

AN HISTORICAL ANALYSIS OF THE ABC-ITT MERGER PROCEEDING  
BEFORE THE FEDERAL COMMUNICATIONS COMMISSION: 1966-1967

by

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## Issue No. 1

Would ABC best serve the public interest as an independent corporation, or as a wholly-owned subsidiary of ITT? This question has three elements to it: the integrity of ABC's news operation; ITT's ability to discharge its responsibilities as licensee of ABC's seventeen broadcast stations; and, the fusion of broadcast and common carrier interests.

Regarding the integrity of ABC's news operation if the merger were approved, the Commission majority said in its December opinion:

One of the principal issues that concerned the Commission in this proceeding was whether the large business interests of ITT might be permitted to exert an influence on the broadcasting activities of ABC, and particularly whether there would be any commercial influence on the performance of the journalistic function--the reporting of news and news commentary--or on the selection or treatment of public affairs programming.<sup>18</sup>

The Commission recognized the potential danger of a conflict of interest between ABC's journalistic function and ITT's extensive investments abroad. ITT's domestic interests in defense and space contracts were noted as an additional source of potential conflict. Interest in this issue was heightened by Commissioner Johnson's concern with the relationship between Section 310(a) of the Act and ITT's position in the communications industry in 1934 when the Act was adopted by Congress. Johnson attributed

the inclusion of this section to Congress's concern with ITT's potentially dominant role in the industry. As cited by Johnson, Section 310(a) states:

- 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 representatives 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 directors are aliens, or of which more than one-fourth of the capital stock is owned of record or voted after June 1, 1935, by aliens, their representatives, 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 revocation of such license.<sup>19</sup>

Although ITT, in neither 1966 nor 1967, had any foreign directors or officers, it did in 1934 when Section 310(a) was written. In his December, 1966 dissent, Commissioner Johnson wrote:

. . . the irony in today's decision fairly seethes when one realizes that the Congressional hearings on the 1934 Communications Act reveal that Section 310(a) was the product not alone of legitimate generalized concern. It was aimed at one company in particular: International Telephone and Telegraph--the

very company which now seeks to control ABC.  
[noted deleted]<sup>20</sup>

Noting that ITT as constituted in 1966 did not technically come within the prohibition of Section 310(a), Johnson added that the rationale, nevertheless, was as fully applicable to a company which earned 60 percent of its income from foreign subsidiaries managed by aliens, or otherwise deeply involved in foreign affairs, as by a company whose Board was partly composed of alien directors.<sup>21</sup> Seeking a resolution to this issue the Commission majority said:

We recognize the large stake our society has in preservation of freedom of broadcast stations and networks from the intrusion of extraneous private economic interests upon programming decisions. . . . We have, therefore, been attentive to the positive assurances which both ABC and ITT gave us and the public on this score.<sup>22</sup>

The assurances referred to by the majority were contained in a letter written by ITT to the Commission:

ABC will operate as a substantially autonomous subsidiary. As we have stated in the applications, 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, communications or other similar interests of ITT.<sup>23</sup>

Reaching its decision to grant the applications, the majority relied 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 non-broadcast interests will be

zealously and effectively protected by every available means."<sup>24</sup>

In the September record James A. McKenna, Jr., speaking on ABC's behalf, noted the potential conflict between the ultimate licensee responsibility of ITT and ABC's role as a substantially autonomous subsidiary of its parent company. He said:

We will establish a self-contained ABC division which would have charge of the day-to-day broadcast operations.<sup>25</sup>

He added, too, that autonomy coupled with parent company responsibility was not only desirable from the FCC's point of view, but was also a desirable concept from a management point of view.

In an exchange with John A. McCone, member of the ITT board, and former director of the Central Intelligence Agency, Commissioner Johnson asked if McCone saw any possibility that there might sometimes be an instance in which ABC would want to do a public affairs documentary on an issue involving a foreign country and its relations to the United States. Johnson was suggesting that, potentially, the interests of ITT might be somewhat different from those the ABC producer would like to present. McCone responded that he couldn't imagine such a situation occurring.<sup>26</sup> (From the record it is unclear whether McCone meant that he could not imagine an ABC producer wanting to do such a documentary or whether he could not

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imagine what Johnson was suggesting--conflict between an ABC producer and ITT interests.) Prodding McCone, Johnson asked if it were inconceivable that ITT would ever take any interest in the public affairs programming of ABC in those areas where there would be a direct conflict with ITT's larger corporate interests. McCone said he did not think that would happen.<sup>27</sup>

In his opening statement to the Commission, Harold Geneen, president and chairman of the Board of ITT, addressed the issue of ABC autonomy from its parent corporation:

ITT is fully aware of the important responsibilities which it will have to the public and to this Commission as . . . a corporation whose subsidiary is a broadcast licensee. We intend to do our best to fulfill those responsibilities in a manner in keeping with the high aspirations of those who would have broadcasting live up to its promise of being a vital force for enrichment of life in our democratic society.<sup>28</sup>

Geneen concluded his opening statement with the following assurance:

Let me say unequivocally that ITT has no right or interest in any way subverting or approaching or putting any influence whatsoever on the news policies of our broadcast licensee or, rather, the broadcasting division. As I pointed out here, even within ABC, as between their own commercial interests and their own news department, this same autonomy exists. I want to be sure that is clear.<sup>29</sup>

These assurances were reaffirmed by both Geneen and Leonard Goldenson, president and director of ABC, in the April hearings before the chief hearing examiner of the Commission.

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As noted in Chapter I, the consideration of the ABC-ITT merger case by the FCC was given vigorous coverage by the press. Three journalists covering the proceedings were called upon to present testimony in the April hearings to shed light on ITT's attempts at management of the news. Eileen Shanahan, a reporter in the Washington Bureau of the New York Times, testified first. Representing the Antitrust Division, Lionel Kestenbaum asked the witness if she had ever been contacted by any official or employee of ABC or ITT concerning the nature or content of her stories or of the Times coverage of the merger proceedings. She testified that she had been contacted "five or six times," but several contacts had been "very brief and routine." Recalling one exchange between herself and the vice president for public relations of ITT, Shanahan said:

He indirectly in some way asked me or indicated he would like to see what I had written. It was not a direct request, certainly not a demand. I responded that he knew that this was considered an improper thing to ask a reporter and he could buy a paper in the morning or his people in New York could buy one at 10 o'clock.<sup>30</sup>

She added that there was further discussion concerning the use of textual material from an FCC Order to the Justice Department in a Times story. The ITT official noted that the FCC had used "rather harsh language" in reference to the Justice Department, and he suggested that it be included in a story. Shanahan testified that

his tone had been "certainly accusatory and certainly nasty" and that "he badgered me again."<sup>31</sup> That same ITT official asked Shanahan if she thought she had a responsibility to ITT shareholders who might lose money as a result of what she wrote. She told him that her responsibility "was to find out the truth and print it."<sup>32</sup> Her testimony continued with the following story:

The conversation still continued. He then after some other things in between I think, asked me whether I was aware that Commissioner Nicholas Johnson was working with some people in Congress on legislation that would forbid any newspaper from owning any broadcast property, and what did I think the Times would think of that because he didn't mention it but for the record the Times owns radio stations. I told him I couldn't imagine the Times would be overjoyed at this but at the same time I could not see such a bill getting through Congress if what he reported was true. He then said, "I think this is some information that you ought to pass on to your publisher before you write anything further about Commissioner Johnson's opinions in anything." That was about the end of it as I recall. I had had about enough. So I told him I had some work to do, which I did, and we parted.<sup>33</sup>

Under cross-examination Shanahan's characterization of ITT overtures was challenged. She stated that it was to be expected that reporters could have conversations with public relations people and, indeed, public relations departments play an important role in the dissemination of information that might not otherwise reach a reporter. She reiterated, however, that she considered her exchanges

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with ITT public relations personnel to have been more abusive than helpful.

Stephen Aug, newsman for the Associated Press, followed Shanahan on the witness stand. He also reported having had exchanges with representatives of ITT and ABC. Using a telephone at the FCC, Aug had dictated a story to his press service concerning a delay in the merger ordered by the Commission pending a determination of whether to allow the Justice Department to present its case. His dictation was interrupted by a phone call from his Washington office. Aug was told that ABC had telephoned the New York office of the Associated Press with the complaint that the first paragraph of his dictated story was wrong. Aug had dictated that the FCC ordered the delay, ABC corrected his dictation stating that the FCC had merely suggested a delay. Aug told his caller that he had the FCC Order in his hands, and that the Commission had ordered, and not suggested, a delay. He refused to change his story as it had been dictated.<sup>34</sup> (An intriguing question is obviously raised by this testimony. How could ABC have known what Aug was dictating to his press service? Although it is unlikely that ABC tapped the telephone in the FCC press room, it is possible that someone in the press room overheard Aug's dictation and, using another telephone, alerted ABC to the nature of Aug's story. ABC

might then have notified the Associated Press of the alleged discrepancy, which in turn alerted Aug.)

Aug related another exchange with two ITT representatives. He had written a news story based on testimony that had been given in the course of the hearing. His callers informed him that his story was incomplete, that figures quoted in his story were later recognized to be inaccurate. He asked to see a copy of the transcript refuting the information he cited, and was told that it would not be available until later that evening. He authorized a colleague at Associated Press to correct his story if and when the transcript was delivered. The story was corrected later that evening.<sup>35</sup>

The third journalist to testify at the April proceedings was Jed Stout, reporter for United Press International. He recalled a telephone conversation with an ITT representative during which he was questioned about his knowledge of Antitrust intentions to eventually take the case to the Court of Appeals. The ITT caller asked Stout to make inquiries at the Justice Department concerning their alleged intentions.<sup>36</sup>

Stout further recalled a conversation he had had with a United Press superior concerning language he had used to describe the Commission's stay of the merger. The conversation had been prompted by complaints received from

officials of ABC regarding the accuracy of his description of the Commission's action.<sup>37</sup>

Finally, Stout recounted a conversation he had had with an ITT official concerning the nature of news reporting that had surrounded the Commission's consideration of the merger. Although the ITT official commended Stout's own reporting, he complained that there had been a great deal of inaccurate reporting. In particular, he said that the questioning of ITT president Harold Geneen's testimony concerning assurances of ABC's news autonomy had been unwarranted.

Under cross-examination Stout testified that the ITT request to look into Justice Department plans regarding an appeal was the first such request he had ever received in his six-year journalistic career.<sup>38</sup>

Although the Commission minority had originally been concerned with potential conflicts of interest between ITT's foreign interests and ABC's news integrity, the testimony presented in the April hearings added another dimension to its concern. In their dissenting opinion issued in June, 1967, Commissioners Bartley, Cox and Johnson said:

The most shocking example of the measures which ITT has employed in pursuit of this merger is its treatment and attitude towards the working press reporting these proceedings. Three reporters testified regarding contacts with ITT officials. An AP and UPI reporter testified to several phone calls to their homes by ITT