

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In the Matter of "PRESUNRISE" OPERATION BY CLASS II STA- TIONS UNDER PRESUNRISE SERVICE AUTHORI- ZATION ON U.S. I-A CLEAR CHANNELS. AMENDMENT OF SECTION 73.99 OF THE COMMIS- SION'S RULES (PRESUNRISE SERVICE AUTHORI- TY) TO SPECIFY 6 A.M. "LOCAL TIME." "PRESUNRISE" OPERATION BY CLASS II STA- TIONS ON U.S. CLASS I-A CHANNELS BEFORE 6 A.M.	}	Docket No. 17562 Docket No. 18023 Docket No. 18036
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REPORT AND ORDER

(Second Report and Order in docket No. 18023)

(Adopted July 29, 1969)

BY THE COMMISSION: COMMISSIONERS COX AND JOHNSON ABSENT.

1. These proceedings are concerned with regularizing the sign-on practices of class II (secondary) daytime and limited-time standard broadcast stations assigned to the U.S. I-A clear channels. The presunrise operating privileges of class III (regional) stations, class II stations assigned to I-B clear channels, and class I-B clear channel stations were permanently adjusted after lengthy rulemaking proceedings in docket No. 14419—*Report and Order*, 8 F.C.C. 2d 698 (1967), aff'd in *WBEN, Inc. v. United States*, 396 F. 2d 601 (2d Cir.) (1968), cert. denied, 393 U.S. 914 (1968). Sections 73.87 and 73.99 of the rules, adopted in connection with that proceeding, forbid regular program transmission outside licensed hours by daytimers and limited-time stations on class III and class I-B channels except in accordance with a supplemental type of authorization called a Presunrise Service Authority (PSA). More than 1,500 PSA's are currently outstanding.

2. At present the early morning operating practices of class II stations assigned to U.S. I-A clear channels are regulated by 73.99 (b) (1) of the rules and the note thereto, under which they may, if located west of the cochannel dominant station, commence operation either at 6 a.m. "standard" (nonadvanced) time or sunrise at the dominant station, whichever is later.¹ Full-daytime or critical-hours power is used, depending upon the licensed postsunrise mode of operation. For class II stations east of the cochannel dominant station, presunrise operation is flatly prescribed.

¹ This applies to presunrise operation only, it being understood that all stations may observe their licensed sign-on. During the late spring, summer months, and early fall months this is often earlier than 6 a.m.

(c) Power levels for permissible PSA operations—par. 8(b), supra—to be determined by the following protection requirements:

(1) 500 w. (or licensed starting power, if less than 500 w.), or such lesser power as may be necessary to provide full treaty protection to foreign class II unlimited time stations (if any) assigned to the same channel.

(2) Foreign interference to be calculated in accordance with applicable treaties. Domestic interference effects resulting from PSA power levels of 500 w. or less to be disregarded, because the protected contour is in fact collapsing from the moment of sunrise at the dominant station.

(d) Daytime or critical hours antenna system to be employed, as appropriate.

(e) PSA requests (if any) by class II-A stations, and by other class II fulltimers operating on U.S. I-A clear channels (KFMB, San Diego, and other stations in Hawaii, Alaska, and Puerto Rico), to be judged on a case-by-case basis in line with par. 39 of the appendix.

(f) As in the case of other PSA's, authorizations issued under the rules herein adopted to be subject to suspension, modification or withdrawal without prior notice or right to hearing, if necessary to resolve interference conflicts, to implement agreements with foreign governments, or in other circumstances warranting such action, including further developments with respect to 770 kc./s. presently under consideration in docket No. 6741.

9. Under the formula set forth in paragraph 8(c), above, daytime-only and limited-time class II stations west of the cochannel I-A station will be limited to 500 w. power, or 250 w. if that is their authorized daytime power. The 250-w. limit will apply to stations KIKK, Pasadena, Tex. (650 kc./s.), KSEO, Durant, Okla. (750 kc./s.), KSPI, Stillwater, Okla. (780 kc./s.), KJIM, Fort Worth, Tex. (870 kc./s.), KCLE, Cleburne, Tex. (1120 kc./s.), and WAVI, Dayton, Ohio (1210 kc./s.).

10. In the notice of proposed rulemaking which initiated one of the above-captioned proceedings (docket No. 17562, F.C.C. 67-768), as well as in the report and order in docket No. 14419, supra, we expressed the tentative view that class II daytime- and limited-time stations operating on U.S. I-A clear channels should be subject to the same power limitation (500 w.) as are PSA holders generally. The reasons underlying this view were that it is undesirable to permit one group of PSA holders to operate at higher power than others, and that a general limitation of 500 w. would effectively control early morning skywave interference on the U.S. I-A clear channels. For the reasons stated in the appendix hereto, we feel that the general 500-w. PSA power ceiling has continuing validity, particularly in view of the fact that the United States-Mexican "Presunrise" agreement, when it becomes effective, will make the 500-w. ceiling mandatory across the board. We note in passing that the settlement reached herein is more lenient than the international settlement reached in the Mexican negotiations, since class II skywave effects at PSA power levels of 500 w. and less are ignored in evaluating domestic interference. On this basis, we do not believe that we are jeopardizing the integrity of the U.S. I-A clear channel services.

11. Further revision of section 73.99 of the rules will, of course, become necessary upon ratification of the United States-Mexican "Presunrise" agreement and its entry into force. In the meantime, the decisions reached in the above-captioned proceedings may be carried out simply by deleting of the present note to section 73.99(b) (1).

12. 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. The change concerning 6 a.m. local time is a relaxation of an existing restriction on presunrise operation, which otherwise would affect numerous stations starting August 1; therefore it is appropriate to make this change in the rules effective immediately (see 5 U.S.C. 553).

13. Accordingly, *It is ordered*, That effective August 1, 1969, the note to section 73.99(b) (1) of the rules *Is deleted*.

14. *It is further ordered*, That notwithstanding the above effective date, operations currently conducted under said note *May be continued* through September 14, 1969, but with sign-on times *adjusted* to 6 a.m. local time (or sunrise at the dominant station, whichever is later). After September 14, 1969, presunrise operations *shall be conducted* only pursuant to a PSA.

15. *It is further ordered*, That to expedite the grant of PSA's to stations affected by these proceedings, the Commission will accept and act on letter requests by eligible class II daytime and limited-time stations, specifying the power of 500 w. (or licensed facilities, if less), without the interference calculations otherwise required by section 73.99 of the rules. Such requests shall, however, contain a description of the method whereby any proposed power reduction will be achieved, and should be filed no later than September 1, 1969.

16. *It is further ordered*, That the waiver request filed August 31, 1967, by Radio Akron, Inc., licensee of radio station WHLO, Akron, Ohio, *Is dismissed* without prejudice to possible resubmission upon conclusion of proceedings in dockets Nos. 11290 and 16298.

17. *It is further ordered*, That the petition for review and final action filed June 30, 1965, the request for immediate action on pending complaint or alternative relief filed October 26, 1967, and all supplementary and related complaints and pleadings filed by Columbia Broadcasting System, Inc. (WCBS, New York), in connection with the presunrise operations of radio station WRFD, Worthington-Columbus, Ohio, *Are dismissed as moot*.

18. *It is further ordered*, That motions filed by Storer Broadcasting Co. (KGBS), Frances Maye Barnett et al. (KSWS), Cornell University (WHCU), and Loyola University (WWL), for acceptance of late or additional comments in dockets Nos. 17562 and 18036, *Are granted*; and the motion to strike filed February 27, 1968, by Plough Broadcasting Co. (WJJD), *Is denied*, to the extent that additional comments filed on behalf of radio station KSL have been considered, and in all other respects, *Is granted*.

19. *It is further ordered*, That proceedings in dockets Nos. 17562, 18023, and 18036 *Are terminated*.

FEDERAL COMMUNICATIONS COMMISSION,

BEN F. WAPLE, *Secretary*.

18 F.C.C. 2d

APPENDIX

Discussion and analysis of the comments in dockets 17562, 18023, and 18036, discussion of pertinent international agreements, and conclusions in these proceedings.

1. *The questions involved.* These three proceedings involve four questions: (1) The power to be permitted for presunrise operation by class II stations on U.S. I-A channels located west of the cochannel I-A station, specifically whether the same 500-w. ceiling on such operation should be imposed as that now applied to presunrise operation on other channels under section 73.99 of the rules (docket 17562 as instituted in June 1967); (2) whether the permissible presunrise starting time should be adjusted for these stations from 6 a.m. standard (nonadvanced) time to 6 a.m. local time (which is 5 a.m. standard time during the daylight-saving-time portion of the year) as it was for other stations in the docket 18023 decision of August 1968; (3) possible operation before 6 a.m. local time (pre-6 a.m. operation) by western class II stations on these channels; and (4) whether, and if so to what extent, presunrise operation should be permitted for eastern class II stations on these channels, those located east of the cochannel I-A station and therefore with their own local sunrise generally earlier than sunrise at the I-A location (docket 17562, as enlarged by further notice of proposed rulemaking issued October 17, 1967).

2. *The comments generally.* Comments were filed in docket 17562 by Clear Channel Broadcasting Service, Inc. (CCBS), an association of I-A licensees including those of the I-A stations on 9 channels also having class II stations, and individually by five of the CCBS member stations (KFI (640 kc./s.), WSB (750 kc./s.), WFAA and WBAP (share time on 820 kc./s.), and KSL (1160 kc./s.)). Comments were also filed in that proceeding by Columbia Broadcasting System, Inc. (CBS), National Broadcasting Co., Inc. (NBC), and Westinghouse Broadcasting Co., Inc. (Westinghouse), among them the licensees of nine I-A stations, and by the individual licensees of three other I-A stations (WCCO (830 kc./s.), WWL (870 kc./s.), and WHAM (1180 kc./s.)). American Broadcasting Co., the licensee of I-A stations on 770 kc./s. and 890 kc./s., did not file. These parties favored either adoption of the 500-w. restriction on western class II presunrise operation and continued prohibition against eastern class II presunrise operation, or further restrictions on or elimination of presunrise operation on these channels entirely. CCBS went still further in its requests.

3. Comments and/or reply comments were filed in docket 17562 by 11 daytime-only or limited-time western class II stations, generally opposing the proposed 500-w. limitation. Five of these are on the Pacific Coast, far from the I-A location (KFAX, KGBS, KIEV, KXA, and KXL); six are located further east (KSKY and WESC on 660 kc./s., KMMJ on 750 kc./s., WJAG on 780 kc./s., WRFD on 880 kc./s., and WLDS on 1180 kc./s.). Five eastern class II stations also filed in this proceeding, in support of presunrise operation by such stations, which four of them have engaged in in the past (WHLO on 640 kc./s., WAIT and WIKY on 820 kc./s., WHCU on 870 kc./s., and WJJD on 1160 kc./s.). Comments favoring such operation were also filed by the law firm of Daly and Joyce.

4. Parties filing in the later dockets 18023 and/or 18036 proceedings, concerning time of presunrise operation, included CCBS, CBS, NBC, and the licensees of I-A stations KFI, WCCO, WHAM, and WSB. Daytime- or limited-time class II stations filing included KFAX, KGBS, KIEV, KMMJ, KXA, KXL, WAIT, WESC, WHLO, WJAG, WJJD, and WRFD, mentioned above, and KOZN (660 kc./s.), KJIM (870 kc./s.), and WOI (640 kc./s.), not previously filing. Daytime Broadcasters Association also filed in docket 18023. Also, for the first time, in docket 18036, there were filings by three fulltime stations other than I-A on these channels: Class II-A station KSWB, Roswell, N. Mex., station KFMB, San Diego, and station KOB, Albuquerque. Although filed only in this docket of very limited scope, these pleadings really relate to the basic question of presunrise operation by such stations, and are so considered.¹

¹ Of the filings mentioned in these paragraphs, the following are not considered further herein: Those of KFI and CCBS insofar as they refer to the record in the hearing proceeding concerning presunrise operation by WOI, Ames, Iowa (docket 11290); that of WOI (a reply to the KFI-CCBS references); and those of WCCO, which relate essentially only to either the presunrise operation by WNYC, New York, N.Y., which is the subject of adjudication (docket 11227), or possible new assignments on this channel, which cannot occur under present rules. We also do not consider certain material purporting to be filed in docket 18036 on behalf of station KFAB, a I-B station at Omaha, Nebr., which is not involved in these proceedings concerning the I-A channels.

5. *The pertinent international agreements and their limitations.* One of the limiting factors which must govern any presunrise operation to be permitted is the United States-Canadian presunrise agreement of June 1967 (TIAS 6268, formalized June 12, and effective July 1, 1967), as modified in August 1968, to specify 6 a.m. local time instead of 6 a.m. standard time. This agreement does not contain any power limitation, but it does limit presunrise operation to 6 a.m. local time and after. Thus, as long as it remains in its present form, the pre-6 a.m. operation contemplated for possible authorization in docket 18036 cannot be permitted.

6. Also highly pertinent is the recent United States-Mexican presunrise agreement, signed by representatives of the United States and Mexico on December 12, 1968, ratified by the U.S. Senate on June 19, 1969, and now awaiting ratification by Mexico and then entry into force, along with the general United States-Mexican agreement concerning standard broadcast matters to which it is a supplement. This limits presunrise operation by those classes of stations permitted it, in either country, to 6 a.m. local time and after, and to no more than 500-w. power (less if necessary to protect cochannel stations in the other country in accordance with the standards of the general agreement.²

7. These international agreements limit the scope of these proceedings in that:

(a) Docket 18036, concerning pre-6 a.m. operation, must be terminated without further consideration, since such operation conflicts both with the recent United States/Mexican agreement and the earlier United States/Canadian agreement. Therefore, while some parties sought to be permitted presunrise operation at an earlier hour, it cannot be further considered. This docket was begun on the premise that through negotiations with Canadian authorities a change in the United States/Canadian agreement to permit such operation might be possible (see notice of proposed rulemaking in docket 18036, F.C.C. 68-194, footnote 1). However, since then the Mexican agreement has been formalized, and in view of the likelihood that it will enter into force in the near future there is no reason to continue to seek such an accommodation with Canada.³

(b) The provisions of the agreements mentioned permit presunrise operation up to certain limits of time and power, but of course they do not require the countries to authorize it. There remain for consideration the contentions of various I-A parties, particularly CCBS, that rather than the proposed 500-w. limit, all presunrise operation on these channels by class II stations should be precluded.

General Considerations

8. Before proceeding to a more detailed discussion of the various situations and showings contained in the records of these three proceedings, it is appropriate to set forth certain general matters, arguments and considerations raised by the record, and whose recital here will simplify the detailed consideration.

9. *The CCBS requests.* In addition to supporting the existing and proposed restrictions on class II presunrise operation (to 500-w. power and 6 a.m. standard time and after, and no such operation for eastern class II stations), as mentioned above CCBS requests steps toward further restrictions on class II operation on

² The United States-Mexican presunrise agreement begins as follows:

The Government of the United States of America and the Government of the United Mexican States * * * have agreed to permit certain broadcasting stations in the standard band to operate for a limited period of time prior to local sunrise and for a period of time after local sunset, using all or part of their authorized daytime facilities (in lieu of authorized nighttime facilities) with a maximum of 500-w. power. For that purpose, both Governments * * * have agreed as follows:

Article I. *Presunrise Operation.*

A. Program transmission is permissible during the period from 6 a.m. local time to local sunrise (presunrise operation); for this purpose, the Time Conversion Tables included in Annex I will be used.

The limitation of up to 500-w. power represents part of the mutual accommodation reached between the two nations concerning their stations' operations. It was believed that this restriction would result in meaningful presunrise service with a minimum of interference.

³ It is quite likely that, at least in most cases, the same result would have been reached apart from international understandings, for purely domestic reasons. As we stated in the memorandum opinion and order on reconsideration in docket 14419 (October 1967, F.C.C. 67-1143, 10 F.C.C. 2d 283, 11 R.R. 2d 1571, par. 34): "* * * We are not persuaded that, in general, earlier operation has enough public interest to warrant the extensive interference entailed during the pre-6:00 a.m. period, when interference conditions more closely approach, or equal, full nighttime conditions. Like the matter of power, this is part of the balance and compromise which must be reached."

these channels going beyond the limitations proposed in these proceedings, including (besides preclusion of presunrise operation) restriction on or preclusion of operation during the critical hours 2 hours after local sunrise and before local sunset, a general reallocation designed to clear 40 AM channels, and authorization of higher power. For reasons discussed there, we adhere to the decision reached in 1959 in docket 8333, the Daytime Skywave proceeding, not to impose critical-hours restrictions on existing class II facilities (all of these class II stations have been in existence, though not necessarily with the same facilities, for at least 20 years).⁴ The general AM reallocation also urged, while it might be desirable in some respects in the interests of improving service, would also be extremely difficult in view of the extremely crowded condition of the AM band and the only slightly lesser congestion in the FM service in much of the Nation. In the absence of specific proposals this does not warrant present consideration. The matter of completely precluding presunrise operation by class II stations on these channels is more germane to this proceeding and is discussed below, as is the matter of higher power for I-A stations.

10. *Equity and technical parity.* The presunrise rules adopted in 1967 in docket 14419, as changed recently to read 6 a.m. local time, limit class III stations, and class II stations on I-B channels, to presunrise operation no earlier than 6 a.m. local time, and to no more than 500-w. power. We expressed in the notices of proposed rulemaking in dockets 17562 and 18036 the belief that considerations of equity and technical parity indicate, or may indicate, that the same restrictions should therefore apply to western class II stations on I-A channels. This suggestion drew no support, and considerable opposition from class II stations. It was urged that any disparity resulting from not applying the same restrictions is de minimis in relation to the basic disparity in AM station assignments, with widely varying powers and hours; that this has never been a consideration in a.m. allocations where stations are assigned on the basis of service and allocations efficiency, using different levels of facilities for different purposes; that use of full facilities presunrise represents efficient use of the particular channel in the class II station's area; that parity is no basis on which to destroy existing service; that in the decision on reconsideration in docket 14419 we stated that waivers of the power restriction would be granted where full protection of cochannel stations is shown and in that statement obviously we did not consider such considerations relevant; that parity is actually increased when the class II station must compete with numerous fulltime stations operating with higher power (KGBS, Los Angeles, KXA, Seattle, and WRFD, Columbus); that the proposed 500-w. limit would mean actual disparity in terms of amount of reduction required (KGBS, which now uses its 50-kw. daytime facilities, would face a 99-percent reduction, whereas the maximum reduction for a regional station is 5 kw. to 500 w.); and that these stations are now at a disadvantage as compared to regional stations because most of them (of western class II stations, all but the five west coast stations) cannot sign on at 6 a.m. all year since sunrise at the I-A station is later in winter months.

11. *Individual consideration.* One of the important considerations in the basic presunrise decision (docket 14419), was that it was out of the question from an administrative standpoint to examine the facts of the thousands of individual situations involved on the regional channels. Storer Broadcasting Co. (KGBS, Los Angeles, 50 kw.), urges that individual consideration in the present proceedings is both possible and appropriate, in view of the much smaller number of situations and the great differences in the facts they present concerning distance from the I-A station, extent of the interference to it, the amount of power reduction which would be involved, and the power needed to adequately serve the class II market.

12. *CCBS nighttime groundwave service showing.* One of the tools used in our evaluations herein is the map submitted by CCBS, WWL, and station WHCU showing nighttime groundwave service in the continental United States and white or gray areas having no or only one such service. This map, prepared late in 1961, is an up-dated version of a map prepared by CCBS during the Clear Channel proceeding (docket 6741) and portrays type B groundwave service, that regarded as satisfactory taking into account not only interference but other factors, such as fading and atmospheric noise, not normally used in the evaluation

⁴ See 27 F.C.C. 687, 696; 18 R.R. 1845, 1854.

of standard broadcast service and proposals. These maps are based on the concepts set forth in exhibit 109 in the Clear Channel proceeding, which we recognized in the decision there as a comprehensive and realistic means of evaluating a.m. service, even though it was not adopted for general application use because of its complexity.⁵ In view of the meritorious nature of this type of analysis, it is appropriate to use here the map based on it. It should be noted that the CCBS map reflects authorized nighttime operations, and does not take into account presunrise operations such as those involved here, either as affording service or as sources of interference during the hours involved. As CCBS points out, the authorization of more fulltime operations from the late 1940's until 1961 did not change the nationwide nighttime white area situation substantially, nor has it changed since in any substantial degree.

13. *Skywave service after sunrise at the I-A location.* One point urged by CCBS and some other I-A parties—in connection with restricting class II operations further than protection of groundwave service requires (and also protection beyond the 0.5-mv./m. 50-percent skywave contour)—is that skywave service exists, or would exist in the absence of interference, after sunrise at the I-A station. This is said to be true because: (1) A 0.5-mv./m. 50 percent of the time signal exceeds that value during part of the time so as to be usable; (2) there are receivers capable of utilizing signals of a lower value (supported by an engineering affidavit); (3) in certain areas of the United States, such as the Plains, man-made noise is low so that only a low-value signal is required for adequate reception; and (4) while skywave transmission decays after sunrise at the transmitter location, atmospheric noise is also at a low level during the hours after sunrise, so that a residual skywave service of significance is provided, or would be in the absence of cochannel interference. It is asserted in the CCBS engineering showing (based on CCIR material), that a signal of 63 uv./m. during the early morning hours is as useful as a 500-uv./m. (0.5-mv./m.) signal in the evening.

14. We believe that there is some merit in these assertions, and that some degree of protection to postsunrise skywave service is warranted in the interest of improving skywave service on which much of the Nation must rely for its AM radio. This is one reason for not permitting presunrise power of more than 500 w. However, we do not believe it sufficient to support a restriction on presunrise operations to below 500 w. (or daytime facilities if less), a power we have previously concluded is appropriate to permit a reasonable amount of local service and avoid excessive interference. See the June 1967 decision in docket 14419, appendix A, par. 28 (8 F.C.C. 2d 698, 715).

15. *The significance of higher power for I-A stations.* CCBS et al. urge that power for I-A stations considerably more than the present 50-kw. level is the real key to improved AM service in the Nation, and that presunrise operation by these class II stations is undesirable because it would both make such an approach more difficult to adopt and, because of interference, seriously diminish the service benefits from higher power in cases where it is authorized. Various class II parties contend that this development—which has been under consideration for many years—is too speculative to warrant curtailment of long-standing class II operations, and provision can be made for reevaluating them in light of higher power if it is ever adopted. We agree with the latter view. The higher power question is a complex one, involving technical, economic, and sociological considerations, and it is not now determined whether it will be authorized (on a regular basis or experimentally) and, if so, for how many or which stations. This possibility should not be the basis for restricting or precluding operations of long standing. However, we also believe that, in view of the substantial service benefits which higher power would bring (in the absence of interference) if it is concluded to be in the public interest, the presunrise operations which are now being put on a regularly authorized basis should not be permitted to be an automatic obstacle to such development if it is decided on. But these are matters for the future. Any higher power developments will involve further proceedings, and in the course of these we can take whatever steps are necessary to make appropriate adjustments in existing presunrise operations. Also, as far as western daytime- and limited-time class II stations are concerned, this is a possible consideration in only a small number of cases, since most such stations are on duplicated channels.

⁵ See 31 F.C.C. 565; 21 R.R. 1801, 1819.

16. *Diurnal evaluation.* The presunrise hours are a transitional period, when full nighttime propagation and interference conditions do not prevail, and nearly all of the parties filing engineering material recognized this in their showings as to interference. CCBS prepared its material on the basis of a diurnal curve (CCBS curve) derived from data submitted in docket 8333; the Daytime Skywave proceeding, which was rejected there in favor of standards based on FCC exhibit 1 in that proceeding (see 27 F.C.C. 832-834). The same curve was used by Westinghouse (KDKA and WBZ), Loyola University (WWL), and class II station WHCU (570 kc./s.); CBS used a curve based on FCC exhibit 1 in docket 8333, and the curves proposed in docket 14419 were used by Storer in a very helpful study of the limits imposed by western class II operations on I-A groundwave service.⁶ NBC used a diurnal curve showing generally similar results although not stating how it was derived.

17. Storer asserts that the CCBS curve, which shows more interference than the docket 14419 curves, overstates the amount of presunrise interference; on the other hand, in docket 14419, the curves we proposed were vigorously attacked as showing less than the actual interference (in particular, as being based on postsunset data whereas presunrise interference is in fact greater than that after sunset). We have not adopted standards for evaluating presunrise interference and do not do so here. It does not appear that use of one set of curves instead of another would affect any decisions reached herein.

18. In support of its position urging restrictions on class II operation after sunrise, CCBS showed the impact of such interference from eastern class II stations on I-A service, in some cases substantial. As already mentioned, we do not consider imposing restrictions on such operation.

19. *Absence of complaint.* An argument made by numerous class II stations, both western and eastern, is that their operation should be allowed to continue without restriction because it has taken place for a number of years without complaint of interference from the I-A station or from listeners. This we regard as a factor of relatively little significance. Under AM allocation rules, interference is a statistical matter, not always easily susceptible of physical determination or coming to the attention of the affected station. Moreover, and perhaps more significant, since these are existing operations, often of long standing, it may well not have occurred to listeners to complain of interference, at least in recent years; it may have been regarded as a fact of life. The question here, we recognize, is not of preserving existing I-A service, but of improving it. Also, of course, it is the duty of the Commission (using the best tools available to it), not that of listeners or affected stations, to implement the mandate of the Communications Act to prevent interference between stations and further the more effective use of radio (sections 303 (f) and (g)).⁷

20. *Programing showings.* Some of the class II parties urge (as has been argued before) that complete protection of wide-area class I-A skywave and groundwave service is not an important consideration because these stations, or most of them, present during the presunrise hours material of interest primarily or exclusively to their own metropolitan areas (traffic reports, etc.). WAIT suggests that if they are to occupy cleared channels, they likely should be regarded as having a fiduciary obligation to present material sepecifically aimed at the white area audience. As to the programing of I-A stations, WWL (New Orleans, 570 kc./s.) showed all of its programing during the 4-7-a.m. period, and CCBS submitted material as to the farm programing of its nine I-A member stations involved here (during the presunrise period and at other times). These showings are discussed below where appropriate in individual situations. KFI, Los Angeles (640 kc./s.), made some reference to the nature of its nighttime programing. The other I-A licensees made no showings of this sort. Of the class II stations (other than Pacific Coast stations where little or no restriction is being imposed herein), WRFD (west), and WHCU (east), made detailed showings as to their program-

⁶ On the basis of the absence of significant interference, Storer urges that the five west coast stations, and KMMJ, Grand Island, Nebr., be permitted to use full daytime facilities before sunrise. The showing purported to include all western class II stations, in support of Storer's contention that their circumstances differ widely and individual consideration is feasible and appropriate.

⁷ Since the class II operations involved here are, by and large, existing ones, on which audiences have come to rely, their curtailment or termination is not to be undertaken lightly. *Hall v. FCC*, 237 F. 2d 567, 572; 14 R.R. 2009, 2012 (1956). Restrictions are adopted herein only where they appear warranted after consideration of the particular circumstances.

ing during the presunrise period, and there were fairly specific references by KSKY (west), and WHLO (east). The general significance of this matter is discussed in par. 27, below.

The Arguments of the I-A Parties in Docket 17562, Generally

21. Some of the arguments of general applicability advanced by CCBS and other I-A parties in docket 17562 have been discussed above, and their submissions concerning particular situations are dealt with below. The other arguments of general pertinence advanced by these parties are discussed in the next few paragraphs; generally speaking, all the points raised in the record are included within the CCBS comments and reply comments. These contentions relate especially to operation by eastern class II stations, which involves interference to the multiple AM clear channel skywave service structure and also extensive groundwave interference to I-A service; but they also relate to western class II operation in the latter connection. The CCBS comments were made in support of restrictions on class II operation going far beyond the scope of this proceeding, and higher power; but they relate pro tanto to the restrictions at issue in docket 17562 on presunrise operation, in the context of the present I-A service structure limited to 50-kw. power,⁸ and the interference showings are generally based on 50-kw. operations.

22. CCBS et al. urge that the service of I-A stations should receive a very high degree of protection against interference from cochannel presunrise (as well as critical hour operations) in order that their skywave transmitters may provide reliable service to the radio desert, the more than half of the conterminous United States which is white area, receiving no primary service at night,⁹ and so that their extensive groundwave service may not be diminished so as to add to the white area. It is claimed that our present proposal is far from enough; more protection is needed, not less. It is asserted that presunrise operations such as those involved here cause such interference to both groundwave and skywave, and should be eliminated; CCBS asserts that the threshold question is whether rural and small-town America should be deprived of the skywave and groundwave service of I-A stations¹⁰ so that a relatively minuscule amount of additional service in generally well-served areas may be provided by urban class II stations.¹¹ It is claimed that the only way to bring really improved service to these areas is by higher power (duplication having yielded little in this respect), and two CCBS members (WSB and KFI), showed the impact on higher power operation by their stations (which they seek), which would be greater than that on their present operations.

23. In reply comments, CCBS claims that the showings made by the class II's as to the value of their service which would be lost, the small amount of time involved in presunrise operation, and the small area they can serve because of interference from the I-A station, are totally inadequate to justify the loss through interference (usually interference to groundwave, as well as to all or

⁸ The arguments of CCBS in dockets 18023 and 18036, concerning time of presunrise operations, are discussed in pars. 44-45, below.

⁹ As CCBS points out, the tremendous increase in the number of stations in recent years has not substantially changed the white area picture. In 1947, it was 1,802,665 square miles containing some 23,252,000 people; in 1957 it was 1,725,000 square miles containing some 25,630,000 people and in 1961 it had actually increased, to 1,726,293 square miles (containing 25,106,000 people). Eastern class II station WAIT (Chicago), in comments supporting class II presunrise operation generally, asserts that, in view of the great population increase in the United States generally in the last two decades, the fact that the white areas have about the same population as they did in 1947 indicates that service to them is now relatively of less importance (as noted, the population actually decreased from 1957 to 1961, though the area was greater).

¹⁰ It is said that this I-A service is necessary to fulfill our oft-stated first AM allocations objective, the provision of some service to all. (The second is provision of as many choices to as many listeners as possible; the third is to provide local service to as many listeners as possible.)

¹¹ Of the 31 western daytime-only or limited-time class II stations, only 11 are in communities with no fulltime AM service, and many are in large cities. CCBS asserts that all 11 of these communities have nearby fulltime AM service available, but if this term is used in its usual sense it is true only of Glendale, Calif. (adjacent to Los Angeles). In many of the other 10 cases the nearest fulltime AM service is from 30 miles or more away, as shown by the nighttime map presented by CCBS and other parties. Of the 11, nine are FM licensees or (one) permittee; in one other case there is a local FM station licensed to another party; and in one (Wadesboro, N.C.), there is no local or nearby FM station or channel, and the nearest fulltime AM service is from Charlotte, some 43 miles away.

most of the I-A station's skywave, service).¹² It is also pointed out that in the presunrise decision in docket 14419, we noted that new zones of interference would be created on other channels as a result of our decision, but that other service, including Clear Channel service, is generally available to those new loss areas (see docket 14419, 8 F.C.C. 2d 698, 703; 10 R.R. 2d 1580, 1588); and thus clear channel service is relied on to serve areas losing service from stations on other channels as a result of that decision.¹³

24. As mentioned above and noted in particular cases below, CCBS submitted a showing of the farm programing presented by its member I-A stations involved here (during early morning hours and at other times), and the record also contains material as to the programing of WWL, and KFI. In support of its claim as to the value of wide-area skywave service, CCBS also refers to a mail survey made by some of its members in 1958, showing listening in many counties outside of the groundwave service area.¹⁴

25. CCBS and other I-A parties urge that the Commission adhere to conclusions reached in earlier proceedings involving operations on clear channels, including: docket 12274 (*Extended Hours of Broadcasting for Daytime Standard Broadcast Stations*, 25 F.C.C. 1135 (1958)), the 5 to 7 proceeding in which we concluded that operation by class II stations during these non-daytime hours would destroy all skywave service on virtually all clear channels in addition to substantial groundwave service losses (25 F.C.C. 1159, 1165-1187); docket 12729 (*Daytime Operation from 6 a.m. to 6 p.m.*, 27 F.C.C. 53 (1959)), the similar 6 to 6 proceeding, and others.

Western Daytime and Limited-Time Class II Stations

26. *Consideration of further restriction beyond 500 w. or lesser daytime facilities.* As noted above, CCBS, and also Westinghouse, urge that we go beyond the 500-w. limitation proposed in the notice and preclude all presunrise operation by western class II stations on these channels. While not strictly within the scope of this proceeding as delineated in the notice and further notice, this argument is sufficiently germane to the general subject to warrant consideration at this point. However, we do not find warrant in the material filed for either preclusions of presunrise operation by these stations, or limitation on the permissible power to less than the 500 w. or lesser daytime facilities proposed in the notice. It must be borne in mind that these are, in general, long-standing operations, whose curtailment is not to be undertaken lightly. *Hall v. FCC*, 237 F. 2d 567, 572; 14 R.R. 2009, 2012 (1956). As mentioned above, we conclude, here as elsewhere, that a 500-w. power level is desirable to permit the rendition of a reasonable amount of local service. As the Storer study above shows, imposition of this limit will result in substantial improvement of I-A groundwave service; as mentioned in paragraph 14, above, we do not believe that the objective of protecting I-A skywave service after sunrise at the I-A location is sufficient to warrant reduction to less than this general power level. We recognize that this

¹² As to the small amount of time involved, emphasized by some of the class II's, CCBS and one of its members (the licensee of WBAF) point out that the same argument can be applied to the service gained by the class II presunrise operation; and assert that the reduction in hours involved would under this theory be patently insubstantial in relation to the provision of news, weather, and entertainment to all of the United States via improved I-A skywave service.

¹³ It is asserted that class II presunrise operation creates the intolerable situation of interfering with I-A groundwave service and thus increasing white area, at the same time interfering with skywave service which is the only means of serving such area. In the notice herein, we mentioned, as possible reason for not imposing the same 500-w. limit on class II's on these channels as on other presunrise operations, the fact that these channels are different, i.e., fewer stations (and generally speaking no possibility of new ones), and fewer foreign problems. CCBS asserts that the difference really goes the other way; the real difference is that presunrise operation causes interference to wide-coverage and badly needed I-A groundwave and skywave service, and should be eliminated. CBS asserts that because there are fewer stations the presunrise operation of any one causes a greater loss than on other frequencies.

¹⁴ This showing was submitted in docket 12274, the 5 to 7 extended hours proceeding decided in 1958. As set forth in the report and order therein (25 F.C.C. 1158), in response to announcements made in June 1958, stations WSM, WGN, WWL, and WHO received mail from listeners in a number of counties and States ranging from 100 counties in 27 States (WFO) to 718 counties in 36 States (WSM). These were outside of the groundwave service area. Stations WLW and WOAL, not involved here, were also included. This likely represented largely evening rather than early morning listening, since sunrise is at its earliest in June and skywave transmission therefore diminishes at an early hour.

will still leave substantial interference in some cases—e.g., WRFD, Worthington-Columbus, Ohio, where according to Storer the limit to WCBS will still be 1.28 mv./m. when evaluated on a diurnal basis—but CBS has made no showing herein of the wide-area value of its I-A operation to justify a greater restriction, and the same is true of other I-A stations.

27. We have also noted in this connection the arguments of CCBS, and the showings as to the early-morning programing of its members, including four I-A stations on channels having western daytime-only or limited-time stations: (WSM, WSB, WHAS, and WHO). We do not find this material persuasive as a basis for further restriction on what are, generally, long-standing operations.¹⁵ As mentioned in par. 6 of the report and order herein, programing considerations can be of little significance in decisions such as this, because programing is subject to change with changes in ownership, and indeed otherwise (for example, as WRFD points out, the farm programing efforts of some I-A stations have declined during recent years). Rather, they must be based on basic engineering considerations, concerning service and interference; and we conclude, for reasons stated, that the proposed restriction is all that should be imposed in light thereof. Therefore we do not give further consideration herein to reduction in presunrise power below 500 w. or daytime facilities where they are less.

28. *Permitting power higher than 500 w. in some cases.* The notice in docket 17562 proposed to limit presunrise operation by western class II stations to no more than 500-w. power for basically two reasons: (1) Reasons of equity and technical parity appeared to indicate imposition of the same limitation here as on all other presunrise operations; (2) it appeared to be a reasonable compromise between provision for local service and avoidance of excessive interference to I-A and II-A service. As mentioned in paragraph 10, above, a number of class II parties attacked the first concept as one of no significance here, where there is involved the curtailment of existing service. As to the second, besides urging that in some cases the interference is of no consequence, Storer and some others urged that individual consideration of particular situations is in order. See paragraph 11, above.

29. As indicated earlier, upon entry into force of the new United States/Mexican presunrise agreement a limitation to 500 w. will be required by the terms of this international agreement. At such time—which is expected to be in the near future—all presunrise use of daytime facilities, will be limited to no more than 500 w. (or daytime power levels if less). While this agreement does not as yet govern pending its entry into force, we do not believe there is reason to permit higher power operations during the interim period, which is expected to be brief.

30. In this connection, we observe that with respect to western class II stations under consideration here, the same limitation would have been generally dictated by domestic considerations, irrespective of any international arrangements. For example, as shown in the Storer Broadcasting Co. showing mentioned above, use of full daytime power by 12 of these stations would cause interference within the 0.5-mv./m. groundwave contour of the I-A station, even on the basis of the docket 14419 diurnal curve which was attacked in that proceeding as an understatement of the interference involved, and the same appears to be true in three other cases not covered in the Storer showing.¹⁶

Three of the stations mentioned above and covered by the Storer showing filed comments herein, and are discussed in par. 33 and footnote 17, below.

31. Radio stations KMMJ, Grand Island, Nebr. (750 kc./s., limited by WSB, Atlanta), WESC, Greenville, S.C. (660 kc./s., limited by WNBC, New York), and KSKY, Dallas, Tex. (also on 660 kc./s.) deserve special comment. WESC, which

¹⁵ In the case of WSB, the farm programing shown does not occur during the time period involved here, since it is always either before sunrise at Atlanta, or before 6 a.m. local time (CST or CDST) at Grand Island, Nebr., Durant, Okla., and (PT) Portland, Oreg., the western class II locations. The CCBS showing in docket 18023 is incorrect in its analysis of sunrise times. In the case of WHAS, the times of interference from WTUP, Mobile, is minimal (only 15 minutes per day during 2 months, even assuming the starting time is adjusted to 6 a.m. local time). Interference to WHO will be substantially reduced when station KIXL, Dallas, the class II station on its channel, operates presunrise with 500 w. instead of its daytime 1 kw. As to WSM, the class II station on the channel (KIKK, Pasadena, Tex.) operates with only 250 w., and we do not believe that further restriction is warranted.

¹⁶ The three stations not covered by Storer's showing are those at Mobile, Ala., and Carrollton, Ga., which are shown in the CCBS and NBC exhibits as substantial sources of presunrise interference, and KUOM-WCAL on 770 kc./s., which would be sources of more interference than WEW on the same channel, shown by Storer.

is located inside WNBC's 0.5-mv./m. (50-percent skywave) contour, operates with a critical hours antenna designed to suppress radiation in the direction of WNBC to the equivalent of 0.1 kw. As quid pro quo for this high degree of suppression, far beyond that required by our rules, WNBC consented to WESC's operation prior to sunrise, New York, absent which WESC was entitled to only a slight increment of presunrise operation (up to 30 minutes in January). WESC's current mode of operation, as redefined in 1968 and specifically conditioned on the outcome of the above-captioned proceedings, calls for a 6:30 a.m. local time sign-on with no more than 7750 w. into the critical hours directional antenna system. (The reduction of power from 10 kw. to 7750 w. is necessary to afford protection to a class II fulltimer in Mexico City.) Because of WESC's impact on WNBC's early morning skywave service and the existence of fulltime broadcast services in the Greenville area, we feel that this arrangement must be terminated. This view is reinforced by the likelihood of early ratification of the United States-Mexican "Presunrise" agreement, under which the WESC operation would in any event have to be reduced to 500 w. WESC's agreement with WNBC is no longer recognized by our rules, nor can it be accorded decisional weight under circumstances in which such recognition would frustrate sound allocations policy. In re WGSB, 17 F.C.C. 2d 966 (1969). WESC may, of course, apply to modify its critical hours operation to achieve the maximum transitional hours coverage obtainable under our rules. Although neither KMMJ nor KSKY is located inside their dominant stations' 0.5-mv./m. (50-percent skywave) contours, their 0.025 (10-percent skywave) interfering contours would preclude operation with powers above 500 w. We have carefully reviewed the comments filed by these stations, including material filed in reply to KMMJ by WSB, and conclude that presunrise operation at powers above 500 w. would not be warranted, even on an interim basis.

32. KSKY emphasizes the value of its early morning agricultural and religious programming and its distance from the dominant station (WNBC). KMMJ stresses the value of its wide-area presunrise service (agriculture, said to be outstanding, weather, school-closing announcements, etc.), the need for full power to cover this area, and the absence of impact on WSB's service in the Southeast, where it is of significance, particularly in view of the greater interference from the other western station on the channel (at Durant, Okla.) at the same time, and the still greater residual skywave interference to WSB from eastern class II stations immediately after their own sunrise (particularly WPDJ, Clarksburg, W. Va.), which assertedly makes the individual impact from KMMJ's directionalized 10 kw. operation of no consequence. However, as WSB shows, interference from KMMJ destroys all but a small portion of whatever skywave service WSB would render during these hours (all except an area in the East and Southeast lying east of Atlanta), and skywave interference to skywave service is evaluated on an individual, rather than an R.S.S., basis. See *Flathead Valley Broadcasters*, 5 R.R. 2d 550 (1965); *Argus Press Company*, 14 F.C.C. 490 (1950). We note that in all of these stations' cities there are other stations limited to presunrise operation with 500 w. (fulltime regional station KRGI in Grand Island).

33. In the case of three other stations which filed herein opposing the restriction, the 500-w. limit is clearly warranted by groundwave as well as skywave interference considerations. These are WJAG, Norfolk, Nebr. (780 kc./s.), WRFD, Worthington-Columbus, Ohio (880 kc./s.), and WLDS, Jacksonville, Ill. (1180 kc./s.).¹⁷

¹⁷ According to the Storer exhibit concerning groundwave interference, the presunrise operation of each of these stations with full day facilities limits the cochannel I-A station to a contour higher than 1 mv./m., even using the docket 14419 curves for diurnal evaluation. In the case of WRFD (5 kw.), the limit to WCBS is more than 4 mv./m. according to the Storer material. A reduction in radiation in these cases is clearly necessary to improve I-A groundwave service, as well as skywave service. WJAG's chief claim is the need for its agricultural and other service in a sparsely settled rural area without much nighttime radio service (CBS in reply claims that much of its area is served from Omaha, and Yankton, S. Dak.). WJAG is a class C FM permittee. WRFD's chief claim is its early morning farm programming, which it is said, would be jeopardized by the time and power restrictions involved if it is limited to 500 w. and 6 a.m. local or standard time, along with the lack of CBS complaint for 18 years before 1965 and failure of CBS to show what use it makes of its I-A facilities. Our view on these matters has been set forth above. CBS in reply points out the lack of total impact on the farm programming mentioned (which cannot in any event be presented at times because it is earlier than sunrise New York, and can be presented at other times because it is later than sunrise at Columbus), the popularity with much of the farm audience of other times such as noon for getting farm information, and the

34. *KGBS and class II-A station KSWs (1020 kc./s.)*. Storer, on behalf of KGBS, Los Angeles, and KSWs, the class II-A station at Roswell, N. Mex., explored in docket 18036 the question of presunrise impact from KGBS (and from KDKA, the I-A station at Pittsburgh), on the presunrise service of KSWs. Storer seeks to use its full 50-kw. directional facilities. Its argument in urging that both stations should use full day facilities before sunrise (although its request is not tied to that) in substance urges five points: (1) Neither KGBS, nor KSWs if it so operates, cause significant interference to the I-A station at Pittsburgh if they use full day facilities, taking into account the greater interference from two Illinois class II stations on the channel (WCIL and WPEO) at the same time;¹⁸ (2) the nighttime limit from KDKA to KSWs at Roswell is 4.83 mv./m., and that is the extent of protection to which KSWs is entitled even though as the time at Pittsburgh draws away from sunrise the interference from KDKA is less;¹⁹ (3) KGBS (using full facilities) does not cause interference to KSWs under the provisions of the Commission's rules and, even if a diurnal evaluation is made using the docket 14419 diurnal curves; the combined interference from KDKA and KGBS is never more than 4.83 mv./m. during the period after 6 a.m., m.s.t., when KSWs currently commences operation;²⁰ (4) with respect to operation at an earlier hour, if KSWs uses night facilities at times before 6 a.m., m.s.t., Storer agrees to reduce KGBS to 25 kw. and, so operating, would not increase interference from it and KDKA to a level higher than 4.83 mv./m.;²¹ but (5) in fact KSWs as well as KGBS would serve more area (including more white area in the case of KSWs) if they both operated with full day facilities,²² resulting in a more efficient use of the channel and preservation of the existing KGBS service.²³ Storer asks that a rule permitting such operation be adopted. KSWs opposes this arrangement and any presunrise operation by KGBS, on the ground of interference to it, including impact on skywave service which it assertedly renders even though it is not recognized by the rules. Later pleadings by Storer and KSWs continue the controversy and are accepted and considered here.

35. We cannot agree with the approach used by Storer in analyzing this situation, mentioned above (footnote 19). If it is regarded as entirely a nighttime one, under conventional nighttime standards the nighttime limit from KGBS, 4.63 mv./m., when combined with the nighttime limit from KDKA, 4.83 mv./m., results in an R.S.S. limit obviously considerably more than the latter alone (nearly 6.7 mv./m.). If the situation at Pittsburgh is regarded as becoming one of daytime conditions after sunrise there, then the interference to KSWs as Roswell from KGBS—over an all-dark path for a considerable time after sunrise Pittsburgh—is the only interference to be considered and is very substantial, as shown

availability of this material on other stations such as class I stations WLW, WJR, and WOWO (WRFD asserts that these stations currently present less of such material than formerly). As CBS also points out, WRFD has an associated FM station, with wide-coverage super-maximum facilities.

¹⁸The highest limit shown in the Storer engineering study from KGBS to KDKA is 0.804 mv./m. at sunrise Pittsburgh (7:30 a.m. e.s.t., 4:50 p.s.t.) in December. At the same time the limit from KSWs with day facilities would be 0.286 mv./m., compared to limits of 1.57 mv./m. and 1.41 mv./m. from WCIL and WPEO, the Illinois stations. These and other limits are diurnally calculated.

¹⁹The argument is that KDKA imposes a normal nighttime limit of 4.83 mv./m. on KSWs, establishing the degree of protection to which that station is entitled for presunrise purposes; but that, under the Commission's rules, interference from KDKA disappears and is regarded as nonexistent after sunrise at Pittsburgh, so that the interference from KGBS—4.63 mv./m. under full night conditions—is the only interference to be considered and is less than 4.83 mv./m.

²⁰At 6 a.m. m.s.t. (5 a.m. p.s.t.) in January, the limits (diurnally adjusted) from KDKA and KGBS would be 2.27 mv./m. and 4.26 mv./m., respectively, giving an R.S.S. value of 4.827 mv./m. This is the highest limit shown for that hour or later.

²¹On this basis, the KDKA and KGBS limits at 4 a.m. p.s.t. in November would be 3.33 mv./m. and 3.27 mv./m. respectively, for an R.S.S. limit of 4.66 mv./m., the highest limit shown for this operating arrangement.

²²The comparison made is between the area within the 4.83-mv./m. contour KSWs has with its 10-kw. nighttime facilities, and the area it would, assertedly, have with its 50-kw. day facilities and limited to 5.7 mv./m. (the R.S.S. value of the diurnally adjusted limits from KDKA and KGBS with 50 kw., at 4 a.m. p.s.t. in November, respectively 3.33 and 4.63 mv./m.). This is not a valid comparison, since KSWs does not in fact have a 4.83-mv./m. limit after sunrise Pittsburgh.

²³It is claimed that—one of few Los Angeles 50-kw. stations—KGBS serves a tremendous area during these hours, bringing a valuable and highly popular program format (with much public service material) to large audiences which are active at these hours in this all night metropolitan area, and particularly to the many motorists with AM but not FM car radios, in this area where transportation is generally by private automobile. KGBS has an associated FM station.

by Storer and noted above. If a diurnal analysis of the situation on the channel is made—which is essentially Storer's way of evaluating it—as shown by Storer and mentioned above the KGBS interference constitutes a very substantial limit on the service which KSWs could otherwise render. It is always more than the interference from KDKA, and during most of this presunrise period, it is so much more than the KDKA limit does not enter into the R.S.S. calculation.

36. Therefore, there is a very substantial impact from KGBS on KSWs. Considering the multitude of AM and FM services in Los Angeles (including two 50-kw. class I stations and KGBS-FM), the lack of nighttime service in New Mexico, and the purpose for which class II-A stations are assigned as mentioned above, we believe that a reduction to 500 w. in the presunrise power of KGBS is appropriate in light of the material of record herein, in addition of course to the fact that when it enters into force the United States/Mexican "Presunrise" agreement will require it. We do not believe that, so limited, presunrise operation by KGBS will substantially impair the wide-area service, in a needful area, which class II-A station KSWs is designed to render, or constitutes any infringement of that station's rights, to hearing or otherwise. To the extent that KSWs renders sky-wave service, as it claims, it has been able to do so with KGBS operating presunrise at full power, and its potential will be improved by the reduction to 500-w. power adopted herein.

37. *Fulltime stations other than I-A.*²² Section 73.99 (a) and (b), and the note following paragraph (b), refer to class II stations, without specifically mentioning fulltime class II stations on these channels. The notice in docket 17562 mentioned fulltime as well as daytime class II stations, and simply proposed to remove the note which permits presunrise use of full power.

38. CCBS and other I-A parties urged in docket 17562 that class II-A and other fulltime class II stations on these channels should not be permitted presunrise operation with other than authorized nighttime facilities. It was said that if using full power with daytime facilities they cause great interference to the cochannel I-A station; and if limited to 500 w. they violate the fundamental purpose for which II-A stations are assigned, service to wide, underserved white areas with high-power nighttime facilities. It is also pointed out that, having authorized nighttime facilities; they do not need presunrise privileges in order to operate. No fulltime stations on these channels (other than I-A) filed in docket 17562 or 18023; however, three such stations filed in docket 18036. These were class II-A station KSWs, class II station KFMB, San Diego (760 kc./s.), and station KOB, Albuquerque, whose status on 770 kc./s. is presently undecided. KSWs, opposing presunrise operation by KGBS, Los Angeles, as mentioned above, disavowed any interest in use of daytime facilities before sunrise. KOB simply asked that the Commission withhold action on any presunrise decision as to 770 kc./s. until resolution of KOB's status, and that meanwhile no action be taken which would prejudice KOB's rights on the channel. KFMB, on the other hand, seeks use of full daytime facilities (5 kw., nondirectional rather than its directional nighttime array) starting at 4 a.m. It claims that its situation warrants special consideration because it gave up its more favorable lower frequency (540 kc./s.) to aid implementation of the earlier United States/Mexican agreement, and because of the great distance between it and cochannel I-A station WJR, Detroit, with no other stations affected. The CCBS material concerning WJR shows some interference from presunrise operation by KFMB with day facilities.

39. In our judgment, use of full facilities presunrise by these stations is out of the question, as violative of the basic allocation concepts governing the I-A channels. We do not here decide that presunrise use of daytime modes of operation with 500-w. power (or less) should be precluded by rule, and accordingly are not changing the presunrise rule except by deleting the note permitting full daytime power to be used. However, any PSA request by fulltime stations on these channels will be scrutinized carefully to determine whether grant thereof would be in the public interest and preferable to requiring them to use authorized nighttime facilities during the hours involved. The area and population losses inherent in such proposals would appear to eliminate them from favorable consideration.

²² Most fulltime class II stations on these channels are located outside of the continental United States and operate with the same facilities day and night. This discussion applies to class II-A stations and KFMB, San Diego, and station KOB, Albuquerque, whose status is undecided.

40. The action taken herein in no way prejudices the situation of station KOB on 770 kc./s. Presunrise operation by daytime and limited-time stations on the channel may be engaged in with 500 w., but it does not appear that this will limit KOB's service to an extent substantially greater than it is already limited by WABC, the I-A station. If, in proceedings presently pending in docket 6741, it is decided that KOB should operate as a class I station (which is not the Commission's proposal), appropriate steps can then be taken with respect to cochannel presunrise operations.

Docket 18023: Adjustment to 6 a.m. local time

41. Under the note to section 73.99(b)(1), western class II stations on these channels are presently limited to presunrise operation starting at 6 a.m. standard time which means 7 a.m. local time during the April-October daylight-saving portion of the year, although of course they can sign on at an earlier hour when their own local sunrise is earlier. The August 1968 decision in docket 18023, changing the rule to 6 a.m. local time for class III stations and class II stations on I-B channels, specifically refrained from making the same adjustment for these stations, because of the different considerations applicable to the I-A channels which required further evaluation. See first report and order in docket 18023, F.C.C. 68-859, 14 F.C.C. 2d 393.

42. Comments were filed by CCBS and KFI opposing the change as to these class II stations, and also by CBS in opposition (although not with particular reference to these channels). Comments favoring the change for stations generally were filed by Daytime Broadcasters Association, and western class II stations KFAX and KJIM (part of joint comments without particular reference to the I-A channels). Comments particularly relating to the I-A channels, and favoring the proposed change, were filed by western class II stations KXA, KXL, WRFD, KOZN, KMMJ, and eastern class II stations WHLO, WJJD, and WOI.²⁵

43. The arguments advanced by the class II parties are generally the same as those urged by class III and other class II stations in the 6 a.m. proceeding and noted in the first report and order mentioned. They include the desirability of preserving existing service which many of these stations have rendered during the hours in question and on which listeners have come to rely, the need for an early sign-on to reach farm audiences and the generally early-rising population of the area, the hampering effect on the station and the community of a late sign-on particularly in October,²⁶ and the need for a sign-on reasonably early in terms of the life of the community. It is also urged by some that if sign-on at sunrise at the I-A location is permitted during the winter months, it should be at all times during the year.

44. CCBS and KFI oppose the change because of the increased interference to I-A service which would be involved. CCBS urges the following points: (1) Since most of the western class II stations cannot sign on at 6 a.m. because sunrise at the I-A location is later, the change involved here will not give them the uniformity of sign-on time which has been so highly stressed by daytimers generally in seeking this adjustment;²⁷ (2) for the same reason, presunrise operation by these stations starting at 6 a.m. local time in the summer and early fall months is often further before sunrise than is 6 a.m. (local standard time) in winter, and thus the interference levels created will often be the highest of those occurring during the year;²⁸ (3) the change will in many cases considerably increase

²⁵ See footnote 1, above, concerning the filings of KFI and WOI.

²⁶ Except for the Pacific coast stations, most of these western class II stations are located in the western portions of the eastern and central time zones (Ohio, Georgia, South Carolina, Nebraska, Oklahoma, and Texas). Therefore, their own sunrise is late during a large part of the year, and they depend on presunrise hours for early morning operation, probably to a greater extent than do regional stations overall.

²⁷ Only the 5 Pacific coast stations can sign on all year at 6 a.m. or an earlier hour. All of the other daytime- and limited-time class II stations are in the central and eastern time zones, and are therefore limited in January and some other winter months to sign-on later than 6 a.m. local time, by virtue of the sunrise time at the I-A location.

²⁸ CCBS states that this is true in 10 cases (incorrectly including one station but also excluding one which should have been included), and in 13 others the maximum time before local sunrise during the daylight-saving time period would be the same as the maximum during the winter. One of the 10 is KIKK, Pasadena, Tex., on 650 kc./s. CCBS shows that (using the CCBS diurnal curves), the interference limitation from KIKK to the groundwave service of WSM, the cochannel I-A station at Nashville, would be greater in August than

the total time of presunrise operation by these stations and thus the duration of interference to I-A service;²⁸ (4) the interference to I-A service thus created will occur at the time of year when such service is of most importance, to rural audiences during the growing and harvest seasons and when people are traveling on the highways in large numbers (vacationers, truckers, etc.); (5) viewed as a group, these stations do not represent much in the way of needed local service which is important at an early hour, since most of them are in or near cities with abundant fulltime AM and FM service (see par. 22 and footnote 11, above), and therefore the interference from presunrise operation during the additional time is not justified.

45. After careful consideration of this matter, including the arguments just mentioned, we are of the view that the 6 a.m. local time adjustment should be made for these stations, just as it was in the 1968 decision for stations on other channels. We adhere to the conclusions reached there (e.g., pars. 31-32, 45-46, 14 F.C.C. 2d 406-407, 412-413), concerning the desirability of providing for the rendition of broadcast service, bringing informational and other material, at an hour reasonably early in terms of the life of the community, which now nearly always is geared to advanced time during the April-October period. We are aware, as CCBS points out, that in most cases such operation by these stations is not necessary to aural, or even AM, service to the community. But this is not always true (see par. 22 and footnote 11, above), and even where it is we believe that the provision for a 6 a.m. local time sign-on is desirable to remove a substantial impediment to these stations' operation and provide for a uniform and reasonably early sign-on during most, even if not all, of the year.²⁹ These benefits we believe outweigh the additional interference which will result. Certain other considerations should be pointed out. First, the considerations of equity and technical parity, which are one reason for imposing a general 500-w. limitation on these operations as mentioned above, likewise apply here to indicate a relaxation of the starting time to 6 a.m. local time, as has been done for other stations in our 1968 decisions. Second, the interference from the additional operation thus permitted will be lessened materially by the 500-w. limit imposed on all of these stations which are substantial sources of potential interference to I-A service, and the overall presunrise situation will be substantially improved by the reduction in power of 20 stations which have hitherto been permitted to operate with full daytime power presunrise. Third, to a substantial extent the operation thus permitted is that which has taken place in the past, with full daytime power, and therefore the change will simply remove a restriction and permit resumption of past service, limited as prescribed herein to avoid excessive interference.³⁰

The Eastern Class II Stations

46. The 28 eastern class II stations on U.S. I-A channels (including WOI and WNYC, whose presunrise operation is not considered herein, and one on

it is in January (ranging from 0.66 to 0.34 mv./m. in August compared to 0.5 to 0.25 mv./m. in January). The situation in this respect appears to be somewhat different from that on the regional channels, where, overall, the time between 6 a.m. d.s.t. and sunrise in October and the other advanced-time months is less than it is between 6 a.m. s.t. and sunrise in January and the winter months, and hence, interference levels are lower. See the first report and order in docket 18023, pars. 38-39, 14 F.C.C. 2d 393, 409.

²⁹ In one case, (WTUF, Mobile, 840 kc./s.), presunrise operation can take place only if the adjustment to 6 a.m. local time is made.

³⁰ As noted earlier, local sunrise for many of these stations is relatively late and therefore they must rely on presunrise time during substantial portions of the year.

³¹ The 6 a.m. local time change will mean additional presunrise operation (and whatever interference results therefrom) as compared to 1968 and 1969 up to now, since such operation has been limited to 6 a.m. standard time. However, as compared to 1967 the change will not represent any additional operating time, since presunrise operations were permitted under the earlier, more liberal rules until October 23 of that year, with full power. Advanced time was in effect starting April 1, 1967, so stations which wished to sign on at 6 a.m. local time (which is a fairly common starting time for stations generally) signed on at 5 a.m. standard time. As to earlier years, when these and other stations could sign on at 4 a.m. but advanced time was not in effect nationally or in some of the States where these stations are located (e.g., Nebraska, Oklahoma, and Texas), some probably operated during the 5 a.m.-6 a.m. (standard time) hour and some not; those that did of course used full power. In the case of KIKK, Pasadena, Tex., specifically mentioned by CCBS as a source of summertime interference (footnote 28, above), examination of its 1968 renewal application shows 39½ hours of operation during the composite week (days in 1966 and 1967) indicating operation generally starting as early as sunrise Nashville permits. See in this connection the first report and order in docket 18023, pars. 40-42 (14 F.C.C. 2d 410-411).

1210 kc./s. in Puerto Rico) are on 13 of the 25 U.S. I-A channels. Presunrise operation by all of these stations, whose sunrise time is generally earlier than that at the I-A location, would seriously impair or destroy completely skywave service on these channels by the cochannel I-A stations during part or all of the presunrise period, at least if conventional nighttime interference standards are used in evaluating the interference, as shown both in the present proceedings and in earlier considerations of 5 to 7 and 6 to 6 extended hours of operation (docket 12274 (1958), and docket 12729 (1959)). Such a serious impairment of the multiple skywave service structure, through authorization of a large number of interference-producing class II operations before sunrise, it is not to be considered without a very substantial showing that the public interest would be served. Viewed as a group, these 26 stations appear to represent only a modest amount of greatly needed aural service or potential service, either in terms of early-morning service to underserved areas or service of local origin.³² Therefore, while we give some consideration to presunrise operation by these 26 stations generally, our attention is directed primarily to the question of permitting such operation by the five stations (other than WOI) on whose behalf comments herein were filed. These are WHLO, Akron (640 kc./s.); WAIT, Chicago, and WIKY, Evansville, Ind. (820 kc./s.); WHCU, Ithaca, N.Y. (870 kc./s.); and WJJD, Chicago (1160 kc./s.). All but WAIT have operated presunrise in the past; WJJD terminated its operation in 1965 following a complaint by cochannel I-A station KSL, Salt Lake City; the operations of WHLO and WIKY were terminated after our adoption in 1967 of the new presunrise rule clearly precluding eastern class II presunrise operation on these channels; and the operation of WHCU continues pursuant to Court order pending its appeal from adoption of that rule and denial of its request for waiver. As far as is known, these are the only presunrise operations by eastern class II stations on these channels which have taken place in recent years. The law firm of Daly and Joyce also filed comments supporting the cause of presunrise operation by these stations.

47. The further notice in docket 17562, which enlarged that proceeding to include the matter of presunrise operation by these stations on the basis of the requests of WHLO and WHCU, stated the question as involving the public value of such class II usages vis-a-vis cochannel U.S. I-A nighttime services which they would inevitably limit, to some degree, as well as secondary issues going to the circumstances under which such operation should be permitted and the degree of skywave interference protection to be afforded class I stations. Some of the arguments advanced by these class II parties have only a small relation, if any, to the question of *public value* as opposed to their own private interest. This is true, for example, of the economic arguments of WHCU³³ and similar arguments advanced by WIKY and WAIT. We recognize that the hours involved here are often periods of high audience and revenue potential, as has often been asserted in presunrise proceedings. But considering the amount of time involved—which is small for these stations as it is for the I-A stations—we are not persuaded that their economic situations would suffer from the absence of presunrise time to an extent which will substantially impair their ability to operate in the public interest or to compete with other stations.³⁴ The matter of a uniform sign-on, which some of these stations urge, is likewise largely a matter of private

³² Of the 26 stations, 13 are in communities with no fulltime AM outlet; in three of these cases (Forest City and Kannapolis, N.C., and Ithaca, N.Y.), there is a local station with presunrise authority, and in four other cases the community is in an urbanized area close to a city with fulltime AM service (East Lansing, Mich., Hempstead, N.Y., Bethlehem, Pa., and Arlington, Va.). Ten of these 13 stations are associated with FM stations; there is other local FM service at Kannapolis, N.C., and a vacant FM channel at Dunn, N.C.

³³ WHCU, licensed to Cornell University, claims that it is self-sustaining and only marginally profitable, and the anticipated annual loss of \$30,000 in revenue would mean a deficit and less time for public-service programming.

³⁴ As shown by its comments, WHCU's actual presunrise operating schedule including about 165 hours. WHCU as a limited-time station can operate until sunset at New Orleans, and presunrise time represents about 3.5 percent of its annual operating hours. In the case of limited-time stations WAIT and WJJD, the number of annual presunrise hours and percentage is about the same (about 162 hours a year). Limited-time station WHLO, Akron, has a relatively late sunrise and more annual presunrise hours, about 300, 5.4 percent of its operating hours. In the case of WIKY, daytime-only, 142 hours of annual presunrise operation represent about 3 percent of annual operating hours. These figures assume sign-on at 6 a.m., local time, which these stations seek; a 6 a.m. standard time sign-on would mean fewer hours and a smaller percentage.

concern insofar as it may lead listeners to turn to other stations. To the extent the listener inconvenience involved is a public-interest factor (as claimed by WHLO with supporting letters), we cannot find that provision for a uniform sign-on, as such, is a consideration even closely approaching in significance the interference impact which such operations have on I-A service. We point out in this connection that a large group of stations—those on foreign I-A channels, numbering more than 500—have not had and do not have such uniformity, and the same is true of many class II stations on U.S. I-A and I-B channels.

48. Another argument made by some of the parties is that their presunrise operations are not only significant as rendering valuable, relied-upon service for a long period, but have existed without complaint by the I-A station or listeners of interference (and sometimes with the I-A station's agreement.³⁵ Therefore, it is urged, they should be permitted to continue and in view of the absence of demonstrated impact in these cases similar operation by other stations should be permitted. We can attach little significance to the absence of complaint, for reasons already stated (par. 19).

49. *Interference to I-A groundwave service.* Except for WHCU, these commenting parties almost completely ignore the matter of interference to I-A groundwave service from their presunrise operations, which is substantial in all cases except WHLO. In the case of WAIT and WIKY on 820 kc./s., CCBS shows, on the basis of diurnal evaluation using the CCBS curve, that in January both stations cause interference within the 0.5-mv./m. groundwave contour of WFAA/WBAP, the I-A stations at Dallas-Fort Worth, even after sunrise at the class II locations (WAIT to a maximum of 1.57 mv./m. if using its full 5 kw. or 0.64 mv./m. using 500 w.). During the presunrise period the interference would be greater.³⁶ In the case of WJJD, the interference to the groundwave service of KSL on 1160 kc./s. would be less and CCBS does not show it; but it appears that it would fall within the 0.1-mv./m. contour even if WJJD were limited to 500 w. WHCU and I-A station WWL (870 kc./s.) both discuss at length the extent of interference to WWL's groundwave service; both using the CCBS diurnal curve in their evaluation. While the showings differ, it appears that the interference occurs within the 0.5-mv./m. contour along somewhat more than half of that contour from east to west (in the direction of WHCU) at about the WHCU presunrise starting time in 6 months of the year. Later in the presunrise period the interference is less, as it is in some other months when the operation begins closer to sunrise; but it occurs within the WWL 0.1-mv./m. contour at all times and in all directions.³⁷

³⁵ The WHCU operation dates from 1956, on the basis of an understanding of consent, on a temporary basis, by Lorola University, licensee of cochannel I-A station WWL. There was no complaint by WWL until, after this matter was raised following the Commission's 1967 presunrise decision, it terminated by letter of Nov. 7, 1967, any agreement which had existed. The WHLO and WIKY presunrise operations took place for 10 years or more; it is stated, as far as we know correctly, that there was no complaint from the I-A station or listeners, and the station may not even have been aware of the operation. WJJD terminated its operation in 1965 on complaint by KSL (the only such complaint against an eastern class II presunrise operation). KSL, in further comments accepted for this limited purpose since WJJD's argument was first advanced in reply comments, asserts that this was prompted by hundreds of complaints from listeners after KSL commenced 24-hour operation. The WJJD and KSL comments conflict as to the extent to which KSL operated during the early morning hours in previous years; *Standard Rate and Data* shows both 24-hour and lesser operation at various times. The other I-A stations on these channels have operated 24 hours a day at least 5 days a week.

³⁶ During part of the presunrise period interference from these stations is less than that from WOSU, Columbus, Ohio (5 kw.), immediately after its own sunrise; but such operation takes place during less than half of the hours involved in presunrise operation at Chicago and Evansville starting at 6 a.m.

³⁷ WWL's showing is of interference conditions at S.R. midpoint minus 1¼ hours, and at later times. The S.R. 1:15 conditions prevail at or near the beginning of WHCU presunrise operation in January, February, late April, September, most of October, November, and December, according to WHCU's analysis of its presunrise starting time in relation to sunrise. WHCU claims, on the basis of diurnal analysis, that it causes interference within WWL's 0.5-mv./m. contour, on the 15th of each month, for the following number of minutes: January, 25; February, 25; October, 30; November, 16; and December, 14 (out of 60 minutes operation); for 19 of 45 minutes on September 15, and not at all on March or August 15. As mentioned below, WHCU and WWL differ somewhat as to the location of the WWL 0.5-mv./m. contour. Presunrise operation by WHCU begins at 6 a.m. local time or an hour before sunrise Ithaca if less; it does not occur during most of April and all of May, June, and July.

50. It appears from the CCBS nighttime groundwave service map (also used by WWL and WHCU), that the three I-A stations mentioned are important in serving areas without other service at long distances from their locations, so that any change in their groundwave service increases or decreases white area. Other presunrise operations may serve some, but not a large amount, of this area in the case of WFAA/WBAP; such operations in the WWL area serve only starting at 6 a.m. central time (7 a.m. Ithaca time), which is after most of WHCU's presunrise operation (the same is true of WJJD-KSL).

51. *WHCU, Ithaca, N.Y.* The parties supporting the cause of eastern class II presunrise operation advance a wide range of arguments in support of their positions, including some relating to particular situations and others more generally applicable. The latter can best be evaluated in the context of the situation of WHCU, Ithaca, N.Y., on 870 kc./s., since this is in most respects the most meritorious of the cases involved here other than WHLO (which involves special considerations and is discussed below), and also since it was more thoroughly explored, in three sets of comments filed by Cornell University, the licensee of WHCU, and Loyola University, licensee of cochannel I-A station WWL, New Orleans. The question is whether WHCU's presunrise operation of 12 years' standing—which takes place during slightly more than 8 months a year, starting at 6 a.m. local time except in most of October, December, and January, when it begins at 6:15 or 6:30—should be permitted to continue, in light of the particular facts involved and the various arguments of general significance urged on both sides.

52. *WHCU-WWL gains and losses.* WHCU puts the question in terms of a 307 (b) equitable adjustment of operating hours vis-a-vis WWL, and WAIT frames it as a matter of the larger and more effective use of radio (sec. 303(g) of the Act). If only the conventional criteria normally used in evaluating standard broadcast proposals are used, on the basis of the material submitted herein WHCU must necessarily lose under either of these concepts, in view of the areas and populations served compared to those lost to WWL through interference to its groundwave and skywave service, and the other service available to the gain and loss areas. This is true if the situation is evaluated on the basis of conventional nighttime propagation standards contained in the rules and normally used in considering operations, during nondaytime hours; and it is also true if a diurnal evaluation is made, as WHCU and WWL have presented their material (using the CCBS diurnal curve). As shown in the record, WHCU renders a presunrise a.m. service to a fairly small area and population, and it provides the only such service to a much smaller area and population, since another Ithaca station operates presunrise with the same power.²⁹ The interference involves a double loss, to both groundwave and skywave service. The former is discussed in paragraph 79, below. The skywave service impact is tremendous if evaluated on the conventional nighttime basis, great even if a diurnal evaluation is made as it has been by WHCU and WWL (using the CCBS curve), and substantial even if weight is attached to WHCU showings based on 5-to-1 and 10-to-1 interference ratios, which WHCU claims are more appropriate than the 20-to-1 standard set forth in the rules (the significance of this matter is discussed below).³⁰

²⁹ WHCU claims primarily to serve Tompkins County (Ithaca), with an area and population of about 500 square miles and 66,000 people; it also cites as indicating wider coverage the use of its school-announcement service by communities up to 20 (and in one case, on an emergency basis, 30) miles from the station. WWL claims that at various times in the presunrise period WHCU is limited by WWL to 7.6 or 10.5 miles from its transmitter; the latter would include most, but not all, of Tompkins County. As to the service rendered presunrise by WTKO, Ithaca, WHCU in three comments in docket 17562 does not mention this station, even though it was mentioned by the Commission as a pertinent circumstance in our November 1967 consideration of WHCU's request for continued presunrise authority (memorandum opinion and order, F.C.C. 67-1309, par. 5; 10 F.C.C. 2d 928, 924-25, 11 R.R. 2d 959, 961), and by WWL in reply comments. We assume that, operating on a higher frequency and with a high limit during these hours from the numerous fulltime and presunrise operations on its channel, WTKO serves a smaller area than does WHCU, but in the absence of any showing we cannot assume that the difference is great.

³⁰ In initial comments, using full nighttime standards, WWL showed WHCU as destroying all of its skywave service within the 0.5-mv./m. 50-percent contour, containing

53. If consideration is given to the total aural-service picture, including AM as well as FM, the balance is even less favorable to WHCU. With its wide-coverage class B facilities, WHCU-FM provides a good predicted FM signal (1 mv./m. or stronger) to a distance of 35 miles or more from Ithaca, including all of WHCU's claimed presunrise area. There is FM service from two other Ithaca commercial stations. FM service is not available in the WWL loss areas to the same extent.⁴⁹

54. *WHCU-WWL: Other considerations.* We turn, then, to consideration of whether any or a combination of a number of factors urged by WHCU and other class II parties should change this result. We give these matters more consideration than would normally be true in evaluating a standard broadcast proposal, both because the WHCU operation is one of long standing and because of the vigorous expressions concerning the need for the service, both by the station and by public officials in supporting letters.

55. *The amount of time involved.* It is urged that the amount of time involved in these presunrise operations is so small—only about 2 percent or less of the I-A station's annual broadcasting hours, and also small in relation to the time it can render skywave service—that the marginal adjustment involved in permitting them should be made for this reason. This factor, as such, is of little significance. If the time is small with respect to I-A stations, it is not a great deal larger for the class II stations (3.5 percent in the case of WHCU), and is not enough to affect substantially their ability to render adequate service to the public in their communities and surrounding areas. Compared to the double loss (to I-A ground-wave and skywave service) which their operations generally involve, this is not a significant factor as such.

56. *The nature of the respective services.* It is urged that allowing class II operations such as that of WHCU to continue permits the rendition continuously throughout the year, of a valuable, locally oriented informational service on which audiences have come to rely and which they need in their daily activities (and which in the case of WHCU represents the first AM service since the previous afternoon or evening). This material cannot be presented at an earlier hour because the station cannot broadcast then, and, it is argued, it cannot be presented later and reach listeners who have left for work or school and who need the emergency and other material (school-closing announcements, etc.) in planning their daily activities. Thus, if the service is to be of any value, it is said, it must be available presunrise.⁴¹ By contrast, it is urged, any I-A service which is

30,300,000 people and substantial white area. WWL later showed diurnal conditions at SR-1.00 on January 1 (5:56 a.m.), with WHCU destroying WWL's skywave service in all of the United States except Louisiana, Texas, Oklahoma, most of Mississippi, Arkansas, Florida, and New Mexico, about half of Alabama, and portions of five other States. Later WHCU showings portrayed the situation within the WWL 0.5-mv./m. 50-percent skywave contour only, at various presunrise times and on the three signal-ratio bases mentioned. At the presunrise starting time in January, it is shown that (20-to-1) interference to WWL occurs in slightly less than half of the area within that contour, to about 350 miles from New Orleans at its closest point and extending from Florida to central Illinois, southern Iowa, and eastern Kansas. The showing is that there is no interference using a 5-to-1 ratio at one-half hour after the presunrise starting time or later; using a 10-to-1 ratio there is interference at the one-half-hour mark but not at sunrise Ithaca; using the standard 20-to-1 ratio there is interference at sunrise Ithaca in October but not in January. Nearly all of the interference areas shown contain a large portion of white area. The five smallest interference areas shown (two using 5-to-1, two 10-to-1 and one 20-to-1), all contain 30 or more counties, in four or more States, all or large parts of which are white area.

⁴⁹ In the area of Louisiana and Mississippi, lying 25 miles on either side of WWL's 0.5-mv./m. groundwave contour, containing all or part of 39 counties or parishes, there are 14 communities having FM stations, six with class C and eight with class A. Thus, to the extent FM service is available, it is often not of local origin as is that available around Ithaca in WHCU's presunrise area. The same is true of the white areas within the area of WHCU interference to WWL skywave.

⁴¹ "While it is true that an hour is only an hour, all hours are not the same. The important fact is to render community service. If the hour in question is lost, the information that people would have obtained is lost, as they will have already made their daily plans." (Letter from the Supervisor of the town of Ithaca, Aug. 15, 1967, submitted with WHCU's comments.)

WHCU emphasizes particularly its information programing—weather and school announcements, of particular significance in this severe winter area, farm information, other emergency messages, etc. Its complete schedule and that of WWL are set forth on the next page.

gained through removal of the interference will be only a service which potential listeners have hitherto been able to live without, a distant service rendered by a I-A station often not concerned with distant (particularly skywave) listeners and obviously unable to present material of particular significance to all of the large skywave area involved. Moreover, it is said, any skywave service thus gained is one available to listeners only during part of the year (generally, the winter months) when the time involved is before sunrise at the I-A location, and thus cannot be relied on by listeners during much of the year and can be of little significance to them. It is argued that to the extent the I-A stations do present any material of significance to skywave audiences during the hours affected in these months, they should be required to reschedule them into other hours when they can render skywave service during this part of the year.⁴² WHCU asserts that presunrise interference to I-A skywave service should be permitted where (as in its case) it does not affect unlimited time skywave service.⁴³ It is also urged (generally and with respect to 820 kc./s.) that the skywave service for which the I-A parties claim protection is at best a 50-percent one, varying and subject to such factors as adjacent-channel skywave interference which make it of less importance compared to the reliable local class II groundwave service involved.

⁴² WAIT terms the early-morning skywave service rendered during these months (and not at other times when nighttime hours are less) service by inadvertence, or bonus hours. It elaborates this concept as follows: Presunrise operation at Chicago, starting at 6 a.m. standard time, averages 50 minutes per day in 4 months (November through February). During these months the I-A station's skywave service period (sunset to sunrise at its location) averages 13 hours a day compared to 10 hours during the March-October period, an increase of 30 percent, which presunrise impact would reduce to about 25 percent. It is urged that I-A stations can easily reschedule into this remaining 25 percent any material, such as farm information, which becomes unavailable because of presunrise interference during the hours affected. This argument is not entirely correct even on the basis stated, since presunrise operation at Chicago averages an hour per day during the 4 months, and the sunset-sunrise period at Dallas-Fort Worth averages about 13.5 hours during these months compared to 11 hours from March to October, an increase of 23 percent which presunrise operation would reduce to about 15 percent. Operation starting at 6 a.m. local time, which all of these class II stations seek, would increase the presunrise time, and it is also greater in other cases such as WMCU. Also, much of this winter bonus time is evening hours, which can hardly be considered the same as interference-free broadcast time available the next morning.

⁴³ WHCU attempts to distinguish its situation by asserting that its location is not greatly to the east of New Orleans and therefore its presunrise operation occurs relatively close to sunrise at that city and has less impact on WWL's service than does operation by some other eastern class II stations on cochannel I-A service. Actually, WHCU is farther east than any other station on 870 kc./s., and farther to the east of its cochannel I-A station (and therefore with sunrise and presunrise times generally more before sunrise at that station) than all but five of the 26 eastern class II stations involved here. As to permitting operation which does not interfere with unlimited time skywave service (that available all year), if this concept were adopted it would permit presunrise operation by all eastern class II stations except WHLO, since in all other cases sunrise at the I-A location in June is as early or earlier than 6 a.m. (local time) at the class II location. Adoption of this concept is clearly not warranted.

18 F.C.C. 2d

Monday-Friday Programming of WECU and WWL During the Hours of WECU's Presunrise Operation Showing the Time Involved Each Month (Most of April, May, June and July, Which Do Not Involve Such Operation, Are Not Included) and the Extent the Time Is Before Sunrise at New Orleans (SR N.O.—1:45, etc.). Vertical Lines Show Presunrise Operating Time.

Time (c.i.t.)	WECU programming	Month												Time (c.i.t.)	WWL programming		
		Jan.	Feb.	Mar.	Apr.	(D.s.t.)	Aug.	Sept.	Oct.	(D.s.t.)	(S.t.)	Nov.	Dec.				
6:00	News, weather, farm markets, sports, road conditions, school closings.															5:00	World and national news.
6:10	Rundown of urban and rural events.															5:05	Farm and Home programs (music, introductions).
6:15	Music, Cornell features (different agricultural or consumer report each weekday).															5:10	Farm news (same as 4:38 7-minute program of national news and information).
6:30	News, weather, farm, sports, school closings, emergency announcements, repeats of news-worthy events of previous day.															5:14	Weather (national summary).
7:00	News, weather, farm markets.															5:16	Music, time signals, PSA's.
7:15	News in depth: analysis and commentary.															5:20	National farm news and national news.
																5:23	Music and time.
																5:25	Regional and Gulf coast weather.
																5:27	Farm news (same type as 4:38).
																5:30	World and national news.
																5:35	Top-of-the-Morning—music and time.
																5:40	National news headlines.
																5:41	Music, time signals, PSA's.
																5:45	Local weather (regional and national if unusually pertinent).
																5:46	Top-of-the-Morning—music, time, PSA's.
																6:00	World and national news.
																6:05	Top-of-the-Morning (see 5:46).
																6:15	Local and regional weather (national when newsworthy).
																6:16	Top-of-the-Morning (see 5:46).
																6:20	National news headlines.
																6:21-6:30	Top-of-the-Morning (see 5:46).

¹WECU's Saturday programming is the same as Monday-Friday. WWL's Saturday programming is generally the same as Monday-Friday except that 5:05 to 5:25 is devoted to two agricultural programs, 5:25-5:30 is a Farm and Home-making report, and the 5:45 and 6:15 weather reports are stated as including marine and fishing information. On Sunday's WECU's programming begins at 7 a.m. and occurs before sunrise only for ½ hour in December and January and 15 minutes during most of October; the 7-8 hour includes music, news, sports and a 15-minute agricultural program. WWL's Sunday programming from 6 to 6:30 Central time

includes *Education Today* (a Loyola University program concerning education) and *University Explorer*. This analysis of WWL programming assumes that the program times given are "local time". If they are C.S.T. instead, the interference from WECU would affect programs from 4 to 5 a.m. instead of 5 to 6 a.m., during late April, August, September and most of October. These are much the same as those shown above, including national, regional and Gulf Coast weather (agriculture and fishing) at 4:15 and 4:45 and a 7-minute national and regional farm program at 4:38.

57. While these factors are substantially more significant than the matter of the number of annual hours involved (already mentioned), we cannot find in them reason to reach a different conclusion from that which would be reached on the basis of the normal criteria mentioned above. Doubtless it is more important for a certain number of persons to continue to receive significant local informational material at a particular time, when it cannot be presented earlier and loses much of its significance if broadcast later, than it is for a group of substantially similar size to have a service available during the same period which they have not previously enjoyed, assuming that other services are available to the two groups to about the same degree. But these are not the facts in the WHCU-WWL situation. Here, the presunrise service is provided only at the double interference cost mentioned—as CCBS points out, interference to groundwave service increasing white area, and at the same time interference to skywave service which impairs the ability to serve white area. The groundwave service areas and populations affected at the beginning of presunrise operation are larger than those served by WHCU, and involve much more white area; this, of course, is a service available all year in the absence of interference and therefore the arguments concerning the partial nature of the service do not apply. The interference to WWL's skywave service affects vast areas and populations if evaluated on the basis of regular nighttime standards or at the beginning of the presunrise period if the 20-to-1 ratio provided in the rules is used for the evaluation. As shown in footnote 39, above, even examined on a diurnal basis and using lower interference ratios, the white area losses are large. We are aware of the limitations on skywave service as providing adequate AM reception, in view of its inherently varying intensity and for other technical reasons; but the fact remains that this is the only type of AM service available to extremely large white areas in the United States, during nondaytime hours, even with the existence of numerous presunrise operations in some areas. The continuation of interference impact on such areas is not to be taken lightly.⁴⁴

58. Nor do we believe that the arguments concerning the importance of the particular time involved, or the possibility of rescheduling material lost through interference, can be accorded decisional weight. If WHCU's broadcasts must reach WHCU's audience at a given hour to be meaningful, it is certainly of at least some importance that significant informational material—news, weather, farm information, etc.—be available to WWL's potential groundwave and skywave audience, more numerous and lacking service to a much greater extent, at a certain time, e.g., 5 to 6 a.m. central time (6 to 7 a.m. eastern time), which is when most of the WHCU operation and interference occur. If persons at Ithaca should not be expected to remain home from work, go to school later, etc., in order to receive WHCU, it is likewise true that a much larger number of potential groundwave and skywave listeners to WWL, rural audiences and others, should not be compelled to arise an hour earlier to receive the material which that station could make available to them, an hour later, in the absence of interference. Nor in our view, is the fact that the skywave service involved is available only part of the year a consideration of high importance. This argument amounts to a contention (actually made by WAIT, as discussed below) that skywave service should not be protected after a given hour in winter and adjacent months, because it cannot be rendered after that time during summer and adjacent months since the time is after sunrise. We do not find anything, in this record or elsewhere, warranting such a Procrustean approach to class I skywave service, the only service available to white areas.⁴⁵ This is particularly true,

⁴⁴ WHCU shows only the impact on WWL's skywave service within its 0.5-mv./m. 50-percent skywave contour, whereas, as WWL shows, the impact on whatever service is rendered outside of that contour is also considerable. As a 1-A station, WWL is permitted to render skywave service, without interference limitation, wherever in the contiguous 48 States it can be heard, inside or outside of that contour. While we recognized in the Clear Channel decision that skywave service beyond that contour is of a low order, providing only minor fringe reception, and base our decision as to WHCU primarily on the interference within it, nonetheless this further impact should not be overlooked.

⁴⁵ WAIT, argues, in support of this concept, that farm programing emphasized by CCBS is of little significance in winter, a time of little agricultural activity. WRFD, a western class II station emphasizing this type of programing, urges that, on the contrary, farm information is important at this time of year, in areas such as livestock and dairy production and marketing.

In the decision concerning WRFD we noted the availability of other times, such as noon, for presenting farm programing. However, this decision was based on the showing, in WRFD's material, that large portions of the farm audience actually prefer the noon hour, as well as the availability during early morning hours of the service of WRFD-FM and of other AM stations serving the area.

if, as many daytime-only stations have urged and WHCU urges here, presunrise service is particularly important in winter months because of adverse weather conditions and snow emergencies. The wide-coverage skywave service of class I stations is capable of rendering a valuable service in these respects, presenting national and regional news and weather information, etc., even though it cannot provide strictly local information.

59. Likewise, in our view, the arguments concerning local vis-a-vis distant service fall short of warranting a different result here. We have long recognized the importance of local radio outlets, and the importance of local early-morning broadcasting was one of the chief considerations behind our presunrise decisions of 1967 and 1968 in dockets 14119 and, for other categories of stations, in docket 18023. However, there are limits on the extent to which local broadcasting can be accommodated and a reasonable degree of allocations efficiency maintained; and in our judgment they do not encompass presunrise operation by WHCU or the other eastern class II stations under consideration here, taking into account the double loss to class I service entailed. It is sometimes said that clear channel stations program at present largely for their own metropolitan areas (traffic reports, etc.), and our concern in this respect is one reason for generally not restricting western class II operations beyond the degree proposed in the notice in docket 17562. But this does not appear to be the case with WWL. As stated in its reply comments, WWL does not present material of strictly local value to New Orleans and environs until after 7 a.m. central time, and its material presented during the hours of WHCU's presunrise operation—news, weather, and farm information—appears to be of at least possible significance to distant skywave and fairly distant groundwave audiences if they could receive it with interference from WHCU removed. To the very limited extent to which program matters can be of significance in decisions such as this, WWL has established channel usage not inconsistent with the I-A function. We also note the letters received by WWL in 1958 in connection with the CCBS survey mentioned above (par. 24 and footnote 14); WWL received letters from 138 counties in 24 States outside of its groundwave service area.

60. *Other arguments concerning skywave service.* WHCU and other class II parties advance certain other arguments as to why the I-A skywave service affected is of little significance—the fact that it has decayed, from its full nighttime level, by the times involved here (less than 2 hours before sunrise at the I-A location); that there are multiple other skywave services available to any area suffering the loss of a particular one; and the general absence, in present circumstances, of the high degree of importance formerly attached to the clear channel concept and maintenance of clear channel integrity. We do not find, in any or the combination of these, a basis for permitting the presunrise operations under consideration here. It is true that, in most cases, the skywave service of the I-A station has begun to decay by the time of day involved here, which is later than 2 hours before sunrise when the decay of skywave transmission is usually regarded as beginning. But the decay is not as great as some of these parties would make it appear. In the case of WWL, for example, presunrise operation by WHCU begins as early as 1¾ hours before sunrise at New Orleans and nearly two-thirds of it (approximately, 4 out of 6¼ month-hours) takes place more than an hour before sunrise there, before the decay has progressed very far. WHCU made its interference showing taking this factor into account, and it has been noted in paragraph 52 above, and considered in our evaluation of the situation. The material submitted shows a substantial interference area, nearly all of it white area, even as late as sunrise Ithaca in October; and we certainly cannot conclude that this service is not entitled to protection or that the loss from WHCU's operation is not substantial or significant.

61. As to the availability of other skywave service, it is true that in the areas affected here, as in the eastern United States generally, there are available at any point numerous class I skywave signals of 0.5-mv./m. 50-percent or greater intensity. But, because of the varying nature of these signals it has always been recognized that multiple skywave signals are necessary to bring even fairly satisfactory reception to areas without groundwave service at night. Thus the impairment of even one represents a significant impact on the skywave service structure. The arguments advanced as to why skywave service is unreliable, and therefore should not be afforded a high degree of protection—decay, adjacent channel interference, etc.—apply to other signals as alternative service sources as

well as to the signal under consideration, and demonstrate the need for multiple services. As to the decay argument in particular, WHCU mentions three New York City I-A stations as providing skywave signals of 0.5-mv./m. 50-percent or greater intensity to all of certain white areas depicted in its interference showing. But sunrise at New York City is substantially earlier than it is at New Orleans, so that the decay of these signals has progressed to a substantial point by the times in question here and their value as other services is less.

62. Concerning the present significance of the clear channel concept, this principle—which goes back more than 40 years and is embodied in sections 73.21(a) and 73.182(a) and elsewhere in our rules—is designed to provide, via both skywave and groundwave signals, service to those portions of the United States which cannot receive it from other stations, both because of the economic limitations on broadcast station construction and operation in sparsely settled areas and because stations of other classes are limited by interference from the numerous other stations on the same channel.⁴⁶ Class I stations on the 25 U.S. I-A channels, and on the 20 channels on which the United States has I-B priority, are designed to meet this problem by the provision of wide-area groundwave service and very wide-coverage skywave service at night. To achieve this objective they are required to operate with high powers (50 kw. for I-A stations), and are afforded a high degree of protection.⁴⁷ Usage of these channels by other class II stations is on a secondary basis, affording protection to this wide-coverage class I service.

63. It is said that this concept is less important today because of developments occurring since it evolved many years ago—the very widespread availability of television, and the tremendous increase in the number of AM stations, which, if they have not diminished the white areas as far as full nighttime service is concerned, do provide widespread presunrise service (as of July 1969, some 1515 class II and class III stations have presunrise authority). We do not agree that these developments remove, or greatly diminish, the need for a high degree of protection to class I skywave and groundwave service, to permit these stations to help in achieving what must be the primary AM allocation objective, the provision of some service to as much of the nation as possible, at all times. A glance at the CCBS nighttime groundwave service map and related material (par. 12, above) makes it clear that half of the area of the United States, or more, is still without satisfactory nighttime AM groundwave service and must rely on skywave service, and also that I-A stations such as WWL, WFAA/WBAP, and KSL contribute or could contribute significantly toward increasing the extent to which groundwave service is available. Television—while it is widely available directly or via translators or CATV's, perhaps more so than satisfactory AM service at night—is not radio, *inter alia*, with respect to the latter's greater flexibility and not demanding the exclusive attention of the audience. Presunrise AM service is more widely available than full nighttime service, and serves portions of the white areas; but it must be borne in mind that such operations are also the sources of substantial interference both to fulltime service and to each other, so that each is highly limited at night (see par. 50, above). While these operations do provide valuable early-morning local service, this is limited in area, and this is not the answer to providing service during the time involved to all or most of the white areas. We recognized this in our presunrise decision, that permitting presunrise operation on a widespread scale would result in new zones of interference on other channels, and that the wide-

⁴⁶ In the standard broadcast (AM) service, as in the other broadcast services, stations' signals are sources of interference to cochannel stations over a much greater distance than that to which they render useful service. Therefore, if a large number of stations are assigned to a channel each is substantially limited by interference from others, leaving areas in between with no service. This is particularly true in the AM service at night, where skywave signals, reflected by the ionosphere, are sources of interference at great distances. However, these skywave signals are also capable of providing service to great distances if properly protected and the stations use sufficient power, and class I stations are designed to render such service (the only stations so regarded).

⁴⁷ Against cochannel interference, class I-A and I-B stations are protected daytime to their 0.1-mv./m. contours—thus protecting intermittent service—and to their 0.5-mv./50-percent skywave contours at night, the latter generally encompassing a high degree of protection to groundwave service also. In the case of I-A stations, the rules provide that they are the only stations operating on their channels at night, with certain exceptions not including any of the channels used by the five class II stations filing here. See sections 73.21(a) and 73.182(a), (e), (i), and (j) of the rules.

coverage service of class I stations is relied on to fill in these service gaps.⁴⁸ In any event, these operations take place only after 6 a.m. at their locations and do not provide service earlier, which is when most of the impact from WHCU occurs to WWL's groundwave service and that portion of its skywave service area which is in the central time zone. The same is true of KSL and WJJD.

64. *The availability of FM.* WHCU's comments, and some of the supporting letters from public officials, assert that while WHCU-FM can and does present the same programming during these hours, this is not the answer to the provision of needed presunrise service. The considerations urged are terrain problems affecting FM reception at some locations (no details are given), limitation on set circulation, the need to reach people in emergencies wherever they are via whatever receiver they have, the fact that WHCU-FM is largely aimed at an upper or middle-class audience so that the poorer portion of WHCU's listeners will either be put to the expense of buying an FM set or (more likely) losing WHCU's early morning service, and our own recognition in the presunrise decision that this is not the complete answer to the provision of early morning service.

65. We do not find these considerations of decisional significance, and in our judgment the fact that Cornell has a wide-coverage FM facility is a definite factor to be taken into account in evaluating this situation, along with the numerous other factors mentioned above, to which we give attention in the unusually extensive consideration we are according this situation. WHCU-FM's power (40 k.w. E.R.P.) and antenna height (730 ft. a.a.t.) are, in combination, greater than those which would be permitted a class B station at Ithaca under present FM assignment rules. Therefore it provides a primary service (1 mv./m.) out to a distance of 35 miles or more, further than a new class B station would serve and well beyond the distance to which WHCU (AM) serves presunrise, as well as a stronger than usual signal at points within that distance. With this and two other commercial FM stations (both unaffiliated with AM) operating at Ithaca, we cannot conclude that terrain and set circulation problems, separately or together, make this less than a significant medium of communication, unlimited as to time. As to the other considerations mentioned, if WHCU's service is as valuable to its area as it claims, we see no reason to believe that FM sets in the area will not be distributed widely enough to permit reception of it via that service to the extent the public interest may require. We note in this connection that WHCU will have a reasonable amount of time to promote its FM service before termination of its presunrise AM operation. Considering the availability of WHCU-FM with its large facilities, the other Ithaca AM station with presunrise authority, and the possibility of operation of the AM station during presunrise and other nondaytime hours in times of real community emergency under section 73.98, we are not persuaded that the need to reach the audience in emergencies is sufficient to warrant continuation of the AM operation. While our presunrise decision recognized that FM is not the complete answer to the provision of early morning radio service, that was based largely on two considerations which appear to be largely or entirely absent here—the lack of FM development and set circulation in remote areas, and the fact that FM channel assignments are not always available to daytime-only stations.⁴⁹

66. Moreover, if FM is not the answer here in some respects, it is no more so, and likely less so, in the much greater areas and populations which lose the service of WWL through WHCU's interference—largely outlying areas where set circulation is often less and the number of stations in a particular area is often smaller. See, for example, footnote 40, above.⁵⁰

67. In this connection we also note an argument made by WHLO, that if FM is a substitute for local class II presunrise AM operations (as CCBS claims),

⁴⁸ See the report and order in docket 14419, par. 16; 8 F.C.C. 2d 703, 10 R.R. 2d 1588 (1967).

⁴⁹ See report and order in docket 14419, appendix A, pars. 20-21; 8 F.C.C. 2d 712-713, 10 R.R. 2d 1602.

⁵⁰ With respect to the economic burden of buying FM sets to receive WHCU-FM, if this is a consideration here it is likewise pertinent with respect to the greater areas and populations which lose WWL's service through interference. According to "Standard Rate and Data" (July 1968), the annual consumer spendable income (1966) for Tompkins County was \$9,170 per household. This is greater than nearly all of the counties in the white areas losing WWL's skywave or groundwave service mentioned above, and considerably more than most of them.

it is likewise appropriate as a substitute for class I service which may be lost as a result—for example, giving class I stations a series of FM satellites to serve their wide-coverage areas. This proposal can hardly be taken seriously. Bearing in mind the very wide range of AM groundwave coverage as compared to FM, and the tremendously greater skywave AM range, it would take a very large number of FM stations to achieve this for even one class I AM station. Aside from the problem of finding enough FM channels (which would certainly exist in the eastern part of the country), the impact on FM channel availability for other users and the obvious competitive and sociological problems, this would be a grossly and patently inefficient use of spectrum space—the use of many 200-kc. channels to replace the service rendered by one 10-kc. channel. This illustrates one reason why skywave service is important and entitled to protection: Despite its limitations, it is a highly efficient means of serving tremendous areas.

68. *WHCU's arguments concerning interference to WWL.* As mentioned hereinabove, WHCU makes a number of arguments to the effect that its interference impact on WWL's groundwave and skywave service is minimal. In addition to the decay argument already discussed, these include: (1) The assertion that lower interference ratios should be used in these determinations, rather than the 20-to-1 cochannel interference ratio specific in the rules; (2) the interference within the 0.5-mv./m. groundwave contour is immaterial because the affected area lies almost entirely within WWL's distortion zone (zone of interference between its skywave and groundwave signals) and thus is not an area of satisfactory reception of WWL anyhow; (3) with respect to interference to groundwave service beyond the 0.5-mv./m. contour, such service is not protected against presunrise interference under the rules and Commission policies, for the reason that the class I station's skywave signal is the dominant one in most of this area (and here overrides WHCU's interference), and the inner portion of it is within the distortion zone; and (4) the small amount of time the interference occurs within the 0.5-mv./m. groundwave contour if it is evaluated diurnally—at only part of the locations along that contour and during only part of the presunrise operating time.

69. As to the matter of interference ratios, we are not persuaded that the evaluation of WHCU's interference should be on the basis of a ratio substantially lower than that historically used and provided in the rules, such as 10-to-1 or 5-to-1. It is true that 20-to-1 was adopted many years ago (and affirmed in the course of the Clear Channel decision), on the basis of what listeners regard as generally acceptable. Possibly, as WHCU urges, more interference can exist without preventing the receipt of intelligible material, if the listener's desire to receive it is strong enough, although we do not know how great the difference would be. We recognized in the 1967 presunrise decision that there may be merit in the argument that listener tolerance of interference in listening to news, weather, etc. may be higher than the traditional ratio would indicate.⁵¹ But we do not believe, in connection with the provision of service for general reception purposes, including news, weather and farm information, that listeners should be required or expected to strain their ears to pick up the desired signal, to an extent substantially greater than our traditional ratio contemplates, or that there is warrant for using in our evaluation the lower ratios urged by WHCU. This is certainly true as to interference to skywave service, which is variable anyhow, and we also believe it is true of groundwave service even though that is steadier. The former CONELRAD system, referred to by WHCU, is not a precedent. This was a system designed for use in times of grave national crisis, with the purpose, as much as anything else, of minimizing the number of stations remaining on the air so as to cut down their potential usefulness in guiding the enemy. The lower ratios used—which led to interference complaints when the system was tested—are not appropriate for adoption in a general broadcast allocation arrangement. In any event, WHCU's material shows substantial interference to WWL's skywave service even using the lower ratios, as noted above. We conclude that the extent of interference to WWL's service from WHCU is not greatly less than that indicated using the 20-to-1 ratio specified; but even using the lesser ratios suggested it is still substantial.⁵²

⁵¹ See report and order in docket 14419, appendix A, par. 23; 8 F.C.C. 2d 714, 10 R.R. 2d 1603.

⁵² WHCU did not make a specific showing as to the effect use of lower ratios would have on the showing of interference to WWL groundwave service.

70. Nor can we accept WHCU's arguments concerning WWL distortion or self interference within the 0.5-mv./m. groundwave contour, and the insignificance of interference outside that contour. Even if the former concept were appropriate for consideration in this situation, as presented in its comments, WHCU's calculation of WWL's distortion zone is a fairly close one. It depends on one factor (the location of WWL's 0.5-mv./m. contour) which is not entirely clear,⁵³ and two others (the values of the WWL and WHCU skywave signals) which are evaluated only on one particular set of diurnal standards (the CCBS curves), at a particular point in time before sunrise, and, in the case of the WWL signal, reaching the stated value only for 50 percent of the time even at that presunrise moment. Under other standards and at other times (e.g., later during the presunrise period) the relationship might well not exist. Therefore the existence of the distortion zone, so as to eliminate any impact from WHCU on WWL's groundwave service within and near the 0.5-mv./m. contour, is not established. In any event, it has been settled for a number of years that this concept is not appropriate in evaluating AM service and interference, because of its complexity difficulty and uncertainty as well as modern receiver developments lessening the impact of fading. See the note to section 73.182(i) of the rules and *WDZ Broadcasting Company*, 17 F.C.C. 609, 7 R.R. 443 (1953), and cases cited therein. We see no reason to adopt a different approach here.⁵⁴ Moreover, a close comparison of the WHCU material with the nighttime groundwave service map submitted by CCBS and WWL (which takes into account this distortion factor) shows a small but substantial area where WWL renders nighttime groundwave service in the absence of WHCU's presunrise signal and which is within the area of interference from that signal, nearly all of it white area (WHCU itself shows a very small such area).

71. We also conclude that interference from WHCU outside of the 0.5-mv./m. groundwave contour but within the 0.1-mv./m. contour cannot be disregarded. While the Commission's rules and decisions are not completely explicit concerning protection to class I nighttime groundwave service, this is because the question does not normally arise, with the 0.5-mv./m. 50-percent skywave contour normally extending far beyond the 0.1-mv./m. groundwave contour under full nighttime conditions so that protection of the former includes a high degree of protection to the latter. Section 73.182(j) recognizes that class I stations are protected from interference beyond their 0.5-mv./m. groundwave contours, into the intermittent groundwave service area.⁵⁵ We conclude that interference caused by WHCU outside of the 0.5-mv./m. contour, but within the 0.1-mv./m. contour, may be considered in this situation. As noted in paragraph 49, such interference from WHCU occurs during all or virtually all of the presunrise operation, and all but small portions of the area involved are white area as far as other available groundwave service is concerned.⁵⁶

72. With respect to the small amount of time and area the interference assertedly affects, this has been noted and considered above in connection with interference to skywave and groundwave service. Well into the presunrise period, and even at sunrise at Ithaca in October if a 20-to-1 ratio is used, extensive areas, including much white area, are affected. WHCU and WWL both show that the interference to groundwave service does not occur to the western portion of the area within the WWL 0.5-mv./m. contour, and if a diurnal evaluation is made it does not occur within any of it during substantial portions of the presunrise operating time (see footnote 37). Nevertheless, the interference is substantial, both geographically and in time even if a diurnal evaluation is made. During nearly all of the presunrise period (all but 15 minutes in December)

⁵³ Comparison of the WWL and WHCU maps showing this contour indicates some differences in its location.

⁵⁴ WHCU refers to section 73.182(y), concerning synchronously operated AM stations and providing that satisfactory service is not rendered where the signal of one exceeds half of that of the other. This rule refers to two stations rather than self-interference, and, since operations of this type which have existed have been located close together (e.g., Boston-Springfield, Mass., and Charlotte-Shelby, N.C.), the reference is primarily to mutual groundwave interference. See the "KOB" decision, 25 F.C.C. 706, 16 R.R. 789.

⁵⁵ Section 73.182(j) states that "Only Class I stations are assigned for protection from interference from other stations into the intermittent service area." The decision in *E. Weeks McKinney Smith*, 22 F.C.C. 311, 13 R.R. 477 (1957), cited by both WHCU and WWL, is not completely clear in this respect.

⁵⁶ In the absence of any specific details, we cannot accord weight to WHCU's assertion that the area outside of WWL's 0.5-mv./m. contour is subject to serious adjacent-channel interference from station WDMG, Douglas, Ga., a station some 400 miles from New Orleans.

WHCU is the only source of interference. Considering the double loss involved, affecting areas and populations larger and much more lacking in other service than WHCU's area and population served, we conclude that the impact on WWL's service outweighs the value of WHCU's service even though the impact becomes substantially less, if a diurnal evaluation is made, toward the end of the presunrise period. In any event, if the temporal impact on WWL is less than total, so is the restriction on WHCU's early morning operation if its presunrise privileges are withdrawn. It can still operate from 6 a.m. on during nearly 4 months a year, and the time before 6:30 a.m. (local time) has always been entirely or partly unavailable to it during nearly 3 months (most of October, December, and January). As shown in the tabulation of WHCU programing (p. 27a), no single 15-minute time segment will be affected for as much as 6 full months of the year compared to present operation.

73. *Demonstrated need for the service.* The last specific WHCU argument warranting discussion is that it has shown the need for its presunrise service whereas WWL has not (WHCU submitted many letters from public and school officials, agricultural agents, etc., as to the need for its early operation). We do not conceive this to be a consideration of decisional significance. As mentioned above, it is the duty of this Commission, not that of listeners, to make appropriate decisions in the overall public interest, to insure the best and maximum radio service possible to all of the nation, using the best tools available. We do not believe that the showing of need in Ithaca and surrounding area for WHCU's presunrise service—taking into account the other presunrise service, FM availability and the possibility of operation during real emergencies under section 73.98—equals the public benefit in providing for improved skywave and groundwave service by WWL which will result, including the increased availability of similar informational material to much larger areas and populations without other service. As with program showings, we believe that decisions of this nature, involving fundamental allocations considerations, cannot to any great extent be based on letters supporting one side or the other. WWL shows programing of at least some possible significance to distant skywave and fairly distant groundwave listeners, and we believe this is sufficient to demonstrate that improvement in service will result. Therefore, taking into account the various factors discussed at length above, we conclude that the rule should not be changed to permit presunrise operation by WHCU.⁵⁷

74. *WAIT, WIKY and WJJD.* The situations of these three class II stations likewise do not warrant permitting presunrise operation, for much the same reasons, chiefly the extensive double loss through interference to I-A skywave and groundwave service. In the case of WAIT and WIKY, the arguments advanced are either general arguments discussed elsewhere herein, or particular arguments concerning the need for a uniform time and competitive assistance which relate largely or entirely to private interests.⁵⁸ See paragraph 47, above. While the amount of annual presunrise time involved is less than with WHCU (an argument which, as noted above, works both ways), the interference to WFAA/WBAP groundwave service from either station is extensive, involving much white area, as shown above. As to the impact on skywave service, this may be less than that from WHCU on WWL to a degree, because the annual time is less and the operation occurs slightly closer to sunrise at the I-A location (a maximum of 1½ hours earlier). But it is shown to be very great from WAIT even at sunrise at Chicago and with WAIT operating with only 500-w. power; and it would be even greater earlier and with full power. The impact would likewise be great from WIKY, which is actually located within the WFAA/WBAP 0.5-mv./m. 50-percent skywave contour. Restriction of the WFAA/WBAP groundwave and skywave service, simply to provide an addition to the multitude of AM and FM services available during the presunrise period in and around Chicago, or a fourth

⁵⁷ Thus, section 73.99(a)(1) will continue to preclude eastern class II stations on U.S. I-A channels from presunrise operation.

⁵⁸ The WAIT comments, which are general in nature, were filed by Maurice Rosenfield and Harry Kalven, Jr., individually and on behalf of station WAIT, with which both are associated. WAIT has a pending application for full nighttime operation, our dismissal of which was recently reversed by the U.S. Court of Appeals (D.C.) in *WAIT Radio v. FCC* (case No. 28689, June 24, 1969). This application proposes highly engineered directional facilities designed to reduce interference to WFAA/WBAP, and consideration of it obviously involves different questions from the present request, which (insofar as it is specific) is for presunrise operation with 5-kw. power nondirectionally. This Court decision is discussed in par. 85.

Evansville AM service at this time, is clearly not warranted. (WIKY has an associated FM station.)

75. With respect to WJJD, this station's presunrise request was advanced incidentally to its opposition to critical hours restrictions on operation after sunrise and before sunset. If it were limited to a presunrise power level such as 500 w., the interference to the groundwave and skywave service of I-A station KSL would be somewhat less than that from the stations previously mentioned; but interference would occur, it appears, within KSL's 0.1-mv./m. groundwave contour, and CCBS shows the impact on skywave service as extensive even at sunrise at Chicago. In both cases extensive white area is involved, and in this case, with KSL far to the west of Chicago, the decay factor is less than in the 870 kc./s. and 820 kc./s. cases just considered. In view of the scarcity of both groundwave and skywave service in the west, provision for WJJD's service, increasing the number of services available in the Chicago area, is not appropriate (WJJD has an associated FM station).⁵⁹

76. Two other arguments of WAIT warrant comments. The first of these is WAIT's proposed resolution of this proceeding: Adopt an arrangement by which I-A stations would be protected until 6 a.m. at their locations, rendering interference-free service up till then but not afterward. This—based largely on the concept that skywave service after that time is not rendered during much of the year anyhow (since it is after sunrise)—is said to result in ample skywave service earlier than that hour, and skywave service until 7 a.m. in any given time zone from stations in zones to the west (until 7 a.m. in the eastern zone from central zone stations, etc.). Aside from the obvious oversimplification involved (e.g., there are only two class I stations in the mountain zone), as mentioned in paragraph 58, above, we do not find any warrant for subjecting valuable I-A skywave service to this rigid approach, restricting its availability in some months just because it is not available in others.⁶⁰ Moreover, this argument completely ignores the impact on groundwave service, which is available all year in the absence of interference. This would also benefit substantially only a small number of class II stations (WAIT, WIKY, and nine others), but not the majority (WHCU, WHLO, WJJD, and 13 others) which are located in time zones east of the cochannel I-A station and therefore could sign on only at 7 a.m. local time or later.

77. The other WAIT argument is that the clear channel concept is merely one of a number of Commission policies which emphasize service to rural white area, where the population is static or declining, while making it impossible to get additional service in rapidly growing metropolitan areas. Other such policies are said to be the 25 percent white area requirement for class II-A stations and a similar requirement for new nighttime facilities generally. Permitting eastern class II presunrise operation on these channels is said to be a desirable quid pro quo for the other restrictions, a way of providing additional metropolitan service and additional competition to communications monopolies there. We do not agree. In view of the very extensive white and gray areas and populations which exist in the Nation, we cannot conclude that restrictions on class I groundwave and skywave service—the only means of serving them—are warranted simply to provide another presunrise service in, for example, Chicago, even to an increasing urban population.

78. In reaching these decisions, we also consider other class II general arguments: The somewhat extravagant I-A claims as to the derogation of clear channel integrity involved in the very small time adjustments involved here; the fact that there have been for many years some encroachments on this integrity through interference so that this is nothing new; that it is CCBS et al. (and the Commission if it continues to preclude these operations), who are changing the basic allocation pattern; that much of the I-A objection is based

⁵⁹ Within a 200-mile distance northeast, east, and southeast from Salt Lake City, there are only six stations rendering fulltime or presunrise AM service. As to skywave service in the West, this is much less plentiful than in the East; the "KOB decision" of 1958 noted a white area in Idaho and Montana where KSL supplies one of only two 0.5-mv./m. 50-percent skywave services. See *Albuquerque Broadcasting Co.*, 25 F.C.C. 698, 16 R.R. 781.

⁶⁰ This is essentially an extension of the uniformity argument: Limit stations at all times to the service they can render at any time. If this approach were to be taken seriously, it might be appropriate to consider limiting class II operation (or use of full facilities) in other months to the time they can sign on in winter months. This would have the advantage of reducing residual skywave interference to I-A service, as CCBS requests herein.

on higher power and, absent that speculative development, their objections have no significance; and that we should disregard engineering trivia and reach here the same decision we did in docket 14419, permitting presunrise operation on a large scale despite some resulting interference. We have carefully examined the facts of each of the situations involved here, and operation by eastern class II stations generally, and conclude that in no case nor generally does the interference impact warrant permitting the operation.⁶¹ Our consideration has been based on the actual facts involved in each situation, in terms of the impact on I-A service during the time involved, assuming that it continues to operate with the traditional 50-kw. power and recognizing that in some cases, such as WHCU, the operations precluded are ones existing presently or in the recent past. The improvement in I-A groundwave and skywave service which will result outweighs the public interest in permitting continuation or resumption of such operations. These observations do not include WHLO.

79. None of the other types of class II operation on I-A channels referred to by these parties is precedent for permitting the operations involved here, involving extensive interference loss to both skywave and groundwave I-A service. The continued operation by western class II stations, as limited herein, does not have an impact on the more generally useful I-A skywave service, before sunrise at the I-A location. The same is of course true of their use of full day facilities after their sunrise. The two eastern class II presunrise operations which are in hearing, WOI and WNYC, had their origin many years ago, in special considerations relating to the nature of the licensee and of programing, not applicable in the present cases or generally; whether their continuation will be permitted is under consideration in the hearing cases.⁶² Eastern class II stations using full facilities after their own sunrise are sources of residual skywave interference to I-A service; but the time of interference to I-A skywave service before sunrise at the I-A location is small, the skywave service affected is of less value as the time of sunrise at the I-A location approaches, and the interference to both I-A skywave and groundwave service is less than it is earlier, before sunrise at the class II location, when darkness prevails over the entire transmission path. Use of full facilities by eastern class II limited-time stations after their own sunset and until sunset at the I-A location is the source of some skywave interference to groundwave service, but less to significant skywave service. In sum, then, continued preclusion of eastern class II operations on these channels is consistent with other Commission actions concerning the I-A frequencies and with the public interest.⁶³

80. Nor is the general presunrise decision in docket 14419 to the contrary. Our decision there to permit presunrise operation by regional stations, starting at 6 a.m. and usually with 500-w. power, did not involve any impact on skywave service, and usually less of an impact on groundwave service to what is otherwise white area than is the case here with WWL, WFAA/WBAP, and KSL. We recognized there the importance of early-morning local service; but as stated above (par. 59) there are limits to the extent to which this can be accommodated consistent with allocation efficiency, and here, where the double loss is involved, the public interest requires a different result. We also observe that the decision here is consistent with the approach taken in that decision as to class II stations on I-B channels east of the dominant station. Presunrise operation by these stations is limited to power which affords protection to the 0.5-mv./m. 50-percent skywave contour of the I-B station, and most of the operations authorized are with very low power. None of the eastern class II stations filing here

⁶¹The discussion herein has related chiefly to the five eastern class II stations filing comments. CCBS, CBS, NBC, and WWL also show very substantial groundwave and serious skywave interference from a number of other such potential operations.

⁶²We do not here pass on the amount of interference involved in the WNYC and WOI cases, but neither of the class I-A stations involved claims interference within the I-A 0.5-mv./m. groundwave contour, such as results from presunrise operation by WHCU, WIKY, and WAIT.

⁶³To a degree, here as elsewhere, use of local sunrise as a dividing line, precluding or limiting operation earlier and permitting use of full facilities immediately after, is an arbitrary concept. However, it is a convenient arrangement, of long domestic and international standing and easily understood, and of reasonable overall accuracy, more so than any other arrangement which has been suggested. We adhere to it here.

early-morning hours. To permit WHLO to operate presunrise would be, in effect, to treat KFI as a class I-B station, whereas I-A stations are generally protected under our rules, as to skywave service, to wherever in the continental United States such service can be received, free from cochannel interference. WHLO's chief claim for resumption of its operation (aside from the inconvenience to listeners from irregular sign-on time, which is largely a private concern) is that it brings an Akron service during presunrise hours to an area not receiving service from other Akron stations, including material such as school-closing announcements. In view of the multitude of other AM service available to this area (including fulltime Akron stations serving a substantial part of it, Cleveland stations, and fulltime outlets in some of the places which WHLO claims to serve), we cannot conclude that the public value of permitting resumption of this service justifies the interference involved, even though it has been rendered until very recently and the service gain to KFI is in an area which KFI had not previously served. Therefore, the rule adopted herein precludes this as well as other eastern class II presunrise operation on these channels. However, this is not a final decision, and if WHLO wishes to seek relief after the decision in the WOI case it may do so.⁶⁷

Other Matters

84. *Gains and losses.* In the present proceeding and decision, no attempt has been made to make detailed comparisons of gains and losses as was done, for example, in the 5 to 7 and 6 to 6 extended hours proceedings of 1958 and 1959.⁶⁸ One reason is that the record in the present proceedings contains very little information of this type; another is that a transitional period is involved, and no standards which permit exact evaluation of the extent of interference and of the affected service (or other available services) have been adopted. Nonetheless, in our judgment the decisions reached herein represent appropriate balancing as between gains and losses from class II presunrise operation, both in individual cases and generally, taking into account the availability of other services. Eastern class II presunrise operation will continue to be precluded because of the double loss involved, to skywave and groundwave service. For reasons set forth above, in no particular case nor in light of general considerations is a different result warranted. Interference from western class II operations to I-A groundwave and skywave service will be substantially reduced by the 500-w. restriction imposed on such operations. With this reduction, I-A service will receive a high degree of protection. The skywave service of I-A stations before their own sunrise—which is much more important than skywave service later—will remain free from cochannel interference from presunrise operations (except in the two hearing cases not involved here). At the same time, the 500-w. limit imposed on western class II stations—which for most stations does not represent a very substantial reduction—will permit rendition of local service to their communities and surrounding area. In sum, this, like all presunrise decisions, represents a compromise and balance, and we believe it to be an appropriate one. It may be that, to a degree, it differs from results reached in the 1950's in the 5 to 7 and 6 to 6 proceedings, where we noted the great interference from extended hours operation by daytime-only stations and, in the latter case, stated that such operation limited to 500 w. would not substantially change this picture. The decision as to eastern class II stations is, of course, the same; as to the western class II stations, we believe, after further considerations, in this and other presunrise proceedings since those earlier decisions, that a 500-w. limit is appropriate, as a balancing of service and interference. We point out that the conclusion reached in the 6 to 6 proceeding concerned 500-w. operation by all stations, including eastern class II stations, and it emphasized the tremendous losses in skywave service which a reduction to that level would not

⁶⁷ If presunrise operation by WHLO is ultimately concluded to be in the public interest, this does not mean that similar operation, with reduced power to protect the I-A station's 0.5-mv./m. contour, will be permitted for other eastern class II stations. Here (unlike the other cases), the proposed operation both protects the I-A station's 0.5-mv./m. 50-percent contour and represents an operation existing until very recently. The combination of these factors is not present in other cases, and might warrant special consideration when the other cases do not.

⁶⁸ See the appendices to the decisions in dockets 12274 and 12729, 25 F.C.C. 1135, 1161-69, and 27 F.C.C. 53, 61-77; 17 R.R. 1669, 1695-1703; and 13 R.R. 1639, 1698-1706.

except WHLO, discussed below, presents a similar situation or has advanced a similar proposal.⁶⁴

81. The decision here has been reached on the basis of careful consideration of the facts of each case, assuming that only the particular station were to operate presunrise, among the 25 eastern class II stations involved here. However, we must also give consideration to the general context—if presunrise operation in any of these situations is permitted, how many other stations situated essentially the same would have to be accorded similar privileges, and what the impact on I-A service would be as a result. Unless grandfathering were to be adopted as the only criterion (which we do not believe appropriate), a substantial number of class II stations would have to be accorded similar privileges, and there would be no reason to apply a stricter standard to class II stations on I-B channels in essentially the same position. The result would be an accumulative invasion of the skywave service which class I stations render and which is of great importance in the AM service structure of the Nation. We also believe that any breakdown of the clear channels—which is what permitting operations such as these involves—should be only after careful consideration of the best possible use of the few assignments which could possibly be made without serious invasion of the whole clear channel structure. Permitting presunrise operation by these stations, simply because they have operated in the past, would be only a more or less random approach to such breakdown.

82. *WHLO, Akron*. The conclusions above do not include station WHLO, Akron (640 kc./s.), the other eastern class II station commenting herein, in light of two considerations which apply to it but not the other cases: (1) Alone among the eastern class II operations proposed here, operation by this station with the usual presunrise power, 500 w., affords protection to the 0.5-mv./m. 50-percent skywave contour of KFI, the cochannel I-A station⁶⁵ and (2) presunrise operation by another station on the channel, WOI (Ames, Iowa), is under consideration in a hearing proceeding. KFI's material filed in the three present proceedings contains a number of references to the hearing record and initial decision in that proceeding (dockets 11290 and 16298). It is apparent that consideration of WHLO's presunrise request here must involve, or at least will likely have to involve, consideration of the extent and value of KFI's nighttime service, matters which are the subject of the hearing proceeding. The considerations involved here are not entirely the same as those concerning WOI—the interference in that case is considerably greater, and on the other hand the WOI operation had its origin in circumstances not present with WHLO or generally—but it would clearly be inappropriate to reach a final decision as to WHLO at this time, as long as a hearing proceeding involving the same reasonably important issue is outstanding. Therefore we do not here reach a final decision as to WHLO, but will consider the matter (if requested) after the decision in the WOI proceeding.

83. The question for decision now, then, is whether WHLO should be permitted to resume its presunrise operation (limited to 500 w.) pending that decision. On the basis of the material presented here, we believe that it should not be so permitted. We recognize the minor nature of the interference in this case, affecting skywave service which (as recognized in the Clear Channel decision and noted above) is of a low order and in general affords only minor, fringe reception. Nevertheless, KFI has demonstrated in the record here (aside from whatever showing is made in the hearing proceeding) that it receives letters from that part of the country where interference from WHLO would be expected to occur (e.g., the Midwest and Texas).⁶⁶ Therefore the impact from such interference appears to be more than theoretical, even though it is to service beyond the KFI 0.5-mv./m. 50-percent skywave contour and occurs during nighttime rather than

⁶⁴ WIKY, located within the I-A station's 0.5-mv./m. 50-percent contour, could not possibly protect it. It was found in 1967, in considering WHCO's request for continued presunrise privileges, that it would be limited to less than 5 w. if it met this standard, and WAIT, located only a short distance outside of the WFAA/WBAP contour, is in about the same situation.

⁶⁵ Neither WHLO nor KFI is correct in its treatment of WHLO interference. Skywave-to-skywave interference is evaluated on an individual signal basis; therefore the signals of WHLO and a Cuban cochannel station are not to be "R.S.S.'d," as KFI does in asserting that interference is caused within the 0.5-mv./m. 50-percent contour. Conversely, the Cuban signal is not regarded as masking interference from WHLO outside of that contour, as WHLO asserts.

⁶⁶ According to the CCBS engineering exhibit, the line of interference from WHLO to KFI runs approximately along the eastern borders of New Mexico, Colorado, Wyoming, and Montana (20-to-1 ratio).

greatly ameliorate. This will not occur under the present decision. To the extent that the result here is different, it represents our present conclusion, after detailed and careful further evaluation, of what the public interest requires.⁵⁰

85. *The decision in WAIT Radio v. FCC.* As noted above (footnote 58), the U.S. Court of Appeals (D.C.) has recently reversed the Commission's dismissal of the application of WAIT, Chicago, involving a waiver of the clear channel allocation rules and the clear channel policy which we did not believe warranted. As mentioned, we do not here pass further on that application, which is again under consideration; different questions are presented from those involved here.

86. However, since WAIT makes some of the same arguments here as those presented in that case, some discussion is appropriate. It is urged, for example, that the clear channel policy is an overbroad regulation entailing undue restrictions on potential broadcasting activities, and therefore violative of first amendment guarantees of free speech. We do not believe this to be the case as far as our actions here are involved, including the preclusion of presunrise broadcasting by WAIT. We point out that access to broadcasting facilities must necessarily be highly limited by the physical facts of interference; this was the basic reason for which regulation of radio in the United States was undertaken. One of the Commission's instructions under the Communications Act (section 303(f)) is to adopt rules to prevent interference. The clear channel policy and rules are a reflection of that mandate. As mentioned herein, presunrise operation by WAIT involves substantial interference to the service—both groundwave and skywave—of the cochannel I-A station, and in our view authorization thereof is inconsistent with the observance of due interference-protection standards. Moreover, as also mentioned above, we believe that any operations of this nature which could conceivably be permitted without wholesale destruction of clear channel service—and they could be but few—should be considered overall, with an eye to the optimum use which could be obtained from such assignments.

87. *Right to a hearing.* The decision adopted herein precludes some presunrise operations which stations have engaged in, restricts others, and permits some to continue either with full facilities or with a lesser power even though a fairly substantial amount of interference will be caused and continuation has been objected to by I-A parties. A few parties have claimed that if such actions are taken without hearing their legal rights are infringed. We do not agree. The action taken herein will result in a substantial improvement in I-A groundwave and skywave service, and at the same time permit continuation of local service to the extent the need therefore appears to outweigh the loss to the public. In our judgment, the decisions of U.S. Courts of Appeals in *American Airlines, Inc. v. CAB*, 359 F. 2d 624 (C.A.D.C., 1966) and *California Citizens Band Association, Inc. v. FCC*, 9 R.R. 2d 2037 (C.A. 9, 1967), clearly establish that such action can be taken in rulemaking without the necessity for hearings. We point out that with some justification, rules could have been adopted in the present proceedings either permitting presunrise operations which have existed in the past (since termination of existing service should not be undertaken without substantial reason) or terminating all or most of the operations which are now being permitted to continue, on the basis of the not insubstantial interference to I-A or II-A groundwave service. We have here adopted an intermediate course, and conclude that the actions decided upon are both appropriate and properly adopted in this proceeding. They may be implemented without regard to the expiration dates of outstanding licenses. *WBEN, Inc. v. U.S.*, supra.

⁵⁰ See docket 12729, the 6 to 6 proceeding, 27 F.C.C. 58, 18 R.R. 1695 (1959).