

AM Station, Class II Secondary
AM Station, Operating Hours
Application, Acceptance of
Coverage, Principal City
Daytime Station
Facility, Modification

Special procedures established for nighttime use of Bahamian, Canadian and Mexican AM clear channels; licenses of existing daytime stations on these channels modified to specify nighttime operation; provision made for new fulltime stations and power increases at night; city coverage requirement not applicable at night; application acceptance criteria of § 73.37 waived.

—AM Clear Channels
MM Docket No. 84-281

FCC 85-224

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION**

WASHINGTON, D.C. 20554

In the Matter of

Nighttime Operations on Canadian, Mexican,
and Bahamian AM Clear Channels

MM Docket
No. 84-281

REPORT AND ORDER
(Proceeding Terminated)

Adopted: April 26, 1985; Released: May 7, 1985

BY THE COMMISSION: COMMISSIONER RIVERA DISSENTING IN PART AND
ISSUING A STATEMENT.

Background

1. The Commission has before it the comments and reply comments¹ filed in response to the March 15, 1984, *Notice of Proposed Rule Making* in this proceeding (49 Fed. Reg. 18567, published May 1, 1984) proposing to permit additional nighttime operations on channels designated as

¹ A total of 34 parties submitted comments, and four parties submitted reply comments. These parties are listed in Appendix B.

Canadian, Mexican, and Bahamian Class I-A Clear Channels.²

2. As the subject *Notice* indicated, international agreements have imposed restrictions on the nighttime use of these 14 channels in the United States. Thus, under the North American Regional Broadcasting Agreement ("NARBA"), the Canadian Clear Channels could not be used at night anywhere within 650 miles of the border with Canada, and the Bahamian Clear Channel could not be used within 650 miles of any point in the Bahamas. The 1968 Bilateral AM Agreement with Mexico is even more restrictive. It precludes nighttime use of the Mexican Clear Channels anywhere in the United States. This situation was expected to change as a result of new international agreements which had been or were being negotiated. Unlike these older agreements, the new agreements were not expected to contain such restrictions.

3. The United States and Canada have signed a new bilateral AM agreement which has replaced NARBA insofar as their mutual dealings are concerned. Under this new agreement, there is no prohibition on the establishment of nighttime operations in the border area on what had been clear channels. Likewise, there is no such restriction in the Final Acts of the Region 2 Administrative Conference (Rio de Janeiro, 1981) to which the Commonwealth of the Bahamas is a signatory. As soon as the Bahamas has implemented its intention to denounce NARBA and to be bound by the Rio Agreement, the same situation will obtain in regard to the Bahamian Clear Channel. In subsequent bilateral discussions with the U.S., the Bahamas has confirmed this intention to take the necessary steps in this regard. Finally, considerable progress has been made in negotiations with Mexico in the development of a new AM agreement which, among other things, is expected to permit new nighttime operations throughout the United States on the seven affected channels.

4. With the above developments in mind, the Commission issued the *Notice* to obtain comments on the standards to be used in establishing nighttime operations on these channels. Specific reference was made to the criteria adopted by the Commission in its 1980 Clear Channel decision.³ In that proceeding the Commission made it possible for additional Class II stations to be established on the 25 U.S. I-A Clear Channels and set forth the technical and eligibility rules governing applications for these new

² The North American Regional Broadcasting Agreement designates seven frequencies (540 kHz, 690 kHz, 740 kHz, 860 kHz, 990 kHz, 1010 kHz, and 1580 kHz) as Canadian Clear Channels and one frequency (1540 kHz) as a Bahamian Clear Channel. The United States/Mexican Bilateral AM Agreement designates seven frequencies (540 kHz, 730 kHz, 800 kHz, 900 kHz, 1050 kHz, 1220 kHz, and 1570 kHz) as Mexican Clear Channels. Because the frequency of 540 kHz appears on both the Canadian and Mexican lists, the total number of frequencies involved is 14.

³ Report and Order in Docket No. 20642, *Clear Channel Broadcasting in the AM Broadcast Band*, 78 F.C.C. 2d 1345 (1980), *recon. denied*, 83 F.C.C. 2d 216 (1980).

Class II stations. In issuing the present *Notice*, the Commission noted the relatively short time that had elapsed since adoption of the 1980 *Report and Order* and asked commenting parties to express their views on whether the relevant portion of the Section 73.37(e) standards adopted in that proceeding should also be adopted here. Generally, under Section 73.37(e) of the Commission's rules, in order to be acceptable for filing, applications must propose service to unserved or underserved areas or to communities lacking sufficient local service.⁴ In addition, on the U.S. I-A Clear Channels, that section permits the acceptance of applications proposing minority-owned stations or ones that would provide noncommercial radio service.

5. Recently, the Commission issued a *Notice of Proposed Rule Making* in MM Docket No. 85-39 proposing to delete the go/no-go provisions of Section 73.37(e) which impose these acceptance criteria in addition to interference protection standards. In that proceeding the Commission is exploring whether these provisions continue to serve any useful purpose in view of the fact that they block the establishment of many otherwise acceptable applications on currently available spectrum merely because they do not meet these criteria.

6. The *Notice* also directed attention to the technical characteristics applicable to Class II-B proposals on the U.S. Clear Channels. Applicants proposing to provide a first nighttime primary service to at least 25 percent of the area or population they would serve were permitted to operate at night at a maximum power of 50 kW. These operations are protected at night to the limit imposed by the co-channel Class I-A station or the higher limit, if any, imposed by other previously authorized co-channel stations. On the other hand, Class II-B applicants not able to meet this standard were limited to 1 kW nighttime power and were normally protected at night only to their 10 mV/m contour. Because of its experience in the prior proceeding, the Commission proposed a maximum nighttime power of 1 kW on the foreign clear channels except where an applicant proposes to provide a first nighttime primary service to at least 25 percent of its coverage area, in which case the maximum nighttime power would be 50 kW. As with the U.S. clear channels, nighttime protection normally would be to the 10 mV/m and 2.5 mV/m contours, respectively. However, unlike the action in Docket No. 20642, the

⁴ Subparagraph (i) of Section 73.37(e) specifies that at least 25 percent of the area or population to receive interference-free primary nighttime service does not receive such service from an existing AM station or from any FM station with a signal strength of 1 mV/m or greater; subparagraph (ii) specifies that the community designated in the application must be provided with a first or second aural nighttime service and no FM channel is available for use in the community, and subparagraph (iii) specifies that at least 20 percent of the area or population of the designated community receives fewer than two aural services at night and no FM channel is available for use in the community.

Commission did not here propose to protect any Class II station at night to a contour of less than 2.5 mV/m.⁵

7. Finally, although the Commission, in Docket No. 20642, did not separately designate Class II stations based on power limitations and protection standards, in the *Notice* in this proceeding it proposed to amend the Rules by designating those Class II stations operating at 1 kW and protected to their 10 mV/m contours as "Class II-C." All other new full-time Class II stations, *i.e.*, those providing wider area service, would be designated "Class II-B." These designations would be applicable to all the Class II full-time stations that had been or would be authorized on the domestic Class I-A clear channels and to the new stations to be established on the newly available foreign clear channels that are the subject of this proceeding.

Comments

8. By far, the majority of comments in response to the *Notice* were submitted by or on behalf of daytime-only stations. They argued that the Commission should use this opportunity to authorize nighttime service by existing daytime-only stations on the affected foreign clear channels. They opposed use of the acceptance criteria which had been proposed, as this would deny the opportunity for full-time operation for many daytime-only stations. Several of these commenters point out that daytime-only stations suffer a competitive disadvantage vis-a-vis full-time AM and FM facilities and, due to their limited operating hours, have difficulty providing effective service to their communities. Although they acknowledge the efforts of the Commission to alleviate their plight through post-sunset operation, they continue to face serious problems. Daytime-only stations are said to render valuable service to their communities despite being unable to reap the benefits of full-time operation. Thus, they are seen as appropriate beneficiaries of the newly available spectrum.

9. Proponents for daytime-only stations note that unlike the situation relating to domestic clear channels in Docket No. 20642, many daytime-only stations already operate on the affected foreign clear channels. As a result, these frequencies cannot be used to any significant degree to respond to the need for new stations. They also contend that application of the proposed acceptance criteria would not accomplish the desired results, as there are few unserved areas which would be able to support a station. Moreover, the Associated Communications Corporation and United Broadcasting Company contend that there will be a way of meeting these needs

⁵ The Commission indicated in the *Notice* that, as a practical matter, it did not expect that this would significantly affect the ability to provide wide-area service, as few new stations were anticipated to be able to achieve nighttime limits less than 2.5 mV/m due to the large number of foreign stations that are already operating on the channels involved.

through new FM stations to be authorized as a result of Commission action in BC Docket No. 80-90.⁶

10. Other comments took a different view, asserting that not enough new stations had been created as the result of the Commission's Clear Channel decision in Docket No. 20642. For example, the National Black Media Coalition ("NBMC") argues that few minority stations were created and that the need for minority stations has remained unmet. Moreover, NBMC notes that many of the stations created as a result of new FM assignments in BC Docket No. 80-90 will be in small communities with little minority populations. Finally, a few commenters suggest that preferential treatment should be afforded to stations which filed expressions of interest in the course of bilateral negotiations with Canada. National Radio Broadcasters Association ("NRBA") would eliminate all threshold criteria and replace them with standards based solely on interference considerations. The Association for Broadcast Engineering Standards suggests adoption of an additional alternative acceptance criteria for daytime-only stations in order to encourage full-time service.

11. In addition to alternative procedures to implement night service by existing daytime-only stations on the Canadian, Mexican, and Bahamian Clear Channels, various parties offered suggestions on the power levels which should be permitted. Some believe that nighttime operating powers of up to 5 kW are warranted in order to provide improved service. In this regard, WGSM Radio, Inc., points to the example of Canada and Mexico, both of which permit greater power than was proposed in the *Notice*. Others would allow nighttime operation at a power up to that authorized for daytime hours, while the NAB would allow any power that is consistent with the Region 2 Agreement. NAB criticizes the 1 kW proposal as wasteful of spectrum resources and as failing to take full advantage of international agreements authorizing nighttime operation. Finally, various suggestions related to establishment of the normally protected contour ranged from 2.0 mV/m to 10 mV/m. Necessarily, the higher the protection level, the fewer the services that would be possible.

Discussion

12. In order to evaluate the various possible uses of these frequencies, it was necessary to perform intensive and wide-ranging studies to examine the potential value these frequencies could have in responding to various types of requirements.⁷ They were designed to determine whether

⁶ *Modification of FM Broadcast Station Rules to Increase the Availability of Commercial FM Broadcast Assignments*, 94 F.C.C. 2d 152 (1983), *recon. denied*, FCC 84-65, March 1, 1984.

⁷ The following studies were initially performed by the Commission on sample foreign clear channels: (1) daytime service and interfering contours of existing daytime-only and fulltime stations were plotted (using the M3 map of ground conductivity). This showed the

these frequencies lend themselves to the establishment of new full-time operations, or could be better used to make it possible for daytime-only stations to operate at night. It also was important to see if it would be possible to harmonize these two apparently conflicting goals. As these studies were completed, several points became clear. In much of the country, particularly the populous areas, these frequencies could not be used to create new stations, full-time or otherwise, without causing destructive interference to the existing daytime-only and full-time stations on the channels.⁸ In these areas, the only choice is permitting the channels to be used at night by the daytime-only stations or allow the frequencies to lie fallow in major portions of the country. Obviously, the latter course would serve no useful purpose. Moreover, it would unnecessarily limit daytime-only stations in their efforts to compete more effectively in the marketplace and thereby enhance their ability to serve the public.

13. Although the above situation applies in much of the country, there are areas where new full-time stations could be established.⁹ Here, too, no purpose would be served by imposing acceptance criteria. Because the areas in which these new stations would be located are concentrated in the unserved or underserved portions of the country, acceptance criteria are not needed to funnel growth toward areas of greatest need. Moreover, these frequencies would continue to be available for minority or public radio applicants.

14. Having decided that the frequencies can be used to establish new stations as well as give nighttime operation to daytime stations, the Commission needs to decide how best to accomplish these purposes. This requires consideration of the interrelated matters of the power to be used and the interference protection to be afforded. In addition, consideration must be given to the administrative mechanisms to be employed to bring about the desired result. Each of these points requires separate treatment. The arrangements to be applied to daytime-only stations will be

extent to which the channel already was used; (2) this, in turn, made it possible to identify areas where existing operations do not preclude addition of new stations daytime; (3) to determine the potential for nighttime operation, the nighttime RSS limits of daytime-only stations on the sample frequencies which result from existing domestic and foreign stations were calculated, and (4) the potential for new stations was examined by selecting for study hypothetical locations in the open areas determined in (2), above, and RSS limits at such points were computed. The summary results of these studies are set forth in Appendix C.

⁸ Appendix C illustrates the limited areas in which new AM stations could be established on the frequencies without causing such interference.

⁹ Although it would be possible to create new daytime-only stations in these areas, such a result would only perpetuate the problem of stations that are unable to compete effectively because of limits on their hours of operation. As a result, the rules will make it clear that new daytime proposals on these frequencies will not be accepted for filing.

described first. Then, it will be possible in the subsequent discussion to contrast the treatment to be afforded proposals for new stations on these channels.

Technical Criteria

15. Only in limited areas would it be possible to establish new full-time stations. Even in such locations, protection requirements to existing foreign and domestic fulltime stations preclude use of the frequencies for higher powered stations. Allowing such higher power also would not provide for an efficient distribution of facilities because the typically high limits on these channels preclude effective wide-area service. Further, allowing these stations to seek higher power is not feasible in view of their proximity to one another and could have the effect of precluding otherwise possible nighttime operations by other daytime-only stations. This has led the Commission to conclude that stations operating on the affected foreign clear channels should be permitted to operate at night, ultimately with maximum power of 1 kW, if consistent with applicable nighttime protection requirements. However, as described below, during a five-year transitional period, a 500-watt limit would apply.

16. The next point to consider is the signal level to protect after the transitional period comes to an end. Considering the existing channel loading and the limited potential for use of these frequencies makes it clear that it would be inappropriate to protect low nighttime signal levels. Moreover, such protection is not possible if daytime-only stations are to be able to operate at night. Protecting low limits is equally infeasible in other areas as well. Our studies have indicated that interference from existing foreign and domestic full-time stations would typically limit nighttime service from existing daytime-only stations (as well as new full-time stations) to their 10 mV/m contours or higher. Accordingly, we have concluded that these stations should be normally protected at night to their 10 mV/m contours. Also, we believe that a minimum power of 250 watts is required in order to be entitled to protection. The nighttime power limits being adopted here are the same as the Commission generally made applicable to stations seeking to operate on the 25 domestic Class I-A channels which were the subject of Commission action in Docket No. 20642.¹⁰ Further, the 10 mV/m contour that Class II stations here must protect each other to is identical to that which the Commission determined in Docket No. 20642 to be the optimal balance between adequate service areas and maximum number of stations.

¹⁰ See: Section 73.21(a)(ii)(C) and (D) of the Rules. Stations providing wide area service to underserved areas as provided in §73.37(e)(i) were allowed to operate at higher nighttime power levels.

17. In establishing these standards we were mindful of the fact that there will be two categories of stations operating at night on these frequencies. Some will come from the new full-time operations made possible by the changed status of these frequencies. By far, the larger portion will be former daytime-only stations which will be operating at night for the first time. In fact, all of these stations will be able to operate at night if they choose to do so. Necessarily, there will be restrictions imposed on these stations by virtue of their need to protect existing full-time stations on the channel, both foreign and domestic. There would be additional effects if these daytime-only stations were required to protect one another at night. However, that would produce major complications and delays in implementing the new rules. Considerable cost would be involved for each station in determining just what protection to provide, and this protection could change with each grant that was made. Finally, as appendix C indicates, in most cases this is an unnecessary matter in any event because of existing elevated levels of interference.

18. For some daytime-only stations, the need to provide protection at night to full-time stations will have little or no effect. For others, it can mean that a substantial reduction in power would be needed when using existing antenna systems, often to a level well below the 250 watt minimum power specified by the Commission's rules. Whatever view we might take in regard to authorizing such low power for new stations, the fact is that for these daytime-only stations, such nighttime power can be justified in terms of the channel loading that already exists and the service these stations can be expected to provide. While that service may indeed be limited, the only other choice is to preclude such service entirely, and that would unfairly deprive these stations and their communities of needed service at night. Thus, during the implementation described below, daytime stations can be authorized nighttime operation and new fulltime stations can be established, but in both cases, nighttime protection to one another will not be required. Thereafter, protection to at least some of the nighttime operations would be warranted. Although it is feasible to allow low power operation, the studies have shown that it would not be feasible to protect these operations having less than 250 watts. As a result, stations that operate with 250 watts or more at night will become protected under the procedures described below, but those that operate with lesser power levels will not be protected now or in the future. In order to obtain such protection, these stations will need to follow the prescribed procedures for increasing power and acquiring protection thereby. Alternatively, they can continue to operate at lower power levels without protection.

19. From now on, neither the new fulltime stations or the daytime-only stations obtaining nighttime operation by virtue of the procedures

outlined below will be subject to the requirements of Section 73.24(j) of the rules regarding city grade coverage at night. To apply these provisions to the daytime-only stations would be impractical in light of the reduced nighttime power required to protect the full-time foreign and domestic co-channel stations and the limited flexibility that many daytime-only stations will have in designing new antenna systems. In addition, it is possible that daytime-only stations will receive high limits and for that reason may be unable to serve their entire community. Although it is appropriate to require new stations to comply with city coverage requirements daytime, it is not possible to do so at night without creating conflicts with other applications. The absence of a city coverage requirement at night does not represent an ideal situation. Nonetheless, as with the matter of authorized power, insisting on compliance with the Commission's coverage rules at night will defeat the opportunity for new nighttime services.

Implementation

20. There can be no question that the expeditious authorization of nighttime service on the foreign clear channels here is in the public interest. Accordingly, the Commission has devoted considerable effort to the formulation of a procedure which can effectuate such service in the most efficient manner. Two points became clear immediately. Implementation would be delayed considerably if it had to be handled entirely by traditional application processes. Perhaps even more important, the initial step for permitting nighttime operation by daytime-only stations requires engineering calculations of great complexity. Requiring each party to perform these calculations would impose an enormous burden on applicants. Then, the Commission would be faced with verifying these calculations before granting the necessary authorization. The problem can be overcome if the Commission performs the calculations itself using the existing daytime or Canadian restricted antenna system and notifies each station of the power it can use. Such a procedure would parallel the one utilized by the Commission in its post-sunset power calculations for these same stations.¹¹

21. Likewise, there is no need for the Commission to insist on the filing of applications to acquire this nighttime authorization. Instead, it can follow the same Show Cause Order approach that was used to bring about the Class IV AM nighttime power increases. In the present case, this involves the issuance of a Show Cause Order to each affected daytime-only station telling it that, absent objection, its license will be modified to specify nighttime operation with the power specified. Some

¹¹ It will be possible for Class II-S stations to continue to utilize these secondary authorizations which were calculated based on full protection.

stations may not choose to utilize this opportunity because they consider the power to be below their needs or because they do not wish to comply with the minimum operating requirements which will apply to these nighttime operations. Other stations may wish to use this authority but may need a delay before operation could begin. To deal with these problems the following procedure will be used. Stations will have one year from the date of the Show Cause Order in which to begin operation at night. Although it is under no obligation to operate under this authority, it will expire under its own terms if not used by then. In addition, before such operation can begin, the licensee will have to indicate its intention to do so and to provide limited engineering data about the operation. Then, operation can begin immediately upon sending this information to the Commission.

22. During a five-year period after the issuance of the Show Cause Orders, the station may continue to operate at night with the power set forth in the Show Cause Order. It also may file an application to increase that power up to a maximum of 500 watts but not to exceed its authorized daytime power.¹² In doing so it will be necessary to protect the fulltime domestic and foreign stations now operating. However, it will not be necessary to provide nighttime protection to the new stations to be authorized or to the nighttime operations of other former daytime-only stations. Likewise, a newly authorized station seeking a subsequent increase in nighttime power to 500 watts is subject to the same interference protection requirements. This situation will continue for five years to provide ample opportunity for any desired increases in power. Instead of making a change on its current channel, it may conclude that it is preferable to propose operation on another channel. Such applications will be acceptable for filing, and will be treated in the same fashion as applications for new stations on those channels. Finally, as noted earlier, only stations that initially obtain operation with 250 watts or more or subsequently increase to that level will be entitled to protection after this five-year period ends.

23. After this five year period ends, two basic changes will occur. First, the maximum nighttime power will be increased to 1 kW, and existing stations will be able to propose increasing their power to this level. However, all existing nighttime operations of 250 watts or more will be protected from additional interference. This includes the former daytime-only stations. In addition, applications for new stations can

¹² Because of the special circumstances presented by this case, it is appropriate to provide a partial exception to the requirement that power increase applications must specify an increase of a specific percentage. A former daytime station may seek a lesser increase so long as that increase is sufficient to bring it to the protected level of 250 watts or more.

continue to be filed, and they will be subject to the same requirements as to power level and interference protection.

24. The Commission intends that nighttime operations on the affected foreign clear channels be effectuated as soon as practicable. Since an appropriate bilateral agreement with Canada has been reached, the amendments to the Rules as they apply to the Canadian Clear Channels herein will be effective as of the date indicated below.¹³ However, since bilateral negotiations with Mexico and with The Bahamas are in progress, the effective date of the amendments as they apply to the Mexican¹⁴ and Bahamian Clear Channels will be as announced subsequently.

25. *Class II-C Designations.* There is one final matter to consider. Consistent with the Commission's proposal as set forth in the *Notice*, the Class II stations operating on the 25 domestic clear channels which were the subject of Commission action in Docket No. 20642 will be redesignated as either "Class II-B" or "Class II-C", as the case may be. Specifically, those Class II stations operating at up to 50 kW and accepted in accordance with Section 73.21(a)(ii)(D) of the rules will be designated "Class II-B,"¹⁵ while those accepted on the basis of Section 73.21(a)(ii)(C) of the rules will be designated "Class II-C." Although this specific proposal to redesignate these channels was not addressed in the comments, it appears, as it did previously, prudent to do so in the interest of clarity. Further, all daytime-only stations that elect to operate nighttime and new fulltime stations that are granted on these foreign Clear Channels will be designated as "Class II-C" stations if they utilize 250 watts or more at night. Those using a lower nighttime power will be designated as "Class II-S" stations.

Paperwork Reduction Act

26. The action contained herein has been analyzed with respect to the Paperwork Reduction Act of 1980 and found to contain no new or modified form, information collection and/or record keeping, labelling, disclosure, or record retention requirements; and will not increase or decrease burden hours imposed on the public.

Regulatory Flexibility Analysis

I. Need and Purpose of the Rules

These rules are designed to permit daytime-only AM broadcast stations operating on Canadian, Mexican, and Bahamian Clear Channels to provide nighttime service. Additionally, these rules provide power and protection standards as well as a procedure for implementing such service and

¹³ This does not include 540 kHz.

¹⁴ This includes 540 kHz.

¹⁵ This includes applications on file as of the effective date of the rules being adopted in this proceeding, to which the current standards would continue to be applied.

standards. Finally, Class II stations operating on both domestic and foreign clear channels are designated according to their operating powers. The new rules can be expected to benefit many small entities, particularly daytime-only stations which will obtain nighttime operating authority for the first time.

II. Summary of Issues Raised by Public Comment in Response to the Initial Notice of Proposed Rule Making

No issues of significance were raised in addition to those set forth above.

III. Significant Alternatives Considered and Rejected

Alternative procedures regarding implementation of nighttime service on the foreign clear channels here, including application of the threshold criteria provided in Section 73.37(e) of the Commission's Rules, have been considered and rejected for the reasons set forth above. Similarly, alternative technical standards regarding power limitations and protection have been found to be inappropriate for the reasons indicated.

27. Accordingly, IT IS ORDERED, That Part 73 of the Commission's rules IS AMENDED effective June 3, 1985, as set forth in Appendix A.

28. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

29. Authority for this action is contained in Sections 4(i), 303 and 307(b) of the Communications Act of 1934, as amended.

30. For further information concerning this proceeding, please contact Joel Rosenberg, (202) 634-6530, or Jonathan David (202) 632-7792, both of the Policy and Rules Division, Mass Media Bureau.

FEDERAL COMMUNICATIONS COMMISSION

WILLIAM J. TRICARICO, *Secretary*

*Appendix B-may be seen in FCC Dockets Branch, 1919 M Street, N.W., Washington, D.C.

Appendix A

1. 47 C.F.R. Part 73 is amended by revising paragraph (a) of Section 73.21 to read as follows:

§73.21 Classes of AM broadcast channels and stations.

(a) * * *

* * * * *

(2) Class II station. A class II station is a secondary station which operates on a clear channel (see §73.25) and is designed to render service over a primary service area which is limited by and subject to such interference as may be received from Class I stations. Whenever necessary a Class II station shall use a directional antenna or other means to avoid interference with Class I stations and with other Class II stations, in accordance with §73.182 (and §73.22 in the case of Class II-A stations). Class II stations are divided into five groups:

(i) * * *

(ii) *Class II-B station.* A Class II-B station is an unlimited time Class II station other than those included in Class II-A, II-C, and II-S. Except as subparagraphs (a)(2)(ii)(A) and (B) of this section provide otherwise, a Class II-B station shall operate with a power not less than 0.25 kW nor more than 50 kW.

(A) Class II-B stations authorized before June 1, 1985, to operate on any of the 25 Class I channels listed in §73.25(a) shall operate with the powers authorized as of June 1, 1980, or such other power as the Commission may subsequently authorize. Class II-B stations on these channels authorized after June 1, 1980, in the contiguous 48 states, must meet the requirements for primary service set out in §73.37(d)(2)(i).

(B) Class II-B stations authorized before _____, 1985, to operate on any of the 14 channels listed in §73.25(c) shall operate with the powers authorized as of June 3, 1985, or such other power as the Commission may subsequently authorize during Stage 3 or the process described in §73.357(d)(4).

* * * * *

(iii) *Class II-C station.* A Class II-C station is an unlimited time Class II station which operates with a daytime power of not less than 0.25 kW nor more than 50 kW and a nighttime power of not less than 0.25 kW nor more than 1 kW as follows:

(A) Class II-C stations authorized after June 1, 1980, on the 25 channels listed in §73.25(a) are those which do not meet the requirements for primary service set out in §73.37(e)(2)(i).

(B) Class II-C stations authorized after June 3, 1985, on the 14 channels listed in 73.25(c).

(iv) *Class II-D stations.* A Class II-D station is a Class II station operating daytime or limited time. A Class II-D station shall operate with power not less than 0.25 kW nor more than 50 kW.

(v) *Class II-S stations.* Class II-S stations are former Class II-D stations which have been authorized limited power operation during nighttime on the 14 channels listed in §73.25(c). Class II-S stations operate with power less than 250 watts nighttime without protection from interference.

* * * * *

2. 47 C.F.R. Part 73 is amended by revising paragraph (j) of Section 73.24 to read as follows:

§73.24 Broadcast facilities; showing required.

* * * * *

(j) That the 5 mV/m contour (or, at night, the interference-free contour, if of a higher field strength) encompasses the entire principal community to be served. For Class II-C and II-S stations on the 14 frequencies listed in §73.24 (c) it is not necessary to demonstrate the ability to provide such coverage during nighttime operation.

3. 47 C.F.R. Part 73 is amended by revising paragraphs (a), (b) and (c) of Section 73.25 and by deleting paragraphs (d) and (e) of that Section to read as follows:

§73.25 Clear channels: Classes I and II stations.

(a) *

(2) * * *

(i) * * *

(ii) Additional unlimited time Class II-B and II-C stations authorized after June 1, 1980.

(iii) * * *

Note 1: * * *

Note 2: See the U.S./Mexican Agreement concerning Mexican use of 660, 760, 830, 1020, 1030, and 1180 kHz.

(b) * * *

Note: Until superseded by a new agreement, protection of the Bahama Islands shall be in accordance with NARBA. Accordingly, Class I and Class II stations on 1540 kHz shall deliver not over 4 uV/m groundwave or 25 uV/m skywave at any point of land in the Bahama Islands and such stations operating nighttime (i.e., sunset to sunrise at the location of the U.S. station) shall be located not less than 650 miles from the nearest point of land in the Bahama Islands. Also see paragraph (c) for additional provisions relating to Class II stations on this frequency.

(c) For Class II stations on 540, 690, 730, 740, 800, 860, 900, 990, 1010, 1050, 1220, 1540, 1570, and 1580 kHz. Effective June 1, 1985, no applications for new Class II-D stations will be accepted on these channels.

Note 1: The U.S./Mexican Agreement is undergoing renegotiation. Until the new Agreement is completed, no applications involving new nighttime operation or major change in existing nighttime operation on 540 kHz except for Alaska, or on 730, 800, 900, 1050, 1220, and 1570 kHz will be accepted for filing. Also, pending completion of negotiations with the Commonwealth of the Bahamas, 1540 kHz is subject to the same restrictions.

4. 47 C.F.R. Part 73 is amended by revising paragraphs (a) and (e) of Section 73.37 to read as follows:

§73.37 Applications for broadcast facilities, showing required.

(a) Except as indicated in other paragraphs of this section, no application will be accepted for a new station (or change in frequency of an existing station) if the proposed operation would involve overlap of signal strength contours with any other station as set forth below in this paragraph; and no application will be accepted for a change (other than a change in frequency) of the facilities of an existing station (including the daytime facilities of an existing Class II-A station) if the proposed change would involve such overlap where there is not already such overlap between the stations involved:

<i>Frequency separation</i>	<i>Contour of Proposed new station (Classes II-B, II-C, II-D, II-S III, and IV) mV/m</i>	<i>Contour of any other station</i>
Co-channel	0.005 0.025 0.5	0.1 mV/m (Class I) 0.5 mV/m (Other classes) 0.025 mV/m (All classes)
10 kHz.....	0.5	0.5 mV/m (All classes)
20 kHz.....	2 25	25 mV/m (All classes) 2 mV/m (All classes)
30 kHz.....	25	25 mV/m (All classes)
	* * * *	*

(e) In addition to a demonstration of compliance with the requirements of paragraphs (a), and as appropriate, (b), (c) and (d) of this section, an application for a new AM broadcast station, or for a major change (see §73.3571(a)(1) of this chapter) in an authorized AM broadcast station, as a condition for its acceptance, shall make a satisfactory showing, if new or modified nighttime operation by a Class II or Class III station is proposed, that objectionable interference will not result to an authorized station as determined pursuant to §73.182(o) of this chapter. Separate interference requirements are applicable to Class II-C and Class II-D stations on the 14 frequencies listed in §73.25(c). In addition, for all classes of stations on these 14 frequencies, except Class II-C or II-S, a satisfactory showing is required as indicated below for the kind of application submitted.

(1) * * *

* * * *

(2) * * *

(i) - (iii) * * *

(iv) That minority persons hold over 50% of the ownership interests in the applicant for a Class II-B or Class II-C station on one of the 25 Class I channels listed in §73.25(a), or,

(v) That the applicant proposes to operate a Class II-B or Class II-C station noncommercially on one of the 25 Class I channels listed in §73.25(a).

Note Applications for new Class II-D or Class II-S stations on the 14 frequencies listed in §73.25(c) are not acceptable for filing. However, applications for changes in the facilities of existing Class II-D or Class II-S are acceptable for filing, subject to the limitations specified in §73.3571 of this chapter.

* * * *

5. 47 C.F.R. Part 73 is amended by renumbering subparagraph (f)(2)(iii) of Section 73.51 as (f)(2)(ii) and by revising the text of this subparagraph to read as follows:

§73.51 Determining operating power.

* * * *

(f) * * *

(1) * * *

(2) * * *

(i) * * *

(ii) The value determined by reference to the following table:

<i>Factor (F)</i>	<i>Method of Modulation</i>	<i>Maximum Rated carrier power</i>	<i>Class of amplifier</i>
0.70	Plate	1 kW or less	
.80	Plate	2.5 kW and over	
.35	Low Level	0.25 kW and over	B
.65	Low Level	0.25 kW and over	BC ¹
.35	Grid	0.25 kW and over	

¹ All linear amplifier operation where efficiency approaches that of class C operation

6. 47 C.F.R. Part 73 is amended by revising subparagraph (c)(1) of Section 73.99 to read as follows:

§73.99 Pre-Sunrise service authorization (PSRA) and Post-Sunset service authorization (PSSA).

* * * * *

(c) * * *

(1) Class II-D stations located on Mexican, Bahamian, and Canadian Class I-A and I-B Clear Channels to commence PSSA operation at sunset times specified in their basic instruments of authorization and to continue for two hours after such specified times. In addition, Class II-S stations may operate pursuant to their Post-Sunset authority in lieu of their licensed nighttime power.

* * * * *

7. 47 C.F.R. Part 73 is amended by revising subparagraph (a)(iii) of Section 73.182, and by adding new subparagraph (a)(iv) and a Note to read as follows:

73.182 Engineering standards of allocation.

(a) * * *

* * * * *

(2) Class II stations are secondary stations which operate on clear channels with powers not less than 0.25 kW nor more than 50 kW, except that Class II-A stations shall not operate nighttime with less than 10 kW; Class II-C stations shall not operate nighttime with more than 1 kW, and Class II-S stations shall operate nighttime with less than 250 watts. Class II stations are required to use directional antennas or other means to avoid causing interference with the normally protected service areas of Class I stations or other Class II stations. (For special rules concerning Class II-A stations, see 73.22.) These stations normally render primary service only, the area of which depends on the geographical location, power, and frequency. This may be relatively large but is limited by and subject to such interference as may be received from Class I stations. However, it is recommended that Class II stations be so located that the interference received from other stations will not limit the service area to greater than 2.5 mV/m groundwave contour nighttime and 0.5 mV/m groundwave contour daytime, which are the values for the mutual protection of this class of stations with other stations of the same class. There are four exceptions:

(i) * * *

* * * * *

(iii) Class II-C stations are normally protected at nighttime to their 10 mV/m groundwave contour, or the higher limit if any imposed by previously authorized facilities of other stations.

(iv) Class II-S stations are not protected from interference during nighttime.

Note: There are additional restrictions in the use of the 14 channels listed in §73.25(c). These restrictions are set forth in §73.3571.

* * * * *

8. 47 C.F.R. Part 73 is amended by revising subparagraph (o)(1) of Section 73.182 to read as follows:

73.182 Engineering standards of allocation.

* * * * *

(o) * * *

(1) With respect to the root-sum-square values of interfering field strengths referred to in this section (except in the case of Class IV stations on local channels and interfering signals to Class II-S stations) calculation is accomplished by considering the signals in order of decreasing magnitude, adding the squares of the values and extracting the square root of the sum, excluding those signals which are less than 50% of the RSS values of the higher signals already included.

* * * * *

9. 47 C.F.R. Part 73 is amended by revising the text of, but not the format of, the chart contained in paragraph (v) of Section 73.182 to read as follows:

§73.182 Engineering standards of allocation.

* * * * *

(v) Protected service contours and permissible interference signals for broadcast stations are as follows (for Class I and Class II-A stations, see paragraph (a) of this section):

Class of station	Class of channel used	Permissible power	Signal strength contour of area protected from objectionable interference ¹		Permissible interfering signal on same channel ²	
			Day ³	Night	Day	Night ⁴
I-A	Clear	50 kW	SC 100 μ V/m. AC 500 μ V/m.	SC 500 μ V/m(50% skywave) ⁷ AC 500 μ V/m ³	5 μ V/m	25 μ V/m ⁷
I-B	do	10 kW to 50 kW	SC 100 μ V/m. AC 500 μ V/m.	SC 500 μ V/m 50% skywave. AC 500 μ V/m ³	5 μ V/m	25 μ V/m
II-A	do	0.25 kW to 50 kW (daytime). 10 kW to 50 kW (nighttime).	500 μ V/m	500 μ V/m ³	25 μ V/m	Do.
II-B	do	0.25 kW to 50 kW	500 μ V/m	2500 μ V/m ^{3 5}	do	125 μ V/m
II-C	do	0.25 kW to 1 kW	do	10,000 μ V/m ⁸	do	500 μ V/m
II-D	do	0.25 kW to 50 kW (daytime)	do	not prescribed	do	500 μ V/m
II-S	do	0.25 kW to 50 kW (daytime) less than 0.25 (nighttime)	do	not prescribed	do	not prescribed
			do	not prescribed	do	not prescribed

<i>Class of station</i>	<i>Class of channel used</i>	<i>Permissible power</i>	<i>Signal strength contour of area protected from objectionable interference¹</i>	<i>Day²</i>	<i>Night</i>	<i>Day</i>	<i>Night³</i>	<i>Permissible interfering signal on same channel²</i>
III-A	Regional	1 kW to 5 kW	2500 $\mu\text{V}/\text{m}^3$	do	2500 $\mu\text{V}/\text{m}^3$	do	125 $\mu\text{V}/\text{m}$	
III-B	do	0.5 to 1 kW (night),	4000 $\mu\text{V}/\text{m}^3$	do	4000 $\mu\text{V}/\text{m}^3$	do	200 $\mu\text{V}/\text{m}$	
IV	Local	0.25 to 1 kW	Not prescribed ⁶	do	Not prescribed ⁶	do	Not prescribed	

¹ When a station is already limited by interference from other stations to a contour of higher values than that normally protected for its class, this contour shall be the established standard for such station with respect to interference from all other stations.

² For adjacent channel, see paragraph (w) of this section.

³ Groundwave.

⁴ Skywave field strength for 10 percent of more of the time.

⁵ These values are with respect to interference from all stations except Class I-B, which stations may cause interference to a field strength contour of higher value. However, it is recommended that Class II stations be so located that the interference received from Class I-B stations will not exceed these values. If the Class II stations are limited by Class I-B stations to higher values, then such values shall be the established standard with respect to protection from all other stations.

⁶ See paragraph (a)(4) of this section.

⁷ Class I-A stations on channels reserved for the exclusive use of one station during nighttime hours are protected from co-channel interference on that basis.

⁸ Applies only to nighttime operations of Class II-C stations coming within §73.21(a)(iii), and to the operation of limited-time Class II-D stations during nighttime hours other than those during which they were authorized to operate as of June 1, 1980.

SC=Same channel.

AC=Adjacent channel.

10. 47 C.F.R. Part 73 is amended by revising the note to Section 73.183(b) to read as follows:

§73.183 Groundwave signals

* * * * *

(b) * * *

Note: International agreement in the matter of standards for good engineering practice concerning determination of ground conductivity by field strength measurements has not been arrived at as contemplated by NARBA, and the United States has no established procedures for reciprocal consideration of such measurements with any country except Canada. Therefore, groundwave field strength measurements will not be accepted or considered for the purpose of establishing that interference to a station in a foreign country other than Canada, or that the signal strength at the border thereof, would be less than indicated by the application of the ground conductivity maps and engineering standard contained in this part and applicable international agreements. Satisfactory groundwave measurements offered for the purpose of demonstrating values of conductivity other than those shown by Figure M3 in problems involving protection of Canadian stations will be considered only if, after review thereof, the appropriate agency of the Canadian government notifies the Commission that they are acceptable for such purpose.

* * * * *

11. 47 C.F.R. Part 73 is amended by revising paragraph (d) of Section 73.3571 to read as follows:

§73.3571 Processing of AM broadcasting station applications.

* * * * *

(d) * * *

(1) In order to be acceptable for filing, any application other than those filed under subparagraph (4) below which does not involve a change in site and which is filed before June 3, 1988, must propose at least a 50% increase in the station's nominal power. However, applications proposing at least a 20% increase and which are in conflict with an application proposing a 50% increase are acceptable for filing.

* * * * *

(4) Special procedures apply to the 14 frequencies listed in §73.25(c). The same procedures will be applied to each of the three frequencies or groups of frequencies which are included in the above category. There are three stages to these procedures. In the first Stage, each Class II-D station will receive an Order to Show Cause why its license should not be modified to specify operation at night with the power calculated by the Commission and as shown on said Order. Stations accepting this modification will be redesignated as Class II-C if the nighttime power is 250 watts or more or as Class II-S if that power is below 250 watts. During Stage two, stations in both groups will be given five years within which to file an application to increase this power to a maximum of 500 watts on their daytime power, whichever is lower. During this period, applications for new Class II-C stations also can be filed and will be granted without regard to the nighttime interference caused to other Class II-C or to Class II-S stations but new Class II-C stations will be required to protect foreign and domestic Class II-B full-time stations on these frequencies. Finally, in Stage 3, which occurs when the five-year period above comes to an end, Class II-C and II-S stations will be able to file applications to increase their nighttime power to 1 kW or their daytime power, whichever is lower. Applications for new Class II-C stations can also be filed specifying a maximum nighttime

power of 1 kW. However, any applications in either category must protect existing Class II-C stations (including Class II-S stations that increased power during Stage 2 and were redesignated as Class II-C during this period). The five-year periods of Stage 2, applicable to the three groups of frequencies, are set forth below:

(i) 690 kHz, 740 kHz, 860 kHz, 990 kHz, 1010 kHz and 1590 kHz: Stage 2 begins on June 3, 1985 and ends on May 31, 1990; Stage 3 begins on June 1, 1990.

(ii) 1540 kHz [to be established]

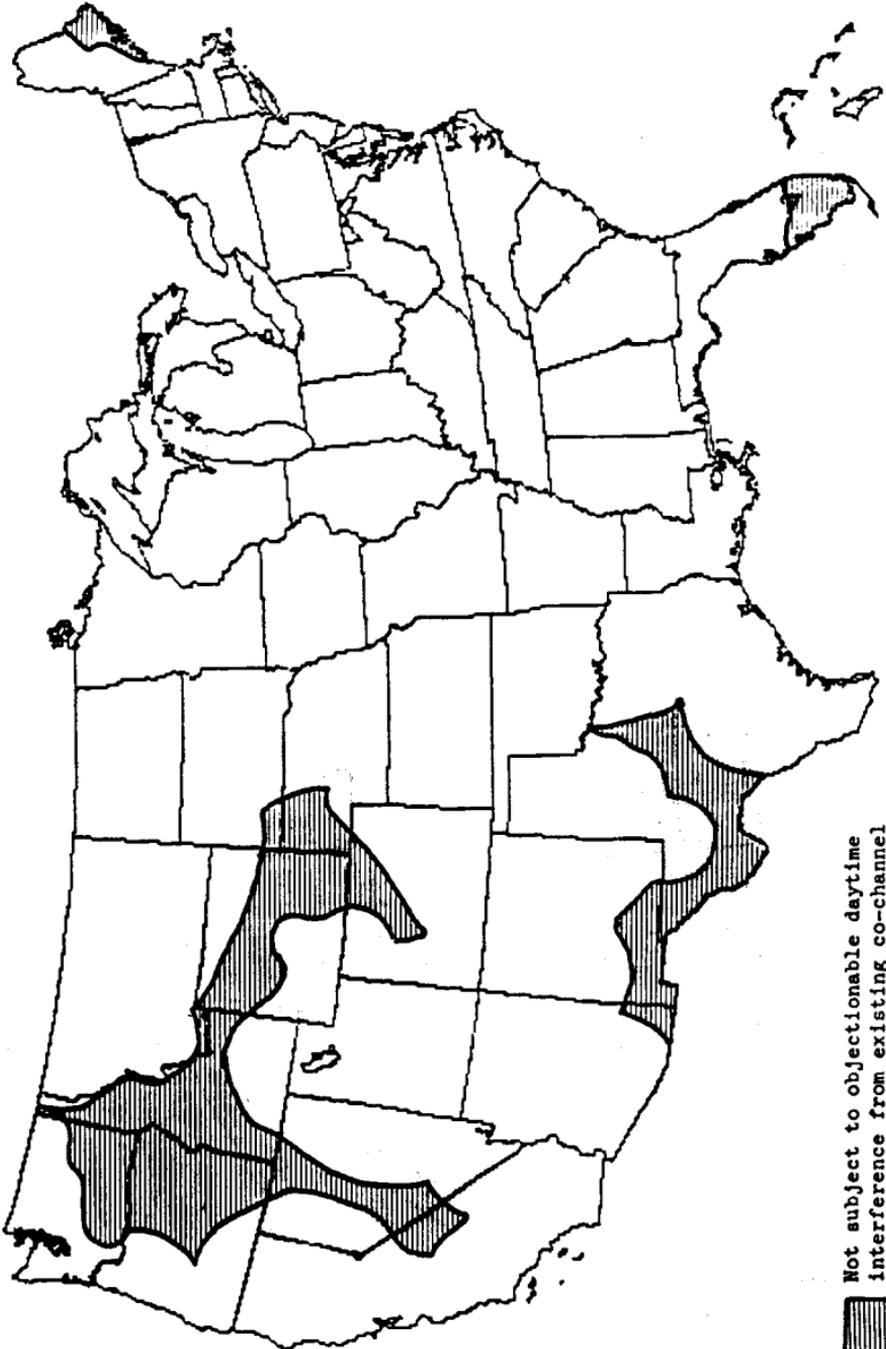
(iii) 540 kHz, 730 kHz, 800 kHz, 900 kHz, 1050 kHz, 1220 kHz and 1580 kHz: [to be established]

* * * * *

Appendix C

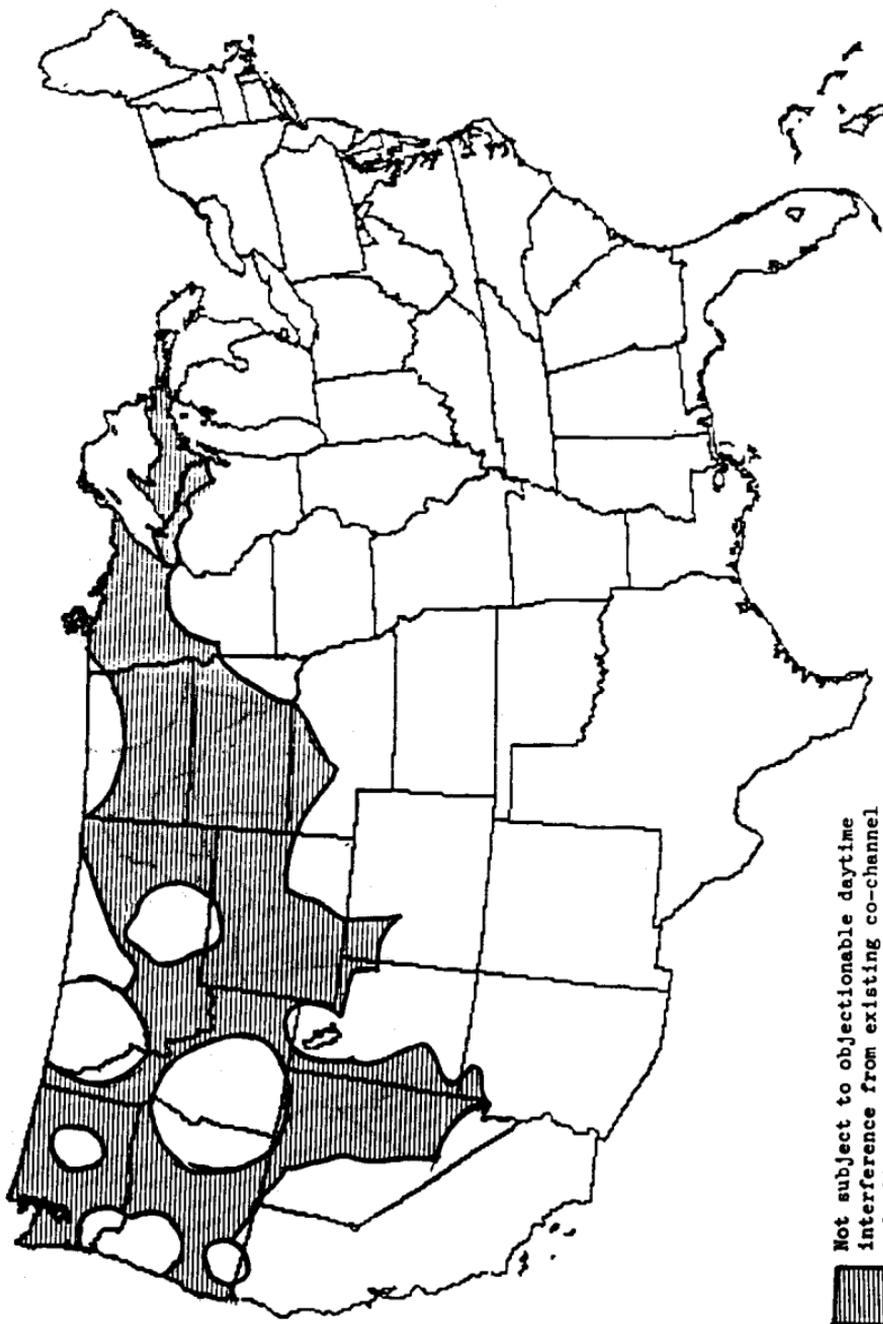
Domestic Assignments on
Canadian, Mexican and Bahamian Clear Channels

<i>Frequency</i>	<i>Country</i>	<i>Unlimited Time</i>	<i>Daytime Only</i>
540	CA & MX	3	13
690	CA	7	18
730	MX	0	30
740	CA	10	19
800	MX	1	31
860	CA	6	26
900	MX	1	44
990	CA	12	30
1010	CA	11	30
1050	MX	1	53
1220	MX	1	47
1540	BA	10	46
1570	MX	1	74
1580	CA	<u>8</u>	<u>61</u>
<u>TOTAL</u>		72	519



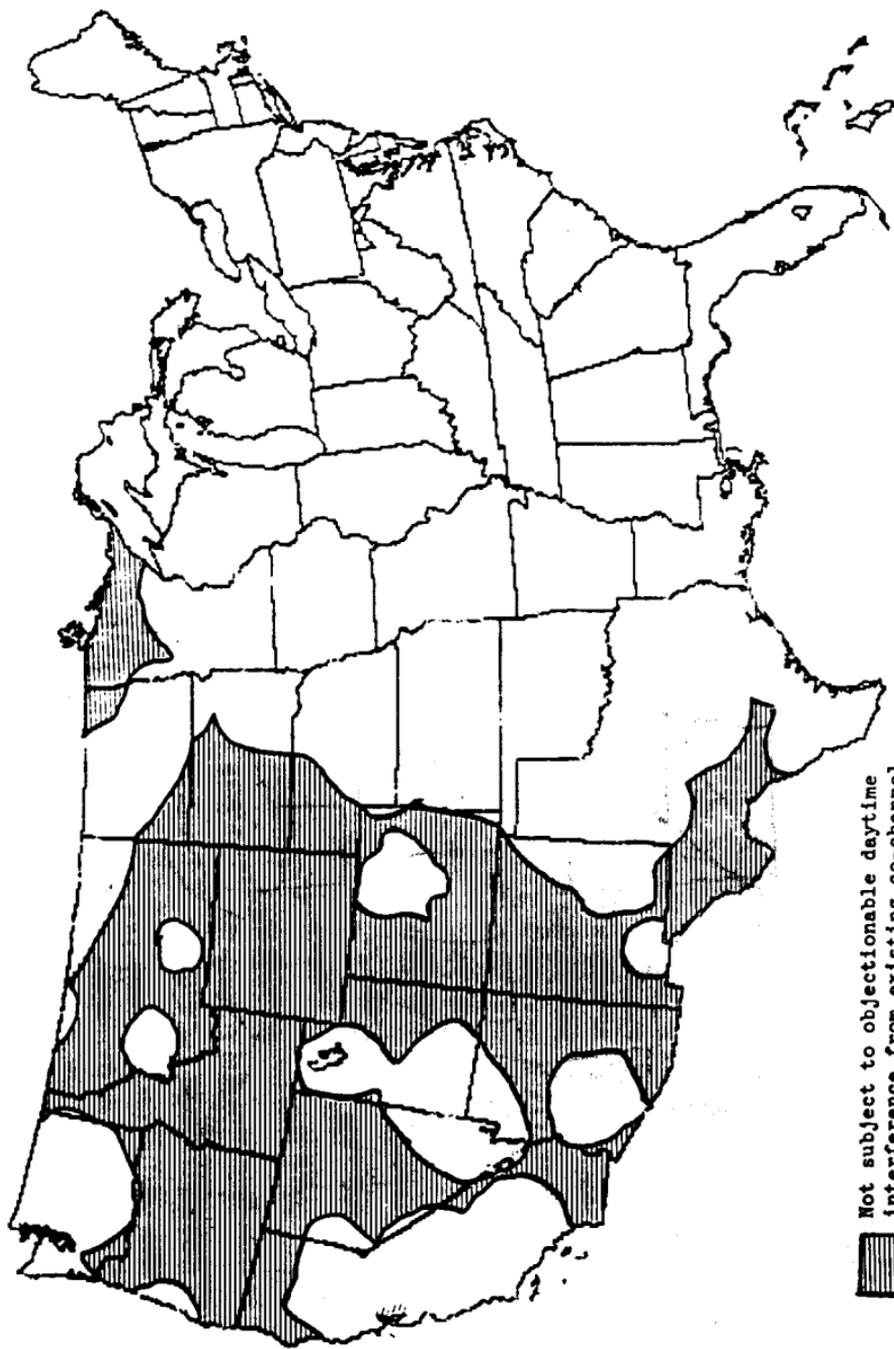
Not subject to objectionable daytime interference from existing co-channel and adjacent channel broadcast facilities.

7.40 kHz



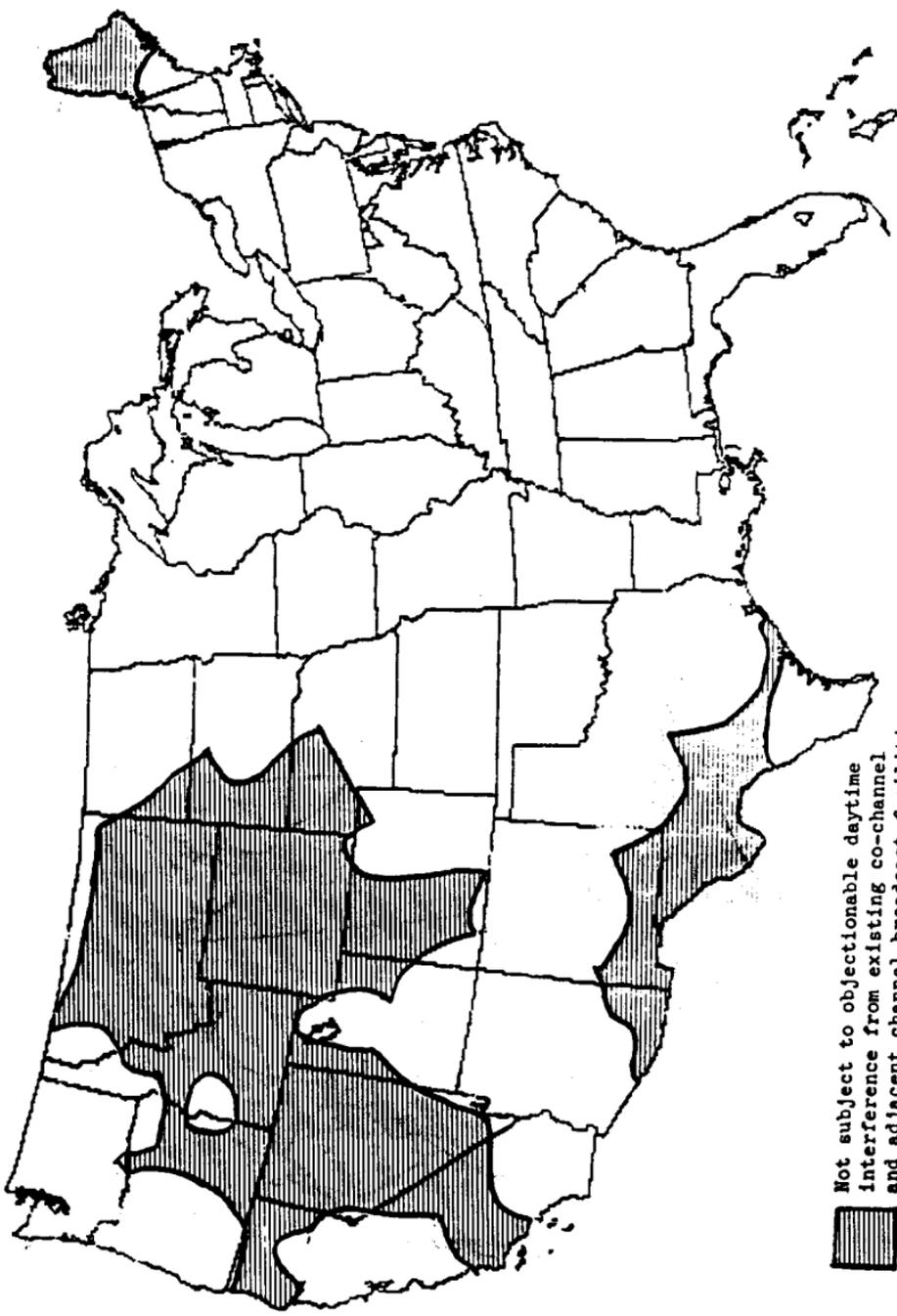
Not subject to objectionable daytime interference from existing co-channel and adjacent channel broadcast facilities.

900 kHz



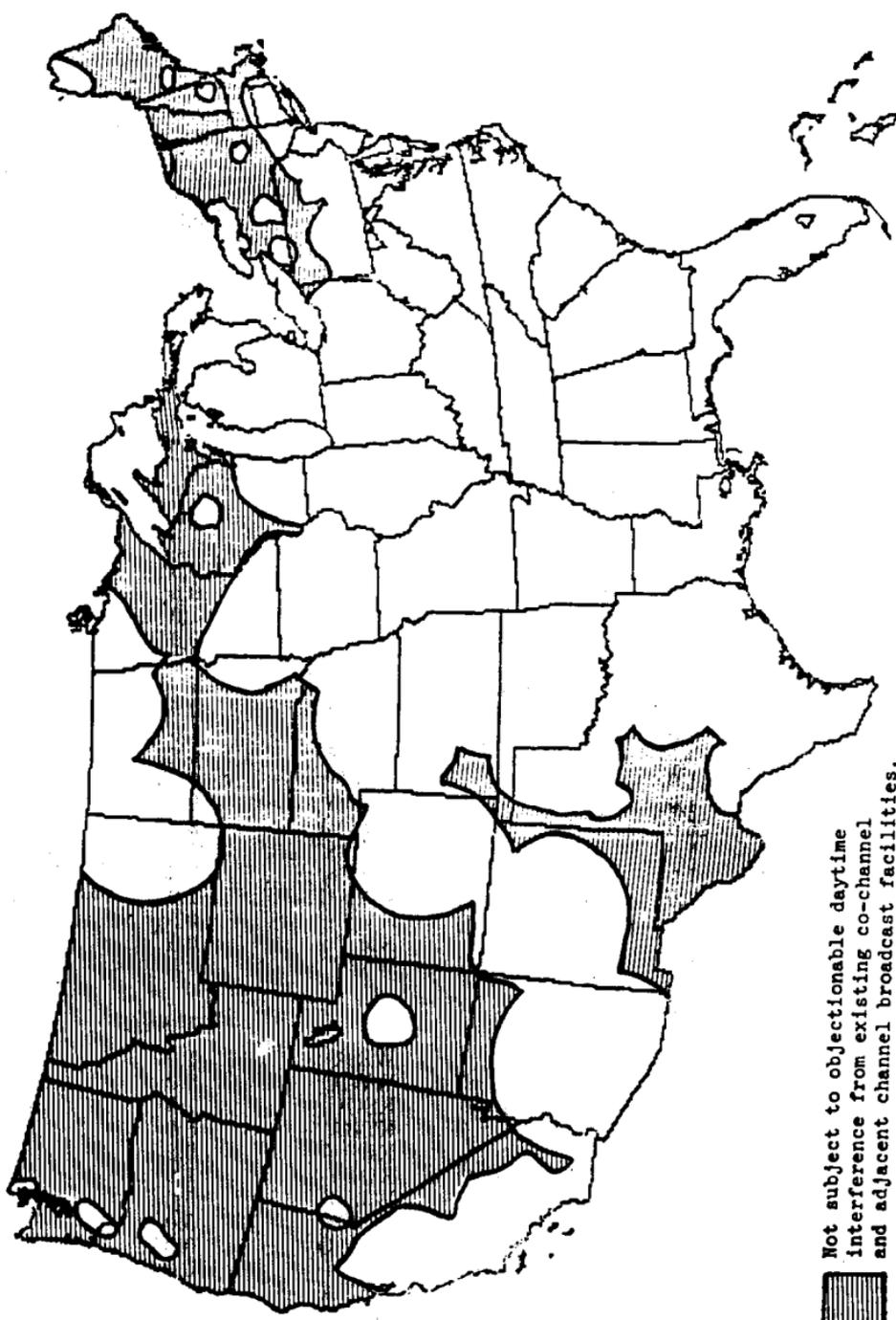
Not subject to objectionable daytime interference from existing co-channel and adjacent channel broadcast facilities.

1050 kHz



Not subject to objectionable daytime interference from existing co-channel and adjacent channel broadcast facilities.

1580 kHz



Not subject to objectionable daytime interference from existing co-channel and adjacent channel broadcast facilities.

0.5 KW NIGHTTIME OPERATION OF DAYTIME ONLY STATIONS

540 kHz

Licensed
Power (kW) Existing RSS
Limit (mV/m)

Call
(mV/m)

KKAR	1.0	8.37
KVIP	1.0	8.08
KWMI	5.0	16.33
WDMV	0.5	34.41
NETC	5.0	20.59
KNMX	5.0	21.44
NLIX	1.	28.80
WARO	0.25	13.71
WYNN	0.25	15.18
WDXN	1.0	8.52
KNAK	1.0	14.18
WRIC	1.0	11.44
WYLO	0.25	9.83
CA *	0.5	16.08
OR *	0.5	20.04
WY *	0.5	25.12

740 kHz

WLWI	50.0	35.70
KMEO	1.0	40.69
KBRT	10.0	111.65
KBOF	2.5	28.68
NYLN	0.25	38.27
WNOP	1.0	48.53
WCAS	0.25	48.57
WMEL	1.0	11.47
WPAQ	1.0	47.40
WGSM	25.0	49.98
WVCH	1.0	50.47
WBAW	1.0	34.11
WSVQ	1.0	49.39
WIRJ	0.25	71.34
WCWY	0.25	59.71
WMBG	0.5	44.18
WRPQ	0.25	41.72
WRPX	0.5	30.67
WRNR	0.5	51.30
NV *	0.5	12.46
WY *	0.5	6.42
ND *	0.5	9.39

900 kHz

WATV	1.0	11.97
WGOK	1.0	20.58
WOZK	1.0	13.88
KHOZ	1.0	12.44
KBIF	1.0	4.94
KGRB	0.5	6.68
WJWL	1.0	27.08
WSWN	1.0	11.01
WMOP	5.0	11.21

900 kHz (continued)

Licensed
Power (kW) Existing RSS
Limit (mV/m)

Call

WJTH	1.0	9.23
WBML	0.25	9.67
WWJD	5.0	8.11
KSGL	0.25	11.09
WEAK	0.25	8.58
WFIA	1.0	8.12
WLSI	5.0	33.87
KICR	0.25	35.10
WLMD	1.0	20.19
WKXA	1.0	50.64
WZXM	1.0	28.49
KTIS	2.5	12.91
KFAL	1.0	8.22
WDDT	1.0	17.74
WKJK	0.5	7.66
WAYN	1.0	8.04
NIAM	1.0	11.13
KJSK	1.0	7.85
NEW (NH)	1.0	56.75
WBRV	1.0	19.09
WKAJ	0.25	37.13
WTOF	0.5	4.37
WFRO	0.5	5.86
WCPA	1.0	20.61
WFLN	1.0	32.57
WGSN	0.5	8.53
WKXV	1.0	9.34
WCOR	0.5	9.62
KALT	1.0	24.10
KKAP	0.25	22.30
KCLW	0.25	37.28
WODY	0.5	7.47
WKDW	2.5	8.10
KUEN	1.0	6.12
WATK	0.25	19.52
WNN0	1.0	15.56
NV *	0.5	5.03
NM *	0.5	10.22
WY *	0.5	5.97

1050kHz

WRFS	1.0	19.28
WWIC	1.0	16.03
KSOH	1.0	36.09
KTBA	5.0	11.50
KBBV	0.25	16.50
KOFY	1.0	5.25
WJSB	5.0	25.72
WROS	5.0	11.23
WHBO	0.25	13.46
WHGI	5.0	9.83
WCGA	1.0	13.08
WMNZ	0.25	14.57
WDZ	1.0	14.76
KBUF	0.25	29.59
WNES	1.0	11.33

* Hypothetical sites potentially useable at night in state indicated by two-letter state code.

1050 kHz (continued)

Call	Licensed Power (kW)	Existing RSS Limit (mV/m)
KLPL	0.25	41.57
KVPI	0.25	59.06
WMSG	0.5	11.18
WNTR	1.0	7.88
WPAG	5.0	27.28
KLOH	1.0	15.04
KMIS	1.0	20.93
KSIS	1.0	14.42
WACR	1.0	26.47
WFSC	1.0	10.44
WLON	1.0	9.60
WWGP	1.0	9.29
WBNC	1.0	82.62
WRBT	1.0	73.26
NEW (NM)	0.5	38.53
WSEN	2.5	54.91
WYBG	1.0	115.82
WTSJ	1.0	13.67
KCCO	0.25	11.40
KGTO	1.0	38.12
KORE	5.0	10.25
WBUT	0.5	17.28
WLYC	1.0	13.96
WJXY	5.0	8.04
WSMT	1.0	12.80
KIIZ	0.25	83.86
KPXE	0.25	78.95
KCAS	0.25	65.76
WGAT	1.0	10.83
WBRG	1.0	9.36
WCMS	5.0	10.25
KSPO	5.0	23.94
KBLE	5.0	16.47
WOKL	1.0	29.37
WKAU	1.0	26.34
WLIP	0.25	20.90
WADC	5.0	12.42
ID *	0.5	9.16
NV *	0.5	8.13
UT *	0.5	9.61

1580 kHz

WEYY	0.5	16.61
KPCA	0.25	10.49
KDFD	1.0	17.11
KLOQ	1.0	20.24
KPIK	5.0	21.76
WENO	5.0	10.72
WGBB	5.0	7.82
WCCF	1.0	7.38
WKIG	1.0	16.07
WKUN	1.0	12.05

1580 kHz (continued)

Call	Licensed Power (kW)	Existing RSS Limit (mV/m)
WCHA	0.5	12.96
KWRK	0.5	11.79
WKKD	0.25	14.97
WDON	0.25	10.05
WBBA	0.25	8.90
WJTX	0.25	11.16
WIFE	0.25	11.31
WAMJ	1.0	16.22
WAMW	0.25	9.48
WBBE	10.0	9.59
WMTL	0.25	8.8
WPKY	0.25	9.20
KLVU	1.0	15.01
WPGC	10.0	9.75
WKLH	1.0	24.59
KDOM	1.0	11.26
KTGR	0.25	9.42
KESM	0.5	10.26
KNIM	0.25	9.07
WAMY	5.0	15.30
WSLL	0.25	16.52
WORV	1.0	19.38
WPMP	5.0	18.31
WZKY	0.25	9.46
WJIK	5.0	10.15
WUIV	5.0	7.60
KAMI	1.0	11.26
WTYO	1.0	10.30
WCRV	1.0	10.31
KZIA	10.0	41.94
WLIM	5.0	11.78
WVKO	1.0	11.95
KOKB	1.0	16.89
WHEX	0.5	10.53
WAJE	0.25	11.21
WANB	1.0	10.75
WGFV	2.5	6.75
WORG	1.0	13.44
WBBR	5.0	6.48
WHHM	0.25	12.57
WSKT	1.0	7.76
WLIJ	1.0	10.62
KGAF	0.25	17.65
KIRT	1.0	19.97
KTLU	0.5	16.84
KWED	1.0	20.74
KBYP	0.25	22.15
WILA	1.0	9.05
WPSK	1.0	9.15
WTTN	1.0	20.16
OR *	0.5	5.76
WY *	0.5	6.60
NV *	0.5	21.43

DISSENTING STATEMENT
OF
COMMISSIONER HENRY M. RIVERA

RE: Nighttime Operation on Canadian, Mexican and Bahamian AM Clear Channels

Notwithstanding the positive aspects of this *Order*,¹ I dissent from the decision to reject use of the acceptance criteria now contained in Section 73.37(e)(2) of the Rules. The *Order* proposes no substitute acceptance criteria for determining which applicants will be eligible for these approximately 40 new stations. We are, thus, backing away from our commitment to encourage minority ownership and noncommercial use of these frequencies without *any* record basis for doing so.

The *Notice of Proposed Rule Making* (NPRM) that initiated this proceeding² proposed to apply the acceptance criteria specified in Section 73.37(e)(2) to the applications for these new unlimited time stations.³ This *Order* rejects that approach, permitting acceptance of all applications without regard for the relative need for additional service to the community of license specified. While the *Order* purports to recite a basis in the comments for this drastic reversal from the NPRM, the majority, in fact, leaves the rationale for the *Order's* outcome unstated.⁴

¹ I endorse the decision to provide relief to the 519 AM daytime-only broadcasters now operating on the foreign Clear Channels. I am also pleased with the Mass Media Bureau's initiative in developing a means of implementing this relief in a way that will minimize the paperwork burden on the affected licensees and bring this expanded nighttime service to the public quickly. These actions on behalf of daytimers contrast sharply with this *Order's* insensitivity, niggardliness and lack of helpfulness with regard to the needs of the minority community.

² Docket No. 84-281, 49 Fed. Reg. 18567 (May 1, 1984).

³ The Commission noted that "[i]t appears that the primary issues pertaining to the use of these foreign clear channels are some of the same issues that were addressed previously in the Commission's *Report and Order* in Docket No. 20642, *Clear Channel Broadcasting in the AM Broadcast Band*, ..." 49 Fed. Reg. 18567 (May 1, 1984), at para. 6. The Commission went on to say that: "Because of the relatively short time that has elapsed since the adoption of the 1980 *Report and Order*, we believe that resolution of issues reached in that proceeding can also be applied in this proceeding. In light of this, we propose to adopt identical or similar standards for new full-time Class II stations on the foreign Clear Channels as were adopted in Docket No. 20642." *Foreign Clear Channels*, *supra*, at paragraph 6.

⁴ In paragraph 12 the *Order* seems to suggest that the decision to help daytimers somehow diminishes the opportunity this *Order* provides to help minorities. Addressing the need to provide nighttime authorizations for existing daytime-only stations is an objective the *Order* accomplishes admirably. I applaud this aspect of the *Order*. Nevertheless, since the relief we provide to the daytimers does not affect the availability of these channels for new unlimited time stations (*see Order* at paragraph 14) our concern for the daytimer's plight provides no justification of ignoring the even harsher plight of minorities. (Few

The *Order* vaguely refers to the absence of any reason "to funnel growth toward areas of greatest need."⁵ However, no explanation is given of how the needs that Section 73.37(e)(2) was designed to address will be accomplished without any acceptance criteria⁶ or how this decision not to supervise distribution of this spectrum complies with Section 307(b) of the Communications Act.⁷

The key to this riddle of the reversal without reasons is that Section 73.37(e) helps minorities (among others). For that reason,⁸ the majority is unwilling to continue the existence of this rule section. It is reluctant to explain its motivation for rejecting Section 73.37(e)(2) because it would have an insurmountable task justifying that decision when the problem of underrepresentation of minorities in the broadcast industry is so far from being resolved.

minorities even have daytime-only authorizations.) In fact, our willingness to use administrative resources (to do the engineering for the affected daytimers), modify the rules (e.g., by dropping the minimum power requirements) and create daytime preferences (see, e.g., *Second Report and Order* in MM Docket No. 84-231, 50 Fed. Reg. 15558 (April 19, 1985)) demonstrates a willingness to favor existing broadcasters over minorities.

⁵ *Order* at paragraph 13.

⁶ Section 73.37(e)(2) provided for acceptance of unlimited time applications in already otherwise adequately served communities if the station proposes noncommercial service or the applicant is minority controlled. These provisions were adopted by the Commission in 1980 to ensure that some of the limited number of new stations available on the U.S. Clear Channels were used to address the needs identified by the Commission as the most pressing. *Clear Channel Broadcasting in AM Broadcasting Band*, 78 FCC 2d 1345, *recon. denied*, 83 FCC 2d 216 (1980). The number of new stations available on the foreign Clear Channels is one third of what was possible on the U.S. Clear Channels and the number of minority owned stations has not increased substantially since 1980. Therefore, the need for acceptance criteria addressing the needs of the minority community is even greater on the foreign Clear Channels.

⁷ Section 370(b) of the Communications Act requires the Commission to make "... distribution of licenses, frequencies, hours of operation, and of power among the several states and communities as to provide a fair, efficient, and equitable distribution of radio service to each of the same." 47 U.S.C. Section 307(b). While this statutory requirement need not be read so strictly as to require the use of a particular acceptance criteria, it would be arbitrary for the Commission to allow depletion of this limited number of new station opportunities without even considering the applicability of this statutory provision.

⁸ In the *NPRM* on deletion of Section 73.37(e)(2), the majority gave assurances it was not prejudging the outcome of this proceeding. (I questioned the veracity of this promise.) The majority should not, given these assurances that these proceedings were independent, claim that the rationale in the Section 73.37(e)(2) *NPRM* provides a basis for its action today. Since the rationale in Section 73.37(e)(2) *NPRM* provides no basis for its action and this *Order* provides no basis either, it is fair to say that the majority takes this action having a significant negative effect on minority participation in broadcasting without providing adequate explanation for its action.