

Minneapolis, Minnesota, October 2017

Take a moment to find Las Cruces New Mexico and draw a one-hundred-mile circle around the town. Ten decades ago that area consisted of scattered farms and ranches, small communities. There was no electricity and few self-powered vehicles beyond the horse or mule.

This was the constituency to be served by the **New Mexico College of Agriculture and Mechanic Arts**. Some called it “The Cow College.” Yet the Land Grant school’s 1890 charter of education and enrichment was taken very seriously. Major courses of study included Engineering, Biology, Chemistry, Fine Arts, Horticulture and of course Agriculture.

The college was seeking new ways to reach out to their extended community at the time an electrical engineer named Ralph Goddard joined the faculty. With the help of interested area Amateur Radio Operators, Goddard built and licensed just the sort of the tool needed for outreach. The license for KOB was granted April 5, 1922...a radio station that would be expected to service many scattered thousands in behalf of the college.

The new self-funded station had more than its share of start-up issues. Licensed to the college (and essentially the state), political interference was piled on technology problems. The station dial spot was moved several time. The one thing you’ll learn in our accounting is how KOB *persevered* through it all.

Given its early scrappy history it’s probably not surprising that KOB met various challenges with determination and will. That included the 40-year battle with WJZ/WABC, the Federal Radio Commission, the FCC and the Courts over KOB’s service area. If you’re into David and Goliath tales, click on the URL below to learn in detail of the machinations and maneuverings of crack legal teams, engaged by owners who always had one more round in them after being repeatedly knocked down.

This sort of struggle is fascinating to me as a hardened 60-year radio veteran. It’s one of those stories that’s instructive and almost entertaining if you’re one of those folks who care about how the radio business developed in the years when the lawyers made much of the money.

There are dozens of similar stories in broadcasting history. Many are anecdotal and even parochial but some stand out for their uniqueness. Probably the most familiar to broadcast historians is that of WLW and its Super-Power operation. But did you know there are easily a dozen back-stories of other big stations fighting the Clear-Channel developments? Many of these accounts are highlighted in the RADIO section of www.durenberger.com

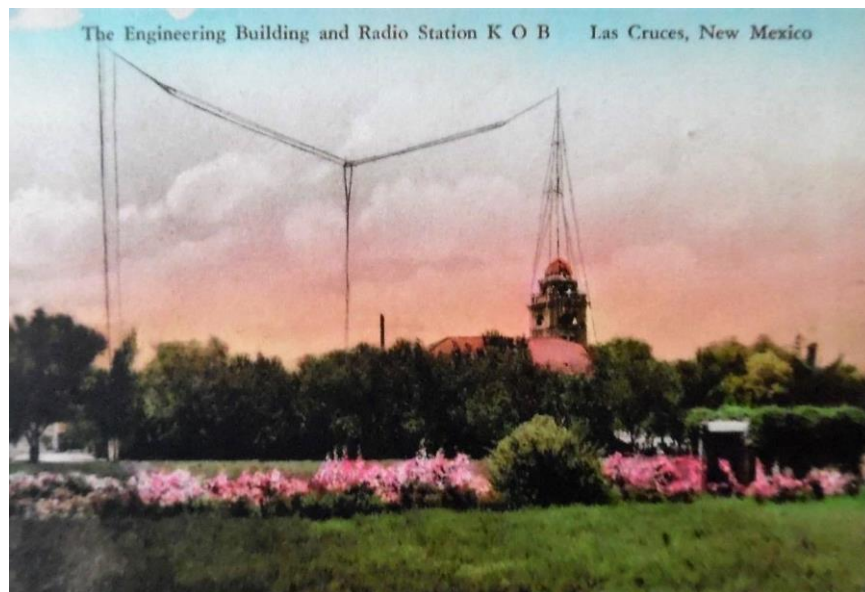
This website is an ongoing Labor of Love. I was totally smitten as a 13-year-old. Dad was Athletic Director of a small private college in Minnesota and was friends with the sports announcer on the nearby small-town radio station. After enough bugging, Dad took me to the station to meet his sports pal who was on the air at the time. I'll never forget walking up the steps into the control room...to find *no* sports guy...just a reel of tape circling around the reels of an Ampex recorder. Now THAT was beyond cool!

And those (RCA 76-B) consoles! The engineer on duty opened the production console and demonstrated how it all worked. From that moment and due to the kindnesses of station folks, I knew exactly what I wanted to do with my life. Garrison Keillor was correct: "Nothing you do for a youngster will ever be forgotten." Of course I followed the usual path into a paid gig at that station...hanging around and bugging folks; started working there in 1956 and never looked back. The pay was probably \$1.50 an hour.

So radio history remains important to your friendly correspondent. Certainly not all tales have been told; it'd be great to hear how WOI Ames Iowa was able to hang on to 640 over all these years. And we'll be reporting to you about the "830" battle between WCCO and WNYC. Then there are the stories around the Catalina Island maneuvers.

Our plan in these pages is to highlight some of the more interesting battles, beginning with the KOB/WABC brouhaha. There's a good deal of detail here; all of it from official documentation.

So grab a cuppa for the KOB/WABC battle:



KOB AND DECADES OF CONFLICT

Like many other pioneer radio stations, KOB began life as the dream of an electronics visionary. What may have been somewhat singular is that this station's birth, nursing and early upbringing were supported by an institution of higher learning and so the outfit was able to weather the usual crises of confidence that haunted so many early investors in "radio." KOB may have begun as an engineer's hobby but it was soon recognized for providing information services to a wide area of the sparsely-populated Southwest: dirt-poor farming and ranching communities without electricity and with scant knowledge of agri-business development.

To many there's a magic and magnetism to the Southwest. During my 1980's years with Hubbard Broadcasting KOB was part of that allure. My own association came at the tail end of KOB's 39-year battle to maintain its coverage area. The skirmishes were finally over; the FCC and the courts had ruled, and it fell to my crew to comply with the order to adjust KOB's nighttime coverage to protect WABC. That meant a tower move. During the period of reconstruction I began to hear the stories of KOB's unusual history... but there was no one living in the 1980's who possessed the complete picture of KOB's struggles to grow and mature.

Then came *AmericanRadioHistory.com* with searchable copies of *Broadcasting Magazine*. That provided access to several dozen news stories and FCC Notices regarding KOB, and many included context. The KOB-WABC battle was only one of KOB's struggles. Other skirmishes included petitions to deny KOB's license by two sitting governors and a challenge by the New Mexico college that built and then sold KOB...and then wanted it returned.

In compiling this information it became apparent the best way to tell the story was to create a timeline based on these public documents and to reinforce that information with Ann Velia's great book "*KOB: Goddard's Magic Mast: Fifty Years of Pioneer Broadcasting*" from which we derived further context.

Today, KKOB-770, Albuquerque New Mexico operates its 50-kilowatt AM radio service in the country's 69th-ranked radio market. While competing with 64 other radio signals it provides "wide-area" service to a half-dozen states (daytime) and to most of the western half of the country at night. And KKOB calmly delivers its revenues to Cumulus Media.

Almost a century ago, Ralph Willis Goddard nourished a dream. He had grown up in Massachusetts in a family that encouraged his interest in mechanical and electrical devices and by the time he graduated from high school he had opened his own company, selling hand-built inventions, from electric bicycles to dynamos. He graduated from Worcester Polytechnic Institute in 1911 and went to work teaching Electrical Engineering at the University of Nebraska for a few years before being lured to the post of Electrical Engineering Department Head at the New Mexico College of Agriculture and Mechanic Arts near Las Cruces New Mexico (hereinafter the "college" or "the school").

Goddard and the college were a perfect fit. The school supported and nurtured development in the electrical sciences. Goddard as part of his duties established a radio club that began operating amateur radio stations; among them 5XD. He developed an interest in delivering news, weather and farm information to the wide-open territory in which he lived, using the developing art of “wireless telephony.” His standing at the school led the college board to endorse an application for a “radio broadcasting” station. The license with the call letters “KOB” was granted on April 5, 1922.

The KOB call-sign had been used by the steamship Princess Anne (she had sunk off Rockaway Shoals New York) and the call letters were available for reassignment. At the time only one other station was on the air in New Mexico; the short-lived KNJ Roswell which went dark in late 1923. KOB was licensed with practically everyone else in the country on 360 meters (approximately 833 kHz). Nearly all of KOB’s equipment was hand-made by Goddard. Station power was about 500 watts...from not much of a tower...



From “KOB: Goddard’s Magic Mast: Fifty years of Pioneer Broadcasting”

Historians recall the “chaos” on the AM broadcast band that reached a nadir in 1926. The Department of Commerce had given up its licensing authority and the Federal Radio Commission (FRC) was created to herd the cats. The FRC’s early attempts were seemingly ad-hoc; they would try a station-assignment plan and, when that created even more problems, would try another plan. Station assignments were being moved almost monthly.

In KOB’s case, after the first assignment on 360 meters it had been assigned 860 “kilocycles” in 1925 (348.6 meters). In 1926 the FRC moved KOB to 760 (where it first encountered WJZ/WABC). Records show the City of License as “State College, New Mexico.” KOB had an authorization for 1,500 watts and was planning for 5,000 watts; Goddard was beefing up power supplies and looking for bigger tubes.

Among the stations sharing 760 at this time was KWKH in Shreveport LA, run by the renegade “Pappy” Henderson who ignored all the rules about power and time-sharing and exhorted his listeners to complain to the government about the way he and his station were being treated. (The KWKH story is worthy of a separate recounting.)

In February 1928 KOB was granted 7500 watts and moved from 760 to 1050...for one month...then was sent back to 760 by the FRC. And in November 1928 KOB was moved to 1180, with 10 kilowatts. As a condition of this far-better assignment KOB was ordered to share post-sunset time with KEX Portland (KOB 1/3, KEX 2/3). Within a year KOB was authorized for 20 kilowatts. Goddard went back to the machine shop.

Since its first day of operation the college found itself bearing KOB’s increasing operating costs and needed some help. It was rare that a high-power station could survive in an area with a small economic base; almost all the other big stations were anchored in significant population centers. In the late 1920’s the school authorized commercial sales and, failing success in that endeavor, Goddard was advised to “shop” the station.

Ralph Goddard was a true “Engineer” and in his makeup was a deep respect for technical operating rules and practices. KOB was thus a model for technically-correct operation. Goddard was constantly at work in the transmitter, eking out major and minor performance improvements. He was working there one evening in late December 1929...when he stepped in the wrong place and was electrocuted.

After Goddard’s death KOB, which had certainly required technical handholding, fell into some disorder. The word got back to the FRC that the station wasn’t maintaining the required technical operating standards. In such condition the station wouldn’t have been terribly attractive to a potential purchaser. So in 1930 the college took the station off the market, reaffirmed its support, began to clean up the problems and continued to try time sales.

Meanwhile T. M. Pepperday, who owned *The Albuquerque Journal*, saw an opportunity to scratch an itch to try broadcasting. He approached the college with an idea...and in 1931 the Board of Regents accepted a proposal by which the Journal would take over operation of KOB, moving it to Albuquerque and rebuilding it properly, while the college retained the license.

At the same time KOY in Phoenix went to the FRC asking for KOB's license and citing the station's technical issues. That request, while turned down, certainly inspired the Regents to make the decision to hand KOB to Pepperday.

The station went on the air in Albuquerque on 1180 in 1932, still time-sharing with KEX in the evenings. The classic adobe transmitter building is still in use.



Source: KOB files

Through a further clarification to its agreement with Pepperday, the college added language *leasing* KOB's facilities to the Journal. Station "profits" were divided 50%--50% between the newspaper and the college. The agreement also guaranteed the college "*access to KOB air time*" (this was another arrangement that would grow thorns).

Citing its inability to deliver the licensed 20 kilowatts, KOB in 1932 asked the FRC to reduce its authorization to 10 kilowatts. This candor, and the emerging reputation of its new engineer George Johnson, made KOB some new friends at the Commission...including a fellow named Wayne Coy. KOB was given the power-reduction and remained licensed to the college and leased to the Albuquerque Journal..

The Journal soon discovered that KOB was too expensive to operate with only 50 percent of the profits as a return. Pepperday wanted the college to take it back...but to keep the station in Albuquerque. The school, near faraway Las Cruces, said no; the distance was impractical.

So a contract affirming the original agreement was initialed in 1934, but now included in the settlement was some cash from the Journal to the college and a re-commitment to station operation by Pepperday.

As for the evening time-share with KEX, in 1934 KOB asked for full-time operation on 1180. The new FCC told KOB that, if it wanted such full-time operation...and did not directionalize to protect KEX...it would have to reduce power to 5,000 watts after Portland sunset.

(By the way, in these time-sharing situations it was apparently common practice for the FRC/FCC to grant temporary time-waivers, based on the desire of one of the stations to clear specific programs. The stations had to apply in advance for these waivers. The record shows several of these requests, for such content as Presidential addresses.)

KOB initially chose the FCC's "5-kilowatt" option so it could immediately operate full-time. It also appeared that KOB might stay full-power nighttime if it built a directional antenna to protect KEX. KOB applied for a directional-antenna authorization, but these plans were overtaken by the channel-assignment machinations leading to the North American Regional Broadcasting Agreement of 1941 ("NARBA"). Uncertainty was about to reign yet again.

While KOB was keeping an eye on its channel-assignment future, New Mexico Governor Clyde Tingley announced one day that 'the college was getting a bad deal' out of its arrangement with the Journal (Tingley, it seems, was smarting from his treatment by Pepperday and the newspaper). Perhaps seeing the value of KOB in furthering his own political agenda, Tingley wanted the State to take over KOB. Legislators pushed back telling the Governor that KOB was too expensive for the state to operate. The Legislature agreed with the college's board that, without the Journal's continued cash infusions, the station would go under.

Tingley, a highly-respected civic leader, never met a cause he didn't like. But on this one he went off without knowing that the deal signed with the college was actually of benefit to the school. The public discourse got personal and silly, to Tingley's discredit. Pepperday used KOB and the newspaper to fight back (this was not the only time KOB would be involved in media concentration matters). In the end, Tingley walked away from the fight he had started.

Then in 1936, the college *did* attempt to regain control over KOB...but wanted to operate it as a non-commercial station. The FCC rejected that proposal. After the lawyers and the Board of Regents were through talking, KOB's license was formally sold by the college to "*The Albuquerque Broadcasting Company; T.M. Pepperday sole owner.*" (It was necessary to differentiate between a newspaper and private citizen licensee to comply with the FCC's media concentration laws. But in this case the distinction eludes one.)

At any rate the new broadcasting company agreed to get serious about radio and pledged to rebuild the station. But lurking in the files of this 1936 sales agreement was language that would haunt both parties.

The Albuquerque Broadcast Company rebuilt KOB while it looked for an opportunity for a permanent operating frequency. The preliminary positioning for NARBA was making many stations uneasy. The formal “pre-plan” was 1934’s so-called “Havana Agreement” on North American broadcast assignments, which was to guide the 1941 frequency reassignments. From the start, the “Havana Agreement” had teething problems.

The United States delegation was tasked with creating a ‘potentially-permanent’ Table of Frequencies, whose protection by other countries in the hemisphere would be guaranteed by International Treaty. In those pre-computer days that meant conferences and more conferences to discuss laborious hand-crafted draft documents; these were continually under review and modification as stations invoked NIMBY. To its credit, the FCC involved its licensees in the dialogue, rather than simply announcing new operating assignments, as the FRC had been doing.

WHOOPS: During the years prior to its 1936 sale to Pepperday, KOB as a college-licensed station had been included among the “Educational Stations” on the FCC’s assignments list. As such, the station unwisely refrained from representation in the Havana discussions, though it did forward a request to have its channel designated as I-A. *But the Commission forgot to deal with KOB’s allocation during the Havana conferences.*

One of the FCC’s projects ahead of 1941 was to integrate the Havana Agreement with the FCC’s own “Craven Plan” for more-equitable allocations. Goals included reaffirmation of international protection for certain 1-A stations, and the establishment of sharing-assignments for some of the others. The U.S. had transferred six of its I-A frequencies to Mexico and had to make room for the high-power stations that were on those channels...which at that moment included WOWO, KEX, WAPI, KVOO, WWVA, KOB AND KYW. First, WJZ was moved from 760 to 770 while WBZ was moved to 1030. As to who would have to share, ideas abounded. Written proposals flew across the country at the speed of train-mail delivery and the potentially-affected stations loaded their political cannons.

The first draft proposal would have WOWO sharing 1160 with KEX, while KOB would split 1180 with WAPI. KVOO and WWVA would share 1140. A follow-on idea was that KYW and WAPI would share 1020 and KOB would be alone on 1180. (This version was confirmed in 1939 and KEX filed to move from 1180 to 1160.) KEX’s filing meant KOB could operate full-time on 1180 and, in 1940, KOB was authorized as a Class I station on 1180.

Then Eastern Interests succeeded in getting 1180 re-classified as a I-A clear channel and the frequency, tentatively assigned to New Mexico, was instead placed in Rochester NY.

The so-called “final” NARBA frequency assignments downgraded 1030 from I-A to I-B status and placed KOB on 1030, sharing the frequency with WBZ (the FCC was apparently unaware that WBZ put a useable nighttime signal into Albuquerque). The record is vague about what followed but apparently KOB went on the air for a short time on 1030; 50 kilowatts day, 25 nights, non-directional.

Because of KOB's interference to WBZ, a latter-day Boston Tea Party appeared imminent. KOB had also complained about return interference from WBZ, and they knew that the Treaty proposal also assigned 1030 to Mexico City (a situation that would have crimped KOB's reach in the Southwest). In addition, there was potential interference to a KOB-1030 operation from a Roswell New Mexico full-power assignment on neighboring 1020.

The FCC, realizing it had a serious issue with 1030 in New Mexico, conducted a comparative interference analysis and on its own motion assigned KOB to 770 on a "temporary" basis for "factual observations." WJZ didn't object at the time due to its understanding of the *temporary* nature of the assignment. At the same time KOB was given a permanent license for 1030...just in case. (You should know as you read on that the KOB authorization for 1030 remained in force throughout most of the impending KOB-WABC conflict years.)

And so, with the NARBA dial changes in 1941, KOB was now ('temporarily') assigned to 770, operating 50 kilowatts days and 25 kilowatts night, non-directional.

KOB AND WABC: GENERATIONS OF WHITE-LIPPED ATTORNEYS

And so it begins. A 1941 protest to KOB on 770 was filed by NBC "on behalf of its affiliates who didn't want duplicated network coverage." (One wonders why NBC couldn't just pull the NBC Network affiliation from KOB? But one also understands the real reason for the protest.)

With KOB remaining on 770, several stations were now eyeing 1030. In 1943 KWSC Pullman WA asked for KOB's 1030 assignment, arguing KOB would never return to that channel. A year later the FCC announced it had authorized KWBU Corpus Christi TX for daytime high-power operation on 1030. And KARM Fresno CA also wanted on the channel. KOB's 1030 fallback option was being devalued.

KECA Los Angeles then decided to file for "a breakdown of 770." The FCC wrote a response that was of value to both sides in the coming battles. It told KECA that it could not accept their breakdown proposal "*since by International Treaty, 770 had to remain a I-A channel.*"

Nevertheless, by 1945, 770 applications included KECA as well as KXA and WEW St. Louis. Additional applications would be filed by KMBC and by KFEL Denver.

While the 770 applications were arriving in Washington, attorneys for KOB asked the FCC to "issue KOB a permanent assignment to 770." This request was granted; however, subsequent FCC authorizations for KOB contained the same conditional language that was included in the original 'temporary' 770 assignment. At this point, everyone took a break.

Except for the folks at KOB...who encountered other troubles closer to home.

For several years a dispute had been brewing between KOB and the college over just what constituted "access to air time." The college had wanted *specific* blocks of time; KOB said no and the FCC affirmed that KOB wasn't legally able to relinquish control over its air-time.

That was enough for another New Mexico governor who had also been bashed by Pepperday's Journal in print (and, presumably, by Pepperday's KOB on the air). Governor John Dempsey demanded the FCC revoke KOB's license, alleging "personal scandalous attacks" by Pepperday. In response, the Journal said Dempsey "was attacking Freedom of the Press" and challenged the governor to "go to court, not to the FCC." Personal challenges flew.

In 1946 KOB added more ingredients to the stew. They wanted release from a requirement of their 1936 agreement that required them to co-ID with the college as joint station operators (though they hadn't done these IDs for years). Dempsey seized the moment. He invoked the FCC's Section 317 requiring sponsor identification and wanted a fine levied against KOB for each infraction of the co-ID rule. He arbitrarily assigned a value of \$2.00 for each ID infraction and unilaterally calculated 250,000 such violations. "That's a half-million dollars you owe the college. Pay up!"

The wags among us might be saying "this could only happen in New Mexico." But folks there took their politics seriously and Dempsey had a loyal following, so this was not a trivial matter. While Dempsey's soup was coming to a boil, KOB got a call from the college attorneys. The school now wanted KOB's license *returned to them* and filed against the renewal of KOB's license to Pepperday. The matter was sent to the U.S. Circuit Court of Appeals. Arguments before the Court: KOB: "*The 1936 contract governing 'air-time access' is confirmed as illegal by recent FCC rulings.*" The college: "*If that's true, then the 1936 agreement itself is illegal and the transfer to Pepperday should not have happened.*" KOB: "*We were to provide air time...but not specific air time as the college had been demanding...which would have been illegal.*" (The record doesn't show that the co-ID issue was argued in the proceeding.)

On January 20, 1947, the Court upheld KOB while the FCC assigned Dempsey's challenge to a hearing. Dempsey's petition was enlarged to include the matter of "identical editorial positions taken by the newspaper and by KOB." This second "media concentration" challenge against KOB and the Journal apparently went nowhere.

In 1949 the college's attorneys asked the FCC to 'reconsider the Court's decisions'...while also sitting down with KOB to try to work things out locally over an iced tea. The iced tea must have been too bland for some; KOB was soon back in court, asking that the FCC affirm its decision on the KOB/college time "contract."

By now Pepperday seemed to be losing his zest for the fighting. Besides, he now had KOB-TV to build out. In 1950 he announced that the station "will compensate the college for its (alleged) lost time...and failing acceptance of that solution, KOB would just give up its license." Pepperday would relax when in 1951 the FCC affirmed that "contracts for no-charge perpetual time are illegal." Tom Pepperday wanted to remain friends with the school; he gave them \$50,000 to settle any remaining disagreements while also agreeing to *some* carriage of college programming..."*but under the Licensee's control.*"

In 1952 Tom Pepperday exited the KOB-AM business, selling the station to TIME Inc. and Wayne Coy, who (coincidentally?) had been FCC Chairman during the previously-reported maneuverings before the Commission. WJZ opposed the transfer; KOB successfully petitioned the FCC to act on the transfer and to treat the 770 matter separately.

MEANWHILE BACK IN WASHINGTON, we have some catch-up to do to get back to our timeline. In 1948 we see that Wayne Coy, while still FCC Chairman, had told Congress that the Mexicans intended to build a station on 770, in accordance with the NARBA treaty (which Mexico still hadn't signed). He told the Representatives that unless 770 was duplicated (presumably by a New Mexico authorization) the Mexicans would probably move ahead.

He also suggested the FCC *could* duplicate 770 while still allowing the channel to remain I-A under treaty obligation. What *wasn't* made clear was whether the FCC would be plowing new ground by this option; after all, at this same time, the Commission was considering breaking up the clear-channel frequencies. Nevertheless, the Mexican-770 threat would serve as a stimulus to address the KOB matter.

ABC was watching all this. In 1949, ABC (as licensee of WJZ) asked the FCC to put KOB back on 1030 where they still held a license. The FCC in response cited the impending clear-channel break-up rule-making as a reason for keeping its powder dry. KOB in response asked that both 770 stations be authorized to operate full-time, full-power...*both* with directional antennas (in effect; two I-B stations on a I-A channel). This they said was a simple solution in alignment with proposed clear-channel rule-makings.

Faced with this business of a major clear-channel proceeding, the FCC staff took a deep breath and "denied all KOB/WJZ/770 petitions for now." This was followed by a denial of WJZ's demand for a KOB move to 1030.

There were now several applications on file for 770 and the 1030 applications now included KARM, KWBU, KTHT, KUTA and KWSC and KGA. It must have been fun to be around the FCC's water-cooler when all these applications were tendered.

In a 1951 filing WJZ told the FCC "it will offer a new frequency proposal for KOB" (none was forthcoming; most observers seemed to agree that 770 was the best channel for a 50-kilowatt station in the Southwest). WJZ also went before the U.S. Court of Appeals for the District of Columbia and smiled as the judges remanded the case to the Commission, directing the FCC to "resolve this issue with all deliberate speed," while also reversing the continued extensions of KOB's temporary authority for 770. The Court said such continued extensions had the effect of modifying WABC's license without affording WABC an opportunity for a hearing. The Court said to the Commission: "Follow the laws"...but added "The FCC must *exercise its discretion*."

The Commission thus reactivated the KOB case, removing it from its "*pending clear-channel-matter-resolution*" files. More hearings were scheduled.

WJZ now told the FCC it must also “look at every other I-A channel before a final determination is made.” A 1951 news report announced that “a showdown is near.” That proclamation would be frequently re-uttered.

There were other skirmishes before the FCC in 1952: WJZ filed to claim it would undergo a ‘severe loss of listeners’ with I-B status and KOB said “prove it.” The FCC seemed to agree with KOB’s suggestion and scheduled another hearing. (Wag’s note: Did the FCC action reflect the fact that their recent Chairman was now a KOB owner?)

In response to this latest hearing announcement, WJZ said “just move KOB to 1030 and we won’t participate as an adversary in the hearings.” “Besides,” WJZ argued: “the FCC should remember it told WJZ in 1941 that the move was only *temporary*.” WJZ added that the 1030 issue with WBZ was only a nighttime matter. It weakly suggested that “Westinghouse/WBZ could make up any nighttime losses through coverage by its other stations.” Finally, from WJZ: “If the FCC’s not going to move KOB to 1030, the Commission must look for another channel for KOB” (though WJZ still offered no suggestions). In March of 1953 WJZ became WABC.

The next FCC hearing was on the wider matter of WABC/KOB co-existence. On April 6, 1953 the Commission’s Hearing Examiner concluded KOB should stay on 770 and be granted a license co-terminus with its 1030 authorization (5/1/54). (Anecdotaly, this hearing and following oral arguments got emotional. KOB later filed to modify part of its pleading “regarding certain characterizations made about ABC.”)

There things sat...for almost a year. In 1955 the FCC re-opened the 1953 hearing, initially calling KOB, WABC and WBZ as participants. KXA then filed to join the hearing to support its own 770 filing (now 13 years old). This time KOB won an extension for its 770 operation; the FCC citing statistics that showed this was a better solution than 1030. It turned against WABC its own previous argument (“*If WBZ loses with KOB on 1030, WBZ’s co-owned stations can make up the difference*”). The Commission pointed out that, absent KOB on 770, WABC’s ‘gain’ would be *mostly in areas served by other ABC stations.*”

KOB and WABC were also told to provide mutual protection. Both stations were ordered to find “representative parcels of land” on which to build directional antennas. ABC in response would take the matter to court.

1956 was a busy year for the attorneys and the filing clerks. In response to follow-up pressure from the 1951 Court, the Commission announced the hold-up was due to their discovery that the 1946 data that informed the *clear-channel matter* was “out of date.”

The Clear-Channel Broadcasting Service, sensing shifts in the political winds regarding clear-channel break-downs, now chimed in to ask for an entire new proceeding, not just a data update. Besides, it was pointed out in October 1956, negotiations with Mexico “may have obviated aspects of the situation.”

In late 1956 the U.S. Court of Appeals ordered the FCC *to take immediate action to eliminate the interference to WABC*, adding: “Either move KOB or require them to protect WABC.” So the FCC gave KOB ten days to agree to protect WABC by: “Going off the air, going to 1030 (protecting WBZ) or building a directional antenna to protect WABC.”

The Order added that, from its interference data, the FCC thought the last option was the best. And then it added, politically, of course this was all “pending resolution of the *clear-channel matter*.” KOB was asked how long it would take them to build a directional antenna (90 days seemed to be a good estimate). This was followed by a Construction Permit for KOB to build the directional system. KOB agreed to directionalize and the Commission removed KOB’s 770 operating-authority pro forma extensions...while continuing to issue those extensions but now formally qualifying them as “*contingent on resolution of the clear-channel proceedings*.”

In what was probably record turn-around time, air-space approval for KOB’s new antenna was granted a month later. The station set to work adding a second tower at its transmitter site. The directional system was approved and 50 kilowatts full-time DA-night was authorized on 4/22/57 (but let us note here that placement of the second tower was not designed to provide the full protection toward WABC that would be mandated later). Still, that might have been the end of things...*but*:

While all this was going on, KOB was acquired by Hubbard Broadcasting (over WABC’s objection) and a new level of energy would be inserted into the matter. Folks not deeply acquainted with the KOB/WABC story believe this fight was always between Hubbard and ABC but these records have demonstrated how much had gone on pre-Hubbard. KOB may have been fighting defensive battles to this point. Now Hubbard wanted the football.

You need to know something about the Hubbard ethic: When Stanley E. and Stanley S. Hubbard believed they were right in fighting for an issue, they would enlist their superb attorneys and consultants and go right to the wall; never accepting defeat when there was one more avenue of approach. Determination and fairness reflected the Hubbards’ business dealings. “*Always fight for what you believe in*” was a Hubbard mantra.

In the news reports to follow on the continued battle, we found the headlines in *Broadcasting Magazine* including words like “battle,” “imbroglio,” “debate,” “feud,” “hoary problem,” “quarrel,” “wrangle,” “fight.”

Hubbard was first able to secure another FCC hearing reiterating the 1949 arguments, and the Hearing Examiner proposed that *both* 770 stations operate with nighttime directional antennas. That solution would have reclassified 770 as a I-B channel or created a singular I-A channel.

(In the following we use “Hubbard” and “KOB” interchangeably.)

In a Further Notice of Proposed Rule-Making issued in April 1958, this time on the *clear-channel matter* itself, the FCC proposed that five I-A stations (on 660, 770, 880, 1100 and 1180) build directional antennas to protect new western assignments on those channels. (This would have solved the KOB problem.) Full-time duplicated Class II assignments would also be made on seven other channels. Twelve I-As would remain untouched and 1030 was ‘set aside’ pending the KOB resolution.

One can imagine how that would go over with the five unprotected I-A stations.

In a 1959 comment on the clear-channel proceeding, Commissioner Robert E. Lee said “Class I stations should provide protection the same way Class II stations do.” His reasoning was that “one class of stations should not be allowed to generate more interference than another class of stations.” He was apparently in the minority...

In a follow-on Third Notice of Proposed Rule-Making in September 1959, the FCC tried a ‘substantially different approach’ and issued a Table of Proposed Secondary Assignments on 23 of the 25 I-A clears (660 and 770 excepted). Now the I-A primary stations would not have to directionalize as I-Bs. Specific states were called out for some of the duplications; in the case of 770 the assignment read: “at a western state to be determined.”

Now for the first time the record shows a glimmer of what would become a decisive argument: network-flagship parity. In late 1958 ABC suggested to the Court that KOB move to 660, 880 (or even 1180), since CBS’s 880 and NBC’s 660 have “a plethora of skywave services in the East.” WABC said that if KOB were to remain on 770, it should be reclassified as a “Class II Station.” (Class II stations were subjected to additional interference and were required to provide additional protection to existing I-A stations.)

Meanwhile WABC continued to file for extensions in opposition to the FCC order to build an antenna to protect KOB. The FCC in response to one such request directed WABC to *file for an early license renewal with license terms requiring the station to protect KOB at night*. ABC ignored the directive. For some reason the FCC staff concurrently told KOB not to go full-power at night, directional, “until WABC’s license was renewed on its normal date (6/1/60).”

By 1960, as the 770 fight was nearing its 20th year, this is how things stood. KOB was operating full-time at 50 kilowatts, DA/N as a I-B, protecting WABC *as though it too were I-B...* (not I-A, which would have required further protection). WABC operated full-time at 50 kilowatts and was not about to protect KOB. And across the west others were now planning to build 50-kilowatt Class II secondary stations on clear channels.

Hubbard Broadcasting now filed on WABC’s license renewal and announced that Hubbard would file to build a 770 I-B operation in New York, protecting KOB. (Hubbard may have also told the Commission it would withdraw this application if WABC agreed to protect KOB).

ABC's opposition took the form of a general objection to the FCC's policy of allowing competing applications during license renewal.

Then the FCC issued a 1961 "Decision" on the omnibus *clear-channel matter*, walking back its September 1959 "Third NPRM" proposal to duplicate almost all I-As. This "Decision" would reserve the original twelve I-A channels for possible higher-power operation. Calling out possible states in which to locate secondary stations, the FCC assigned 770 to New Mexico but did *not* specify what class of secondary operation would be required there. Artful.

A follow-on 1962 hearing was scheduled in which WABC reintroduced the "flagship-parity" argument and the Commission confirmed KOB's full-time, DA-night operation on 770. ABC requested the FCC remove WABC's directional-antenna requirement or said it would take the matter back to court. KOB in response asked the FCC to uphold this order "or this matter will drag on for years." (Hubbard Broadcasting added in a "salt-to-the wound" footnote that, if granted 770 in New York, they would have the station on the air in six months.)

That hearing's 1963 Report said that it accepted only in part the WABC argument regarding parity with other flagship stations, and pointed out again that other ABC stations covered the service area WABC might lose. The Hearing Examiner had recommended denial of ABC's request for 'license-renewal specifying non-directional operation,' and the FCC issued an order rejecting WABC's application for license renewal as a non-directional station.

"MAY IT PLEASE THE COURT..."

Now ABC went before the District of Columbia Court of Appeals, armed with the argument that WABC's coverage would suffer by comparison with the CBS and NBC flagship stations. ABC pleaded for "equal treatment with the other networks."

The FCC also wanted standing in the Court to deal with Hubbard's challenge to WABC's license "since it was "properly filed during the license-renewal term." Hubbard said "WABC created its own predicament by refusing to directionalize" and told the Court that "the FCC has been more than generous in allowing WABC so much time to comply, when KOB had only been given ten days to agree to protect WABC." Finally, Hubbard argued again that WABC should lose its license since it won't accept the FCC's order to protect KOB. But then...

In early 1965 that Court, in a unanimous decision, reaffirmed the 1961 Court directive to take into account ABC's competitive standing, and it reversed the FCC's directive that both stations be Class I-B. The Court ruled that ABC wasn't given fair treatment in the orders to share 770 with KOB, since that order would have downgraded WABC from a I-A to a I-B station. It noted that CBS now had its own duplication in the West and still managed to maintain protection for the New York flagship as a I-A station.

What few were aware of is that WCBS worked very closely with KRVN, the 880 duplicating station, to essentially eliminate all nighttime 880 signal to the east. KRVN ended up building a four-tower antenna. (The other duplicating stations in the west would typically use two towers.)

The Court went on to suggest the earlier FCC decision favorable to KOB “may have been overtaken by events or otherwise rendered obsolete.” It even recognized WABC’s argument about the cost of adding a directional antenna. The Court then suggested ‘maybe Albuquerque doesn’t need a Class I station.’ In strongly chiding the FCC for the length of this proceeding, the justices offered an alternative: the FCC could downgrade *all three* network flagships to maintain parity. Then the Court held Hubbard’s New York City 770 application in abeyance.

In response, the FCC re-opened what had essentially been a closed case (were it not for WABC’s refusal to comply with its orders). The Commission suggested that, absent a 770 solution that was within its power to enforce, it may have to reduce protection for all three network flagships. (This of course ignited yet another group of attorneys.)

The FCC went on to request additional information on whether Albuquerque “deserved a I-B station.” It asked the Court for further clarification on its Rulings (that request was denied). It asked for Certiorari from the Supreme Court for resolution; that too was denied.

So the FCC reopened *the clear-channel matter* for the sole purpose of clarifying the 770 situation and once again asked WABC to propose an alternative, workable channel for KOB and suggested that, absent such an alternative, according to the Court’s order KOB may very well be reduced to Class II status.

(It’s now possible to read into the FCC’s own language some sympathy for KOB and an emerging bias against the so-called need for flagship parity...this perhaps in reaction to the Court’s forceful language.)

In April 1966 the FCC in an Inquiry called for collaboration among applicants and regulators to find a “fresh solution to the problem.” All parties recognized the need for large-area service to white areas, but the Commission now suggested that higher-grade (I-B) facilities were not worth the disruption of existing I-A service from the east. ABC agreed of course, saying New Mexico is no more important than other western areas where Class II stations were being authorized. Hubbard then asked the FCC to hold a hearing with all three New York network licensees, to discuss downgrading all of them to I-B.

The Broadcast Bureau’s response to the April 1966 Inquiry was that 770 should remain I-A, that WABC would retain its I-A status and that KOB should be granted “II-A authority as a secondary station on a I-A channel.” (Class II-A stations must protect I-As but do not receive reciprocal protection.) Hubbard objected; arguing that all such secondary stations must be I-B, not II-A and it said the conversion of the secondary authorizations to Class I-B status is a practical solution that allows the existing I-A to retain its facilities.

Hubbard added that the FCC is ignoring its mandate to provide public service and suggested that, if the Commission can't handle this, perhaps Congress could provide the solution. Hubbard said "those attempting to provide wide-area service are being thrown to the wolves." KOB believed the 1958 decision to make both stations I-B is "useful and correct" and should stand.

Hubbard's next step was legislative. Through a New Mexico Senator, a bill was introduced to affirm that "*The public interest, not equal treatment*" should define FCC actions. There's no further information on whether this bill was heard.

THE 1969 NOTICE OF PROPOSED RULE-MAKING:

The FCC's 1969 NPRM was extensive and explanatory...if somewhat defensive. The Commission acknowledged that giving KOB I-B status on a Class I-A channel was fraught with difficulty, not the least of which was the setting of a precedent that would invite challenges from other Class II stations wanting equal treatment. It would also thoroughly upset the Table of Assignments constructed during the clear-channel rule-making. The FCC proposed that KOB go back to the II-A status it had from 1957 to 1963...thus requiring further protection to WABC.

The NPRM also eliminated a KOB-1030 alternative as unworkable. It noted no one had proposed a workable alternative to 770 except perhaps 1210 and that had been assigned to Guyton Oklahoma. It rejected the idea of downgrading all three network flagships to parity as contrary to the public interest and defended its original choice of 770 for KOB. It then reminded all parties that AM and FM were now being recognized as a "single aural service" and noted the many FM stations within KOB's coverage area.

Hubbard in response reminded the record that KOB once had Class I-A status (on 1180) and the station should be returned to that status on 770. Hubbard also argued that WABC provided very little "flagship" programming to its network; that 770 New York programming was now highly local...that in fact radio-network programming on *all* networks had seriously diminished. WABC did not respond to this claim.

After accepting replies and comments and counter-comments and further replies, the FCC issued its "Final" **Report and Order** on April 30, 1976. It confirmed its positions in the 1969 NPRM, noting that Hubbard's NYC-770 application is thus 'moot,' but leaving the door open to further challenges against WABC. It ordered KOB to protect WABC under the standard requirements imposed on a Class II station. And it "Terminated" the proceeding.

Hubbard immediately went to the U.S. Court of Appeals for the District of Columbia. It affirmed the FCC's Report and Order. In April 1978 Hubbard appealed to the Supreme Court; it refused to hear the case.

So 'Hubbard's fight was over.' But: ***Remember the mantra...***

Now trying “Door Number Two,” in 1978 KOB applied for operation as a Class I-A on 770. KOB had filed on WABC’s license-renewal application and argued that if 770 was to have a I-A station protected by II-A duplication, the I-A assignment should be moved to Albuquerque. At stake, said KOB, was a potential nighttime gain of some 7 million listeners; many of them in underserved areas. Such a I-A move would be “mutually-exclusive” with WABC’s I-A license and therefore, KOB said, deserved a hearing.

Citing “non-conformance with the Table of Assignments,” the FCC dismissed Hubbard’s application on 11/13/78 (some commissioners voiced fears that “a new round of litigation may be starting”). In 1979 the case went again to the Court of Appeals; this time at the FCC’s request. The arguments were detailed but the Court affirmed the FCC’s position: the I-A would remain in New York and KOB would be given II-A status. And that was that.

BUT THEN: What *Broadcasting Magazine* called “**KOB II**” showed up in the March 1981 notices. Hubbard had petitioned to amend the Table of Assignments, placing the I-A location in New Mexico, and was now filing for a Construction Permit to build a I-A facility there. Hubbard’s argument for this filing was that it needed “to protect its rights” against a 770 application filed for Lafayette LA.

Hubbard asked the FCC to hold Lafayette’s application “in abeyance” since KOB clearly deserved the channel. It cited the Commission’s mandate to provide “fair and equitable service” and noted the “heavy migration to the Sunbelt,” reminding the FCC that 18 of the 25 I-A channels are located in eastern areas of diminishing population. Lafayette fought back. Hubbard’s filing, it said, was based on “speculative, hypothetical and unlikely future commission determination.” (Lafayette finally came on the air low power in 1981).

The Broadcast Bureau denied Hubbard’s application for an Albuquerque I-A assignment. Hubbard applied for review; this was denied on September 30, 1981. Then came a try at the 8th District Court of Appeals: That Court said it “lacks jurisdiction in the matter.”

KOB would now have to conform to the technical rules defining “protection by a II-A station toward a I-A station.” The original I-B directional antenna parameters wouldn’t do the job and KOB would have to rebuild its directional antenna system. That meant moving a tower; we completed that work in the mid-1980’s. Loss of nighttime service to the state capitol Santa Fe was immediate. KOB reminded the FCC that the station’s obligations, as a primary provider of emergency information to the state’s capitol city, were now seriously impaired, and proposed synchronous 770 operation in Santa Fe. We installed a 230-watt station in Santa Fe in the mid-1980’s; it’s still running.

The bottom line: KOB was granted permanent, full-time “II-A” operation on a I-A frequency. Eventually as we know those sacred I-As were further duplicated and, at the time of this writing, the FCC is considering relaxing the skywave protection on the remaining I-A stations.

In the context of the dissolution of “Clear-Channel AM” protection and the proliferation of alternative aural services, it now seems as though the fight was akin to tilting at windmills. But at the time the stakes were high and station values and revenues may have been worth the cost.

Besides, “You always fight for what you believe in.”

Respectfully submitted,

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