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[Docket No. 8741; FCC 76-871]

PART 73—RADIO BROADCAST SERVICES

Report and Order; Proceeding Terminated

In the matter of Clear Channel Broadcasting in the Standard Broadcast Band KOB/WABC).

1. On April 22, 1969, we reopened the captioned clear channel proceeding for the limited purpose of establishing permanent nighttime operating modes for radio stations KOB(AM), Albuquerque, New Mexico (770 kHz, 50 kW, DA-N) and co-channel class I-A WABC(AM) in New York City (770 kHz, 50 kW, non-directional day and night). Notice of Proposed Rule Making, 17 FCC 2d 257. The proposal was duly published in the Federal Register of April 29, 1969 (34 FR 7033). Both licensees are on deferred renewal status awaiting the outcome of this proceeding.

2. By Notice of Inquiry and Proposed Rule Making released December 12, 1975 (FCC 75-1331; Docket 20642), we opened a new clear channel proceeding to consider the possible nighttime duplication of presently unduplicated U.S. I-A clear channels, the further duplication of presently duplicated U.S. I-A clear channels and, alternatively, the reservation of certain U.S. I-A clear channels for "super-power" operation in order to improve nighttime skywave service to remote regions of the country now lacking interference-free primary service from any aural broadcast source. However, because of the protracted history of litigation involving the frequency 770 kHz and the fact that a series of court decisions has severely narrowed the range of options available to use in resolving the "KOB problem," we decided to deal with it separately and at an early date. Footnote 1, page 2, FCC 75-1331.

BACKGROUND

3. The "KOB problem" originated in 1941, when it became necessary to find another frequency for KOB, then assigned to 1180 kHz as a clear channel station of the first North American Regional Broadcasting Agreement (NARBA), effective in March 1941, which triggered a number of frequency shifts in the United States owing to the creation of new Mexican clear channel priorities. No comparable assignment on another channel could be found, and KOB was summarily assigned to 1030 kHz, a I-A clear channel on which the dominant station is WBZ, Boston. Despite the distance between Boston and Albuquerque, KOB's operation on 1030 kHz proved to be technically unsatisfactory, due in part to the westward orientation of WBZ's directional antenna system and resulting extensive nighttime skywave interference between the two stations.

4. In November 1941, KOB was shifted to 770 kHz, a I-A channel on which the dominant assignment is now WABC (American Broadcasting Companies, Inc.), but which at that time was a Blue Network outlet for the National Broadcasting Company (WJZ). KOB has operated on 770 kHz ever since. Initially, KOB's occupancy of 770 kHz was authorized under a special service authorization (SSA) which specified a power of 50 kW day and 25 kW night, nondirectional. This caused considerable skywave interference to WABC during nighttime hours. In 1944, KOB filed an application (File No. BMP-1738) in which it sought to regularize its operation on this basis,

and a hearing thereon was held in January 1945. No decision was reached at that time because in February 1945 we instituted the first clear channel proceeding, which sought to define dominant and secondary uses on all of the 25 I-A frequencies reserved for clear channel use in the United States.

5. In 1946 the KOB application, along with others relating to the U.S. I-A clear channels, was placed in pending status awaiting the outcome of the clear channel proceeding. KOB's SSA operation on 770 kHz was continued on an interim basis. In 1950, WABC appealed from our extension of KOB's interim operation, and in 1951 the U.S. Court of Appeals held the long-standing interference to WABC, without hearing, to be improper, and directed us to find a permanent solution. Accordingly, the KOB application was removed from pending status, but the SSA remained in effect. WABC protested this continuation, and a hearing on its protest was held in 1953. In July 1955 we denied the WABC protest. WABC appealed again, in response to which the Court, in 1956, directed us to take immediate steps to remove the interference to WABC. By letter of November 8, 1956, we directed KOB to submit a directional antenna pattern for temporary nighttime operation on 770 kHz, in compliance with the Court's mandate. KOB did so, and commenced directional operation in April 1957 with a two-element array, in effect becoming a class II (or secondary) station on the clear channel 770 kHz, protecting the dominant class I station (WABC) to its 0.5 mV/m 50% nighttime skywave contour.

6. In a wide-ranging decision adopted September 3, 1958—25 FCC 683 (1958)—we gave in-depth consideration to the long-pending KOB application (paragraph 4, supra), as well as to a variety of possible alternative modes of operation at both stations against a backdrop of populations and areas gained and lost, programming and network affiliations, and apparent inequities in the historic distribution of class I facilities in the United States. The reversion of KOB to its licensed frequency (1030 kHz) was ruled out for a variety of reasons, including the high RSS limits which would be imposed on its nighttime operation by co-channel I-A WBZ, Boston and, potentially, by a co-channel class II fulltimer in Mexico City (XEQR). Finally, we found that KOB, operating as a class I-B station on 770 kHz along with WABC, would provide a first nighttime primary (groundwave) service to 118,000 more people in the relatively underserved Southwest than it would if operated as a class II (secondary) station fully protecting WABC. KOB was granted leave to amend its application to specify nighttime directional operation in accordance with theoretical parameters contained in the decision, and WABC was granted leave to file a parallel application to directionalize its nighttime operation.

7. WABC appealed the 1958 decision, and a 1960 Court decision affirmed but with reservations. *American Broadcasting-Paramount Theatres, Inc. v. FCC*, 280 F. 2d 831. Specifically, the Court stated that WABC should not be precluded from a hearing on its claim that some eastern broadcaster other than ABC should bear the burden of accommodating KOB. The Court also stressed that ABC's position as a network should not be prejudiced by forcing it to share its clear channel if other networks retained on their clear

channels greater protection (i.e., WNBC and WCBS, both I-A clear channel stations in New York City on 680 kHz and 880 kHz, respectively). Finally, that Court expressed the view that we should, in still another proceeding, seek to provide facilities for ABC comparable to those of the other networks. In a related development which occurred early in 1960, *KSTP, Inc.*, the then-licensee of KOB, filed a competing application (File No. BP-13,932) for 770 kHz in New York against the then-pending WABC renewal application (File No. BP-167), specifying the nighttime directional parameters we had prescribed for WABC but which WABC had failed to request. Both applications are still pending.

8. In light of these developments, we ordered, in 1961, a further hearing on issues designed to determine whether the result reached in 1958 should be altered on the basis of parity among radio networks, as suggested by the Court. In our decision in this matter, adopted July 3, 1963—35 FCC 36—we conceded that to require WABC to directionalize during nighttime hours while WCBS and WNBC were permitted to operate nondirectionally would leave ABC with a facility in New York inferior, from the standpoint of coverage, to those of NBC and CBS. We concluded, however, that ABC had failed to translate comparative inferiority in station coverage into a competitive inferiority of the ABC radio network vis-a-vis NBC and CBS. This conclusion rested in part on our finding that the outlying secondary (nighttime skywave) service area which would be lost to WABC as a result of nighttime directionalization was already 99 percent served by ABC-owned WLS, Chicago, and 65 percent served from ABC affiliate KXEL, Waterloo, Iowa, both clear channel stations, and that ABC had failed to quantify its allegation that the nighttime directionalization of WABC would affect network time-buying practices as to the ABC radio network. We therefore granted KOB's application for class I directional nighttime facilities in Albuquerque and denied WABC's application for nondirectional renewal in New York, without prejudice to reconsideration " . . . if ABC files, within 30 days of the release date hereof, an application for modification of facilities on the frequency 770 kc in conformity with parameters specified in paragraph 22 of the September 1958 decision . . . " The effect of this decision, insofar as KOB was concerned, was to transform it from the temporary class II-A status mandated by the Court in 1956 to a *de facto* class I-B station³ which would protect WABC to its 0.5mV/m 50% skywave contour, but

³ Our 1963 decision also made passing reference to the Clear Channel Decision of 1961 (31 FCC 565 (Docket 8471)) which, although not determining optimum modes of operation on 770 kHz, did conclude that the public interest required a major fulltime station in New Mexico; that 770 kHz was much preferable to 1030 kHz for this purpose; and that other alternatives should not, and indeed could not, be considered. The rules were amended to accommodate the assignment of two class I Stations on 770 kHz in a manner to be determined. With respect to NBC and CBS, provision was made for permanent nighttime duplication of their clear channels in Alaska and Nebraska, respectively, but without altering their existing I-A nondirectional modes of operation.

⁴ With class I-B facilities but not receiving the degree of nighttime protection normally accorded to class I-B stations.

FCC Story of the "KOB Problem"

only if the latter station directionalized its nighttime signal to suppress radiation toward Albuquerque. On July 3, 1963, we granted an appropriately modified construction permit (BMP-1738), and on October 25 of that year, KOB commenced operation as a de facto class I-B assignment on 770 kHz (50 kW, DA-N) under program test authority of equal date. The station is presently operating with these facilities.

9. Predictably, ABC did not file a directional nighttime proposal, as contemplated in our 1963 decision. Instead, ABC appealed once again. A decision on that appeal was rendered by the United States Court of Appeals (D.C. Cir.) on February 25, 1965, in *American Broadcasting-Paramount Theatres, Inc. v. FCC et al.*, 345 F. 2d 954, 4 RR 2d 2006, in which the Court again addressed the underlying issues in the case. In reversing our 1963 decision to give KOB class I-B status and remanding the case for further proceedings, the Court made the following observations:

(a) WABC, as ABC's radio network "flagship" station, was treated very differently from WNBC and WCBS in our 1961 Clear Channel Decision in that it remained classified as a class I-B station, was required to share its channel with another class I-B station (KOB), was required to protect that station, and did not receive the same degree of interference protection as the other two network "flagship" stations.

(b) Operating with nighttime class I-B facilities, WABC's primary (groundwave) nighttime service area would be reduced to the extent of 3,680 square miles and some 702,326 persons, and secondary (skywave) service to approximately 17 million people would be lost.

(c) WABC would be required to incur a substantial capital outlay, might be compelled to acquire a new transmitter site, might be unable to obtain airspace clearance from the FAA, and would in any event be precluded from future consideration for higher power.

(d) ABC's failure to sustain the burden of proving that its overall competitive position would be damaged by downgrading WABC to a class I-B facility was irrelevant " * * * because it is not within the scope of [the Court's] 1960 opinion, which indicated that comparable channel facilities should be provided for all networks."

(e) Our 1963 decision, based in part on technical findings elicited in the 1958 proceeding, may have been overtaken by events or otherwise rendered obsolete.

The main thrust of the Court's opinion was that WABC is entitled to "equitable channel treatment" vis-a-vis the "flagship" stations of the other two major networks. While concurring in our oft-expressed technical judgment that 770 kHz is the most suitable permanent frequency for KOB, the fact that KOB was a class I station on 1180 kHz prior to 1941 did not, in the Court's view, confer equities which should in the long run differentiate it from conventional class II fulltimers assigned to the WNBC and WCBS clear channels.

10. We then sought both clarification of the Court's mandate and certiorari from the Supreme Court. Both requests were denied. On July 19, 1965, we issued a Memorandum Opinion and Order reopening the Clear Channel proceeding for the reception of supplemental evidence to up-date the need for additional AM broadcast service in the Southwest. 1 FCC 2d 326. The Memorandum Opinion and Order also contained issues going to the relationship of the projected WABC loss area to ABC's network revenues, and ABC's competitive position vis-a-vis the CBS and NBC radio networks within the

projected WABC loss area. We acknowledged, however, that the Court's decision pointed to a class II status for KOB if such a station " * * * would now adequately meet the needs of the Albuquerque area."

11. Further action was withheld because of a proposed ABC,ITT merger which, it appeared, might lead to a voluntary settlement of the case. This prospect vanished, however, following intervention by the Department of Justice and withdrawal of the transfer application in 1968. In the meantime, and in response to our solicitation of the views of all parties to the dispute, we abandoned earlier efforts to resolve the matter through the adjudicatory process, and decided that the issues raised by the court's 1965 remand " * * * can most appropriately be resolved at this juncture through rulemaking " * * * Memorandum Opinion and Order, 4 FCC 2d 606 (1966). The KOB and WABC applications which had figured in earlier judicial appeals were accordingly removed from hearing status, to be held in abeyance pending further order of the Commission.

THE 1969 PROPOSAL

12. In the Notice of Proposed Rule Making which followed (paragraph 1, supra), we recognized that to give KOB permanent class I-B status in Albuquerque and still comply with the principle of "equitable channel treatment" of WABC, as mandated by the Court, would involve the restructuring, at least in part, of our 1961 Clear Channel Decision and the overall plan of class I-A/II-A channel sharing reached therein, along with further expense, delay, and uncertainty which would end with massive and unacceptable reductions in nighttime coverage presently provided by eastern class I-A clear channel stations. This, we concluded, was a price not worth the benefit. Accordingly, we proposed to resolve the "KOB problem" by amending sections 73.22 and 73.25 of our rules to provide for fulltime operation by a class II-A station on 770 kHz in New Mexico, the effect of which would be to reconvert KOB to a class II-A operation similar to the one conducted between 1957 and 1963. KOB's de facto I-B nighttime mode of operation, which as previously noted does not provide as high a degree of protection to WABC as class I-A stations are normally entitled to, was continued pending outcome of rulemaking.

COMMENTS FILED IN THE PROCEEDING

13. Comments, reply comments, and other pleadings were filed in this proceeding by the following parties:

(a) WEW, Inc., (WEW), licensee of co-channel daytime station WEW, St. Louis, Missouri.

(b) KXA, Inc., (KXA), licensee of co-channel limited-time station KXA, Seattle, Washington.

(c) American Broadcasting Companies, Inc. (ABC or WABC), licensee of class I-A station WABC in New York City.

(d) Hubbard Broadcasting, Inc. (Hubbard or KOB), licensee of station KOB, Albuquerque, New Mexico.

14. WEW, a daytime station on 770 kHz operating with a power of one kilowatt, is one of the oldest AM broadcast stations in the country. It is presently affiliated with ABC's American Entertainment Radio Network. The licensee's efforts over the years to obtain nighttime hours of operation have been unsuccessful, principally because of the protected I-A status of WABC. Citing our commitment in the 1961 Clear Channel Decision to consider the further

nighttime duplication of channels once-duplicated in that proceeding, WEW seeks to use this proceeding as a vehicle for once again proposing its own nighttime operation. Specifically, WEW proposes that KOB and WABC both operate as class I-B facilities, as contemplated in our 1958 decision, and that the rules be amended to permit a "mid-point" class II (secondary) operation on 770 kHz in Missouri. Such an operation, if sharply directionalized north and south during nighttime hours would, according to WEW's engineering consultant, fully protect KOB and WABC if those stations were operated as class I-B facilities. Operating as proposed on 770 kHz (50 kW, DA-2), WEW would provide a first nighttime primary ("white area") service in a portion of Ozark Mountains region not served by nondirectional clear channel station KMOX, St. Louis, owing to low soil conductivity in the area.

15. KXA, a limited-time class II station on 770 kHz, operates essentially daytime hours with a power of one kilowatt. Like WEW, KXA has repeatedly attempted to obtain nighttime operating authority. These proposals have been consistently rejected, first because of a World War II "freeze" on the acceptance of new and major change applications, and later because they became entangled in the clear channel protection principles underlying the 1961 Clear Channel Decision. Operating as proposed (50 kW, DA-2, unlimited hours), KXA would protect the day and night primary and secondary service areas of WABC and the primary (groundwave) service areas of KOB, assuming the latter station to be operating as a class II-A facility. In so doing, KXA would provide a second primary ("gray area") service in an area of about 8,000 square miles and a first primary ("white area") service in an area of about 1,100 square miles. Finally, KXA points to the curtailment of its pre-sunrise operation growing out of our 1969 rulemaking decision in Docket 17562 et al, in which a power ceiling of 500 watts was imposed on all PSA operations—18 FCC 2d 705²—and attempts to show that its existing daytime use of 770 kHz effectively precludes the efficient fulltime use of that frequency elsewhere in the Northwest.

16. ABC views KOB's presence on 770 kHz as an "encroachment" hastily ordered on a "temporary" basis in 1941 to meet NARBA frequency shift deadlines. This use, ABC observes, was continued through the war years because of a wartime "freeze" on construction, thereafter becoming entangled in clear channel rulemaking from which it never really emerged. The end result, ABC contends, is that among the 25 I-A clear channels reserved by treaty for use in the United States, 770 kHz alone has been singled out for class I-B station duplication; that this "solution" has been branded by the Court as prejudicial to ABC's interests vis-a-vis the other two major networks and removes WABC as a candidate for "superpower" at some future time; that if WABC is ultimately compelled to directionalize, it will lose almost 18,000,000 potential listeners to its nighttime skywave service; that a loss of

² On September 16, 1969, the 500-watt PSA power ceiling was stayed as to KXA and certain other western class II daytime and limited-time stations pending reconsideration of the 1969 rulemaking. Accordingly, KXA has continued to operate during the pre-sunrise hours with its authorized daytime power of one kilowatt.

³ The same impediment to expansion, however, would appear to apply to most of the 13 currently duplicated I-A channels.

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this magnitude cannot be outweighed by the need for additional nighttime primary service in New Mexico; * that under the I-A/II-A dichotomy applying to other duplicated I-A clear channels, WABC is entitled to nighttime protection to its 0.5 mV/m 50% skywave contour; that to place all U.S. class I-A stations on the same footing by adopting a lesser degree of protection across the board would produce massive skywave dislocations in the East which would run counter to the basic rationale of the Clear Channel Decision; that Hubbard, having acquired KOB in 1967 subject to the outcome of the instant litigation, has no "overpowering private equities" in 770 kHz beyond what might be asserted on any other U.S. I-A clear channel; and that in the Notice in this proceeding we decisively rejected the assertion of such equities based on channel-by-channel analyses of I-A frequencies whose usage has already been settled in the Clear Channel Decision. In short, ABC contends that the past holdings of the Court, as well as the basic conclusions reached in the Clear Channel Decision and tentatively reaffirmed in the Notice in this proceeding, require that WABC continue as a non-directional class I-A station, and that KOB be relicensed as a class II-A station affording the same degree of protection to WABC as other class II-A stations provide to the dominant clear channel stations on their frequencies.

17. The comments filed by KOB endorse the past findings of the Commission in this matter and hence are confined, in large measure, to a critical analysis of the Court's reasoning in remanding the case in 1965. KOB's position may be fairly summarized as follows: our 1969 Notice in this proceeding, which looks toward a II-A status for KOB, represents a retreat from earlier judgments, reached in 1958 and 1963, that the public interest would best be served by class I-B facilities in New York and Albuquerque on 770 kHz; that operating in this manner, KOB would bring a first primary AM service to 98,000 people in a 24,500 square-mile area and a second primary AM service to 9,000 persons in a 1,330 square-mile area; that the massive reduction in WABC's secondary (skywave) service area which would result from its nighttime directionalization is not significant because the loss area is served by 18 to 20 other secondary services; that based on an analysis of WABC's programming compiled from 1968 composite-week renewal data and off-air monitoring, WABC's pretensions to network "flagship" status are invalid because the station is operated " * * * primarily and almost exclusively as a local New York City station for the benefit of New York advertisers * * *"; that this conclusion is reinforced by the fact that the carriage of network programs accounts for only 8.5 percent of WABC's composite week as against 20 percent for WCBS, 22 percent for WNBC, and 38 percent for KOB (an NBC network affiliate); that in any event radio network operations are no longer a significant factor in the mass media field and hence should not be a consideration in AM allocations decisions; that in contrast to WABC, KOB has " * * * endeavored to preserve its pattern of programming for regional and wide-area coverage"; that for all these reasons, WABC should be

compelled to directionalize during nighttime hours, preferably at sunset, New York, but at least no later than sunset, Albuquerque; and that such directionalization, twice ordered by the Commission, can be accomplished at WABC's present transmitter site at a probable cost of less than \$60,000.

18. Reply comments were filed in this proceeding by KXA, Hubbard, and ABC. The gist of KXA's reply brief is that if KOB's counter-proposal is adopted (i.e., mutually protected class I-B directional facilities for KOB and WABC), KXA could design a 5 kW nighttime array which would fully protect the secondary service contours of both KOB and WABC and, in the process, serve a new area of 1,073 square miles with a population of almost one million. KXA also renews its request that the rules be amended to accommodate a class II unlimited-time station on 770 kHz in Seattle. Hubbard, updating earlier allegations that WABC fails to carry programming of interest to listeners outside the New York metropolitan area, submitted for inclusion in the record the community ascertainment showing filed by WABC in 1969 in connection with its long-deferred license renewal application. ABC reiterates the massive nighttime skywave signal loss which would occur if WABC and/or the other two network "flagship" stations were required to directionalize, but fails to address Hubbard's recurring argument that no one is listening and that, in any event, WABC's programming is oriented only toward the needs and interest of the New York metropolitan area. ABC also condemns as "premature" the efforts of WEW and KXA to "muscle into" the instant proceeding, which it views as being restricted to the purpose of implementing the outstanding mandates of the court. In a "Petition to Enlarge Scope of Proceedings", supported by KXA and opposed by ABC, WEW again urges that consideration be given, within the context of this proceeding, to the possibility of fulltime operation in St. Louis on 770 kHz.

ANALYSIS OF THE COMMENTS

19. While we sympathize with the frustrations endured over the years by WEW and KXA in their efforts to obtain nighttime operating privileges on 770 kHz, their desire to do it within the context of this proceeding must be rejected. To enlarge the present proceeding to accommodate their proposals for fulltime operation would require the issuance of a further notice of proposed rulemaking, thus delaying again the resolution of a problem which is already 35 years old. Moreover, to do so would transgress the bounds of the Court's 1965 remand order; i.e., the issue of channel equality for WABC vis-a-vis the other network "flagship" stations in New York and the extent to which KOB's nighttime mode of operation would destroy that equality. Because of the manner in which the remand order was drawn, our Notice in this proceeding sought only to define the permanent relationship between WABC and KOB. Other licensees on (and prospective applicants for nighttime hours of operation on) 770 kHz, including WEW and KXA, must await clarification of this relationship before their proposals can be intelligently evaluated.*

20. We now proceed to a resolution of the respective priorities of WABC and KOB. This matter is best approached by a brief recitation of those solutions which are clearly not acceptable to us or to the

Court:

(a) *Reversion by KOB to 1030 kHz.* For technical reasons fully explained in our 1958 and 1963 decisions, and summarized in paragraph 6, *supra*, together with the disruptive effects of such a move on channel assignments made in the western United States on frequencies adjacent to 1030 kHz since the onset of litigation, we find this solution to be unacceptable.

(b) *Shifting KOB from 770 kHz to a frequency other than 1030 kHz.* None of the parties to this proceeding has offered this possibility as a counter-proposal, nor does it appear to be technically feasible. Apart from 70 kHz and 1030 kHz, the only other east coast I-A clear channel even remotely suitable for nighttime duplication in Albuquerque is 1210 kHz, currently assigned to CBS-owned and operated WCAU in Philadelphia. In our 1961 Clear Channel decision, 1210 kHz was earmarked for nighttime duplication in "Kansas, Nebraska, or Oklahoma" and was thereafter assigned to a new class II-A station in Guymon, Oklahoma. This forecloses the nighttime use of 1210 kHz in Albuquerque. We therefore conclude that KOB must be permanently accommodated on 770 kHz.

(c) *Achievement of "channel equality" by directionalizing all three network "flagship" stations in New York City.* While apparently acceptable to the Court, we categorically reject this "solution" as contrary to the public interest. It is clear that we cannot order the directionalization of all three stations without hopelessly undermining the rationale of the 1961 Clear Channel Decision as to the function to be served by class I-A stations generally. We wish to stress that our earlier decisions in the "KOB" case flowed from an evaluation and balancing of service gains and losses between the stations involved, in a manner typical of section 307(b) adversary proceedings in the AM broadcast field. By way of contrast, the pattern of I-A clear channel use decided upon in the 1961 Clear Channel proceeding came from an examination of channel usage in broad perspective, with the effects of proposals for individual channels considered in relationship to the proposed usage of all other I-A channels. As stated in the 1969 Notice in this proceeding

* * * such directionalization by all three New York City I-A stations would result in very extensive losses of service in the densely populated northeastern part of the country, depriving large populations of three skywave services and of three groundwave services in areas west of New York City, where 'white areas' might result if the service of all three stations were lost. Such losses in service obviously could not be found to be in the public interest if the sole purpose is to equalize the New York City facilities of the three networks.

Thus, as an isolated transaction, we found in 1958 and again in 1963 that the public interest would best be served by "balkanizing" 770 kHz in such a way that needed increments of nighttime groundwave and skywave service could be introduced into New Mexico and portions of surrounding states without disruption to corresponding services provided by the two remaining class I-A clear channel stations in New York City. To sacrifice the latter services on the altar of "channel equality" among networks is too high a price to pay. As already indicated, we reject this approach as contrary to public interest judgments already made in the 1961 Clear Channel Decision.

(d) *Intermixture of class I-A and I-B facilities on 770 kHz.* As indicated in paragraph 8, *supra*, KOB has been operating with a I-B pattern and directional

* ABC observes that of the 25 million people in the continental United States who receive no primary (groundwave) AM service during nighttime hours, 18 million live east of the Mississippi River and depend primarily on eastern clear channel stations like WABC for nighttime skywave reception.

* WEW and KXA may, of course, file comments with respect to the possible nighttime duplication of 770 kHz in St. Louis and Seattle in the newly instituted clear channel proceeding (Docket 20642).

parameters since 1963, anticipating the installation, by WABC, of a companion I-B nighttime directional array in New York City. WABC has, however, continued to operate nondirectionally. KOB does not, therefore, receive the nighttime protection to which class I-B stations are entitled under our rules (0.5 mV/m 50% skywave contour protection). Conversely, KOB is not protecting WABC's 0.5 mV/m 50% skywave contour, which is also the degree of protection which class I-A stations on "duplicated" clears are entitled to receive from class II fulltimers on the same channel. The net result is that during nighttime hours, the interference imposed on KOB by WABC destroys essentially all of what would otherwise be KOB's secondary service area and a substantial portion of KOB's primary service area. KOB, in turn, is destroying WABC's nighttime skywave service within a crescent-shaped area running through portions of Georgia, Tennessee, Kentucky, Indiana, Illinois, Wisconsin, and Michigan. This area, which encompasses metropolitan Chicago and Milwaukee, contains a population of about 9,500,000 persons within a 30,500 square-mile area.⁴ Admittedly, this represents a highly inefficient use of the channel, and if allowed to continue might well preclude the assignment of additional western class II fulltimers on 770 kHz as part of our deliberations in the new Clear Channel proceeding (Docket 20842).⁵ To summarize, and although not addressed by the parties, we believe that the permanent continuance of KOB on 770 kHz with its present I-B parameters is both technically unsound and, in view of the above-described impact on WABC's secondary service area, fails to meet the test of "comparatively equal channel facilities" among the major networks, as laid down by the Court in its 1955 decision.

21. Thus, by a process of elimination, we come to the solution recommended in the outstanding Notice in this proceeding; i.e., specifying II-A parameters for KOB and thus returning that station to essentially the same nighttime mode of operation as observed between 1957 and 1963. Given the reality of a 50 kW nondirectional nighttime operation by WABC in New York City and the nighttime RSS limitation (approximately 2.2 mV/m) already imposed by WABC on KOB, adjustment of the latter station's directional pattern and operating parameters to meet II-A requirements instead of I-B requirements should not substantially alter the areas and populations it is presently serving.

22. The rationale of this solution was amply expressed in paragraph 46 of the Notice which initiated this proceeding:

In any event, neither KOB nor the public interest will be ill-served by its permanent assignment to the channel 770 kHz, with a II-A classification. Operating with a power of 50 kilowatts, day and night, on a basis which will protect WABC's present operation, KOB can serve extensive areas and populations. The conditions for groundwave propagation on 770 kHz are considerably more favorable than on 1180 kHz, the channel on which KOB operated unduplicated as a class I station for a brief period, and the primary service KOB would provide on 770 kHz as a class II-A station approaches that which it delivered on 1180 kHz in its class I status. While KOB will have no secondary service as a II-A station, this lack should not appreciably affect the viability of its operation.

⁴ This translates into area and population loss of 8 percent and 9 percent, respectively, within WABC's 0.5 mV/m 50% nighttime skywave contour.

⁵ This preclusion would occur because KOB would continue to be protected as a class I-B station rather than as a class II-A (secondary) station on the channel.

23. There have been several developments since the 1965 court remand which tend to make a "II-A" solution in Albuquerque more acceptable in the public interest than before. In rulemaking proceedings concluded in recent years, we have increasingly come to regard the AM and FM broadcast services as equal components of a single aural broadcast service. In this connection, the following FM broadcast services (all unlimited time) have been established in New Mexico during this 11-year period: KQB-FM, Albuquerque (93.3 MHz); KPAR-FM, Albuquerque (100.3 MHz); KRST(FM), Albuquerque (92.8 MHz); KUNM(FM), Albuquerque (90.1 MHz); KSVP-FM, Artesia (92.9 MHz); KBAD-FM, Carlsbad (92.1 MHz); KMTY-FM, Clovis (99.1 MHz); KBSO(FM), Espanola (102.3 MHz); KRWN(FM), Farmington (92.9 MHz); KRAZ(FM), Farmington (96.9 MHz); KQNM(FM), Gallup (93.7 MHz); KGLP(FM), Gallup (94.5 MHz); KSCR(FM), Hobbs (95.7 MHz); KPOE(FM), Humble City (94.1 MHz); KASK(FM), Las Cruces (103.1 MHz); KGRD, Las Cruces (103.9 MHz); KEOP(FM), Las Vegas (91.1 MHz); KPUN-FM, Las Vegas (100.9 MHz); KLEA-FM, Lovington (101.7 MHz); KOPE(FM), Mesilla Park (104.9 MHz); KENW-FM, Portales (88.9 MHz); KTDB(FM), Ramah (89.7 MHz); KAFE-FM, Santa Fe (97.3 MHz); KSNM(FM), Santa Fe (95.5 MHz); and KTNM, Tucumcari (92.7 MHz). As a result of these post-1965 service increments, 25.1 percent of the land area of the State now receives one or more primary (1 mV/m) nighttime FM broadcast services, and about 70 percent of the State is provided with 50 uV/m nighttime FM coverage. Significantly, FM stations have been established at seven places within the area which KOB would serve as a protected I-B but not as a class II-A station.

24. Moreover, in *Berrendo Broadcasting Company et al.*, 52 FCC 2d 413 (1975), we accepted for filing an application to upgrade the nighttime facilities of class II-A station KSWB, Roswell, New Mexico (1020 kHz) from 10 kW to 50 kW. This proposal, when implemented, will bring a first nighttime primary (ground-wave) service to an area of 1,820 square miles with a population of about 4,000. Finally, we note that the act of relegating KOB to a II-A status will, in overall terms, still leave the State of New Mexico in a better position than most western states with respect to nighttime duplication privileges on the eastern I-A clear channels; i.e., apart from the State of Nevada, which has class II-A assignments in Las Vegas and Reno, New Mexico will be the only state with two class II-A stations. For all these reasons, it appears that at this point in time, a "II-A" solution of the "KOB problem" would comply with our obligation, under section 307(b) of the Communications Act, to " * * * provide a fair, efficient, and equitable distribution of radio service * * *" among the states and communities of the United States.

OTHER MATTERS

25. As indicated in paragraph 18, supra, ABC fails to rebut Hubbard's persistent argument that WABC's nighttime programming is not responsive to the problems, needs, and interests of the thousands of communities and millions of listeners within the secondary (skywave) service area ABC seeks to protect in this proceeding. By its silence, ABC concedes this to be true. The question then becomes: what significance, if any, attaches to WABC's failure to design programming for communities far removed from the New York metropolitan area and, if such an obligation exists, how would it be discharged? Re-

newly ascertainment data currently on file indicate that WABC does in fact carry a limited amount of public affairs programming which is responsive to the problems, needs, and interests of communities in northern New Jersey, Connecticut, eastern Long Island, and elsewhere within its primary (groundwave) service area. These efforts must be judged against the test laid down in the Primer on Ascertainment of Community Problems by Broadcast Applicants, 27 FCC 2d 650 (1971), which provides in pertinent part as follows:

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From the information of record, it appears that WABC is meeting its ascertainment obligation within the 75-mile perimeter, and that insofar as its nighttime skywave service area is concerned, there is no parallel obligation. A different conclusion would, we feel, impose an impossible ascertainment burden on every clear channel station in the country.

26. With respect to "equitable channel treatment" for WABC, as mandated by the Court, KOB asserts that WABC devotes well under 10% of its time to network programs from the ABC Contemporary network (only 5.6% during evening hours in a week in May 1969, with all programs longer than 5 minutes being run between midnight and 3 a.m. on Monday morning); that this is a much smaller percentage of time than WNBC and WCBS devote to their networks' material; that WABC in fact does not carry some ABC Contemporary programs and is not shown to originate any of them; and that network radio, consisting now chiefly of brief newscasts and similar programs, has much less importance in radio and in the mass media than was true in earlier years. In sum, KOB contends that the loss in ABC programming to the public, and to ABC as a network operation, would be minuscule, as compared to the service benefits in the Southwest resulting from true I-B status for KOB.

27. In a Notice of Inquiry and Proposed Rule Making recently issued concerning network radio regulation generally (Docket 20721, FCC 76-157, February 1976), we recognized the changes which have taken place in radio, and network radio in particular, since 1941 when our network rules were adopted. However, we do not find in these developments, or in the characteristics of ABC's and WABC's current operations urged by KOB, reason why the concept emphasized by the Court is no longer valid. Networks are important in radio as sources of national news and other informational material, and we have repeatedly recognized in recent years both this importance and, in view of the economic problems such radio operations face in the "television era", the importance of permitting experimentation and innovation. See, for example, National Broadcasting Company, Inc., 55 FCC 2d 59 (1975). While WABC itself is directly involved in the carriage of material for only one of ABC's four networks, and is not in this sense a "flagship" with respect to the other three, we believe it appropriate to look at the situation in a more general sense, in line with what we regard as the Court's concern—ABC as one of three network companies owning radio facilities in the country's largest market as well as in

other places, and the desirability of putting these facilities on an equal footing instead of taking affirmative action which would unbalance them. The net loss to WABC through directionalization—some 700,000 persons with respect to primary service, and 17,200,000 as to secondary service—cannot be regarded as of no consequence, even if only a small amount of the station's time is devoted to network programs and there are three other ABC networks.

28. Moreover, in view of the emphasis which the Court placed on equality among the three companies with respect to clear channel facilities, it must also be regarded as significant that both CBS and NBC have more clear channel skywave signals than does ABC in the area which would be lost to WABC by directionalizing to protect KOB at night. According to KOB's exhibits, all of this area has one ABC skywave signal (from WKCY), nearly all of it a second (from ABC-owned WLS), and portions of it receive one or two other ABC skywave signals, from three other stations. All parts of the area receive at least 4 NBC and at least 5 CBS secondary services, ranging up to 10 and 9 such signals respectively.⁹ Since several million persons in this area do not have nighttime primary AM service available to them, the loss of one ABC secondary service to this population must be regarded as a significant matter.¹⁰ In sum, we conclude that these concepts have much the same importance they had in 1965, and in light of the Court's 1965 decision, support the result reached herein.

DECISION IN THE PROCEEDING

29. The "KOB problem is perhaps the oldest unresolved matter before the Commission. Our earlier efforts to resolve it have been the object of four appeals to the Courts and three major proceedings before this agency. The public interest now demands that it be brought to a conclusion. While we adhere to the view that there is considerable merit in the concept of assigning class I-B operations in Albuquerque and New York City on 770 kHz, as determined through the hearing process in 1968 and again in 1963, we recognize that this solution would find favor with the Court only if WNBC and WCBS were similarly directionalized. For the reasons we have expressed, such a solution would run counter to the overall objectives of the 1961 Clear Channel Decision. We are not prepared to pay that price. Finally, the introduction of new and improved aural broadcast services into the State of New Mexico over the past 11 years has redressed part of the allocations imbalance on which our earlier decisions turned, and makes a "II-A" status for KOB more acceptable today than in years past. We conclude that this can be done with minimal disruption to KOB's present nighttime listenership, given the RSS limit already

⁹There have been some changes in affiliation of these class I stations since KOB's exhibits were prepared, but the general picture is still the same. Of 27 other class I stations which provide skywave signals to all or part of the skywave coverage area which WABC would lose by directionalizing, as of late 1978 only one (WLS, Chicago, ABC-owned) was an ABC Contemporary outlet; three were affiliated with other ABC networks (KXKL, WBT and WWVA), and one affiliated with both the ABC Information network and with CBS (WQKY). Eight others were affiliated with CBS and 18 with NBC. Eleven had no national network affiliation.

¹⁰ABC has, among its 6 networks, many more affiliated stations than do CBS or NBC, about 1,400 AM and FM stations compared to roughly 800 for NBC (in two networks) and 250 for CBS, as of early 1978. However, only the clear channel stations referred to in the text and in footnote 9 provide skywave service.

imposed by WABC's nondirectional operation on KOB, and that, everything considered, a "II-A" status for KOB will not deserve the public interest.

30. As we noted in paragraph 7, supra, KOB has on file an application (BP-13932) for permission to operate a class I-B directionalized station on the 770 kHz assignment occupied by WABC in New York. That application, as the Court recognized in *American Broadcasting*, supra, 345 F.2d at 857, was responsive to our 1958 Orders that both KOB and WABC should operate as class I-B directionalized stations on their respective 770 kHz assignments. WABC, however, had refused to seek a renewal under those terms, and KOB hoped, by applying to substitute itself on the channel and thus obviate the protracted controversy between the two stations. We deferred action on the application, and the Court approved, until such time as we should resolve the issue of equal treatment for the New York network "flagship" stations, and the classification for 770 kHz in that city. Id. at 861. Now, by our action herein, making KOB a II-A station and returning WABC to I-A status, KOB's application for a I-B assignment in New York is effectively mooted. The larger concern—clear channel protection from co-channel interference—has been resolved in a manner we view as fair, equitable and public-serving. We find no compelling reasons for lengthy consideration of that application, especially in light of the overall circumstances. However, our actions herein cannot be taken as foreclosing future filings by any qualified party who may desire to compete, at the appropriate time with the proper application, for the 770 kHz assignment now licensed to WABC. Therefore, we are dismissing KOB's application (BP-13932), and granting the WABC renewal application (BR-167).

31. Accordingly, and pursuant to sections 4(d), 303(r), 307(b), and 308(a) of the Communications Act of 1934, as amended, it is ordered, That the "Petition to Enlarge Scope of Proceedings" filed by WEW and supported by KXA, is denied.

32. It is further ordered, That Hubbard's application (File No. BP-13932) to establish a new class I-B station in New York City on 770 kHz is dismissed as inconsistent with the rule amendments herein adopted, which contemplate a I-A clear channel priority on 770 kHz at that location.

33. It is further ordered, That Hubbard is directed to tender for filing, on or before June 30, 1978, an application to modify its outstanding construction permit (BMP-1738) to specify a nighttime directional pattern and theoretical parameters appropriate to the operation of KOB as a class II-A station.

34. It is further ordered, That section 1.1111 of the Commission's rules are waived to permit the acceptance and processing of such application without payment of filing and grant fees.

35. It is further ordered, That Hubbard's program test authorization of October 25, 1963, is hereby extended until further order of the Commission.

36. It is further ordered, That ABC's application (File No. BR-167; Docket No. 14225) for renewal of the WABC license on 770 kHz is granted without prejudice to such further action as the Commission may deem appropriate upon the conclusion of proceedings in which *American Broadcasting Companies, Inc.*, is a party defendant: (i) *Columbia Pictures Industries, Inc., et al., v. American Broadcasting Companies, Inc., et al.* (Civil Action File No. 70 Civ. 6202, United States District Court for the Southern District of New York); (ii) *United States of*

America v. American Broadcasting Companies, Inc. (Civil Action File No. 74 Civ. 3600, United States District Court for the Central District of California); and (iii) *Dubuque Communications Corp. v. American Broadcasting Companies, Inc.* (Civil Action File No. 73 Civ. 1473, United States District Court for the Northern District of Illinois, Eastern Division).

37. It is further ordered, That effective June 4, 1976, sections 73.22, 73.25 and 73.182 of the Commission's rules are amended as set forth in the Appendix.

38. It is further ordered, That proceedings in Docket Nos. 6741 and 14225 are terminated.

(Secs. 4, 303, 307, 308, 48 Stat., as amended, 1064, 1082, 1083, 1084; 47 U.S.C. 154, 303, 307, 308)

Adopted: April 21 1976.

Released: APR 30 1976

PART 73—RADIO BROADCAST SERVICES

Clear Channel Broadcasting; Standard Broadcast Band

1. On April 21, 1976, the Commission adopted a report and order on the above-entitled matter (41 FR 18419) and, among other things, directed Hubbard Broadcasting, Inc. (Hubbard) to tender for filing, on or before June 30, 1976, an application to modify its outstanding construction permit (BMP-1738) to specify a nighttime directional pattern and theoretical parameters appropriate to the operation of Station KOB as a Class II-A station.

2. On June 10, 1976, counsel for Hubbard requested that the time for tendering its application for filing in the above-mentioned matter be extended to and including August 30, 1976. Counsel states that the additional time is necessary to afford Hubbard's consulting engineers adequate time to prepare the engineering for the application following completion and filing of other applications subject to the Commission's closed season on new and major change AM and FM applications which commences July 1, 1976. Counsel further states that the heavy workload occasioned by these other applications would make it extremely difficult, if not impossible, to complete the required engineering prior to June 30, 1976. Counsel adds that the grant of this extension will not unduly delay final resolution of the KOB-WABC controversy, since Hubbard has requested appellate review of the report and order, and it will be some time before these appellate proceedings will have progressed to the point that new KOB construction, if any, will be required.

3. We are of the opinion that the requested additional time is warranted. Accordingly, it is ordered, That the above petition for extension of time filed by Hubbard Broadcasting, Inc., for tendering an application to modify its outstanding construction permit (BMP-1738) to specify a nighttime directional pattern and theoretical parameters appropriate to the operation of Station KOB as a Class II-A station is granted and the date is extended to and including August 30, 1976.

4. This action is taken pursuant to authority found in sections 4(d), 5(d)(1), 303(r) of the Communications Act of 1934, as amended, and § 0.251 of the Commission's rules and regulations.

Adopted: June 18, 1976.

Released: June 22, 1976.

FIN

 Editor: Bill Hardy
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Special Features

APPEALS COURT UPHOLDS FCC
ON WABC-KOB MATTER; ONLY
APPEAL LEFT TO SUPREME COURT

The U.S. Court of Appeals at Washington, D.C., has affirmed the FCC decision of April

21, 1976, in a long-standing dispute between KOB-770 Albuquerque, NM, and WABC-770 New York City over use of the frequency 770 kHz.

KOB, owned by Hubbard Broadcasting, Inc., could keep the case alive by appealing it to the U.S. Supreme Court, but so far has not reached a decision on whether or not to appeal.

DK Monitor carried the FCC's Report and Order in the "KOB Problem" case, which dates back to 1941, in its issues of 3/5/77 (p. 289), 3/12/77 (p. 299), and 6/11/77 (pp. 394-396). To summarize the FCC decision, WABC was granted continued Class I-A status on 770, and KOB, which has been using Class I-B facilities since 1963, was ordered to change to Class II-A facilities. Class II-A facilities would require KOB to provide protection to the WABC coverage area to the east, specifically a crescent-shaped area in parts of Georgia, Tennessee, Kentucky, Indiana, Illinois, Wisconsin, and Michigan, which are supposed to be within WABC's skywave-coverage area at night but now receive objectionable interference from KOB. KOB's present nighttime pattern is based on both KOB and WABC operating as Class I-B facilities (i.e. directionalizing to protect each other), as proposed in a 1963 FCC decision. The Court of Appeals struck down that decision in 1965, saying all three network-owned stations in New York City (WNEC-660, WABC, and WCBS-880) had to have "comparable facilities" - that is, all three had to be Class I-A, or else all three had to be Class I-B. (WNEC and WCBS are Class I-A, 50kw nondirectional. WABC has operated 50kw nondirectional throughout the 36 years of litigation, but has received interference from KOB from 1941 to 1957, and from 1963 to present. There is now a Class II-A assignment, KRVN-880, on WCBS's channel, and a fulltime Class II assignment in Alaska, KPAR-660, on WNEC's channel. However, neither KRVN nor KPAR causes interference within the protected nighttime coverage area of WCBS nor WNEC, respectively, whereas KOB has caused interference, as noted above, to WABC.) The FCC decided that too many people would lose coverage from New York City if WNEC, WABC, and WCBS all had to directionalize at night with a null to the west. So, the FCC concluded, WNEC, WABC, and WCBS should stay nondirectional, as at present, and KOB should revert to a Class II-A status it had from 1957 to 1963.

KOB appealed the decision to the Court of Appeals. The court affirmed the FCC decision the week of 10/3/77. The Supreme Court is now the only avenue of appeal left to KOB, which is continuing its I-B operation pending the final appeals. (KOB, 50kw DA-N, is actually I-B in signal only; Class I-B stations are entitled to more protection than KOB is getting, and this is because WABC never applied for I-B facilities, like KOB did, after the 1963 FCC decision which went against WABC - the decision the court overturned in 1965, after KOB began using I-B facilities. Meantime, KOB was able to send more signal towards WABC than is normally permitted; because WABC did not protect KOB, KOB did not have to protect WABC. Thus KOB got more coverage to the east with the I-B arrangement than they will with the ordered II-A arrangement - and this is why KOB had appealed. KOB claims it will lose 100,000 listeners in its nighttime primary - local - coverage area. Plus, Class I stations get protection from interference in their nighttime skywave - distant - coverage area, whereas Class II stations do not get skywave protection. This could have an impact on the all-night "Jock Radio" truck-driver show on KOB, which is widely heard in the Southwest.

The effect of this decision, if it is upheld, will be to modify the nighttime directional pattern of KOB to provide less signal to the east and thereby possibly more signal to the north, west, and south. This will make KOB harder to log at locations east and northeast of Albuquerque, so try for it now if

parameters since 1963, anticipating the installation, by WABC, of a companion I-B nighttime directional array in New York City. WABC has, however, continued to operate nondirectionally. KOB does not, therefore, receive the nighttime protection to which class I-B stations are entitled under our rules (0.5 mV/m 50% skywave contour protection). Conversely, KOB is not protecting WABC's 0.5 mV/m 50% skywave contour, which is also the degree of protection which class I-A stations on "duplicated" clears are entitled to receive from class II fulltimers on the same channel. The net result is that during nighttime hours, the interference imposed on KOB by WABC destroys essentially all of what would otherwise be KOB's secondary service area and a substantial portion of KOB's primary service area. KOB, in turn, is destroying WABC's nighttime skywave service within a crescent-shaped area running through portions of Georgia, Tennessee, Kentucky, Indiana, Illinois, Wisconsin, and Michigan. This area, which encompasses metropolitan Chicago and Milwaukee, contains a population of about 9,500,000 persons within a 29,500 square-mile area.⁸ Admittedly, this represents a highly inefficient use of the channel, and if allowed to continue might well preclude the assignment of additional western class II fulltimers on 770 kHz as part of our deliberations in the new Clear Channel proceeding (Docket 20842). To summarize, and although not addressed by the parties, we believe that the permanent continuance of KOB on 770 kHz with its present I-B parameters is both technically unsound and, in view of the above-described impact on WABC's secondary service area, fails to meet the test of "comparatively equal channel facilities" among the major networks, as laid down by the Court in its 1968 decision.

21. Thus, by a process of elimination, we come to the solution recommended in the outstanding Notice in this proceeding; i.e., specifying II-A parameters for KOB and thus returning that station to essentially the same nighttime mode of operation as observed between 1957 and 1963. Given the reality of a 50 kW non-directional nighttime operation by WABC in New York City and the nighttime RSS limitation (approximately 2.2 mV/m) already imposed by WABC on KOB, adjustment of the latter station's directional pattern and operating parameters to meet II-A requirements instead of I-B requirements should not substantially alter the areas and populations it is presently serving.

22. The rationale of this solution was amply expressed in paragraph 46 of the Notice which initiated this proceeding:

In any event, neither KOB nor the public interest will be ill-served by its permanent assignment to the channel 770 kHz, with a II-A classification. Operating with a power of 50 kilowatts, day and night, on a basis which will protect WABC's present operation, KOB can serve extensive areas and populations. The conditions for groundwave propagation on 770 kHz are considerably more favorable than on 1180 kHz, the channel on which KOB operated unduplicated as a class I station for a brief period, and the primary service KOB would provide on 770 kHz as a class II-A station approaches that which it delivered on 1180 kHz in its class I status. While KOB will have no secondary service as a II-A station, this lack should not appreciably affect the viability of its operation.

⁸ This translates into area and population losses of 8 percent and 9 percent, respectively, within WABC's 0.5 mV/m 50% nighttime skywave contour.

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Special Features

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37-YEAR-OLD BATTLE DRAGS ON SOME MORE;
HUBBARD (KOB-770) LOSES AT U.S. SUPREME COURT;
THEN FILES AGAINST ABC (WABC-770) FOR CLASS I-A!

The U.S. Supreme Court has refused to review a U.S. Court of Appeals decision against Hubbard Broadcasting Inc., licensee of KOB-770 Albuquerque, NM, in an FCC dispute dating back to 1941 against WABC-770 New York City (owned by ABC) for Class I status on 770 kHz.

The Court of Appeals last fall had upheld a 1976 FCC decision favoring WABC and requiring KOB to downgrade itself from Class I-B status to the less-desirable Class II-A status. Unless KOB's latest legal maneuver succeeds, KOB will have to sharply curtail its nighttime signal in the direction of WABC's nighttime coverage area.

(For a write-up on the case, see the 10/22/77 DIM - appropriately enough, on p. 77, hi - and also the FCC's Report and Order on its 1976 decision, in DIM's dated 3/5/77, 3/12/77, and 6/11/77.)

The FCC decision granted WABC full Class I-A status on 770, allowing WABC to use 50kw nondirectional day and night. WABC has been operating as a I-A facility since the 1930's. KOB has been operating Class I-B, 50kw fulltime, ND days and DA nights, but with a nighttime pattern based on I-B operation by WABC (which WABC has never undertaken). The result has been stronger-than-permissible interference from KOB to WABC in the western and southwestern fringe of WABC's nighttime coverage area. Now, KOB will have to pull its signal completely out of WABC's nighttime skywave coverage area. What's more, as Class I-B, KOB received nighttime protection to its skywave coverage area in the West. As Class II-A, KOB will not be entitled to nighttime protection outside of its groundwave coverage area. That could mean greatly-increased interference to KOB, if further fulltime assignments are made on 770 in the future.

The directional pattern KOB will require to protect WABC will cost KOB some 100,000 listeners in the nighttime primary coverage area east of Albuquerque, not to mention lack of FCC consideration of KOB's nighttime skywave (distant) coverage area and its listeners, and the loss of many nighttime skywave listeners to the east and northeast (although KOB will pick up some additional listeners to the north and west with the new pattern). This is why KOB owners, Hubbard Broadcasting, fought the FCC decision all the way to the Supreme Court. Now, they've lost that battle.

But possibly, Hubbard still hasn't lost the war. Right on the heels of the mid-April Supreme Court decision, Hubbard came up with a new legal maneuver which just might be unprecedented in FCC history. Hubbard filed for Class I-A status in Albuquerque for KOB! The idea would be to have the FCC shift the site of the U.S. Class I-A assignment on 770 kHz from New York City to Albuquerque. Since the cities for I-A assignments are not "etched in stone" in the FCC rules, it remains to be seen whether the FCC would decide that a shift of the I-A assignment from New York to New Mexico would be in the public interest.

Within weeks of the Supreme Court decision, KOB filed its application for I-A status on Friday, 4/28/78 - just three days before the Monday, 5/1/78, deadline for filing objections to applications for renewals of radio stations in New York and New Jersey, including WABC. If Hubbard's application is found to have merit, WABC's renewal will go into a hearing against KOB's proposal. Or, the FCC could simply return KOB's application as "unacceptable." We'll let you know what happens.

If KOB does gain I-A status (which would mean 50kw-nondirectional operation at night), instead of losing 100,000 primary listeners at night, KOB would add at least 130,000 people to its primary coverage area at night, including some 118,000 who do not now receive any primary AM coverage at night, plus 7,211,800 more people in the nighttime skywave area!

(Based on 4/24/78 and 5/1/78 Broadcasting, used by permission, and on the past issues of WJ mentioned above). -RH.

FCC GRANTS 50-KW FULLTIME
C.P. ON 890 kHz IN
ST. GEORGE, UTAH

An FCC review board has granted a CP for the last available Class II-A assignment

in the western United States.

The review board granted an application by Albert L. Crain for a fulltime station on 890 kHz at St. George, UT, while denying a competing application filed by Julie P. Miner, licensee of KDKU-1450 and KDKU-FM, St. George.

Crain had applied for a brand new 50kw fulltime station. KDKU had proposed to move from 1450 (1kw day, 250w night) to 890 (10kw fulltime). 890 was only available for assignment in Utah, and because of the requirement that 25% or more of the population, or 25% or more of the area, within the II-A station's nighttime primary (groundwave) contour receive no other nighttime primary service. This pretty well precluded any assignment close to Salt Lake City, where KSL-1160 covers much of northern Utah. St. George is in the southwestern corner of Utah (in fact, it is closer to Las Vegas, Nevada, than it is to Salt Lake City), and hence the new station on 890 will have very little overlap, day or night, with KSL's groundwave coverage.

Crain now owns KESN-790 Prine, TX (a 1kw daytimer) and WMSO-1590 Collierville, TN (a 500w daytimer).

The FCC review board decided that Crain should have the 890 facility because he would bring a new media voice to St. George, population 7000. KDKU-AM-FM are currently the only broadcast stations there. Crain's preference for media diversification outweighed a slight preference for Mrs. Miner, who operates the AM and FM stations with members of her family, for integration of management and ownership.

(Based on 4/3/78 Broadcasting, used by permission.)