherweight size. The prices a network can charge advertisers depend not so much on its ratings as on how many affiliate stations carry its programming. For the past decade, NBC and CBS have each enjoyed a line-up of some 200 affiliates, while ABC has hovered around the 150 mark. In 1971, however, 22 more stations agreed to carry ABC shows live and another 22 signed up to run them on a delayed basis. The result is that for the first time since 1962, the ABC network is expected to register a profit this year. 'The big TV shocker of this season,' says New York stock analyst William Morris, 'is that we now have three full-fledged networks--instead of only two and a half.'177
FOOTNOTES

Chapter III


4. Ibid., p. 94c.

5. Ibid., p. 94b.

6. Ibid., p. 94c.


8. "$100 Million," p. 94c.

9. Ibid.

10. Ibid.

11. Ibid.


13. Ibid., p. 69.

14. Ibid., p. 62

15. Ibid.

16. Ibid.

17. Ibid., p. 63.

18. "$100 Million," p. 94c.


Ibid.


40. Ibid., p. 56.
41. Ibid.
42. Ibid., p. 55.
43. Ibid., p. 54.
45. Ibid.
46. Ibid.
47. Ibid., p. 34.
49. "FCC Staff Questions," p. 34.
50. Ibid., p. 35.
51. Ibid.
52. Ibid.
53. Ibid., p. 34.
54. Ibid., p. 30.
55. Ibid., p. 31.
56. Ibid.
57. Ibid., p. 32.
58. Ibid., p. 31.
60. Ibid., p. 34.
61. Ibid.
62. Ibid.
63. Ibid.
64 Ibid., p. 34.
65 Ibid., p. 32.
66 Ibid., p. 33.
67 Ibid.
68 Ibid.
69 HB10481, June 5, 1967: Representative Dingell, Ottinger, Moss.
74 Ibid., p. 575.
75 Ibid., p. 567.
76 Ibid., p. 580.
79 "In the Matter of...," Docket 16828, pp. 588-589.
80 Ibid., p. 591.
81 Ibid., pp. 592-593.
82 Ibid., p. 617.
83 Ibid., p. 596.
Ibid., p. 613.

"For ABC, ITT:...," p. 30.

Ibid., p. 29.


Ibid.

"Washington Fumbling Match," p. 84.


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"Affiliates Ask Voice," p. 44.


Ibid., p. 64.

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Ibid., p. 67.

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Ibid., p. 66.

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Ibid., p. 66.

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Ibid., p. 87.


"What Happens Now to ABC," Broadcasting, January 8, 1968, p. 34.

Ibid.


"What Happens Now," p. 35.

Ibid.


Ibid.


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Ibid., p. 41.

Ibid.

Ibid.
144 Ibid., p. 41.
145 "What Happens Now," p. 34.
146 Ibid.
147 Ibid.
148 Ibid., p. 35.
150 Ibid., p. 5.
155 Ibid.
156 "What Happens Now," p. 35.
157 "ABC Shuffles," p. 53.
158 "$75 Million," p. 60.
161 Ibid.
162 Ibid.
163 Ibid.
164 Ibid., p. 42.
165 Ibid.
167 Ibid.
168 Ibid., p. 50.
169 Ibid.
170 Ibid., p. 51.
173 "ABC-TV Station Men Welcome President as One of Their Own," Broadcasting, May 6, 1968, p. 33.
175 Ibid.
176 "Happy Days Are Here at ABC," Newsweek, January 10, 1972, p. 40.
177 Ibid.
SUMMARY AND CONCLUSIONS

To the press the proposed merger was about as sexy a story as that of one large bank acquiring a somewhat smaller one, although not quite as significant. 1

Highlights of a Non-Merger

A brief review of the chronology of the merger proceedings may help reorient the reader to the myriad of circumstantial and procedural barriers and conflicts which marked this most unusual FCC case. Early in December, 1964, Gerald Tsai, then with Fidelity Funds, a company with a considerable financial investment in ABC and ITT, first suggested the possibility of a merger between the corporations. In a conversation with ABC President Goldenson, Tsai outlined many of the benefits which could conceivably result from such a marriage. 2

The first public announcement of the merger discussions between the two companies appeared in late December, 1965, in an article in the New York Times. By March of 1966, the boards of directors of both companies had issued a formal approval of the merger plan, which was followed by

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the filing, with the Commission, for the transfer of ABC's seventeen AM, FM, and TV properties to ITT.

In April, 1966, the stockholders of the two companies issued their respective endorsement of the merger plans. At each of the meetings, the stockholders were told by corporation executives that the Justice Department had not issued any comment on the proposed new corporate giant.

In July, 1966, the Commission requested additional information from the two company presidents on the portent of the merger for the public interest, additional financial data, foreign investment and contractual obligations, and a more definite description of the relationship that would exist between the two companies. Though the singular, largest transfer of its type to be considered by the Commission, it was not thought that a formal evidentiary hearing on the transfer applications would be necessitated.

However, in August, 1966, the Commission issued an order directing that a unique "oral hearing" be held before the Commission "en banc" in September. All interested parties were asked to appear. The hearings were conducted on September 19 and 20, 1966, with the major body of testimony coming from the presidents of ABC, Inc. and ITT.

In the latter part of September, the first of the congressional comment on the proposed merger appeared in
the form of a request by Senator Gaylord Nelson for a full evidentiary hearing on the matter. Other senators and congressmen were quick to follow Nelson's lead and many advanced a similar request. They, too, raised questions concerning the possible influence of ITT's foreign holdings on ABC programming and operations.

By November of 1966, the Justice Department, which had been kept advised by the Commission of all developments in the case, made their first recorded pronouncements in a letter to Commission Chairman Rosel Hyde. In the letter, Donald Turner, Director of the Department's Antitrust Division, requested that the Commission forestall making a decision on the merger until the Department staff had an opportunity to examine further the preliminary results of their study which indicated that there was

...a sufficient possibility of anticompetitive effects to indicate that substantial antitrust questions are presented.\(^3\)

During that same month, Commissioners Johnson, Cox, and Bartley requested additional and extensive information on the foreign aspects of ITT's business operations and holdings. Following the reply by the principals to this new request, additional questions were submitted to ITT by Johnson and Cox which delved further into the issue of possible foreign influence on ABC program activities due to the international nature of ITT's business interests.
On December 20, 1966, the Commission received a second letter from Antitrust Chief Turner which, in part, said that an anticompetitive atmosphere could result from approval of the ABC-ITT union, but that the Department felt that the possibility was simply to "speculative" to warrant entry by Justice into the case. The letter did pose additional issues for Commission considerations, however.

On December 21, 1966, the Commission approved the merger by a four to three vote. As a consequence of what many considered a "hasty" decision, the Commission once again came under a storm of congressional ire.

On January 18, 1967, the Justice Department filed with the Commission a request for stay of the order approving the transfers. They based their request for reconsideration on the existence of "new evidence," suggesting that a reexamination of the merger would be in the public interest. The Department cloaked their petition with the veiled threat that if the Commission did not heed their request, possible court action might ensue.

After consideration of the Justice Department plea, the FCC decided to hold a formal evidentiary proceeding which took place over a two week period in April, 1967.

In July, 1967, the Commission, in a vote identical to its earlier approval, once again granted the request for
transfer of licenses. Shortly after the FCC decision, the Justice Department filed with the District Court of Appeals a brief asking the court to consider the merits of the Commission decision on the approved merger and requesting that the case be remanded back to the Commission for reconsideration.

The three-man panel of judges heard the case in November of 1967 but by December 31, 1967, had not made their pronouncement on the case. The agreed upon waiting period having elapsed, ITT announced on January 1, 1968, that it was dropping its arrangement with the broadcasting company. ABC was back on its own.

**The Issues Under Consideration**

In an article in *Television*, Leo Zeidenberg described the situation facing the Commission.

Pending before it was a case in which a giant communications and manufacturing company, with scores of subsidiaries in this country and abroad, was seeking acquisition of a company that not only owns seventeen broadcasting stations but is affiliated with hundreds of radio and television stations across the country—yet, no one was objecting or raising questions. There was, furthermore, no dispute as to the facts in the case as far as an intensive staff investigation could find.4

However, this did not accurately reflect the attitudes on Capitol Hill nor within the Commission itself. Indeed, the issues raised in conjunction with the pending merger
were of great import not only from an immediate, pragmatic standpoint, but also from a philosophical level that would become the essence of a special FCC task force study of the conglomerate in broadcasting.

One major issue troubling opponents of the merger was the ability of ABC to preserve its programming autonomy as a member of a large conglomerate corporation with substantial foreign holdings and government associations. This concern was especially bothersome to the minority commissioners.

The questions troubling Commissioners Bartley, Cox, and Johnson revolved around the fact that one of the largest corporations in the country..., will require a major broadcasting network that it could use to influence opinion. They noted that 60 per cent of ITT's revenues are from foreign business and that half its domestic revenues are from defense and spacework.5

In addition, there were those who voiced apprehension on the effect of the merger on ABC's ability to function as a vocal spokesman for broadcast interests in a corporate structure with common carrier interests.

The issues of possible advertiser reciprocity, the role of the conglomerate in broadcasting, and the actual financial plight of ABC were also hotly contested, as was the possibility of undue economic concentration of resources.
And, there were those who speculated on ITT's possible entrance into broadcasting had ABC not been available for acquisition or should the merger have been denied. And of greatest concern, and inherent in the issues above, was the paramount question, "Would the merger serve the public interest, convenience and necessity?"

In their opinions of December 21, 1966, and June 22, 1967, approving the transfers, the majority left little doubt that any reservations on the issues they might have nurtured had been adequately answered.

Our review of the complete record persuades us that the merger of ABC with ITT promises unquestionable public benefit in at least three important areas. First, ITT's larger financial resources will strengthen ABC's capacity to compete effectively with the other two national TV networks.

Second, this merger promises for the broadcast public even more tangible benefits than the not inconsiderable feature of invigorated competition among the major national television networks; it promises meaningful enhancement of ABC, as network and station programming services to the public.

The merger holds out promise of a third major benefit, which while it is not unrelated to the other two, it represents a decided public gain, that is the added support ITT has undertaken to give to the advancement of UHF broadcasting. That support is twofold. First, programming improvements can be expected to increase the capacity of UHF affiliates of the ABC network to attract audiences and advertisers and thus strengthen UHF's competitive potential with VHF stations. This can ease the way toward fuller use of other UHF channels in the communities concerned. The other benefit to UHF is ITT's devoted interest in the advancement of UHF technology.
It is this writer's opinion that the majority failed to adequately consider not only the "facts" of the case, but neglected to exercise wisdom in evaluating the greater aspects of the merger which reflect on contemporary concerns in a society dominated by the mass media. In a nation where radio and television have become a portion of the average American's life style, the approval of this merger and the rationale given for doing so would seem to cast serious doubt on the Commission majority's commitment to function in the public interest, convenience, and necessity.

Though the intervention of the Justice Department negated the realization of the union, this writer is most concerned that it was twice approved by the regulatory body who must, by statute, operate as a communications ombudsman for the public good. The caveats the record contains of the portent for possible deleterious effects if the merger were to be approved should have been sufficient reason for a verdict prohibiting the transfers. Each of the majority's points favoring the merger are weak and sometimes proffered in the face of evidence of the most negative nature.

The Autonomy Issue.

Of paramount importance in the merger deliberations was the question of ABC's ability to remain autonomous under the corporate umbrella of a company with wide and
diverse business associations and holdings, both foreign and domestic. This was closely allied to the questions of the responsibility of the leadership, and the business ethics that served as guides for the ITT and ABC corporate management. This writer feels strongly that the evidence supporting the minority view is most persuasive in indicating that ABC would have been under tight supervision in programming content, especially in their news and public affairs efforts. There is also sufficient evidence to render suspect the business credo and ethic which served to guide the principals in the case.

Not only did Messer’s Geneen and Goldenson err "egregiously" during testimony before the Commission, but as documented earlier, even attempted to manipulate news reporters and at least one trade oriented organization.

This combined with misstatements about dates on important correspondence and assorted mistakes in data about affiliate strength and financial needs, is sufficient evidence that candor was not one of the applicants' major virtues. This writer can not accept the notion that all the erroneous statements and attempts at manipulation were unpremeditated.

If this postulate is accepted, then the inference must be drawn that the parties interested in merging were willing to do whatever necessary to assure approval of the union,
even if it meant employing a certain amount of deceit and deception. There can be no guarantees, no matter how sincerely proffered, that this same attitude would not have been attendant in the operations of the proposed ITT broadcast division, as well as in its dealings with agencies and issues of importance to that corporate arm.

This attitude on the part of the ITT-ABC leadership lends additional credence to the suggestion that ABC's broadcast operations, most especially in the area of news and public affairs, would not have been held inviolate by the ITT management. Though ITT President Geneen and his ABC counterpart, Goldenson, made much of their continuing assurances of ABC's autonomous and "unique" position in the ITT superstructure, their own statements on the matter suggest that, like other pronouncements, self-serving interest, not the "public interest," was of paramount importance.

At one point in the deliberations, ITT President Geneen offered his personal definition of autonomy. The reader should pay special attention to the last sentence; it is used to support the ITT contention that its ABC news division would be free to operate as it saw proper and necessary. However, the sentence might easily apply to a situation where a conflict of interest existed between the
broadcast arm of ITT and another of its divisions, or even between the media and general ITT corporate interests.

Autonomy is a delegation of authority, generally within an agreed sphere of operating policy and it works on the basis of continuous information and review, which means that it is constantly updated as to the policy.

Or if it doesn't work, it could be theoretically withdrawn.

As a matter of policy, I think both Mr. Golden-son and ourselves have said exactly what we mean. It is the greatest disservice that anyone can do in that company, to violate this relationship of complete integrity for the news.

You go beyond that and it is not just the policy you announce but it's the policy you really enforce and have everybody know you mean it? (emphasis added)

Broadcasting, in an article on the proposed merger, however, suggested that there were those within the ITT hierarchy that did expect to contribute to ABC's decision making in programming matters.

In another aspect of the merger that has caused considerable controversy--an ITT official--who is slated to sit on the ABC board and its executive committee in the event the merger is consummated--said he would expect to have a voice in ABC programming matters.8

It could well be hypothesized that this would not be unique to the operation of ITT, but would, of necessity, exist in any large corporate structure in which the broadcast function was only a part of the total business enterprise.
And, the economics of both big business and broadcasting must be taken into account in a discussion of the ITT-ABC merger. The conflict between economic success and service to the public concerns this writer as it did Commissioner Cox who stated:

The broadcast licensee is a trustee for the public in the sense that he must be guided by its interest and in his provision of program service. His economic interest must be tempered and shaped by his stewardship to the public.

Broadcast service in the public interest—that is the reason for the license. Our statutory duty requires that we keep these basic concepts in the forefront of our minds in determining where the public interests lies in considering this application as all other applications.

As I previously stated, despite the intentions and professions of quality broadcasting autonomy... it appears likely that in the normal course of business economics and competitive self-interest, the proposed applicant must inevitably tend to view his broadcast responsibility as secondary and ancillary to its larger and highly diversified business interests.

There appears to me to be no doubt that such subordination is a real possibility and danger in the present circumstances.9

The rejoinder to the concern of Commissioner Cox employed by the applicants was based on the assumption that with "good men" in control of the respective companies, the Commission had no reason to fear for the autonomous stature of the ABC broadcast operations nor cause for undue speculation on the conflict of economic and broadcast responsibility.
The "good man" theory suggests that business leaders will always act in a responsible and honorable manner. And, though it would be pleasant to assume that the theory is realistic, it would be folly to do so. This is, indeed, a tenuous defense to the charge of possible interference in ABC programming and operational matters, and is further debilitated by the suspect motivation behind many of the principals' pronouncements on other matters pertinent to the merger considerations.

One merely has to muse over the vast ITT network of corporate interests to surmise a number of potential conflicts. With 40 per cent of ITT's domestic income derived from government and space contracts, unfavorable programming on either subject would not be necessarily welcomed by the conglomerate leadership. The same conflict might arise in conjunction with a documentary or news item dealing with pending truth-in-lending legislation broadcast by ABC and reactions to this by the three finance companies owned or controlled by ITT. And perhaps most importantly, is it possible for a company with wide foreign holdings not to attempt, if necessary, to influence the content of programs dealing with countries, governments, or issues which could conceivably affect its corporate strengths? As ITT President Geneen stated at the 1966 annual stockholders meeting,
We now employ over 200,000 persons in more than fifty countries, representing an extensive involvement and responsibility in the economics and the societies in which we operate.¹⁰

This concern for ABC's independence is further underscored by the evidence which singles out ITT's Geneen as a strong-willed leader who expected things to be done his way. The policies enunciated by Geneen were a hallmark of ITT.

In comparing the company to Litton Industries in The Conglomerate Commotion, the author wrote:

Litton, by contrast, is widely identified with the development and application of advanced technology, and ITT with the imposition on diverse companies of tightly centralized modern management.¹¹ (emphasis added)

The issue of autonomy, in the merger deliberations, was a central one with great justification. As pointed out earlier in this chapter, the freedom of the press, and in the case of ABC, that of broadcast journalism, has been a hallmark of the strength and growth of our democracy. The evidence is most persuasive that this freedom would not have been held inviolate within the ITT framework.

This clash of direction in self-interest and service is what can be most troublesome when evaluating the role of a large conglomerate entity, like ITT, in the communications industry. As a supplier of goods and services with a myriad of business and professional associations to maintain, there must be occasional conflicts whose settlement can only, from
the corporate point of view, be dictated by economic considerations.

This is not to imply that there are not noisome influences of this nature already at work within the broadcast industry. This writer only questions the wisdom of allowing the atmosphere for further such influence to thrive.

The Financial Issue

Much of this study has been devoted to the claims by ABC that a major, perhaps most important rationale for the merger, was ABC’s need for capital for technical and programming improvements in order to better compete with the other two networks. However, for several months, during the early merger discussions and until the September hearing, neither party to the merger agreed to provide a firm support figure, contenting themselves with the statement that ITT would support its new subsidiary "as needed." During the September hearings, Commissioner Johnson speculated on this oddity, in light of ABC's lamentation as to financial need and ITT's profit orientation,

I understand you have discussed the budgets with Mr. Geneen. I understand Mr. Geneen is aware of what your financial needs are. I have a rough understanding of what your financial needs are.

My question is, I repeat, do you have a specific commitment from ITT, a specific commitment for a specific amount of money for a specific purpose. I think the answer is no.
Finally, Johnson's questions and continued pressure on the witnesses concerning the amount of support ABC would need and a definite statement on meeting those needs by ITT, caused Geneen to announce that $50 million would be made available to the broadcasting company.

Both the Broadcast Bureau and the Justice Department had taken exception to the ABC financial plight issue, and this writer is inclined to feel that the evidence supports their contentions. As the Bureau pointed out following the April, 1967, hearings,

the president of ABC [has] testified... that ABC was not handicapped in its entertainment programming efforts by any lack of funds... consequently, it may be concluded that ABC's revenue problems will yield only to programming ingenuity and good fortune and the gradually increasing availability for affiliation of UHF stations.13

In fact, the financial reports from previous years indicate that ABC was extremely sound financially and confirm the theory that ITT was not interested in companies classified as profit "losers." The first half of 1966 showed ABC 11 per cent above previous years in revenues; and all the divisions combined had shown an increase during the second quarter of 16 per cent... an all time high.14

The manufacturing of an issue, as this writer believes was the case with the financial need question, is a most
serious and damning indictment of the Federal Communications Commission for it implies that the principals were so confident of success in their merger venture that they felt that the disposition of the Commission allowed them great freedom in proving the union in the "public interest." To be sure, the merger would have benefited both ABC and ITT financially, but at what cost to the viewer? The fraudulent case for the marriage advanced by the principals would seem to auger ill for such a combination.

Again, glaring errors in testimony and conflicting statements render the credibility of the ABC financial claims suspect. Having first neglected a firm support figure and later equivocated on figures and evidence supporting their claims, the principals in the merger deliberations made a mockery of this major contention. This writer does not take exception to the fact that the increased finances of ITT would have made ABC's available resources more secure, but most certainly the record indicates that ABC was capable of succeeding alone and the past history of the network confirms this notion.

Once more, the self-serving statements of the applicants are called to question and the specter of the propriety of approving the merger is broached.
The Profit Motive: Strength for Both Companies?

Though ITT President Geneen had denied the charges that ITT had been considering broadcast properties as a possible area for acquisition, hearing testimony cast serious doubt on his statements. ITT, described as "profit-conscious" and "merger-motivated," was most interested in not only broadcasting, but also in CATV and ancillary communications activities. And the proposed merger with ABC is ample evidence that ITT found the industry to be most attractive. The results of any financial study of the industry undertaken by analysts for ITT would have shown that broadcasting properties offered economically sound investment possibilities. In an article in the journal, Mergers and Acquisitions, Richard P. Doherty wrote:

Broadcasting is firmly hitched to America's economic growth and expansion: TV is one of America's "strongest" growth industries and averages an annual sales increment of between 10 per cent and 12 per cent.\textsuperscript{15}

This was well within the percentage boundaries used by Harold Geneen when considering the potential worth of a merger or the acquisition of a new company.

Geneen's acquisition philosophy, as spelled out in a two-year old policy statement, is aimed primarily at picking up companies with a growth rate greater than ITT's 10 per cent.\textsuperscript{16}

And ITT was most definitely interested in the communications field.
The controversy spotlights ITT as a restless giant with an urge to merge—especially in broadcasting. Previously confidential intra-corporate memoranda introduced as evidence at FCC revealed Geneen as a suitor who combines eagerness with discretion.\(^1^7\)

For one thing, the acquisition would have supplemented and enhanced other ITT subsidiaries, especially since

... a tie with ABC could add force to ITT's push to secure a major role in the fast-growing information and education industry, an area ITT entered when it acquired Howard W. Sams & Co., a publishing house (as well as) help bring a balance between services, earnings, and manufacturing earnings—balance domestic and foreign income (which would lessen ITT's desire for greater investor interest, would be the increased public recognition of its name resulting from the ABC tie.\(^1^8\)

However, profit was the most important motive in the ITT expansion plan, and ABC's role in the conglomerate family was acknowledged by Geneen as a most important one. In response to a question by Commissioner Cox, during the April hearing, he said:

I think the thrust of your question is would we consider them [ABC] the most important profit making division of the company. And the answer is yes.\(^1^9\)

If then, profit was a prime motivational factor for the principals in deciding to merge, how can one accept the approval of the union by the Commission. . Nowhere in the Communications Act of 1934 is there even the slightest indication that assured economic success is a valid reason or necessary criteria for approving the transfer of a
single license, much less the seventeen under consideration. Though the Commission is most assuredly concerned with the financial viability of the licensees who report to it, the economic success or failure of stations is not directly connected to their FCC's statutory function nor authority.

In this area, there is scant ground for the approval of the merger by the Commission majority. In fact, the existence of evidence suggesting the importance of this issue to ITT and ABC would be strong reason to cast doubt on the motives for and desirability of approving the union.

The Anticompetitive Question

Though acknowledging that ITT and ABC had much to gain from the merger, and that the broadcast arm would have been forced into the ITT mold, this writer feels that the anticompetitive fears raised by the Justice Department are not necessarily valid nor based on fact. ITT had achieved considerable attention and recognition for many of its technological advances and contributions. It is axiomatic that ITT would have been foolhardy to do anything which could have left in jeopardy their achievements.

ITT has recently won plaudits on the performance of the ground station it developed aboard the recovery Early Bird, of the splash downs of two manned Gemini space capsules. And the ITT-designed Videx System, which transmitted slow-scan still pictures via audio circuit of the recover of astronauts Conrad and Cooper, won high praise last year.
Secondarily, entrance into the industry itself is extremely difficult, and the ITT interest in ABC was a result of the paucity of available avenues to broadcasting.

Under FCC engineering standards, there is a scarcity of available radio/TV licenses—certainly a scarcity of licenses which permit the establishment of competitively good broadcast facilities in the larger markets of the nation. Thus new investors, seeking entry into the broadcast industry, are forced to purchase an existing property.21

As for the possible formation of a fourth commercial network by ITT, as suggested by the Justice Department, the demise of the United Network would have forestalled any move by the profit conscious ITT executives into that area. United lasted only thirty-one evenings and collapsed with losses totaling about $2.3 million. Forced to shut down when it was unable to meet the $400,000 deposit necessary to maintain the intercity network, the network had met with a lack of advertiser enthusiasm. Even the Justice Department was forced to admit that possible anticompetitive effects of the merger were "too speculative" to disqualify the marriage.

It is also possible to counter the arguments by critics of the merger who contended that ITT would have moved into the field of CATV if denied access to ABC. The field, heavily surveyed by ITT staff, had been of early interest to the company, and the evidence shows that ITT was most impressed with the fledgling industry... enough as to
invest several million dollars in CATV development. However, it was contrary to established ITT policy to tie up substantial amounts of money in an industry whose future was as yet undecided from a regulatory standpoint and one which also demanded a substantial time lapse before a gain from invested capital could be realized.

It is possible that ITT might have secured a group of stations and commenced program development and syndication activities in the fashion of Westinghouse and Metromedia. But the initial expense involved and the vagaries of the syndication market, would probably have dissuaded the profit conscious ITT management from entering this field.

Indeed, ITT had built much of its reputation in competitive fields and the resultant high regard extended the company because of their efforts would be a commodity that ITT would not have wished to place in jeopardy.

The "Snowball Effect"

There is little doubt in this writer's mind that had the merger been consummated, Columbia Broadcasting System would have commenced a search for a partnership with a much larger concern. Their financial picture was better than that of ABC alone, but the resources of ITT would have forced CBS into a distant third, behind the ITT-ABC combine and NBC-RCA. Though the company had been active in the
acquisition of smaller concerns, most financial experts conceded that CBS could only compete effectively if it too merged.

Says one investment company man: "The recent CBS acquisitions may be good money makers but they are not that big. CBS has to go for that big one and stop nibbling. It does not have to go under the shield of a larger company but I think it has to at least acquire a large company with a good cash flow to weigh in against its new consolidated competition."

Had CBS effectuated such a move, this writer submits that the impact on the industry would have been substantial. With the three major networks tied to larger corporations with diverse holdings, the fabric of competition would have been much altered with an emphasis shift toward even more profitable areas of program production. The resultant decrease in public affairs offerings and trend toward even more bland and innocuous programming would have been a far cry from the Commission's desired competitive atmosphere.

In addition, a CBS merger might have increased the climate for advertiser reciprocity abuses by further honing the profit awareness of the broadcast-owning corporations. And finally, it would have further decreased the diversity of control of broadcast networks, placing all three commercial outlets in the hands of much larger entities.
The Role of the Justice Department

The intervention of the Justice Department was the most controversial of the many events in the two years of merger considerations and, in a sense, overshadowed the Commission's own role in the activities. Early in the proceedings, most observers felt that the merger would be approved without the interference of another government agency (e.g., Securities and Exchange Commission, the Federal Trade Commission, or the Justice Department). Many felt that the FCC's acknowledged desire to assist ABC in improving its competitive position with the other two networks, in addition to the existence of the NBC-RCA combine, would preclude any barriers to the action. 23

The Justice Department's involvement in the Commission's consideration of the merger could best be described as minimal until the latter part of November, 1966. 24 Following the December Turner letter, however, they became an omnipresent participant in the merger deliberations, and played a major role in preventing the finalization of the union.

To the minority commissioners, the Justice position in the proceedings was justified and welcomed, as it underscored their contention that the merger was being accorded insufficient consideration on the part of the
Commission majority. Since the minority felt unable to cope with the growing volume of information pertinent to the deliberations, they sympathized with the Justice Department which felt that additional evidence and consideration should be undertaken prior to any Commission action.

The majority view was somewhat different to that of their dissonant colleagues. Feeling that the "speculations" of the Department had been already carefully weighed, the Commission was anxious to move forward. In their December order approving the merger the four commissioners made a special note of the Justice Department's involvement in the case... with tongue somewhat in cheek.

We appreciate the effort the Antitrust Division has made to assist the Commission all though we are bound to note that its comments would have been more appropriate and helpful if they had been submitted before or at the time of the [Sept., 1966] hearing in this matter. All of the facts and considerations discussed in the letter from the antitrust division are and have been the subject of careful consideration under the principles and standards applicable to our field of specialized jurisdiction, experience, and expertise.25

And as the Department's reluctance to communicate with the Commission was a point of contention with the Commission majority, so it was with Justice in regard to the rapid passage of the merger approval following the December 20, Turner letter.

It is conceivable that a portion of the Justice Department-FCC debate and confrontation may have been the
result of "one upsmanship" which often attends the interaction of mortals. Broadcasting, in an article on the merger approval, addressed themselves to the rapid Commission action following the December 20, 1966, Justice missile.

An observer close to the case said the speed of the Commission's action should not be surprising. 'Once Justice said it had no grounds for action, the Commission was ready to pass on matters under its jurisdiction. It had been considering this case for a year, and it's supposed to be the expert; if they hadn't been prepared to move, that really would have been grounds for concern.'

There can be no doubt that the case was unique, and the Justice Department's participation helped underscore the importance of the decisions facing the Commission... and the portent for future intervention by the Department.

In a sense the Justice Department, when it took its case to the Court of Appeals, had created a situation which placed the U.S. vs. the U.S.. This was the first time the Antitrust Division had ever confronted a regulatory agency under similar circumstances. Adding to the singular nature of the situation was the Justice acknowledgments that it did not have sufficient antitrust evidence--previous action had always been in consort with other Government agencies in similar situations--and it placed the two in an Executive Branch (Justice Department) vs. a Legislative Branch (FCC) squabble in court. However, it was not the first time the
Department of Justice or the Antitrust Division had been involved in broadcast matters. 27

Though the harbingers of gloom and doom in broadcasting prophesied a growing interference in FCC affairs by the Justice Department, there were those who felt that this was the exceptional case rather than a glimpse into the future. And they pointed out that the Justice Department was known to be among the busiest agencies in the Executive Branch with numerous broad ranging concerns, thus the amount of time allotted for FCC matters was likely to be scarce. Second, they alluded to the human factor and questioned whether all attorney generals and anitrust chiefs would be quite as activist-minded as Clark and Turner, respectively. And finally, doubt was raised as to the number of federal agencies which would be as willing, as the Commission had been, to tempt the Department to exercise the type of supervision and intervention that took place during the merger consideration. 28

What bothered the majority commissioners was not the intrusion of the Justice Department but the manner they chose to employ in becoming active, and the unidirectional communications gap that had existed prior to the receipt of the first Justice letter.

This lack of correspondence from the Department is not easily understood. The Commission had been open and had
extended every courtesy possible to the Department from the
onset of the filing of materials until their transfer ap­
proval in December. Though it is only speculation, both
the tenor of the Commission's references to the Department
and those contained in the letters and filings of Justice
sent to the FCC indicate that both sides felt personally
affronted by the actions of the other party.

However, the importance and impact of the Justice
Department's intervention, regardless of the motivation,
can not be readily dismissed. Unquestionably, the Depart­
ment was solely responsible for the second hearing and sub­
sequent fuller and more extensive record of the case.
Second, their decision to pursue further court review fol­
lowing the Commission's reaffirmation of their original
decision prevented the merger from being consummated.

The Justice Department entry into the deliberations,
as documented elsewhere in this paper, was not viewed as
justified in the eyes of many of the proponents of the union.
One argument advanced by many critics of the Justice move
reflected the contention that "bigness does not mean badness"
and is reflected in the book, The Conglomerate Commotion.

Related to several of these views [against
conglomerates] is a stubborn conservative pre­
judice to the effect that conglomerates are just
'unnatural,' that there is some kind of inherent
impropriety in companies taking on unrelated ven­
tures, that if God had wanted ITT to be in the
automobile rental business He would have made it that way.29

This author can readily accept largeness in broadcasting, assuming it does not impinge on the freedom of broadcasters to act in the "public interest, convenience, and necessity." However, it is impossible, in light of the evidence on the record, to accept the contentions of ITT and ABC that these important tenents would have been held inviolate. Perhaps corporate size isn't adequate reason for casting aspersions at the conglomerate-broadcaster, but the evidence indicates that expediency, not the public good was of paramount interest to the principles in the ITT-ABC merger, and it is difficult to imagine that they would have made a major attitudinal adjustment had the consummation of the merger not been impeded.

What is also disheartening to this writer is the almost circus atmosphere that surrounded the deliberations. This is born out in the musings of Leonard Zeindenberg who wrote in Television:

Yet the actual product of so much talent, energy, time and money was frequently less than heroic. And in the thrust and counterthrust of the contending parties, there was often an air of unreality, as if they were caught in the grip of some devilish green giant that was, in truth, bigger than all of them and too strong, at times, for them to overcome. Else, why would so many patently wrong moves have been made--moves that led to the unseemingly juncture of the Justice Department accusing the FCC of failing to do its job properly.30
In addition, during the first year of Commission considerations, the merger, and the issues it raised were for the most part buried on the financial page, and only the trade press seemed aware of the magnitude and singular nature of the merger. And, with little press coverage and little non-commission dissent until after the oral hearings in September of 1966, it is surprising that any questions were raised and that the Justice Department even became involved.

This is further reflected by the lethargic reaction to the planned merger on the part of congressional leaders who were not overly concerned, nor even apparently aware of the Commission's deliberations until the September, 1966, hearings. But the Fall gathering did help to document some of the minority concerns and problems inherent in the union and also

...served another function too; that of alarm clock. News of the hearing finally penetrated the consciousness of persons on Capitol Hill who needed only to be advised of the merger to feel it should be blocked.

It wouldn't be correct to suggest that senators and congressmen, though they had failed to keep abreast of developments prior to the oral hearings, responded swiftly and indignantly after reading of it in the morning papers. The indifference surrounding the entire proceeding was thicker than that.
In this lies one of the great tragedies of the deliberations for the apathy that surrounded the first announcement of the union, broken only by occasional outbursts from a relatively small number of congressmen and three minority commissioners, evidences a seeming disregard for the media and its activities in the society. Quite probably the merger would have caused several alterations in the broadcast relationship of ABC to the Commission, as well as to its counterparts in the industry. These in turn would have caused modifications and alterations in programming, service attitude, industry philosophy, technological change, and extra-industry relationships.

Thus, it was the Justice Department that had to intercede in what could have been the least talked about and most important Commission case of its kind. One can only speculate on what the face of broadcasting might have been, had Justice remained reticent to participate and explore the issues.

**ABC... Four Years after the Fall**

Following the collapse of the merger plans, ABC President Goldenson decided to revamp his staff and appointed Elton Rule as President of the TV network. Rule and James Duffy who succeeded him devised a plan which they hoped would bring the network to parity with the competition.
Accepting the advice proffered by many of their critics, they decided to "innovate" both in programming and in approach.

In an effort to improve the quality of its shows, ABC reduced the control exercised by advertisers over the content of its programs. 'It may have been easier, cheaper and more expedient to let the advertiser do our programming,' the forty-three-year-old Duffy told Newsweek's Ann Ray Martin. 'But it hurt this network's image. We decided we had to become master of our own destiny.' But the plan's most critical element involved the complex new TV game of demographics. Leaving the older viewers and the rural areas to CBS and NBC, Rule and company decided to concentrate on the young, urban viewer—the audience that today's TV sponsors most desire to reach. Thus, while CBS was grinding out cornball comedy for the boondocks (all spun off the "The Beverly Hillbillies"), ABC was building a loyal, young following with such offerings as "Room 222," "The Portridge Family," "That Girl," "Mod Squad," and "The Tom Jones Show." And as ABC's ratings began to improve in the major markets, advertisers began returning phone calls from ABC salesmen.32

Having thus dealt with their relative disadvantage in affiliate numbers, other changes began to appear with the ABC logo firmly affixed. Not content with the status quo in the area of news, as was mentioned earlier, a directive went out to all news staff issuing new guidelines and philosophies. Along with these came some new faces on the ABC evening edition, as reported by Newsweek magazine.

Although the CBS and NBC 7 o'clock news shows continue to lead in the ratings, the ABC team of Harry Reasoner and Howard K. Smith, which was formed in December, 1970, has been the only program
to overcome the nation's apparently dwindling interest in the news. Over the past sixteen months, 'ABC Evening News: has gained 959,000 and NBC's John Chancellor has lost 593,000.' At last reckoning, ABC had climbed to a 23.9 per cent share of the nightly news audience, while CBS held 39.5 per cent and NBC 35.5 per cent.

The emergence of a revitalized, non-ITT allied ABC has had a beneficial effect on the industry as a whole, and perhaps one might indeed conclude that the dissolution of the merger, not the merger itself, assisted in improving the competitive position of ABC.

The two other networks are reacting more ambivalently to ABC's overall turn-around. ABC's healthy new status is helping to create a more bullish economic climate throughout the industry, since it eliminates the need for one network to offer bargain-basement rates to advertisers—a situation that tends to depress the entire TV ad market. But obviously, ABC's soaring ratings have deflated those of CBS and NBC. At NBC, which placed only four shows in a recent Neilson Top Twenty, one top executive moaned: 'We just aren't use to losing.'

And the decision of the network to propose a major restructuring in programming for children was the first of its type to be enunciated by the networks. Among the suggestions made by ABC-TV President Duffy were a one-third reduction in the number of commercials in children's programming and the elimination of weekly ratings on the program fare offered the young. This would allow the networks to experiment without undue concern directed toward the 'numbers game.'
The above innovations even prompted a kind remark from Commissioner Nicholas Johnson, a vociferous foe of the proposed merger. He told the network,

You have made a tremendous number of friends among Washington officials, which in itself is kind of novel these days for the broadcasting industry.35

What might have existed at ABC under management and control of ITT could only be speculated upon by this writer, but the evidence is most persuasive that the merger would have not produced as much positive thrust and benefit for the public, as did the decision by ITT to forego the opportunity of being allied with ABC. This does not imply that ABC has reached the parity it seeks with its competition, but one can assume that the future is not as bleak without ITT, as had been indicated during the merger considerations.

For its part, the ABC high command seems duly aware that the network still has a long way to go, particularly in the area of investigative news reporting. But for the moment at least, the mood throughout the "Almost" Broadcasting Company suggests this euphoria of a rebuilt football team after its first winning season. 'I've been associated with all three networks,' says an official of one ABC affiliate, 'but I've never seen a network with this kind of momentum.'36
ITT-ABC: A Microcosm of the Conglomerate and Broadcasting--

Cause for Concern

It can not be denied that as a single instance, the ITT-ABC merger attempt brought to light many of the issues and concerns that surround the role of the large, diversified corporation in the broadcast industry. Prompted by the merger considerations, the FCC directed that a task force study be undertaken regarding the conglomerate-broadcast owner. Among the issues the Commission felt valuable for study and consideration by the task force were many of those developed during the ITT-ABC deliberations: what are the benefits and detriments potentially existent in conglomerate ownership; what contributions of a technological nature are possible or is this type of ownership detrimental to continuing experimentation and innovation; does the greater financial wealth of a conglomerate owned station allow for greater program development or encourage the formation of additional networks; and does it allow for increased stability? In addition, the conglomerate task force is searching for information pertaining to the existence of or predisposition for advertiser-supplier reciprocity, a tendency for siphoning of profits from the broadcast division to other areas of the company, and most importantly, the extent to which the broadcast arm is able to retain its autonomous status, free from high level corporate interference.37
If the ITT-ABC merger can be considered a "typical" arrangement for projecting the conglomerate's role in the broadcasting industry, then this writer must express severe reservations about diversified corporate control of mass media resources. The Commission's own Multiple Ownership Rules stipulate two objectives which must be of concern in evaluating the licensing of stations in the public interest, and they are applicable to the conglomerate control question: 1) does conglomerate ownership and control foster maximum competition and 2) does it promote diversification of programming sources and viewpoints? This writer feels that based on the ABC-ITT deliberations, neither of the FCC criteria is met.

First, the conglomerate, especially one dominated by a strong leader, can neither afford nor encourage competition since unity, not diversity of viewpoint and approach, is what fosters greatest cohesiveness within the company structure and superstructure of auxiliary services, suppliers, and business associations. Secondly, group ownership carries with it an inherent "sameness," fostered by the desire of top management to achieve a unity within the group of broadcast properties. Admittedly, some small differences may exist from market to market in editorial and public affairs offerings, but this writer feels that these don't adequately meet the challenge of a variety of voices and
viewpoints, Commission rules notwithstanding, that the Communications Act of 1934 and amendments thereto, hoped to promulgate.

In their First Report and Order in the Matter of Multiple Ownership, the Commission members addressed themselves to this issue of programming and operational authority and said,

Centralizing of control over the media of mass communications is, like monopolization of economic power, per se undesirable. The power to control what the public hears and sees over the air waves matters, whatever the degree of self-restraint which may withhold its arbitrary use.39

This is not to dismiss, out of hand, conglomerate ownership of broadcast properties, for there are undeniable benefits to the industry inherent in broadcast ownership by an economically more powerful ally. There is no doubt that ITT, as an owner of a number of broadcast stations and accompanying networks, would have had available the capital necessary to assure competitive programming and technological experimentation. This would have enhanced the competitive posture of ABC as well as assisted in the development of technological advancements of benefit to the entire industry. The question is, would the company have been willing to expend the money necessary to satisfy the ABC desires and, from a technological standpoint, risk making much of the equipment and capabilities that its broadcast division
depended upon obsolete? This is a moot question and deserves more intensive study, but this writer would submit, based on the evidence in the ITT-ABC case, that much reflection on the ultimate corporation motives of profitabilities and success would be undertaken by top management before commitments involving substantial risk were made. Conglomerates do not become successful because they lose money, and neither do they succeed because they, with forethought, place themselves in intra-company competition.

This must also be assumed to be true of the conglomerate with broadcast properties, who also has interests in common carrier activities. I found it difficult to accept the assurances of the ITT-ABC management that each division would have been allowed to function independently and feel that this would be the case with any large diversified company in a similar circumstance. I cannot picture true, spirited and independent debate taking place before a federal agency on any conflict of interest issue that might exist between two divisions of a large corporation, and suggest that any intra-company squabbling would be adjusted for prior to a public confrontation.

Those sympathetic with conglomerates are quick to point out that without the success of the "Multiple-Owned"
stations, broadcasting would not have burgeoned into the successful industry it is today. In his dissent to the FCC Notice of Inquiry into the matter of conglomerate ownership, Commissioner Robert E. Lee wrote:

The profits of the multiple-owned stations made the networks possible and sustain them. Large, successful, independent multiple-owned stations and corporations with varied business interests will hopefully create the fourth network, unless the government meddles too much. This in turn, has created an almost unlimited number of related and affiliated industries, all of which require capital beyond the practical reach of an individual or single industry corporation to support. The result is a standard of living, employment, and wage rate unsurpassed by any nation. Any broadside tampering with a system that has produced such results can only lead to chaos.40

This is much the same argument advanced by the proponents of the merger who ask: if an RCA-NBC exists, why not an ITT-ABC? This writer feels, however, that though the point has merit, it is still compounding a wrong. This is not a matter of equating "bigness" with "badness" but one of practicability. On one hand, there is the large conglomerate with the capital and technological capabilities to do much to advance the industry and operate in the public good. However, conglomerates do not advocate self-destruction, and there would no doubt be times when the profit motive would come in conflict with the public good.

It does not suffice to say that guarantees by diversified companies will assure autonomy of the broadcast
function nor adequate return of profit to the organization. ITT did not wish to secure a network of stations because they wished to improve the viewing availabilities for a nation... they did so because it was sufficiently evident that the return on their investment would be substantial. This is in conflict with the very tenets of broadcast law which have always held that the public good and industry competition are of paramount importance.

The question then arises, can broadcasting and the conglomerate thrive together? It is neither practical nor philosophically legitimate to exclude the conglomerate from broadcasting, and the merits of their involvement could be substantial if the guidelines are appropriate and policeable. Based on the research involved in this study, this writer would like to postulate a few recommendations which may, hopefully, reflect the findings and ultimate recommendations of the FCC task force on conglomerates.

Of primary importance is a method of assuring the autonomous stature of the broadcast property within the corporate structure. Some question was implied in the task force charge to seek information on the supervision, or lack of same, by top management officials of their broadcast holdings. I submit that the task force will find that the supervision is intense, and that it becomes even more
so should profits from the broadcasting subsidiary begin to wane. The methods utilized for this on-going surveillance of the autonomy of the broadcaster are, however, not easily delineated. One method might be through annual reports, submitted not by the broadcaster but by the parent company with the broadcasters endorsement. Another might be through a review of programming among the properties owned by a conglomerate, with a comparison of trends in both similarity and differences of local programming efforts. But the attendant paper work, already a problem with the Commission, would be staggering.

A decision must also be made, probably based on the economic size of the conglomerate in question, as to which corporations are to be approved for broadcast ownership and which are to be denied. In addition, even stronger prohibitions on the extent of foreign control and involvement must be drafted and adopted in evaluating the large, diversified corporation as a possible broadcast property owner. This should be of special concern when the properties under consideration are a part of a network or are heavily involved in syndicated program production.

Finally, specific regulations must be established regulating the amount of dissimilar programming that must be produced and aired by the individual stations, the
amount of broadcast profit to be returned to the operations, and the financial relationship of the broadcast stations to the parent company.

**Further Topics for Study**

Many of the above issues lend themselves readily to further study, and even the intensive and pervasive examination by the task force on conglomerates will not adequately nor completely answer all the questions that exist. One might initiate a study of the alternate avenues for broadcast ownership, which might conceivably preclude conglomerate involvement. Historical studies of major conglomerates with broadcast properties might also be undertaken, with the end product a perspective on the ability of the conglomerate to function in the public good via the air waves.

Additional questions dealing with advertiser reciprocity, corporate propaganda and image making, and the financial success of broadcast properties with conglomerate ties might also be undertaken.

And finally, as was suggested by the study, a greater examination of the role of interagency cooperation and assistance is suggested. The interaction of the Justice Department and the FCC, fraught with conflict, indicates that a more precise definition of their respective roles, obligations, and areas of joint responsibility needs to be
undertaken. In a future so filled with promise and uncertainty for the mass media, change must be considered in the regulatory agencies and the laws which govern and guide them to allow the media to match hope with realization.

Of special concern are the laws guiding the communications media of the United States, as well as the vague and expansive ones which apply to foreign broadcasting activities. The Communications Act of 1934, presently a patchwork quilt of regulations, must be discarded and a new more relevant act must be drafted and implemented which will take into account the changing technological and social implications of mass communications.

The social posture, economic power, and pervasive nature of the mass media, especially television, are already well documented. The future is a matter of conjecture, speculation, and broad new horizons. Most certainly, conglomerate owners will be interested parties and much involved in what the future will bring. Planning and study, done during the present, with modifications of existing guidelines, hopefully will assist in fulfilling the mass media dreams for tomorrow.
Summary and Conclusions


10. ITT Stockholders Meeting, April, 1966, p. 16.


A brief review of the Chronology of this proceeding is necessary to understand the present procedural situation. It appears from the Department of Justice petition that the Department learned of this proposed merger in December, 1965, and began investigating it 'within days.' It served a civil investigative demand upon the parties and received information regarding the merger from that and other sources through April 1966. ABC and ITT tendered the subject applications for Commission approval of the proposed transfers on March 31, 1966, and these were accepted for filing on April 14, 1966. Notice of the filing of these applications was publicized by radio, television and in the newspaper in accordance with the requirements of the statutes and rules.

Our records disclose that during June, 1966, the Commission sent two letters to the Department requesting the views of the Department concerning this matter. On August 18, 1966, the Commission issued its order and notice of oral hearing before the Commission en banc, in which the Commission announced a procedure whereby any party desiring to offer evidence in the proceeding might do so, ordered a hearing on all issues of law, policy and fact, and invited any interested party to appear and be heard 'with respect to any question affecting the Commission disposition of the
pending applications.' A copy of the order and notice was transmitted to the Department and it was published in the Federal Register on August 24, 1966.

On September 19 and 20, 1966, a hearing was held before the full Commission on this matter. The Department did not appear, file a statement, or give any indication to the Commission that it had any evidence or views to present regarding the matter. Moreover, it did not raise any question concerning the procedure adopted, nor did it indicate in any way that it desired a postponement of the scheduled proceedings in order to permit completion of its investigation and the preparation of evidence for presentation to the Commission.

In October, the Commission again advised the Department by letter that it expected to make a decision in the near future and invited the views of the Department. The Department first indicated to the Commission that it might have any views or statement regarding this matter in a letter of November 3, 1966, which stated that there was a "possibility of significant and anticompetitive effects" and suggested that the Commission defer its own decision until the department had arrived at a "final decision on the antitrust aspects of the merger." Thereafter the Commission repeatedly urged the Department to make a more definitive statement and provide further information.

On December 20, 1966, the Department wrote the Commission stating that the possibilities of anticompetitive consequences from the merger "seem sufficiently speculative that we are not presently contemplating action under the antitrust laws to enjoin consummation of the merger," but that these possibilities deserve full and serious consideration by the Commission in making its public interest determination. On December 21, 1966, ITT filed a letter responding to some of the comments in the department letter. Thereafter the Commission adopted and issued its decision."

25 "Fumbling Match," p. 86.


"The Department of Justice's intervention in the ABC-ITT merger case isn't the first time the government's
antitrust lawyers have taken an interest in broadcast matters, although it's agreed by all that it marked the Department's debut as an official part before the FCC.

Back in the 1940's when the FCC was considering the adoption of the then controversial chain-broadcasting rules, the Justice Department cooperated by filing antitrust suits against CBS and NBC. The suits were later withdrawn when the Commission's decision on chain broadcasting was upheld by the U.S. Supreme Court, and when the networks divested themselves of interest to which the government had objected (among them NBC's operation of two networks, one of which was to become ABC).

Again in 1941, the Department went to court with a charge of monopoly in music against the American Society of Composers, Authors and Publishers and Broadcast Music Inc. These resulted in consent orders in the same year.

It was 1949, following the relatively quiescent war years, that Justice moved again into broadcasting when it filed an antitrust complaint against the Lorain (Ohio) Journal. It charged that the newspaper refused to accept advertising from merchants who also advertised over WEOE Elyria, Ohio. The case was fought all the way up to the U.S. Supreme Court, which upheld the Department of Justice. In 1951, a similar complaint was lodged against the Mansfield (Ohio) Journal. This was settled by a consent judgment the following year.

In 1951, the government contended that the National Football League was violating the antitrust laws by restricting coverage by radio and TV of its games. A final judgment in 1953 forced the NFL to revise its rules on coverage.

In 1953, the government filed an anticompetitive and monopoly suit against the Kansas City Star. The Star was found guilty in 1955, and among other things was forced to sell its WDAP-AM-TV there.

In 1956, the Department filed an antitrust suit against the Philadelphia Radio and Television Broadcasters Association, charging that a conspiracy existed to maintain rates. This was concluded the following year, when the defendants pleaded no defense and were fined.

Also in 1956, the Department went to court with an antitrust suit to upset an FCC decision permitting NBC and Westinghouse Broadcasting to swap their radio and TV stations
in Philadelphia and Cleveland. The department charged that
the move of NBC into Philadelphia resulted in giving that
network a monopolistic positions in the top TV markets.
The litigation was withdrawn in 1959 when NBC agreed to sell
the Philadelphia station. The case, incidentally, dragged
through five more years of FCC proceedings because of
opposition to the NBC sale; it terminated in 1964 when the
Commission ordered NBC and Westinghouse to reexchange the
Philadelphia and Cleveland stations."

28 "New Threat to Station Trading," Broadcasting,
January 8, 1968, p. 41.

29 Conglomerate Commotion, p. 47.

30 "Fumbling Match," p. 46.

31 Ibid., p. 82.

32 "Happy Days Are Here at ABC," Newsweek, January 10,
1972, pp. 40-41.

33 Ibid., p. 40.

34 Ibid., p. 41.

35 Ibid.

36 Ibid.

37 "In the Matter of Inquiry into Ownership of Broadcast
Stations by Persons or Entities with Other Business Interests,"
Adopted February 7, 1969, Docket #18449, p. 421.

38 "In the Matter of Amendment of Sections 73.35;
73.240; and 73.636 of the Commission Rules Relating to
Multiple Ownership of Standard, FM, and Television Broadcast
Stations," Adopted March 25, 1970; 18 RR Pike & Fisher, 2d,
1735, 35 FR 5948, Docket #18110, p. 927.

39 Ibid., p. 941.

40 Notice of Inquiry, "Other Business Interests,"
Dissent of Commissioner Robert E. Lee, p. 437.
APPENDIX

ITT MANUFACTURING AND SERVICES

CANADA
Barton Instruments Ltd. (Canada), Calgary, Alta.; Cannon Electric (Canada) Ltd., Toronto, Ont.; General Controls Co. (Canada) Ltd., Guelph, Ont.; ITT Canada Limited, Montreal, P.Q.; Royal Electric Co. (Quebec) Ltd., Pointe Claire, P.Q.; Wakefield Lighting Ltd., (Canada), London, Ont.

JAMAICA
ITT Standard Electric of Jamaica Ltd., Yallahs.

MEXICO
ITT de Mexico, S.A. de C.V., Mexico City; Industria de Telecommunication, S.A. de C.V., San Bartolo Naucalpan; Industrias Ocelco de Mexico, S.A., Monterrey; Materiales de Telecommunication, S.S., Toluca; McClellan, S.S., Mexico City; Standard Electrica de Mexico, S.S., Mexico City; Wyatte de Mexico, S.A. de C.V., Tlainepantia

PANAMA
ITT Standard Electric of Panama, S.A. Panama City.

PUERTO RICO

UNITED STATES

ITT Cannon Electric (Division), Los Angeles; ITT Controls and Instruments Division, Glendale, Calif; Barton Instrument Corp., Monterey Park, Calif.; General Controls, Glendale, Calif.; Hammel-Dahl, Warwick, R. I.; Henze Valve Service, Hoboken, N. J.; ITT Data Services (Division),
Paramus, N. J.; ITT Electron Tube Division, Easton, Pa.; ITT Electro-Physics Laboratories, Hyattsville, Md.

ITT Environmental Products Division, Philadelphia; Nesbitt, Philadelphia, Pa.; Hayes, Torrance, Calif.; Norman, Columbus, Ohio; Reznor, Mercer, Pa.; ITT Export Corp. New York; ITT Farnsworth Research Corp., Fort Wayne, Ind.; ITT Federal Laboratories (Division), Nutley, N. J.; ITT Federal Support Services, Richland Wash.; ITT Fluid Handling Division, Morton Grove, Ill.; Bell and Gossett Hydronics, Morton Grove, Ill.; Marlow, Midland Park, N. J.; Stover, Freeport, Ill.


ITT Wire and Cable Division, Pawtucket, R.I.; Royal, Pawtucket, R.I.; Surprenant, Clinton, Mass.; Jennings Radio Manufacturing Corp., San Jose, Calif.

TELEPHONE OPERATIONS

PUERTO RICO
Puerto Rico Telephone Co., San Juan

VIRGIN ISLANDS
Virgin Islands Telephone Corporation, Charlotte Amalie.

SOUTH AMERICA
MANUFACTURING--SALES--SERVICE

ARGENTINA

BRAZIL
CHILE

PERU
Compania Peruan de Telefonos Limitada, Lima.

EUROPE, MIDDLE EAST, AFRICA
MANUFACTURING--SALES--SERVICE

ALGERIA
Societe Algerienne de Constructions Telephoniques, Algiers.

AUSTRIA
Standard Telephone und Telegraphen Aktiengesellschaft, Czeija, Nissl & Co., Vienna.

BELGIUM
Bell Telephone Manufacturing Co, Antwerp; ITT Europe, Inc., (Branch), Brussels; ITT Standard S.A. (Branch), Brussels (offices in several countries).

DENMARK
Standard Electric Aktieselskab, Copenhagen.

FINLAND
Standard Electric Puhelinteollisuus Oy, Helsinki.

FRANCE

GERMANY: Deutsche ITT Industries G.m.b.H., Freiburg, Standard Elektrik Lorenz Aktiengesellschaft, Stuttgart; Graetz G.m.b.H., Stuttgart, and other subsidiaries.

GREECE: ITT Hellas A. E., Athens.

IRAN: Standard Electric Iran Ag, Tehran.

ITALY: Fabbrica Apparecchiature per Communicazioni Elettriche Standard S.p.A., Milan; Societa Impianti Elettrici


NIGERIA: ITT Nigeria Ltd., Lagos.


REPUBLIC OF SOUTH AFRICA: Standard Telephones and Cables (South Africa) (Proprietary) Ltd., Boksburg East, Transvaal.

RHODESIA: Supersonic Africa (PtI) Ltd., Bulawayo.


SWEDEN: ITT Norden AB, Solna; Standard Radio & Telefon AB, Barkarby.


FAR EAST AND PACIFIC
MANUFACTURING --SALES--SERVICE

AUSTRALIA: Cannon Electric (Australia) Pty. Ltd., (50% interest), Melbourne; Standard Telephone & Cables Pty. Ltd., Sydney; ITT Australia Pty. Ltd. Brisbane and other cities.
HONG KONG: ITT Far East & Pacific Inc. (Branch), Hong Kong; ITT Far East Ltd., Hong Kong, Transelectronics Ltd., Hong Kong.

INDIA: ITT Far East & Pacific Inc. (Branch), New Delhi.

JAPAN: ITT Far East & Pacific Inc. (Branch), Tokyo.

NEW ZEALAND: Standard Telephones & Cables Pty. Ltd., (Branch), Upper Hutt, Wellington.

PHILIPPINES: Globe-Mackay Cable & Radio Corp., Manila (unit of ICG Group, below); ITT Philippines Inc., Makati, Rizal.

INTERNATIONAL COMMUNICATIONS
American Cable & Radio Corp., New York, All America Cables & Radio Inc., Commercial Cable Company, Globe-Mackay Cable & Radio Corp.; ITT All America Communications—Caribbean Inc.; ITT Cable & Radio Inc.—Puerto Rico; ITT Communications Inc.—Virgin Islands; ITT World Communications Inc. Press Wireless, Inc.; Companhia Radio Internacional de Brazil, Rio de Janeiro; Compania Internacional de Radio Boliviana, La Paz; Compania Internacional de Radio, S.A., Buenos Aires; Compania Internacional de Radio, S.A., Santiago Cuban American Telephone and Telegraph Co. (50% interest), Havan; Radio Corp. of Cuba, Havana.

FINANCIAL AND OTHER SERVICES

INTERESTS (minority and other) AND ASSOCIATE LICENSEES
AUSTRALIA: Austral Standard Cables Pty. Ltd., Melbourne
ITALY: Societa Italiana Reti Telefoniche Interurbane, Milan.
JAPAN: Nippon Electric Co., Tokyo; Sumitomo Electric Industries, Osaka.

SPAIN: Marconi Espanola, S.A., Madrid.
THE COMMUNICATIONS ACT OF 1934

Section 310. (Limitation on holding and transfer of licenses) (a) The station license required hereby shall not be granted to or held by—

(1) Any alien or the representative of any alien;

(2) Any foreign government or the representative thereof;

(3) Any corporation organized under the laws of any foreign government;

(4) Any corporation of which any officer or director is an alien or of which more than one-fifth of the capital stock is owned of record or voted by aliens or their representatives or by a foreign government or representative thereof or by any corporation organized under the laws of a foreign country;

(5) Any corporation directly or indirectly controlled by any other corporation of which any officer or more than one-fourth of the capital stock is owned of record or voted after June 1, 1935, by aliens, their representative, or by a foreign government or representative thereof, or by any corporation organized under the laws of a foreign country, if the Commission finds that the public interest will be served by the refusal or the revocation of such license.

Nothing in this subsection shall prevent the licensing of radio apparatus on board any vessel, aircraft, or other mobile station of the United States when the installation and use of such apparatus is required by Act of Congress or any treaty to which the United States is a party.

Notwithstanding paragraph (1) of this subsection, a license for a radio station on an aircraft may be granted to and held by a person who is an alien or a representative of an alien if such person holds a United States pilot certificate which is valid in the United States on the basis of reciprocal agreements entered into with foreign governments.

Notwithstanding section 301 of this Act and paragraphs (1) and (2) of this subsection, the Commission may issue authorizations, under such conditions and terms as it may prescribe, to permit an alien licensed by his government as an amateur radio operator to operate his amateur radio station licensed by his government in the United States, its
possessions, and the Commonwealth of Puerto Rico provided there is in effect a bilateral agreement between the United States and the alien's government for such operation on a reciprocal basis by United States amateur radio operators; Provided, That when an application for an authorization is received by the Commission, it shall notify the appropriate agencies of the Government of such fact, and such agencies shall forthwith furnish to the Commission such information in their possession as bears upon the compatibility of the request with the national security: And provided further, That the requested authorization may then be granted unless the Commission shall determine that information received from such agencies necessitates denial of the request. Other provisions of this Act and of the Administrative Procedure Act shall not be applicable to any request or application for or modification, suspension, or cancellation of any such authorization.

(b) No construction permit or station license, or any rights thereunder, shall be transferred, assigned or disposed of in any manner, voluntarily or involuntarily, directly or indirectly, or by transfer of control of any corporation holding such permit or license to any person except upon application to the Commission and upon finding by the Commission that the public interest, convenience and necessity will be served thereby. Any such application shall be disposed of as if the proposed transferee or assignee were making application under Section 306 for the permit or license in question, but in acting thereon the Commission may not consider whether the public interest, convenience and necessity might be served by the transfer, assignment, or disposal of the permit or license to a person other than the proposed transferee or assignee.
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