

4. Examiner's Assumption that Applicants Are not Responsible for Their Activities Through the Council

The Examiner, pointing out that applicants do not have voting control of the Council, stated that it is not "made clear by what means or method the alleged sins of ECCNE could or should be visited on the Applicants . . ." (Initial Decision, p. 18). The answer is that applicants are held, under the antitrust laws, no less responsible for their actions through the Council than for their actions elsewhere: they are not, after all, compelled to participate in the Council's activities. The Commission in a licensing proceeding has the authority and obligation to take account of the antitrust implications of applicants' actions. If the Commission were to determine that the exclusion of the municipals from the Council's planning activities is, indeed, a bottleneck boycott, it could either deny the applications or grant them on terms which make clear that the boycott must be ended or applicants must no longer be party to it. And, of course, if the applications were to be granted on such terms, but the licensees persisted in unlawful activity through the Council, action pursuant to Section 10 (h) could be taken against them.