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BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In the Matter of AMENDMENT OF THE RULES WITH RESPECT TO HOURS OF OPERATION OF STANDARD BROADCAST STATIONS	Docket No. 14419 RM-268

REPORT AND ORDER

(Adopted June 28, 1967)

BY THE COMMISSION: COMMISSIONER COX CONCURRING IN PART AND DISSENTING IN PART AND ISSUING A STATEMENT; COMMISSIONER JOHNSON ABSENT.

1. Section 73.87 (formerly sec. 3.87) of the Commission's rules allows certain classes of standard broadcast stations to commence operation with their authorized daytime facilities as early as 4 a.m., local standard time, subject to summary termination by the Commission. Historically, such terminations have grown out of valid nighttime interference complaints by unlimited-time stations assigned to the same channel. Although the privileges conferred by this section (since 1941) have been mainly confined to class III daytime-only stations authorized to operate on the 41 regional channels, a substantial number of class II and class I-B stations operating on frequencies other than foreign I-A clear channels have also benefited from its provisions, as have many unlimited-time class III stations licensed to use different facilities day and night.

2. Because of the proliferation of standard broadcast stations (particularly daytime only) following World War II, serious early morning interference conflicts had, by 1960, begun to develop on many regional and class I-B channels, resulting in the issuance of increasing numbers of termination notices by the Commission and challenges thereto by stations adversely affected.[1] The problem was further compounded by a decision of the U.S. Court of Appeals (D.C. Circuit) in *WBEN, Inc.* v. *FCC*, 290 F. (2d) 743 (1961), which, for the first time, gave standing to unlimited-time licensees to prosecute pregrant objec-

[1] *Reese Broadcasting Corp.*, 20 R.R. 1136 (1960). See also *North Shore Broadcasting Co.*, FCC 63-833 (1963); *Central Massachusetts Broadcasting Corp.*, 1 R.R. (2d) 518 (1963). In these and other cases, interference complaints by full-time stations were sustained where it could be established that the complainant was operating with its licensed nighttime facilities during presunrise hours; that the station complained against was using its daytime facilities during the same period; and that interference was indicated by calculations made in accordance with the Commission's rules. In many instances, the interfering skywave contour was found to extend more than 1,000 miles in all directions, thus guaranteeing favorable action on virtually all properly documented complaints. It will be appreciated that the resulting disruption of early morning services, particularly those of many years standing, raised public issues of significance, far transcending in importance the narrow question of objectionable interference and its method of calculation.

tions against daytime-only proposals involving possible future interfering operations under section 73.87.

3. In response to the growing number of early morning interference conflicts, which coincided with a petition for rulemaking, filed June 16, 1961, by Storer Broadcasting Co., the Commission initiated this proceeding by notice of proposed rulemaking, released December 8, 1961 (FCC 61–1446). One objective was the up-dating of the rules by the inclusion of the entire body of "presunrise" case law which had developed up to that time. Another element of the proposal was, however, to require all stations operating under the permissive provisions of section 73.87 to notify their presunrise operating hours to the Commission, thereby assisting unlimited-time stations in policing their channels by identifying possible sources of interference. This proposal would also have established a cutoff date beyond which newly authorized class III stations would be precluded from engaging in any presunrise operation with their daytime facilities.[2] Moreover, it was proposed in the notice and a clarifying order, adopted January 25, 1962 (FCC 62–98), to terminate all permissive presunrise operation by class II stations.

4. On July 2, 1962, the House of Representatives adopted H.R. 4749 looking toward the use of daytime facilities from 6 a.m. through local sunset and, in addition, providing for certain preexisting operations in the 4 to 6 a.m. period, the extended hours to be made available for stations in communities unserved by unlimited-time stations. This bill was never enacted into law. However, during its pendency we stated that we would restudy the entire subject of presunrise operation to see if some easing of existing restrictions could be provided.[3]

5. In addressing ourselves to this restudy, we were again faced with the nighttime propagation conditions under which presunrise transmissions take place, and the necessity for reconciling the objectives of this proceeding with other findings concerning the efficient nighttime utilization of standard broadcast channels. A review of our earlier findings in this area will illuminate our present task.

6. The use of skywave measurements for evaluating individual interference problems was abandoned 13 years ago, and the statistical approach, represented by the use of skywave propagation curves derived from extensive measurement data recorded over many years, was held to be the only satisfactory method of calculating nighttime interference (docket No. 10492; 10 R.R. 1562 (1954)). This approach was further refined in our decision in the daytime skywave proceeding (docket No. 8333; 18 R.R. 1845 (1959)), and calculations by the statistical method continued to be conclusive for determining the extent of skywave service and interference thereto during nighttime hours. *Storer Broadcasting Company*, 1 FCC (2d) 1594 (1965).

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[2] Since Jan. 25, 1962 (FCC order 62–98), class II and class III new and major change grants have been routinely conditioned against presunrise operation with their daytime facilities pending outcome of rulemaking in this proceeding. Approximately 500 outstanding authorizations are so conditioned.

[3] Excluding, of course, restrictions beyond the scope of this proceeding. These include the present 250-w ceiling on class IV nighttime power, as well as existing prohibitions against presunrise operation by class II daytime only stations assigned to frequencies on which foreign countries have I–A clear channel treaty priorities.

7. This approach was dispositive of our 1959 decision in the so-called "6 a.m. to 6 p.m." proceeding (docket No. 12729; 18 R.R. 1689 (1959)). After analyzing the comprehensive engineering data submitted in that proceeding, we concluded that if all daytime-only standard broadcast stations were to operate between 6 a.m. and 6 p.m. throughout the year "there would be substantial [overall] losses of existing groundwave services, new white areas would be created in the vicinity of communities * * * now served by unlimited-time stations on the same frequencies, and [existing] skywave service would be lost." We had reached the same result the previous year in the "5 a.m. to 7 p.m." proceeding concerning extended hours of operation for daytime-only stations.[4] It should be noted, however, that both proceedings and decisions presupposed operation with full daytime power and on all frequencies other than the six local channels, including channels reserved for clear channel operation, rather than the more limited proposal now before us.

8. In our recent report and order adopting more restrictive AM assignment standards (docket No. 15084; 2 R.R. (2d) 1658 (1964)) we called attention to the continuing erosion of existing services by the cumulative effect of new assignments in an already overcrowded band, and concluded that, except for class IV proposals, no application be accepted for new nighttime facilities (including the addition of nighttime facilities to an existing daytime-only station) unless it can, among other things, be shown that no interference to other stations will occur and that substantial "white area" coverage will be achieved.[5]

9. Against this background, it is clear that any resolution of the presunrise question must, of necessity, rest upon a realistic balance between the provision for needed early morning service, particularly in geographic areas where it would otherwise be lacking, and the interference which such service frequently causes to full-time stations assigned to the same frequency.

10. Our further notice of proposed rulemaking in this proceeding (FCC 62-1241, released Nov. 30, 1962), which followed the adoption of H.R. 4749 by several months (par. 4, supra), would have resolved this conflict in the following manner: Sign-on times for class II daytime-only stations not assigned to foreign I-A clear channels would continue to be keyed to local sunrise at the dominant station(s) if located to the east of the class II station; class III daytime-only licensees in communities or urbanized areas without local unlimited-time stations would, upon proper application, be licensed to sign on at 6 a.m.[6] with a power of 500 w (nondirectional); other class III daytime-only licensees would also be eligible to apply, but would face

[4] 17 R.R. 1669 (1958).

[5] In passing on petitions for reconsideration of the report and order in docket No. 15084, however, we noted that it "may be appropriate to adopt different standards for the limited time period involved in presunrise operation, in view of the different considerations which obtain." *Memorandum Opinion and Order*, 4 R.R. (2d) 1569 (1965).

[6] As proposed and adopted herein, "6 a.m." means local standard time, as that term has historically been used—the time prevailing in each of the time zones of the United States in relation to Greenwich mean time, not taking into account the 1-hour advancement heretofore called "daylight saving time." We will shortly revise our rules to take into account the new terminology of the Uniform Time Act of 1966. See the public notice of Mar. 17, 1967, FCC 67-331.

a rebuttable presumption that the desired presunrise service was unwarranted; class III presunrise proposals in conflict with the standards and priorities of the North American Regional Broadcasting Agreement (NARBA) or the United States/Mexican bilateral agreement could be authorized only with the concurrence of the foreign government involved; and interfering signals would, for domestic purposes, be determined by reference to a set of diurnal curves so constructed as to permit evaluation of skywave signal intensity at 15-minute increments throughout the period of transition (from 2 hours before sunrise). The further notice would not have permitted any presunrise use of daytime facilities by unlimited-time stations.

11. Appendix A hereto contains an analysis of the comments filed in the proceeding, chiefly those filed in response to the further notice, which were the bulk of the material. We note in passing that the manifest need for early morning service in connection with weather emergencies has already been met, in part, by our adoption of section 73.98 of the rules (docket No. 14703; 1 R.R. (2d) 1559 (1963)). In essence, this rule permits daytime-only stations to transmit (on a sustaining basis) nighttime traffic dealing with emergency weather conditions, including the announcement of school closings and changes in school bus schedules resulting therefrom. This authority is without regard to interference caused to other stations, but is limited to emergency situations in which unlimited-time service in the area is either unavailable or inadequate.

12. After issuance of the further notice and evaluation of responsive comments, it became clear that even with the power limitation proposed therein, a substantial percentage (perhaps a majority) of all potential class III presunrise proposals would result in cochannel nighttime interference (if judged by existing treaty standards) to unlimited-time foreign stations, and that this problem would largely consist of United States-Canadian conflicts where station sites and transmission paths lie in the northern latitudes most affected by seasonal fluctuations in daylight hours. It followed, therefore, that any meaningful relaxation in presunrise restrictions—a policy desired both by Congress and this agency—depended upon reaching agreement with Canada on modifications of existing nighttime protection standards. Accordingly, informal discussions were held with representatives of the Canadian Department of Transport and Board of Broadcast Governors to explore the possibility of a bilateral agreement on this subject pursuant to section A, subsection 6, of annex 2 of NARBA.

13. On the basis of these discussions, tentative agreement was reached in the form of a memorandum of understanding, signed in Ottawa on October 28, 1965.[7] The agreement was formalized, with

[7] In the course of these discussions, Canadian officials expressed an interest in obtaining presunrise operating authority for two daytime-only stations: CJSP, Leamington, Ontario (710 kc/s), and CHIN (formerly CHFI), Toronto, Ontario (1540 kc/s). It was determined that CJSP could, within the framework of the agreement, begin operation with a power of 500 w at local sunrise, New York City (the location of cochannel class I–B station WOR). However, in the case of CHIN, any presunrise operation would involve some degree of interference to cochannel class 1–B station KXEL, Waterloo, Iowa. Because of the importance of the CHIN proposal to the successful outcome of the negotiations, the licensee of KXEL was approached to obtain its consent to the interfering operation, CHIN to sign on at 6 a.m. Toronto time with a power of 500 w into its authorized directional antenna sys-

certain revisions, by an exchange of notes on June 12, 1967. The heart of the agreement is the reciprocal use of a new family of curves for determining acceptable United States-Canadian transborder radiation (fig. 12), with provision for downward power adjustments where necessary to reduce radiation to specified limits. As a result, operation by class II and class III stations during the transitional hours between 6 a.m. and local sunrise will generally be possible, except that: Class II operations will continue to be keyed to sunrise times at class I–B station locations to the east (assuming full 0.5-mv/m 50-percent skywave protection to all I–B assignments to the west) and class II daytime-only operations on foreign I–A clear channels will continue to be prohibited during the above transitional hours. Provision will be made for mutual United States-Canadian notification of all presunrise proposals. The protection requirements of the NARBA and the United States/Mexican bilateral agreement will be otherwise observed.

14. The advantages accruing to U.S. class III licensees from this agreement (without regard to domestic, Mexican, or Cuban interference problems) are illustrated by the following study of four regional channels:

610 kc/s.—There are 22 stations assigned to this channel in the United States. Of these, all but two can qualify for 500-w presunrise operation, in conjunction with their authorized daytime antenna systems.[8] These two can be authorized on the same basis but with power reduced to levels between 180 and 320 w.

920 kc/s.—There are 45 stations assigned to this channel in the United States, 42 of which can qualify for 500-w presunrise operation in conjunction with their daytime antenna systems. The remaining three can be authorized on the same basis but with power reduced to levels between 280 and 300 w.

1250 kc/s.—There are 56 stations assigned to this channel in the United States, 54 of which can qualify for 500-w presunrise operation in conjunction with their daytime antenna systems. The remaining two can be authorized on the same basis but with power reduced to levels between 300 and 400 w.

1600 kc/s.—There are 73 stations assigned to this channel in the United States, 68 of which can qualify for 500-w presunrise operation in conjunction with their daytime antenna systems. The remaining five can be authorized on the same basis but with power reduced to levels between 150 and 300 w.

Parallel advantages will accrue to class II stations in the United States vis-a-vis unlimited-time class II assignments in Canada, in that permissible radiation may be determined under the new, more liberal curves. Additionally, interference to Canadian I–B clear channel stations (although conventionally determined) may be eliminated by reductions in power to noninterfering levels, thereby providing a modicum of service in situations heretofore beyond reach.

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tem and to continue with that mode until local sunrise. KXEL acceded to this proposal on condition that no other exception to the presunrise solution contained in this document will be authorized or agreed to by the Commission. We feel this condition to be reasonable, and in signifying our concurrence we express our appreciation for the role played by KXEL in the successful outcome of these negotiations. The agreement does not, of course, contemplate negotiation of individual exceptions to its terms. Therefore, station CHIN is provided for as a "special case" within the framework of the agreement.

[8] Use of the antenna system already authorized, whether directional or nondirectional, will obviate the necessity for our specifying a different antenna system for the presunrise mode, thereby eliminating the need for costly and time-consuming measurement data in connection with such proposals.

15. The principles agreed to with Canada (pars. 13 and 14, supra) are reflected in the rules adopted herein except that, for domestic purposes, cochannel interference among U.S. class II and class III stations will not be taken into account. Class II stations will continue to take advantage (after 6 a.m.) of the time differentials between local sunrise and sunrise at the dominant station(s) to the east—subject to providing conventional nighttime protection to all westerly cochannel class I assignments.

16. With the exception of class II stations assigned to U.S. class I–A clear channels, an across-the-board power ceiling of 500 w (into the daytime antenna system) has been imposed. While this limitation is not a specific requirement of the agreement with Canada, it is dictated by the overall interference considerations discussed elsewhere in this document. Although some existing early-morning interference problems will be moderated as a result of the power ceiling, we recognize that new zones of interference will also be created, even with the 500-w limitation. Our study of the matter suggests, however, that those areas of the country in which the greatest destruction of existing services will occur are, in general, reached by alternate services, including the signals of clear channel stations and, to a lesser degree, by FM broadcast services.

17. Our decision not to apply, for the time being, the 500-w power ceiling to class II stations operating on U.S. I–A clear channels stems from considerations set forth in appendix A, chiefly the fact that the record in this proceeding is inconclusive as to the need for this power ceiling. In this connection, the situation on these channels is different from that on other frequencies, in that there are fewer stations to cause interference, fewer possibilities of additional assignments, and fewer foreign protection problems.[9] By contrast, because of the geographic distribution of class I–B clear channel stations throughout the North American region and other considerations discussed elsewhere in this document, the 500-w power ceiling is clearly indicated with respect to class II stations assigned to class I–B clear channels. Therefore, the further rulemaking being initiated in conjunction with our final decision in this proceeding deals only with the limited question of power levels for class II stations operating under pre-sunrise service authorizations on U.S. class I–A clear channels.

18. The rules adopted herein make no provision for operation by the 34 U.S. class I–B clear channel stations during presunrise hours with their authorized daytime facilities. Such operation is proscribed by the agreement with Canada. We do not know precisely how many class I–B stations now operate in this fashion, but the number is believed to be substantial. In addition to achieving better close-in coverage in specific cases, this practice has to some extent been undertaken in "self-defense" against interfering class II signals, as well as to avoid the otherwise required maintenance of a more complicated directional antenna pattern during the early morning hours. In any event, the described operations are permissive and may be terminated

[9] Dark path protection problems rule out any consideration being given to the possibility of presunrise operation by class II daytime-only stations located east of the dominant U.S. I–A cochannel assignment.

without right to hearing. *Music Broadcasting Company* v. *FCC*, 217 F. 2d 339 (1954). In our view, the requirement that class I–B stations operate with their licensed patterns during all nighttime (including presunrise) hours, on the basis of unqualified protection to their 0.5-mv/m 50-percent skywave contours, will assure the integrity of the wide-area nighttime coverage which these clear channel stations are intended to provide. *Storer Broadcasting Company*, supra.[10] Moreover, any residual skywave interference (unrecognized under our technical standards) resulting from the practice at many class II stations of signing on at sunrise at the dominant station to the east will, as a practical matter, be largely eliminated by our decision to apply an across-the-board 500-w power limit to all class II presunrise operations (other than those assigned to U.S. I–A clear channels, as noted in par. 17, supra).

19. As previously mentioned, the further notice in this proceeding proposed to limit class III eligibility to daytime-only stations, giving preferential consideration to such stations in markets without local unlimited-time standard broadcast service. Our review of this matter in light of the written comments leads to the conclusion that these limiting aspects of the proposal are neither administratively sound nor in the public interest. They involve too many anomalies to be acceptable as a basis for general presunrise allocation policy. For example, many communities have two daytime-only outlets but no unlimited-time station, raising the question of whether both should be permitted to operate presunrise and, if not, which one should be. Also, where an unlimited-time station does exist (notably class IV service with severely restricted nighttime coverage), it can frequently be demonstrated that substantial areas and populations have come to rely on the presunrise programing of class III daytime-only stations assigned to the same community. Nighttime service from nearby communities, sometimes from within the same metropolitan area, is another variable which could not properly be assessed outside the hearing process. For the reasons more fully developed in paragraph 30 of appendix A, the burden of resolving these variables on a case-by-case basis is one which should not be imposed on this agency or on the industry. In addition, decisions arrived at on the basis of "situations in being" would be unsettled by the addition or deletion of unlimited-time stations, or by arbitrary changes in their operating schedules. Moreover, to deprive unlimited-time stations of the presunrise operating benefits enjoyed by daytime-only stations, as contemplated by the further notice, would tend to penalize those licensees who, in good faith, have expended considerable sums of money to directionalize for nighttime operation and who, as unlimited-time licensees, are compelled by our rules to render service through 10 p.m. even in markets where much of the nighttime audience has switched to television. We have, therefore, abandoned these aspects of the further notice and are making equal provision for all class III and many class II stations to use their daytime

[10] In this admittedly extreme case, the Commission found that two cochannel I–B clear channel stations (WTOP, Washington, D.C., and KSTP, St. Paul, Minn.), operating presunrise with their daytime facilities, totally destroyed each other's skywave service as well as 90 percent of their respective primary (groundwave) services during the early morning hours.

facilities within the limits of the 500-w/6 a.m. operating formula, thereby giving full-time stations an optional mode of presunrise operation.

20. We wish to call attention to certain other administrative and legal problems which must be dealt with in putting the new rules into effect. As outlined in the appendices, the new scheme of presunrise regulation calls for the submission of informal (letter) applications, thus eliminating the permissive aspect of the present rule. We estimate that more than 2,000 class II and class III licensees and permittees, both daytime only and unlimited time (including the 500 stations with outstanding conditions against presunrise operation), will be eligible and will apply for Presunrise Service Authority (PSA). In order to allow sufficient leeway for the handling of these requests in time to be of benefit during the coming fall and winter seasons, it is imperative that the new rules be made effective at the earliest possible moment. On the other hand, we are reluctant to disturb existing operations until they can be reestablished on the new footing. Accordingly, notwithstanding the effective date specified below, it is our intention to maintain the status quo with respect to existing permissive operations through October 28, 1967, by which date all timely filed requests will hopefully have been disposed of. Prospective applicants are, however, cautioned that we can offer no assurance that PSA requests submitted after August 31, 1967, will be reached and considered on their merits prior to the October 28 deadline on existing operations.[11]

21. In addition, numerous presunrise interference disputes are currently pending and unresolved, including 30 complaints filed under the existing rule (sec. 73.87) and 25 petitions to deny filed against pending renewal applications under the *WBEN* doctrine, supra. We contemplate that most if not all of these can eventually be dismissed as moot,[12] together with applications on file (but unaccepted) by radio stations WLAW, WIPS, and WEAW for specified hours of operation, submitted in response to our March 5, 1964, interim public notice, entitled "Adjustment of Presunrise Operating Disputes" (FCC 64-201), and 12 informal requests for deletion of outstanding conditions against presunrise operation.

22. As the record in this proceeding abundantly demonstrates, neither this nor any other resolution of the presunrise problem can hope to satisfy the essentially irreconcilable objectives of the many respondents both within and outside the broadcast industry. As more fully developed in appendix A, an argument may be made that section 316 of the Communications Act confers hearing rights on unlimited-time licensees adversely affected by the issuance of PSA's growing out of this proceeding. We do not so construe the statute and, therefore, are not postponing the effectiveness of the new presunrise arrangements. The 500-w power ceiling will militate against significant increases

[11] Inasmuch as separate rulemaking is being initiated with respect to the need for a 500-w power ceiling for class II operations on U.S. I-A channels, class II stations in this category should not request presunrise service authorizations at this time, and may continue existing modes of operation until further notice. In line with the new Canadian agreement, however, such stations may not, after Oct. 28, 1967, sign on earlier than 6 a.m. or sunrise at the dominant station, whichever is later.

[12] The new 500-w power limit alone will moot out the technical considerations on which many of these complaints and petitions are based.

in existing interference. In situations where this does not prove to be the case, we urge licensees to refrain from litigation which would only further impede our efforts to realize a final solution and which, in any event, can yield no advantage beyond the terms of licenses now in force. Finally, we emphasize our conviction that the ad hoc approach to presunrise regulation, with its countless anomalies arising from Commission action or failure to act on specific complaints of interference, must be abandoned in favor of a more orderly system of regulation based on definitive rules which can be applied without regard to the hearing process.

23. Authority for the adoption of this report and order is contained in sections 4(i), 303(c), 303(e), 303(r), and 307(b) of the Communications Act of 1934, as amended.

24. *It is ordered*, That, for the reasons stated herein and in appendix A hereto, the Commission's rules *Are amended*, effective August 15, 1967.

25. *It is further ordered*, That, for the reasons set forth in paragraphs 20 and 21 of appendix A hereto, the petition for further rulemaking, filed April 19, 1967, by the National Association of FM Broadcasters, *Is denied*.

26. *It is further ordered*, That class II stations assigned to U.S. I-A clear channels may continue existing modes of operation, without regard to the application procedures set forth in the rules, as herein amended, until further notice from the Commission: *Provided*, That such stations may not, after October 28, 1967, sign on earlier than 6 a.m., local standard time, or sunrise at the dominant station, whichever is later.

27. *It is further ordered*, That proceedings in docket No. 14419 *Are hereby terminated*.

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE, *Secretary*.

APPENDIX A

ANALYSIS OF COMMENTS IN THE PROCEEDING

1. The further notice produced a vast volume of material, the original of the docket in the proceeding (which contains informally submitted material as well as formal filings) consisting of 60 volumes.[1] Much of the information material consisted of letters from listeners, school officials, local governmental and civic leaders, and others, usually supporting the continued presunrise operation of a particular station (8,800 letters were filed on behalf of one station alone). The great majority of these expressions appear to have been solicited by the stations they support, and for the most part it appears that the writers were not completely informed as to the nature of the problem (for example, the fact that the service they favor causes interference to other stations) and in some cases were actually misinformed as to the effect of the Commission's proposal on the particular station. Therefore, despite its obvious sincerity, much of this material is of relatively little value. However, some of it—particularly letters from school officials concerning need for school-closing and school-bus information—is of substance, as discussed below.

[1] Relatively few comments were filed in response to the 1961 notice, since the date for comments was postponed indefinitely before it arrived. The majority were by class II and class III daytimers, opposing the proposal as tending to restrict or eliminate their presunrise privileges. A few class III stations supported the proposal, one going further and urging that all permissive presunrise operation, by any class of station, should be abolished.

2. Formal comments were filed on behalf of close to 300 stations, the great majority of them daytime-only or full-time class III stations on the regional channels. Two radio networks—American Broadcasting Co., Inc. (ABC), and Columbia Broadcasting System, Inc. (CBS)—also filed, on behalf of their owned AM stations. Others filing formal comments were Association on Broadcasting Standards, Inc. (ABS, a group of full-time stations, mostly class III); Daytime Broadcasters Association (DBA, an association of class II and class III daytime-only stations); National Association of FM Broadcasters (NAFMB); Association of Maximum Service Telecasters, Inc. (MST, filing only legal comments on the question of the applicability of sec. 316); the AFCCE; A. Earl Cullum, Jr., & Associates; and Congressman Thomas L. Ashley of Ohio, urging that full-time stations be protected against undue interference (with particular reference to station WSPD, Toledo). Reply comments were filed by ABS, DBA, Cullum, a number of stations (some of which had filed initial comments), and Clear Channel Broadcasting Service (CCBS, a group of class I–A stations). In addition to Congressman Ashley's formal comments, a number of Senators and Congressmen filed letters with respect to particular stations or more general situations, usually supporting the cause of presunrise operation by daytime-only stations. There were also informal expressions of views to the same effect by State legislative bodies and leading State agricultural officials. While a number of the commenting parties supported our proposal, the great majority opposed it, for various reasons, as indicated below.

3. In view of the length of the record, it is impossible to set forth all of the various arguments, counterproposals, and factual showings submitted. All of the material filed has, however, been carefully considered, whether specifically referred to or not.

Comments Concerning the Regional Channels

4. The great bulk of comments filed concerned class III stations assigned to the 41 regional channels. The same general considerations apply to the class II stations (other than those on foreign I–A channels, which are beyond the scope of this proceeding), but these are much less numerous and special considerations concerning the different types of situations involved must be taken into account. The class II situations are dealt with later herein.[2]

5. Besides the ABS and DBA filings, formal or informal comments were filed on behalf of some 260 class III stations, 143 daytime-only stations (daytimers) and 122 unlimited-time stations (fulltimers). Of the daytimers, 79 would be eligible for presunrise operation under the further notice, with 500-w power and from 6 a.m. on, because there is no fulltimer in their community or urbanized area.[3] The remaining 64 would not be eligible, in the absence of exceptional circumstances, because there is a fulltimer in their community or urbanized area. Some daytimers (usually, those which would be eligible and operate daytime with 500 w so they would not face a cutback in power) favored our proposal as the most appropriate means of resolving the presunrise problem. A few others would favor it if it were modified to accommodate their particular situations, such as operation with greater power or from 4 a.m. instead of 6 a.m., or making stations eligible even though there is a full-time station in the same urbanized area but not in the same community, or where the full-time station in town is a class IV with a highly limited presunrise service area. But a substantial majority of the commenting daytimers and DBA opposed it, because it would terminate

[2] Of approximately 4,257 authorized AM stations (licensees and permittees) as of May 24, 1967, there were 2,182 daytimers, or more than 50 percent. Of these, 1,214 are on regional channels and 926 are class II daytime-only or limited-time stations on class I clear channels. Of the latter, 509 are on Canadian, Mexican, or Bahamian I–A channels, and as such are beyond the scope of this proceeding, leaving 417 class II daytime or limited-time stations subject to consideration herein.

[3] According to ABS, as of early 1963, 722 out of 1,180 regional daytimers would be eligible, or 61 percent. Our study indicates that this is approximately correct, and that about the same ratio has obtained with respect to grants since. This analysis, however, and the figures in the text do not take foreign-interference considerations into account.

Stations included here as daytimers are those so operating at the time they filed (May and June 1963). A few already had authorizations for full-time operation, and at present about eight of the commenting stations then operating as daytimers either operate unlimited time or have authorizations to do so. In determining eligibility under the further notice proposal, the presence or absence of full-time facilities in the community or urbanized area was determined as of mid-April 1967. It has not changed substantially since.

many presunrise operations and reduce a great majority of the rest either in time or power (the great majority of class III daytimers are authorized daytime power of more than 500 w).

6. In support of daytimer presunrise operation generally—and in particular in opposition to our proposal insofar as it would terminate some such operations and restrict many others in time and power—the commenting daytimers made three main lines of argument:

(*a*) The importance of their presunrise service, both "local" service (such as news of school closings and school-bus schedules) and "unique" service where the station is in a city with fulltimers.

(*b*) The economic importance to the station of presunrise hours, and the serious economic impact of curtailment of such operation.

(*c*) The absence of any real interference impact from such operation (in spite of what our technical standards might indicate) on the service of fulltimers.

Numerous daytimers made factual showings in support of the value of the presunrise service, often including letters from listeners, school, civic and agricultural officials, and advertisers. In some cases, such as letters from school officials concerning the value of early morning school-closing and school-bus cancellation announcements during wintertime bad weather, these came from a considerable distance (see, for example, comments filed on behalf of station KXXX, Colby, Kans.). This would appear to indicate that this type of service is rendered, at least in some cases, out to a distance greater than simple calculation of the daytimer's nighttime presunrise interference limit would indicate. Some factual data was advanced in support of the economic point mentioned; in reply comments some daytimers pointed out that, although numerous fulltimers complained of the effects of interference from presunrise operations, none really complained of economic impact therefrom. As to the third point, the argument was mostly assertion only.

7. Of the full-time class III stations commenting, a few did not oppose the further notice, at least if some modifications are made (such as limiting daytimers to 250 w, like class IV stations, instead of 500), and full "316 hearing rights" are given affected fulltimers. The great majority, more than 100, opposed the proposal, as did ABS. In general, there were two main opposing lines of argument (sometimes combined): (1) the harmful effect of interference from daytimer presunrise operation on fulltimer service, with area and population losses to full-time stations in most cases (including badly needed rural coverage) significantly greater than the gains to the daytimers and their areas; and (2) the undesirable effects of prohibiting fulltimer use of daytime facilities (usually greater than nighttime) before local sunrise.[4] Some of those making the first line of argument urged that—with the high limits they generally have during these hours—daytimers are limited in coverage to their communities and immediately surrounding areas, so that they cannot effectively meet the needs for their service which are claimed, such as school announcements. It was also urged that these needs are rather minimal anyhow—news is news even if presented after sunrise rather than before, and bad weather school announcements can be taken care of by liberalizing the emergency operation rules (they have since been liberalized to cover such situations, though not where full-time emergency service is available to the area involved and only on a noncommercial basis; see sec. 73.98 of the rules). Conversely, several fulltimers (WREC, Memphis, for example) stressed the value of their own wide coverage, including rural areas.[5]

[4] Of the 858 fulltimers on regional channels, only 90 operate with the same facilities day and night. DBA and some daytimers supported the cause of fulltimer presunrise use of daytime facilities, apparently on the theory that the preclusion of such use is the main ground for full-time opposition to the general licensing of daytimers for presunrise operation. However, as indicated herein, this is not the only basis of fulltimer opposition to daytimer presunrise operation generally, or to the further notice.

[5] WREC's showing (based on our rules and the proposed diurnal curves) was that at 6 a.m. in December (e.s.t.), four eligible daytimers operating would limit it to its 4.37-mv/m contour instead of its 2.0-mv/m normal nighttime contour, representing a loss of 6,310 square miles and 259,574 persons; of these, 5,460 square miles and 188,881 persons receive no other primary service at that time. This was the only showing giving specific details as to "white area" losses. Presunrise operation by certain eligible daytimers would serve some of the "white area," but only after 6 a.m., c.s.t.

8. As to the second line of argument, several fulltimers urged that they are better off coverage-wise using daytime facilities presunrise even with a considerably higher interference limit resulting from cochannel presunrise operation (particularly for nondirectional coverage of their particular communities); some asserted that they need these greater facilities for wide-area presunrise coverage. It was urged by several that presunrise interference is probably not as serious a problem as engineering standards would indicate, for one reason because (it is asserted) listeners will tolerate a higher interference level where news and informational material is concerned than for, say, symphonic music. It was also urged that it is unfair to accommodate daytimer presunrise operation at the expense of fulltimers in this way.

9. A number of fulltimers favored retention of the traditional section 73.87 status quo (at least pending a complete and thorough study of propagation conditions). It was urged that this has worked well and gives fulltimers a desirable and practical option—of using their greater daytime facilities presunrise or, if interference conditions on their channels become really serious, reverting to nighttime facilities and filing 73.87 complaints to "clean up" their channels.

10. *Counterproposals and Alternatives.*—Some of the opposing parties presented no alternative or counterproposals. Numerous stations, both daytime and full time, supported the 73.87 status quo, the daytimers apparently relying either on the absence of complaint against their operations up to now or on legal theories as to their rights in the face of complaint, and the fulltimers urging the merit of the option mentioned above. A wide range of other counterproposals was advanced. Some fulltimers urged that 73.87 be abolished and all presunrise operation (by daytimers or fulltimers with day facilities) be prohibited except in strict accordance with engineering standards. At the other extreme, some daytimers advocated a blanket "6 to 6" rule (daytimers operating with full day facilities) or immediate licensing of all daytimer presunrise operations. Other counterproposals included: Maintaining permissive operation under 73.87 (for both daytimers and fulltimers with day facilities) until complaint, and then giving the station complained against a hearing, continuing the service in the meantime; continuing such permissive operation and using our proposal as a sort of "backstop" for daytimers in the event of complaint; using the proposal as a minimum and giving case-by-case consideration to further presunrise operation by daytimers and fulltimers; permitting daytimers not normally eligible under the proposal to continue operation until complaint, and then to file applications for presunrise authority, with the affected station to show why the application should not be granted (it was urged that thus only really serious interference will be complained of); "grandfathering" all daytimer presunrise operations, even in the face of complaint, if they have existed without complaint for a period such as 3 to 5 years; permit no daytimer presunrise operation which causes interference unless it is shown that the interference involved could not be removed by directionalizing the operation; limit such operation to 250 w unless 500 w is shown to cause no interference; permit fulltimer use of day facilities at least until complaint, or in "white areas" or on a showing that it is warranted; permit fulltimers to operate with 500 w nondirectionally; and impose any cutback in daytimer power on a proportional basis (i.e., why should a 1-kw and a 5-kw station both be cut back to 500 w?). ABS and other fulltimers urged the necessity of a case-by-case approach rather than a general rule, taking into account possible daytimer directionalization or lesser power, service from nearby stations where there is no full-time station in the community itself, and other circumstances of each case. A number of parties urged continuance of 73.87 but more flexible application of it, to permit continuance of the presunrise operation after complaint with lesser power (or less time) than that previously used. This procedure we have since adopted for resolving presunrise controversies, and it has been successful in a number of cases; but many pending complaint situations do not appear to lend themselves to resolution on this basis alone.

11. Some fulltimers—though a smaller number than daytimers—made factual showings as to the value of their presunrise service. The relatively few letters submitted usually, though not always, related to continued use of daytime facili-

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ties for wide-area presunrise coverage, rather than interference problems. Many parties made engineering showings concerning interference.[6]

12. The great majority of commenting daytimers appear to be presently operating presunrise during part of the year, and many fulltimers use daytime facilities during these hours. A staff study of three regional channels in mid-1962 revealed that virtually all daytimers operate presunrise during part of the year, and many, likely a majority, of fulltimers make such use of their daytime facilities. In spite of the sharply increased number of complaints in recent years, there probably still is some presunrise operation (in both senses) on every regional channel, and no complaints have been filed with respect to 16 of the channels. Thus, while much of the fulltimer argument regarding interference is put in terms of what would occur, in fact, much of this interference already exists. However, as mentioned, the number of complaints filed has sharply increased in recent years, now reaching stations on 25 channels, as compared to only 15 channels as recently as 3 years ago.[7]

13. Comments relating to the regional channels were filed by other parties, usually not directly affected. For example, NAFMB urged the importance of encouraging FM development, and requested that a daytimer not be eligible for presunrise operation if there is an FM channel in its community (or one is available there under the "25-mile rule"), and thus full-time aural service is available. We also note a late filing by the Committee for Equal Facilities, a group of daytime stations authorized after January 1962 and thus subject to the overall condition against presunrise operation, urging the importance of presunrise operation to them and their areas, asserting that they should be treated the same as stations authorized earlier, and asking that the Commission either expedite resolution of this proceeding or lift the overall condition as to the new stations. Some parities advanced competitive considerations. For example, two daytimers on foreign I–A channels—not now or proposed to be allowed presunrise operation—opposed regularizing presunrise operation by daytime regional stations in their communities, with which they compete, and it was also urged—by daytimers in communities or urbanized areas having a full-time station—that it is exactly where the daytimer faces such competition that it needs the economic benefit of extra hours.

Class II Stations

14. In the original notice herein (and clarifying order issued Jan. 29, 1962), we proposed to eliminate entirely presunrise operation by class II stations. In the 1962 further notice, we proposed to permit it only for daytime-only or limited-time stations located west of all cochannel class I stations, and only on channels not having foreign class I assignments. As at present, as so limited it would be tied to sunrise time at the location of the dominant cochannel station. As compared to the present rule, the proposal would eliminate presunrise use of daytime facilities by: (1) Full-time class II stations; (2) stations located east of class I stations but far enough away and having low enough power so that their skywave signal does not cause interference under the rules to the class I station's skywave service; (3) class II stations on I–B channels having foreign I–B stations; and (4) operation by agreement with the dominant station. Authorized daytime facilities could be used, and no other limit on time was specified.

15. About 25 comments were filed by class II stations, generally opposing the proposal and stressing the importance of their presunrise operation and service.

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[6] In terms of population lost, the largest numerical showing was that of WKY, Oklahoma City, claiming that, at 6 a.m. in December, it would lose 401,028 population as a result of eligible daytimers operating, out of 1,087,937 within the 1.94-mv/m contour it would have from nighttime facilities (the daytimers would limit it to 4.75 mv/m). WKY and other stations explored the possibility of daytimer directional operation to protect them. While no population figures were given in its showing, the loss would probably be greater in the case of WMCA, New York City, since the loss area lies in the populous New York-northern New Jersey region.

[7] These complaints have, by and large, been prosecuted by pioneer class III fulltimers enjoying low nighttime RSS limits. These stations are not evenly distributed among the 41 regional channels, which has accounted for a disproportionate concentration of complaints on certain channels, notably: 600, 930, 950, 1250, 1330, 1360, 1370, and 1590 kc/s.

Because of the prevalence of presunrise operation, often of many years' standing, one of the most frequent and vigorous arguments against our proposal, both by daytimers and by fulltimers seeking to continue use of day facilities, was that the proposal would result in great disruption of existing service on which listeners have come to rely.

similar to the arguments mentioned above in connection with regional stations. Several of these comments were the same as those submitted by regional stations, the parties not directing themselves to the particular facts of their class II situation. Others opposed the proposal because it would eliminate presunrise operation in their particular case; e.g., stations on channels having foreign clear-channel assignments and using day facilities at sunrise at the foreign station (such as KFRE, Fresno, Calif., 940 kc/s), full-time class II's (e.g., KLOK, San Jose, Calif., 1170 kc/s), and stations located east of one co-channel class I–B station and west of another, sufficiently far from the latter that their 250-w daytime operation does not cause it interference, and wishing to continue to sign on at sunrise at the eastern class I location (e.g., WTPR, Paris, Tenn., 710 kc/s; I–B stations at New York City and Seattle). Storer Broadcasting Co.'s filing related mostly to the regional channels, but it noted that a large number of class II stations on U.S. I–A channels benefit from presunrise hours (although we had in the notice indicated that the matter was minimal) and pointed out that several, including its own KGBS, Los Angeles (limited time), are more than 2,000 miles from the I–A station and under early AM assignment rules would have been permitted to operate full time simultaneously with it. DBA's comments urged that presunrise privileges should be given to class II stations on the same widespread basis as class III stations, urging that the House of Representatives so indicated by not making any distinction in enacting H.R. 4749, and that there is no logical reason for any different treatment. CCBS, opposing DBA in reply comments, urged that the Commission not authorize any across-the-board presunrise operation by class II stations, because of losses to the service of class I stations.[8] The only comments filed by a class I licensee which dealt with this subject specifically were those of Metromedia, Inc., filing on behalf of its class I–B station, WNEW, New York City (1130 kc/s), as well as its regional stations, and urging the general abolition of presunrise operation by any class of station.[9]

Decision in the Proceeding

16. As already indicated, the resolution of this proceeding necessarily represents a balance between considerations and objectives which are to some degree in conflict—the provision for needed presunrise service on the one hand, particularly in situations where it has been in existence before and has come to be relied upon by listeners, and on the other hand, protection of the existing service of unlimited-time stations against an inordinate amount of loss through interference, and thus inefficient use of the channels involved. It is also apparent, as it

[8] CCBS' comments do not mention the fact that presunrise operation now takes place on many of the U.S. I–A channels, where the daytime class II stations are located west of the dominant stations. Its specific example of service losses is 640 kc/s, where there is no presunrise operation under 73.87 because the dominant station is at Los Angeles.

[9] WNEW showed the effect on service on 1130 kc/s if it and the other I–B station on the channel (KWKH, Shreveport) and three pertinent class II stations (at Detroit, Milwaukee, and Minneapolis) used daytime facilities before sunrise New York. With the five stations' present operation with nighttime facilities, the two I–B stations are protected to their 0.5-mv/m groundwave contours and beyond, and the three class II stations have limits of 2.3, 3.4, and 4.2 mv/m. If all five used daytime facilities instead, the class I–B stations would be limited to 12 and 30 mv/m, respectively, and the class II stations would be limited to 44, 50, and 67 mv/m. This showing was made on the basis of the conventional nighttime propagation curves in the rules. This situation does not in fact exist, since the class II stations covered are all located east of the I–B station at Shreveport and therefore present 73.87 privileges do not extend to them, and even if it did exist it would not be entirely typical because of the large daytime facilities these class II stations have (50 kw, directionalized), but it does illustrate the interference which unrestricted use of nighttime facilities by class II stations creates or would create if permitted.

The effect of full-scale presunrise operation by class II stations, even after sunrise at the class I station, is illustrated by the situation of class I–A station WCBS, New York City (880 kc/s), which in 1965 filed a complaint against presunrise operation by cochannel daytimers at Clinton, N.C. (1 kw), and Columbus-Worthington, Ohio (5 kw). The complaint claimed that immediately after sunrise at New York City in January (7:15 a.m., e.s.t.) and before their own local sunrise, the Clinton station limits WCBS to its 5.12-mv/m contour on the basis of conventional nighttime calculations, or about 1 mv/m if the diurnal factor is used, and the Ohio station imposes limits of more than 12 mv/m or about 2 mv/m, using the same bases of computation. The groundwave service of a class I–A station is protected against cochannel interference to its 0.1-mv/m contour. As to interference to full-time class II stations, a few such stations commented on this. We note that of eight daytime-only class II stations on I–B channels filing herein, all are the only stations in their communities and only one is in an urbanized area.

has been for some time, that presunrise use of daytime facilities by U.S. stations must be brought into line with this country's obligations, under pertinent international agreements, to protect the stations of other nations in the North American region from objectionable interference. With respect to the regional channels, we are persuaded, after careful consideration of the record herein and the above considerations, that the most appropriate balance can be achieved by permitting virtually all class III stations (daytime and full time) to operate presunrise, from 6 a.m., standard time, on, with 500-w power, using their daytime modes of operation (directional or nondirectional), except where lesser power is required to meet international obligations as mentioned above.

17. In reaching this conclusion, we have taken into account the many considerations which have been so vigorously urged by those taking the various opposing positions, and the numerous counterproposals, urged upon us. We recognize that, as many full-time stations urge, permitting presunrise operation by daytimers (and by fulltimers) may cause substantial interference to the licensed service of full-time stations; it may well be true, as Storer and others urge, that the losses will often, perhaps usually, exceed the gains if strict engineering standards are applied. But in our judgment the record herein establishes that the presunrise service rendered by daytime-only stations is, by and large, a valuable one, and one which should be permitted. In our view, as a general proposition, the gains outweigh the losses, when all factors, such as the location of the areas of service and interference with respect to the stations gaining and losing, and the extent of other service, are taken into account. We note the contention of Storer and others that rural areas will lose the badly needed service of wide-coverage full-time regional stations. But we also note that, with few exceptions, the fulltimers did not establish the extent to which listeners in such areas (usually at some distance from the station) actually rely on and need their service. Their showing in this respect fell short of daytimers' showings.

18. Moreover, we take into account the other service which remains available to such loss areas from the same or nearby places, often including wide-area coverage by I–A and I–B clear channel stations and wide-coverage FM service.[10] The daytimers assert that the fulltimers are located in large cities, with a plethora of locally originated services, and, while this is by no means always true, there appears, both from the record herein and our experience generally, to be a tendency in this direction. For example, as far as AM service is concerned, out of some 107 communities having full-time class III stations who filed formal or informal comments herein, 65 have other class II or class III full-time AM service from stations in the same community (28 of these cities have wide-coverage I–A or I–B clear channel stations). Fourteen others have full-time service from a local class IV station and 25 have no other local full-time AM service (including nine in urbanized areas and close to large cities with multiple services).

19. Of the 107 communities mentioned, all but 10 have wide-coverage class B or class C FM channels available (either assigned to the city or available under the "25-mile rule") on which wide-area coverage may be rendered from the city. Of the 10, three have class A channels (two others are in urbanized areas and close to large cities with multiple AM and FM services). Taking into account both other full-time AM service (besides class IV) and wide-coverage FM service, only nine of these communities do not have such service available. More than half of the full-time class III stations—68 out of 122—have associated FM stations in the same community (or, in two cases, a nearby larger city); 65 of these are wide-coverage class B or class C assignments. Another 17 could take advantage of unoccupied channels, either assigned to the city or available under the "25-mile rule" (all but two class B or class C).[11]

20. In remarking on the fact that FM may thus be a means of overcoming the losses full-time stations might incur through interference, we have not overlooked the fact—which NAFMB and others urged—that it may also be of value to daytimers in overcoming their presunrise difficulties, as well as providing evening service. Out of some 135 class III daytimers listed in appendix C (excluding

[10] On several occasions in recent years—for example, in docket No. 15084 (the overall AM allocation proceeding)—we expressed the view that AM and FM should be viewed as complementary parts of a total aural service.

[11] The figures for the number of communities and licensees include CBS' class III station at Boston, and ABC's class III stations at Detroit, Los Angeles, and Pittsburgh.

the eight which have now become full-time operations), some 53 are FM licensees or permittees, 19 of them class A and the rest class B or class C (including two where the FM station is in a nearby city). There are unoccupied channels—usually class A assignments—which some of the others could use. However, of the 135 communities involved, there are some 22 situations in which no assignment is provided in the FM table for the community; it is not in an urbanized area; and it has no local full-time AM service. There are other situations where no assignment is provided in the table and the community has no full-time local AM service, but it is part of an urbanized area. In some of these cases, channels might be available under the "25-mile rule," or possibly additional assignments might be made through rulemaking; but a substantial number of these situations are in areas where channels are scarce and the making of additional assignments is not always possible, however desirable it might be. Thus, it appears that with respect to the communities represented in filings herein, the extent of FM service and potential—particularly for wide-area coverage—is greater for full-time stations and their communities than it is for daytimers. We note also that many stations who particularly urged the value of wide coverage, both daytimers and fulltimers, are wide-coverage FM licensees or could become so (e.g., WMTM, KXXX, WSAU).

21. Thus, viewing the picture of aural service as a whole, we are convinced that permitting presunrise operation by daytimers to the extent provided herein will result in the provision of service where there is more need for it than there is for whatever service may be lost in the areas where such losses occur. Bearing in mind that FM is not always available to daytimers even though it often is, and the present fairly modest development of that service, perhaps particularly in more remote areas, we do not believe that it affords the answer to the presunrise problem as claimed by NAFMB. We do not conceive FM, at the present time, to afford the answer to supplying a needed presunrise service which daytimers in outlying areas appear to render and which, we believe, can be accommodated to the limited extent decided on herein without undue interference losses to licensed full-time service. However, it can afford a valuable supplement to service during these hours in two respects: Giving daytimers, and fulltimers using daytime facilities, coverage comparable to that which they now have on AM using their full daytime facilities presunrise (and which they might not have limited to 500 w), and giving coverage where AM service is lost through interference.[12]

22. In sum, then, in our view we are making provision for service where it is most needed, in fulfillment of the mandates of sections 303(g) and 307(b) of the Communications Act. In evaluating the arguments concerning interference, two other factors should be borne in mind. First, for the most part, the presunrise service under consideration here—both by daytimers and fulltimers—is an existing service, and interference therefrom, while it has increased somewhat in recent years as more stations have been authorized, is not a phenomenon arising now for the first time. As mentioned above, on some regional frequencies there still has been no complaint against stations' presunrise operation, and this was true of a majority of these frequencies as recently as 3 years ago. In other works, these conditions, however bad they may appear from a strict technical standpoint, are for the most part circumstances which the full-time stations have been able to live with. The second point is that—by the 500-w power ceiling now provided—we are taking action which may well improve present interference conditions on these channels; for example, by sharply decreasing the interference from numerous 5-kw daytime operations, but both daytimers and fulltimers.

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[12] We are not adopting the approach urged in NAFMB's petition for further rulemaking, filed herein on Apr. 19, 1967, wherein we are urged to reappraise the need for "substandard, interference-producing AM presunrise operation" in light of our *1964 Report and Order* in docket No. 16084 (2 R.R. 2d 1659), the JTAC radio spectrum utilization report released the same year, and the substantial recent increase in the number of FM sets. As noted in footnote 13 of the docket No. 15084 *Report and Order*, the nighttime allocation principles there considered were concerned with "service through the evening and not * * * service during the hours immediately before sunrise [which is] the subject of a separate rulemaking in docket No. 14419. * * *" We will continue to give careful consideration to the development of FM and its proper role in the overall aural service picture, and it may be that in the fairly near future it will be appropriate to propose some action along the line urged. But we do not believe it appropriate to postpone resolution of this longstanding and wide-ranging AM proceeding, and the many uncertainties existing as long as it is unresolved, while such an evaluation of the role of FM is conducted.

23. We also note the contention of the fulltimers that the interference loss is being incurred for very little reason, because the daytimers' service areas are so severely limited during these hours. We do not believe that—bearing in mind that these are transitional hours—the service range is as limited as present technical standards might indicate. There may be merit in the argument—advanced by several daytimers and by fulltimers in support of using full daytime facilities—that listener tolerance of interference in listening to news, weather, etc., is fairly high, higher than our traditional signal ratios contemplate. In any event, the service appears to be one—locally oriented—valuable enough to warrant provision for its rendition.

24. The further notice would have limited daytimer presunrise operation to stations where there is no fulltimer in the community. Upon further consideration, we believe this restriction is unwarranted, even though permitting some additional operation may increase interference beyond what it would be otherwise.[13] Other daytimers may render valuable service, as indicated above, and, perhaps more important, just as much as with the "eligibles," it is often service upon which listeners have come to rely, often for a period of several years, so that termination would be disruptive. We are not persuaded that its termination is warranted. Moreover, as various parties pointed out, the fulltimers in town may not have the same service area as the daytimer—perhaps a substantially smaller one—and the proposal in this respect presented certain anomalies which might make it difficult to administer, such as cases where there are two daytimers in a community with no fulltimer, and cases where a fulltimer later goes into operation.

25. Although avoiding disruption of existing presunrise service is an important factor in our decision, we do not believe it should be the only one. Other stations, for example those granted since early 1962 and conditioned against presunrise operations, are likewise capable of rendering a valuable service during these hours, perhaps especially (though not necessarily entirely) when they are in places without full-time outlets. The same applies to future authorizations. Therefore, we are not limiting presunrise operation to those stations which have engaged in it before or to presently authorized stations. In our judgment, with interference conditions improved on the various channels by reduction of presunrise operation to 500 w, the number of stations thus added will not materially worsen existing interference conditions.

26. If a great many stations are to be permitted presunrise operation, as we have concluded they should be, some restriction on such operation must be imposed if an inordinate degree of interference is to be avoided. It is for this reason that we have decided to limit presunrise operation, by daytimers or by fulltimers with daytime facilities, to no more than 500-w power (as mentioned above, the authorized mode of operation, nondirectional or directional, will be used, although fulltimers may, of course, use their nighttime facilities if they prefer). This limitation will improve interference conditions in many cases, and 500-w power appears sufficient to provide a generally adequate service to the communities involved. To a degree, of course, this reduction may mean loss of existing service which has come to be relied upon. But if it is true that "distant" stations are not of significance to listeners at a particular place if they are fulltimers (which the daytimers urge with respect to interference), it is likely equally true that listener interest in daytimers generally decreases with distance, so that a 5-kw operation may not be rendering a really significant presunrise service out to the bounds of its normal daytime service area. Moreover, while power greater than 500 w is not precluded as such by the understanding with Canada, it appears highly unlikely that many operations with power much more than that could comply with the arrangement with Canada and applicable treaties with other countries. In connection with this limitation, as well as with the limitation to 6 a.m. mentioned below, we also note the significance of the FM service, mentioned

[13] The interference from the additional daytimers would not necessarily be great. One engineering firm made showings as to presunrise interference on behalf of nine full-time regional stations (on eight channels), under various conditions, including (1) "eligible" daytimers operating as proposed in the further notice (500 w from 6 a.m.) and (2) all daytimers operating on that basis (fulltimers using night facilities in both cases). In five of the nine cases the limit to the fulltimer would be the same under both conditions at all times; in the other four, the difference would usually be less than 2 mv/m, and only part of the time.

above. If stations seek greater coverage presunrise than 500 w would permit, they must rely on the companion aural service.

27. Likewise, we are convinced that presunrise operation must be confined to 6 a.m. (local standard time) and after. We reach this conclusion on the basis of the record herein, which, despite the assertions and showings of some stations to the contrary, does not persuade us that earlier operation has enough public interest to warrant the extensive interference entailed during earlier hours when skywave propagation and interference conditions more closely approach, or equal, full nighttime conditions. In any event, earlier operation is precluded by our understanding with Canada.

28. In reaching these conclusions as to limitations, we have rejected the contentions of some parties that the limits should be more restrictive, such as 250 w and 7 a.m. The fact that 250 w is the presunrise power of class IV stations does not mean that it should be for regional stations, which are designed to serve wider areas; 500 w appears to be both necessary to provide adequate presunrise service, and sufficiently low to avoid excessive interference. We do not believe that a 7 a.m. sign-on is sufficiently early to meet the need for local informational service which has been demonstrated herein.

29. We have, likewise, concluded that full-time stations should be allowed to use daytime facilities before sunrise to the same extent. We are impressed by the arguments made (e.g., that of WLOS) that such facilities, even if operated with only 500 w, may well provide better service to the city and its environs during these important hours. In addition, such operation will afford fulltimers some additional protection against interference from daytimer presunrise operation. The limitation to 500 w and 6 a.m. is necessary for the same reasons mentioned above for daytimers; again, we call attention to the availability of FM for wider coverage. Many fulltimers commenting on this point (e.g., WSAU) are or can become FM licensees, often on wide-coverage channels, and thus render wide-area service.

30. We must reject the arguments and counterproposals of ABS and other parties that a case-by-case approach must be used in this matter. Such an approach—taking into account that there are some 1,200 daytimers and 858 full-time class III stations—is simply out of the question from an administrative standpoint. The number of potential hearings involved staggers the imagination, and they would in all probability become exceedingly complex, since (with skywave interference involved) more than one daytimer usually affects a given fulltimer and, conversely, a given daytimer may affect more than one fulltimer. A given hearing situation might well end up involving a considerable number of the stations on a channel, including a comparative inquiry into which presunrise operation should be permitted and which precluded. Not only would this entail an inconceivable burden, both on the Commission and on standard broadcast stations and their advisers, it would take a great amount of time, a consideration inconsistent with our view that the public interest clearly requires a reasonably prompt resolution of the presunrise situation and the widespread uncertainties currently involved in it. We do not conceive that a more particularized approach, either by hearing or otherwise, would throw significantly more light on the appropriate course of action in a given situation, anything like enough to warrant the burden involved.

31. Likewise, we must reject the arguments of those who favor the traditional 73.87 status quo, with its complaint and ensuing termination procedure. While it might have been a true statement 5 years ago that the rule has worked "reasonably well," it is hardly so today, with the large number of complaints which have been filed in recent years. We believe that the uncertainties involved in presunrise operation, as they have developed recently, must be resolved, so that all parties know where they stand. Moreover, such an approach is inconsistent with this country's internationl obligations to prevent objectionable interference to duly notified foreign stations.

32. *Legal Matters.*—It was contended that 73.87 is a part of a station's license, so that we cannot order termination or reduction in a presunrise operation without complaint. This is without merit. The rule speaks of termination upon notice from the Commission that "undue interference" is caused, and in *Music Broadcasting Co.* v. *FCC*, 217 F. (2d) 339 (1954), this was held to mean objectionable interference as determined under the usual nighttime interference rules. While we have in the past ordered termination or reduction only after complaint,

the rule does not require this, and certainly this agency has the power to take steps to alleviate interference conditions on a channel on its own motion, even in the absence of complaint. To hold otherwise would be to negate our power to act in the public interest to further the more effective use of radio. There are virtually no presunrise operations with full daytime facilities which are free from objectionable interference effects on licensed full-time stations, using our regular nighttime interference rules. Therefore, we have the power to terminate or cut back such operations—which are permissive, not licensed—without hearing or other proceedings.

33. In the further notice we posed the question of whether section 316 of the Communications Act—precluding modification of a license without a hearing—applies to the present situation where, after a general rulemaking proceeding, certain presunrise operation may be permitted on an authorized basis, resulting in interference to some full-time stations. Many parties urged that it does, and that they will insist on their 316 hearing rights in connection with such operation.[14] We conclude that it does not. Of course, this Commission cannot finally determine the statutory legal rights of licensees as against its regulatory authority; this is for the courts. But it is our duty to construe the act to the best of our ability, in light of pertinent court decisions. For present purposes, we view the recent decision in *American Airlines, Inc.* v. *CAB*, 359 F. (2d) 624 (C.A.D.C. 1966), as authority for the proposition that we can "modify" existing licenses with respect to interference received by stations—if "modify" is the appropriate term—through a general rulemaking proceeding, and that section 316 does not apply. It must be borne in mind that this a rulemaking proceeding of general applicability, affecting many stations on many channels, exactly the type of proceeding the court considered in that case. In this respect it is clearly distinguishable from *FCC* v. *National Broadcasting Company* (*KOA*), 319 U.S. 239 (1943), from which the concept of "modification through interference" stems. That was a particular proceeding involving the assignment of one station (WHDH, Boston) to KOA's frequency at night for the first time, resulting in substantial interference to what had been until then a class I-A station. Therefore, we do not view *KOA* as a reason for postponing the effectiveness of the new rules, and are making them effective as quickly as possible.

34. *Class I-B and Class II Stations.*—As mentioned in the report and order (par. 18), and for the reasons stated therein, the rules adopted do not provide for presunrise use of daytime facilities by class I-B stations. See *Storer Broadcasting Company*, 1 F.C.C. 2d 1954 (1965).

35. With respect to presunrise operation by class II stations, as mentioned above the original notice herein would have precluded it completely; the further notice would have precluded it except for daytime-only and limited-time stations on U.S. I-A channels (and I-B channels having no foreign I-B stations), located west of all of the dominant cochannel stations. Upon further consideration and review of the comments filed, we are of the view that these proposals would be unduly restrictive and prevent the rendition of significant service. It is, of course, of great importance to protect the skywave and wide-area groundwave service of class I stations, but in our judgment this can be achieved, if presunrise is limited in extent as discussed below, without precluding some other categories of stations from presunrise operation. Therefore, the rules adopted herein will permit presunrise operation by: (1) Class II stations (daytime, limited time, and full time) located west of all cochannel dominant stations, starting at sunrise at the location of the westernmost foreign or domestic dominant station

[14] It was argued that *Transcontinent Television Corporation* v. *FCC*, 308 F. (2d) 339 (1962)—which affirmed our authority to change a station's channel at the end of its license period without an evidentiary hearing—is not authority for the type of action contemplated here, even at the expiration of an outstanding license, for one reason because that case involved a detailed exploration in rulemaking of one particular situation. We do not agree with these arguments, particularly in light of the subsequent decision in *The Goodwill Stations, Inc.* v. *FCC*, 325 F. (2d) 637 (1963), affirming our clear channel decision. As indicated above, the presunrise rulemaking is a proceeding of general applicability. As such, we hold its impact on individual applicants, permittees, and licensees confers no adjudicatory hearing rights under sec. 316 of the Communications Act. *United States* v. *Storer Broadcasting Co.*, 351 U.S. 192 (1956); *Airline Pilots Association* v. *Quesada*, 276 F. 2d 892 (1960); *Federal Power Commission* v. *Texaco*, 377 U.S. 33 (1963); *California Citizens Band Association* v. *USA and FCC*, Ninth Circuit, case No. 20030 (1967).

(or 6 a.m., local standard time, whichever is later);[15] and (2) operation from 6 a.m., local time, by daytime and full-time stations on class I–B channels regardless of location, if they protect the 0.5-mv/m 50-percent skywave contours of domestic and foreign cochannel class I stations located to the west. Reduced power may be used if necessary to afford such protection. Certain requests by class II stations in other situations must be rejected as inconsistent with overall allocations efficiency and the public interest.[16]

36. With respect to the limitation to 6 a.m. and after, this, of course, is required by the terms of the understanding with Canada mentioned in the report and order. We believe it is also appropriate from a domestic standpoint, just as with the regional channels, since operation at an earlier hour, when propagation conditions more nearly approach full nighttime conditions, is the source of more substantial interference (see pars. 14 and 15 and footnote 9 above). Therefore, presunrise operation by class II stations will be limited to 6 a.m., local standard time, and after, just as that by class III stations.

37. With respect to the I–B channels, it is also appropriate to impose the same 500-w restriction adopted for the regional channels. This is necessary to prevent excessive interference from higher-power operations, and afford an adequate degree of protection to class I–B and unlimited-time class II stations. This is particularly true since class I–B stations will not be permitted presunrise use of daytime facilities (see report and order, par. 18).

38. Tentatively, we are of the same view that the same 500-w restriction should apply to presunrise operation by class II stations on the U.S. I–A channels (see, for example, the situation described in footnote 9, above). However, since this particular subject has not been explored, and since to some extent different conditions obtain on these frequencies (fewer class II stations, much smaller foreign protection requirements, and the fact that under present assignment rules there can be no more daytime stations), we are not adopting it at this time. Such a restriction on class II stations on these channels is proposed in a notice of proposed rulemaking adopted today.

39. The question of interference to U.S. class I–B stations located west of the class II station, to all full-time cochannel stations in North American countries other than Canada, and to Canadian I–B stations will continue to be determined by conventional nighttime propagation standards. As to permissible radiation toward cochannel Canadian full-time class II stations, the curves contained in new figure 12 of 73.190 will apply. If necessary to meet any of these requirements, stations may operate with power less than 500 w and make presunrise requests on the basis of such lower power.

40. *Other Matters: Diurnal Curves.*—The further notice herein proposed a family of diurnal curves, taking into account the fact that the appropriate reducing factor applicable to conventional nighttime interference calculations for any particular point in time during the 2 hours before sunrise. Use of these curves would show less interference than conventional nighttime computations. However, their validity was attacked, chiefly on the ground that (based on data concerning postsunset conditions) they do not accurately represent presunrise conditions. A substantial question appears to exist as to their accuracy. Moreover, their use is quite complex, and they have no international standing. In our view, an appropriate resolution of this proceeding is possible without them and, therefore, they are not adopted herein.[17]

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[15] This, of course, does not include daytime-only class II stations on foreign I–A channels, which are not now permitted to operate presunrise and are not within the scope of this proceeding.

[16] Thus, if class I–A stations' skywave service is to be protected, as we believe it must be, we cannot permit presunrise operation by a class II station to the east of a cochannel class I–A station, and, since we have provided that class I–B stations must use nighttime facilities until local sunrise, we reject requests from class II stations based on the fact that the I–B station to the west of them was in fact using its daytime facilities. As far as interference to full-time class II stations is concerned, we are of the view that in this respect the same considerations apply as on the regional channels, and that presunrise operation serves a valuable purpose and should be permitted to the extent provided herein.

[17] On July 15, 1966, ABS filed further comments containing measurement data intended to show that the diurnal attenuation factors for sunrise and sunset transitional periods are not symmetrical, and, specifically, that morning propagation conditions (referred to sunrise at the path midpoint) are more favorable to undesired 10 percent skywave interfering signals than are evening propagation conditions (referred to sunset at the path midpoint). As stated in the text, we recognize on the basis of the earlier material filed that this

41. *Directional or Nondirectional Presunrise Operation.*—The further notice proposed operation by "eligible" class III daytimers with 500 w nondirectionally, even though their authorized facilities might be directional. Some parties attacked this, for one reason because it would produce an artificial service area for a short time during only part of the year, which the directional station would not have at other times, leading to confusion. For this reason, and also because of the added burden involved in specifying an additional mode of operation, we agree with the objecting parties and are providing herein for use of the authorized daytime mode of operation, directional or nondirectional.

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factor raises a question as to the proposed curves' validity, and this is one reason for not adopting them as a presunrise tool. We have also pointed out that individual skywave measurements, or series of measurements, are not appropriate as a basis for determining skywave service and interference (*Amendment of the Standards of Good Engineering Practice Concerning Standard Broadcast Stations (Skywave Measurements)*, 10 R.R. 1562 (1954)). Therefore, this extremely late-filed matter, and DBA's motion to strike it, need not be considered. We are of the view that the approaches adopted herein—sign-on time and power limitations, together with the conventional nighttime skywave standards on the clear channels where skywave service is to be protected—are the most appropriate and perhaps the only workable concepts of presunrise regulation. ABS' suggestion that the proceeding be further delayed while more measurements are taken and analyzed must be rejected, if this longstanding and important proceeding is to be terminated in a reasonable time. The same applies to supplemental comments filed by ABS on Feb. 23, 1967, containing additional engineering material.