

JUN 5 1972

[Handwritten signature]

MEMORANDUM FOR

Mr. Peter A. Michel

The issue paper which you forwarded concerning the network antitrust suits is accurate. I think, however, that it could be more persuasive and attach a suggested revision to achieve this.

[Handwritten signature: Clay T. Whitehead]

Clay T. Whitehead

Attachment

cc: DO Records
DO Chron
Mr. Whitehead - 2 ✓
Eva
GC Subj
GC Chron

AScalia:hmy - 5-30-72

Issue:

Antitrust suits against NBC-TV, ABC-TV and CBS-TV.

Answer:

The Justice Department's civil antitrust cases against the three networks and a former CBS subsidiary are the results of a long standing concern about the monopoly power of the networks over entertainment programming. The suits charge monopolization and restraint of trade in prime time entertainment broadcasting. They contend that it is anticompetitive for the networks to produce or to have any financial interest in the programs which they show, and specifically allege that the networks used their power over programming to compel independent program suppliers to convey financial interests in programs. The complaints cite FCC figures showing substantial increases between 1957 and 1967 in the number of prime time shows which were either produced by the networks or in which the networks held a financial interest.

The object of these suits is to assure viewers a diversity of entertainment programming, from a wide variety of independent program producers. If the suits are successful, the networks would continue to be solely responsible for choosing the programs which they broadcast, but this choice would no longer be artificially limited by their own ownership of rights in certain productions.

Two points about the suits bear emphasis: First, there is no effort to affect television news. The complaints relate solely to network entertainment programs, and expressly exclude "news, public affairs, documentary or sports programs." The Justice Department has specifically stated that no antitrust action relating to television news programs is under consideration nor has any ever been considered; that the current suits are in no way designed to provide any basis for a later attack on network news content; and that the antitrust laws would not permit such action.

Second, the suits are completely unrelated to the ITT hearings. They have been under consideration and preparation for many years, and are intended to correct a problem that has been a substantial concern of the Department for at least the past 15 years.

Opponents' Arguments:

That the suits were filed in an effort to intimidate the news media or to back the Department's claims of vigorous antitrust enforcement in the wake of the ITT hearings.

OFFICE OF TELECOMMUNICATIONS POLICY
WASHINGTON

5/25/72

To: Nino

From: Tom

You might want to use some of
this in the Antitrust Q&A.

OFFICE OF TELECOMMUNICATIONS POLICY
WASHINGTON

May 23, 1972

TO: Tom

FROM: Nino

FYI



Department of Justice

STATEMENT BY WALKER B. COMEGYS,
ACTING ASSISTANT ATTORNEY GENERAL
IN CHARGE OF THE ANTITRUST DIVISION

MAY 5 1972

Network news coverage is in no way involved in the antitrust suits filed by the Justice Department against the three major television networks. Indeed, the complaints expressly exclude "news, public affairs, documentary or sports programs."

The Department's suits are aimed solely at the elimination of alleged anticompetitive actions by the networks which involve the production of network entertainment programs and the networks' financial interest in independent production of entertainment programs for network use.

No antitrust action relating to television news programs is under consideration nor has any such action ever been considered.

The current suits are in no way designed to provide any basis for a later attack on network news content; indeed, the antitrust laws would not permit such action.

OFFICE OF TELECOMMUNICATIONS POLICY
WASHINGTON

May 23, 1972

Tom:

The Answer is entirely accurate, but also entirely soul-less. It does not seem to me a convincing reply to either of the opponents' arguments. I would dwell on harmful effects of programming monopoly, and point out that the suits have been under preparation for a long time.

Since all that was asked for was our assessment of the statement's accuracy, I hesitate to suggest any revision. What is your pleasure?

→ *Revise*

Yend

OFFICE OF TELECOMMUNICATIONS POLICY

WASHINGTON

5/31/72

To: Nino

From: Tom

In the second, third, or fourth paragraph, I would like to see a sentence that points out the problems of excessive economic concentration in broadcasting and the traditional emphasis we have placed in this country on localism, licensee discretion, etc. Without prejudging this case, pointing out that it is important that the Government be aware of these things and take appropriate action.

Tom:

I have tried, and there is no way I can do this. The rules don't do a thing for licensee discretion or localism. Nor do they at all reduce network power. The networks still choose all their shows — they just have to let others produce + own them.

Putting in sexy language such as that which you suggest may well cause the networks to suspect that (contrary to the third ¶) we propose to bust them up. Won't you reconsider? A

THE WHITE HOUSE
Washington

Date May 19

TO: Tom Whitehead

FROM: Peter A. Michel
Room 104-EOB

F. Y. I.

Would you please review the attached issue paper prepared by Justice for both substantive accuracy and to insure it is an accurate statement of Administration policy.

This is for possible inclusion in our Issue and Answer notebook.

Thank you.

Engman
Flan,
Whitehead

DOJ/Antitrust #14
John W. Hushen 739-2028
April 21, 1972

Issue:

Antitrust suits against NBC-TV, ABC-TV and CBS-TV.

Answer:

The Justice Department's civil antitrust suits against the three networks and a former CBS subsidiary charged monopoly and restraint of trade in prime time entertainment broadcasting. They cited FCC figures showing substantial increases between 1957 and 1967 in the number of shows on prime time which were either produced by the networks or in which they had a financial interest.

The suits contend that it is anticompetitive to have the networks producing entertainment shows for network showing, or having any financial interest in such shows. The suits allege that the networks have used their power over programming to compel independent program suppliers to give the networks a financial interest in programs they produce. The suits ask the court to bar the networks from producing or having any financial interest in any entertainment program produced for network television. If the suits are successful, the networks would still be allowed to continue to purchase first-run exhibition rights to productions, which would allow them to operate much as they do now, only in a more competitive atmosphere. The suits are aimed only at entertainment programming, and not at news, public affairs, documentaries or sports. And under the suit the networks would continue to exercise responsibility for programs they accept for broadcast.

Opponents Arguments:

That the suits were filed in an effort to intimidate the news media or to back the Department's claims of vigorous antitrust enforcement in the wake of the ITT hearings.

OFFICE OF TELECOMMUNICATIONS POLICY
EXECUTIVE OFFICE OF THE PRESIDENT
WASHINGTON, D.C. 20504
May 22, 1972

Antitrust

To: Tom Whitehead
From: Bruce Owen *BWO*
Subject: Network Antitrust Suit

The latest data from our NERA contract may be useful in evaluating the merits of the network antitrust case.

In the period 1961 to 1972 there were 416 prime-time network program series. Of these, the networks produced 45, the major studios 171, and independents the rest. Of the series produced by major studios and independents, there were 36 in which the networks had a minority financial interest.

The networks, over this ten-year period, had financial interests in less than 25% of the prime time series programs.

<u>Producer</u>	<u>Number of firms</u>	<u>Number of series</u>	<u>Network Participation</u>
Networks	3	45	45 series
Major studios	6	171	21 series
Independents	<u>92</u>	<u>200</u>	<u>15 series</u>
TOTAL	101	416	81 series

cc:
Hank Goldberg
Nino Scalia