

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 87-131

In the Matter of

Unlimited-time Operation by Existing AM
Daytime-only Radio Broadcast Stations;
Discontinuance of Authorization of
Additional Daytime-only Stations; and
Minimum Power of Class III Stations

NOTICE OF PROPOSED RULE MAKING

Adopted: April 29, 1987;

Released: May 26, 1987

By the Commission:

I. INTRODUCTION

1. This action initiates a *Notice of Proposed Rule Making* to consider authorizing fulltime operation by daytime-only AM stations on the domestic regional and Class I-A and Class I-B clear channels. We also propose that the minimum power specified in the rules for Class III stations be reduced from 0.5 kW to 0.25 kW, and that the future licensing of new daytime-only AM stations be discontinued.

2. This *Notice* is an outgrowth of the staff report on the status of the AM broadcast rules that was issued by the Commission in early 1986.¹ The *AM Report*, among other things, discussed the possibility of taking the steps that we are now proposing, and solicited public comment on these steps. Broad, general support for such action was expressed in the comments that were received in response to the *Report*. The underlying objective, consistent with the maintenance of interference protection to existing stations, is to relieve the public and the station licensees of the disadvantages of severe limitations on broadcasting by daytime-only stations during nighttime hours.

II. DISCUSSION

3. In contrast to the other frequency bands where broadcast services are authorized, the propagation characteristics of the AM band vary with the time of day. During daytime hours, signal propagation of an AM station is predominantly by groundwave signals. Groundwave signals travel along the surface of the earth and are thus affected by the characteristics of soil conductivity along the propagation path. During nighttime hours, however, the reach of skywave signals from an AM station becomes significantly greater than the reach of its groundwave signals. Skywave signals are reflected from the ionosphere and can be propagated many hundreds of miles from the transmitter location. As a consequence, co-channel stations may be located reasonably close to one another without interference during daylight hours. The enhanced nighttime propagation increases the inter-

ference possibilities, however, and the operations of many AM stations have in the past been restricted to daytime-only hours.²

4. These restrictions on the hours of operation of daytime-only stations have two consequences that significantly hinder their ability to serve the public fully: the stations' operating hours do not always coincide with activities such as drive-time and sporting events, and a year long consistent operating schedule cannot be maintained. For example, while they are able to operate for a longer period during the summer months when the days are longer, during the winter, when there are fewer daylight hours, these stations must substantially curtail their hours of operation. Thus, for a substantial portion of time each year, daytime-only stations are unable to provide broadcast service, particularly during the critical "drive-time" periods during which so much radio listening is concentrated. In addition, the inability of daytime-only stations to operate during all portions of key time segments, such as drive-time, results in a loss of advertising revenue that could be used to improve their service to the public. Further, where daytime-only stations are the only source of local broadcast information, the operating time restrictions may adversely affect the public.

5. Finally, in an earlier era, when AM was the dominant medium, daytime-only stations functioned as effective competitors in the marketplace. Today, the competitive position of AM has declined as FM services have multiplied, and the previously mentioned difficulties of daytime-only operation have become increasingly disadvantageous, in terms of both competition and service to the public.³

6. The Commission has been cognizant of the difficulties daytime-only stations face, and has taken two main steps to reduce the adverse consequences these difficulties impose on the public. First it altered the times at which stations may begin and conclude operation. Second, unlimited-time operation was authorized for some stations. Initially, pre-sunrise operation was permitted. This authorization generally permits AM stations to commence operation with daytime antenna facilities at 6 a.m. with powers not to exceed 0.5 kW.⁴ The Commission had been urged to make similar provision for post-sunset operation, but for many years international obligations prevented it from taking such action. As a result of new agreements with Canada and Mexico which were established in 1984 and 1986, respectively, the FCC was able to authorize post-sunset operation up to two hours beyond local sunset for the great majority of daytime-only stations for the first time. Under the rules adopted by the Commission, daytime-only stations could operate with a power of 0.5 kW, reduced as necessary to avoid interference.

7. In another action made possible by the new AM agreements with Canada and Mexico, the Commission, in MM Docket No. 84-281, permitted new nighttime uses of what had been 14 foreign Class I-A clear channels.⁵ Nighttime operation on those channels is to be initiated in stages. During the first five-year period of such operation, the Commission authorized a maximum power of 0.5 kW, reduced as necessary to protect existing full-time foreign and domestic stations on these channels. These stations were encouraged to increase power up to the 0.5 kW maximum (as much as permitted by the interference standards) through the use of directional antennas. These stations are not required to provide interference protection to one another for a five-year period. After five years,

permissible power for these stations will increase to 1 kW, and protection would be afforded to all stations, including the former daytime-only stations, operating at night with 250 watts or more.

8. These various Commission actions have alleviated somewhat the difficulties faced by daytime-only stations and their listeners. But, as discussed below, we believe that there are additional steps which may be taken to enable daytime-only stations to serve their communities more effectively. This conclusion is buttressed by the comments received in response to the Commission's invitation to comment on the *AM Report*, footnote 1, *supra*.

III. PROPOSED RULE AMENDMENTS

NIGHTTIME AUTHORITY FOR DAYTIME - ONLY STATIONS

9. Our previous agreements with Canada and Mexico specified the minimum power levels at which the various classes of stations could operate. For Class II and Class III stations, the minimum powers were 0.25 kW and 0.5 kW, respectively. We were unable to authorize any stations (including daytime-only stations) to operate at night with lower power. However, because the new Canadian and Mexican agreements no longer prohibit the licensing of lower powered stations, we are now free to consider allowing daytime-only stations on the domestic clear and regional channels to engage in unlimited-time operations with low power. The rules we propose generally parallel those established in 1986 for daytime-only stations on the foreign clear channels. However, rather than follow the precise pattern of nighttime operations established for daytime-only stations on the foreign clear channels, we propose to adopt new rules, where appropriate, to reflect circumstances on the domestic clear and regional channels that differ from those on the foreign clear channels. Subject to the conditions proposed in the following paragraphs, we propose to authorize daytime-only stations on the domestic clear and regional channels to operate during nighttime hours using their present daytime antenna systems with powers reduced as necessary to protect existing unlimited-time foreign and domestic stations from interference. In order to maximize the amount of new nighttime service that can be rendered through nighttime operations by daytime-only stations, we do not propose to require them to provide protection against mutual interference that they would cause each other during nighttime hours. These and other proposals are discussed below together with the technical criteria, conditions, and procedures which would apply.

10. *Requisite Protection to Other Stations.* We propose to authorize daytime-only stations on the domestic clear and regional channels to operate during nighttime hours with their daytime or critical⁶ hours antenna systems, whichever they are licensed to employ at local sunrise. We further propose to initially permit daytime-only stations to use as much nighttime power, up to an initial maximum of 0.5 kW, as would provide regularly required interference protection to: (1) previously authorized domestic unlimited-time stations; (2) new and changed unlimited-time stations for which applications have been tendered before the effective date of the proposed rule revisions; and (3) foreign stations, as required under inter-

national agreements. During the initial steps to authorize nighttime operations by daytime-only stations, we propose not to consider mutual interference among them. Since this proposal would minimize the radiation restrictions that would be imposed, we believe this approach will maximize the net service gain to the public. We propose to initially restrict the maximum power to be authorized to 0.5 kW, however, in order to minimize such interference.

11. *Procedure for Issuing Nighttime Authority.* Should this proposal be adopted, the Commission proposes to calculate the permissible power for each affected station, and to issue to each an order to show cause why its license should not be modified for nighttime operation.⁷

12. *Power Minimum and Rounding.* No authorization would be issued for nighttime power less than 0.001 kW (1 watt). We propose also to amend section 73.31 of the Rules, 47 CFR § 73.31, to specify that all powers below 0.25 kW would be rounded to the next lower integer (i.e., to the next lower watt).

13. *Reclassification of Daytime Stations.* Under the rules previously adopted for daytime-only stations on the foreign clear channels, those authorized to operate with a nighttime power of at least 0.25 kW are designated as Class II-C stations. All others are designated as Class II-S stations. Class II-C stations are entitled to protection by subsequently authorized stations, while Class II-S stations are not entitled to such protection. We propose to reclassify daytime-only stations on the domestic Class I-A and Class I-B clear channels that are authorized to operate nighttime, in a similar manner.

14. Section 73.21 of the Commission's Rules, 47 CFR 73.21, subdivides the classification of unlimited-time Class II stations on the Class I-A and I-B clear channels as Class II-B and Class II-C. The minimum power permitted for Class II-B and Class II-C stations is 0.25 kW. Insofar as there are now certain circumstances under which facilities of less than 0.25 kW would be authorized, we propose to classify unlimited-time Class II stations on these channels on the basis of their root-mean-square (RMS) field strength at 1 kilometer.⁸ We propose to classify stations on the basis of the facilities authorized in the show-cause orders we propose to issue. Stations that would receive authorizations for nighttime power that would enable them to attain an RMS field strength of 141 mV/m or more at 1 kilometer would be designated as Class II-B or Class II-C stations. The remaining stations would be designated as Class II-S stations.

15. We propose to make the same distinction among Class III daytime-only stations on the regional channels. As discussed below, we propose to reduce the minimum power of Class III stations from 0.5 kW to 0.25 kW. Those authorized to operate at powers that enable their field strength at one kilometer to attain at least 141 mV/m would be classified as Class III (unlimited-time stations). Those that do not attain that level would be classified as Class III-S stations.

16. *Entitlement to Protection.* The nighttime operations of daytime-only stations that are reclassified as Class II-B, II-C or Class III would be entitled to interference protection from facilities that are applied for after the effective date of the revised rules. However, we do not propose to permit the secondary nighttime operation of Class II-S and III-S stations to adversely affect existing and prospective primary service. Thus, we do not propose to protect Class II-S and III-S nighttime operations from interfer-

ence. Furthermore, we propose to exclude interference contributions of Class II-S and III-S stations from the RSS (root-sum-square) calculations of other stations.

17. *Principal City Signal.* Inasmuch as their operation would be secondary, we propose to exempt Class II-S and Class III-S stations from the requirement that they provide the generally prescribed minimum signal to the principal community to be served during nighttime hours. At the power levels (less than 0.25 kW) at which these stations would be authorized to operate during nighttime hours, many of them would not be able to comply fully with this requirement. For administrative convenience, we also propose to extend this exemption to the small number of stations that would be reclassified as Class II-B, II-C, or III by the Commission when it issues the show-cause orders. We propose, however, to not extend this exemption to former daytime-only stations that seek authorization to use nighttime powers greater than that initially authorized.

18. *Minimum Nighttime Operating Schedule.* Section 73.1740(a)(1) of the Rules, 47 CFR § 73.1740(a)(1), establishes requirements relating to the minimum operating schedules of radio broadcast stations. Under that rule, unlimited-time AM stations are required to operate not less than four hours between 6 p.m. and midnight each day of the week except Sunday.⁹ Unlike Class II-B, Class III-C and Class III stations that receive interference protection, Class II-S and III-S stations are not intended to preclude opportunities for other nighttime services because they would not be entitled to interference protection. Moreover, the low operating power authorized Class II-S and Class III-S stations and the high interference levels to which they would be subjected may make it particularly uneconomical for them to comply with the minimum operating hours. Therefore, we believe it appropriate to exempt Class II-S and Class III-S stations from the minimum hours requirement. Accordingly, we propose to permit these classes of stations to use their authorized nighttime powers during such nighttime hours as they find appropriate.

19. In our previous action authorizing nighttime operation on the foreign clear channels, we did not similarly exempt Class II-S stations from the minimum hours requirement. On further reflection, however, we believe that the considerations that justify the exemption for Class II-S and Class III-S stations on the U.S. clear and regional channels apply also to Class II-S stations on the foreign clear channels. Accordingly, we propose to amend the rules to extend the exemption to them as well.

20. *Continuing Post - Sunset Service Authorizations (PSSA's).* Class II-S and Class III-S stations that would be authorized under the proposed rule changes to operate unlimited time would retain the right to broadcast during post-sunset hours under PSSA's issued pursuant to section 73.99 of the Commission's Rules, 47 CFR § 73.99. In many instances, the powers authorized to daytime-only stations under PSSA's are greater during some portions of the operating period than the powers they would receive under the rule amendments we are now proposing. We believe that it is in the public interest to permit Class II-S and Class III-S stations to continue to be eligible for PSSA's under Section 73.99, in order to permit service to the public to be enhanced to the extent possible.

21. *Subsequent Increases in Nighttime Power.* We propose to require applications filed subsequent to the effective date of these rules to demonstrate interference

protection to all stations entitled to it. In keeping with this proposal, we also would require Class II-S and III-S stations seeking facility modifications that directly or indirectly affect their nighttime operations to submit full showings demonstrating that their modified nighttime operations fully meet all applicable interference requirements. Moreover, under our proposed rules, applications filed by Class II-S and III-S stations proposing only changes in their nighttime antenna systems would also be required to specify nighttime antennas that provide an RMS field strength of at least 141 mV/m at one kilometer and comply with other requirements for reclassification to Class II-B, Class II-C, or Class III unlimited-time.

22. *Eventual Maximum Nighttime Power under the Revised Rules.* Daytime stations on the foreign clear channels are restricted to nighttime powers not exceeding 0.5 kW for an initial five-year period. Thereafter, they are permitted nighttime powers up to 1 kW provided that no interference is caused to domestic or foreign stations. We do not believe, however, that it would be appropriate on the domestic clear and regional channels either to require a five-year waiting period for power increases above the levels initially authorized, or to maintain a ceiling of one kW. Both those limitations appeared to us to be suitable for developing the use of the foreign clear channels for unlimited-time operations that, under previous international agreements, had either been prohibited or more narrowly restricted than under recently revised agreements with Canada and Mexico. We felt that those limitations would afford optimal opportunity for new and improved services on the foreign clear channels.

23. By contrast with those channels, the use of the domestic clear and regional channels has matured, and they are much more densely occupied by existing unlimited-time stations. Under these circumstances, the allocations objective for the domestic clear and regional channels is now to facilitate useful employment of the remaining spectrum opportunities for new and improved nighttime service within the general framework that exists on these channels. Accordingly, we intend to continue to permit daytime-only stations on domestic regional and clear channels to apply immediately for nighttime power levels up to the maximum permitted for the station classes on their respective channels.

CLASS III MINIMUM POWER

24. Regional channels were originally reserved for Class III stations to render service to a principal center of population and contiguous rural areas. In order to promote the development of such regional service, and to ensure that Class III stations would have the capacity to render it, they have in the past been required to operate with a minimum power of 0.5 kW. Since that requirement was adopted, the regional channels have become densely populated with Class III stations. There are now relatively few opportunities left for new unlimited-time stations that could operate with at least 0.5 kW power without causing interference to the service rendered by other operating stations. Moreover, any changes to existing facilities would not significantly alter the opportunities for new or expanded service on these channels. The use of the regional channels having thus matured, we believe that the remaining opportunities for unlimited-time service would be enhanced by reducing the minimum power level on these channels. We accordingly

propose to reduce the permitted minimum power of Class III stations on regional channels to 0.25 kW, thereby making it uniform with the minimum power on the other classes of AM channels.¹⁰ We believe that this action will benefit the public by permitting new nighttime service that otherwise would be precluded.

25. *Treatment of Class IV Stations on Regional Channels.* At one time, we permitted Class IV stations to be assigned on domestic regional channels in addition to the six channels normally designated for such stations. Class IV stations so assigned to regional channels did not qualify as Class III-A or Class III-B stations (the then sub-categories of Class III stations) because of their low power levels and the levels of interference that they received. Subsequently, the Commission adopted section 73.29 of the Rules, 47 CFR § 73.29, that prohibited the assignment of additional Class IV stations on regional channels. Section 73.29 permitted the few Class IV stations already assigned on the regional channels to continue operating on their assigned channels, although they were not provided interference protection from Class III stations. If the minimum power of Class III stations is reduced to 0.25 kW, as we have proposed, some of these Class IV stations on the regional channels would qualify as unlimited-time Class III stations. We propose to reclassify as Class III (unlimited-time) stations those Class IV stations that have 0.25 kW authorized nighttime power. Thereafter, these reclassified Class IV stations would receive the interference protection afforded other Class III stations.

DISCONTINUANCE OF LICENSING OF NEW DAYTIME - ONLY STATIONS

26. Inasmuch as we propose generally to grant unlimited-time authorizations to most daytime-only stations, we find this also an appropriate juncture to consider the utility of authorizing new daytime-only facilities. As is discussed below, the protection afforded daytime-only stations may be such that new and expanded unlimited-time service is greatly reduced. It may be that in some instances the reduction in future unlimited service possibilities is compensated for by the advantages of a new daytime-only station. We do not find it beneficial to examine the costs and benefits of individual proposals, however. Moreover, we believe that in the vast majority of instances the value of unlimited-time service would outweigh the public interest gains of a new daytime-only AM station. For this and other reasons discussed below, we propose to discontinue the authorization of new daytime-only facilities.¹¹

27. The Rules already greatly restrict the authorization of new daytime-only stations. Additional daytime-only stations are prohibited on the 14 foreign clear channels and on the 6 channels that the Commission has classified as "local."¹² On the 25 domestic Class I-A clear channels, the assignment of new daytime-only stations is permitted only in the exceptional circumstance that they be located within the 0.5 mV/m 50% skywave contour of the co-channel Class I-A station, in order to avoid precluding potential new unlimited-time stations beyond that contour.

28. Furthermore, each additional daytime-only station assignment has a substantial preclusive effect on the potential assignment of unlimited-time stations on seven channels: the channel occupied by the daytime station, and the three adjacent channels higher and lower in

frequency. 5-kW daytime transmitter can, for example, typically preclude the assignment of a co-channel unlimited-time station in an area with a diameter in excess of 460 miles. The precluded areas for unlimited-time stations on first, second, and third adjacent channels can have respective diameters in excess of 156, 86, and 22 miles. The use of higher power for daytime stations substantially increases such preclusions.

29. Moreover, the preclusive effect of additional daytime-only stations would not be confined to blocking possibilities for new unlimited-time stations. They could also foreclose opportunities for existing stations to improve their nighttime services to the public. In this regard, it is noted that many Class II-S stations that we are now proposing may need to change their daytime facilities in order to upgrade their nighttime service. New daytime-only stations could preclude such modifications. All these factors militate strongly against continuing to authorize still more daytime-only stations.

30. Under our present regulatory structure, none of the costs of this potential preclusion are borne by parties receiving daytime-only assignments. Therefore, there is no reason to expect that new daytime-only licensees will select facilities that optimize the use of the channel. Because unlimited-time stations are better able to provide useful, consistently scheduled service to the public, we believe that they are, on the average, much more valuable to the public than daytime-only stations. In light of these facts and the small number of remaining opportunities for new AM assignments of any kind, we propose to discontinue authorizing daytime-only AM stations. We observe that much of the demand for new aural service formerly met by daytime-only assignments may now be met from the enlarged opportunities for new radio stations in the FM band that the Commission created in recent FM reallocation proceedings in MM Docket No. 80-90. It is further noted that the AM band is to be extended from 1605 kHz to 1705 kHz, thereby making available ten additional AM channels that can be employed to meet future broadcasting requirements.

CUMULATIVE INTERFERENCE EFFECTS

31. Although the Commission believes that the actions proposed in this *Notice* could result in desirable additional service to the public by daytime-only stations, we are nevertheless concerned about the possible adverse effects of our proposed rules. As discussed below, in actual practice existing nighttime operations could experience some loss of service if the proposed rules are adopted. Thus, this proposal could run counter to our efforts to improve the AM service as a whole, over the long term. Comments are requested on the concerns we raise, as well as on any other pertinent effect of the rules proposed in this *Notice*, together with analyses of gains versus losses that could result.

32. First, it must be recognized that provision of any new nighttime service creates some additional interference to existing nighttime operations. Requisite protection to existing nighttime service is currently calculated in accordance with section 73.182 of the FCC Rules, 47 CFR 73.182. In the case of Class II and Class III stations, section 73.182(o), 47 CFR 73.182(o), provides that the basis of protection to an existing station is the RSS (root-sum-square) for that station. The RSS is determined

by considering interfering signals in decreasing magnitude, excluding those that are less than 50% of the RSS value of higher signals already included. The application of this "50% exclusion" method results in actual interference from new nighttime operations that is not recognized by the Rules. In fact, this method may allow each new nighttime operation to cause as much as 12% (approximately 1 dB) of additional interference to any existing nighttime station. On many AM channels, there are large numbers of daytime-only stations that could qualify for nighttime service under the rules we are proposing. The cumulative interference effects that could occur would not be recognized by our Rules, and could, nevertheless, be detrimental to existing nighttime stations in some instances.

33. A similar issue is raised in regard to protection afforded Class I clear channel stations. Special procedures are employed in calculating protection to Class I stations, and circumstances can arise where protection to the 0.5 mV/m 50% skywave contour as well as the 0.5 mV/m groundwave contour must be assessed. The geographical relationships between Class I stations and their co-channel daytime-only stations limit the number of daytime-only stations that contribute interference at common points along the protected contours of Class I stations. Nevertheless, due to the low signal levels to which Class I stations are entitled protection, the effects of cumulative actual interference not recognized by our Rules are a matter of concern.

34. Finally, we seek comment on the potential effects of cumulative interference from first adjacent channel skywave interference resulting from nighttime operations by daytime-only stations. The Rules do not make provision for including the effects of adjacent-channel skywave interference in assessing protection to be afforded. However, as a practical matter, such adjacent channel skywave interference does contribute to the overall level of interference that a station receives.

35. As an outgrowth of the *AM Report, supra*, the Commission intends to initiate in the near future a Notice of Inquiry designed to address the types of issues discussed above. Moreover, the Inquiry will address issues pertaining to co-channel and adjacent channel protection ratios (the ratios between desired and undesired signals), contours to be protected, calculation methodologies, and RF bandwidth limitations. Based upon the data and information developed in the Inquiry, it may be desirable to initiate rule making looking toward changes in the interference standards that could lead to long-term improvements in the AM broadcasting service. We seek comment on the extent to which rules proposed herein could have a detrimental effect upon desirable future technical rule changes that are identified in the planned Inquiry.

IV. ADMINISTRATIVE MATTERS

36. Authority for the rule changes on which comments are invited is contained in Sections 4(i), 303, and 307 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303, and 307.

37. Pursuant to applicable procedures set forth in 1.415 and 1.419 of the Commission's Rules, interested parties may file comments on or before **July 17, 1987**, and reply comments on or before **August 3, 1987**. All relevant and timely comments will be considered by the Commission before final action is taken in this proceeding. To file

formally in this proceeding, participants must file an original and five copies of all comments, reply comments, and supporting comments. If participants want each Commissioner to receive a personal copy of their comments, an original plus nine copies must be filed. Comments and reply comments should be sent to Office of the Secretary, Federal Communications Commission, Washington, D.C. 20554. Comments and reply comments will be available for public inspection during regular business hours in the Dockets Reference Room (Room 239) of the Federal Communications Commission, 1919 M Street, N.W., Washington, D.C. 20554.

38. For the purposes of this non-restricted notice and comment rule making proceeding, members of the public are advised that *ex parte* contacts are permitted from the time the Commission adopts a notice of proposed rule making until the time a public notice is issued stating that a substantive disposition of the matter is to be considered at a forthcoming meeting. In general, an *ex parte* presentation is any written or oral communication (other than formal written comments/pleadings and formal oral arguments) between a person outside the Commission and a Commissioner or a member of the Commission's staff which addresses the merits of the proceeding. Any person who submits a written *ex parte* presentation must serve a copy of that presentation on the Commission's Secretary for inclusion in the public file. Any person who makes an oral *ex parte* presentation addressing matters not fully covered in any previously-filed written comments for the proceeding must prepare a written summary of that presentation. On the day of oral presentation, that written summary must be served on the Commission's Secretary for inclusion in the public file, with a copy to the Commission official receiving the oral presentation. Each *ex parte* presentation described above must also state on its face that the Secretary has been served and must also state by docket number the proceeding to which it relates. See, generally, Section 1.1231 of the Commission's Rules, 47 CFR 1.1231.

39. As required by section 603 of the Regulatory Flexibility Act, the Commission has prepared an initial regulatory flexibility analysis (IRFA) of the expected impact of these proposed policies and rules on small entities. The IRFA is attached as Appendix A. Written public comments are requested on the IRFA. These comments must be filed in accordance with the same filing deadlines as comments on the rest of the *Notice*, but they must have a separate and distinct heading designating them as responses to the Regulatory Flexibility Analysis. The Secretary shall cause a copy of this *Notice of Proposed Rule Making*, including the Regulatory Flexibility Analysis, to be sent to the Chief Counsel for Advocacy of the Small Business Administration in accordance with section 603(a) of the Regulatory Flexibility Act, Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601 *et seq.*, (1981).

40. The proposal 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 labeling, disclosure, or record retention requirements, and will not increase burden hours imposed on the public.

41. For further information on this proceeding, contact Louis C. Stephens, (202) 254-3394.

FEDERAL COMMUNICATIONS COMMISSION

William J. Tricarico
Secretary

APPENDIX A

REGULATORY FLEXIBILITY ACT
INITIAL ANALYSIS**I. Reason for Action :**

The need to improve the capacity of daytime-only AM radio broadcast stations to provide improved service to the public during nighttime hours.

II. Objective:

To increase the opportunities for daytime-only AM stations to operate during nighttime hours, thereby enhancing the usefulness to the public of their broadcast programming; and to discontinue the authorization of new daytime-only stations in order to ensure the efficient use of remaining spectrum for new and improved nighttime service.

III. Legal Basis:

Sections 4(i), 303, and 307 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 4(i), 303, and 307.

IV. Description, Potential Impact and Number of Small Entities Affected:

Numerous daytime-only AM stations on the U.S. clear and regional channels, many of which are typically small entities, will benefit from the proposed rule change by being enabled to enhance their broadcast service during nighttime hours.

V. Reporting, Record Keeping, and other Compliance Requirements:

None, except to notify the FCC if they desire to operate during nighttime hours pursuant to authorizations that the Commission will initiate in the form of show cause orders.

VI. Federal Rules that Overlap, Duplicate or Conflict with These Rules:

None.

VII. Any Significant Alternatives Minimizing Impact on Small Entities and Consistent with Stated Objectives:

None. The "impact" on numerous existing small daytime-only radio broadcast stations is favorable, in that the rules proposed will enable them to enhance and improve their service to the public, thereby strengthening their capacity to attract audience, secure advertising revenue, and compete in the radio marketplace.

FOOTNOTES

¹ See *Report on the Status of the AM Broadcast Rules*, Mass Media Bureau, Federal Communications Commission, April 3, 1986, RM 5532, (*AM Report*)

² Today, almost half (2,500) of the total number of AM stations licensed by the FCC are daytime-only stations.

³ FM stations are not affected by the vagaries of propagation and are thus able to provide a full power audio service 24 hours a day.

⁴ Power must be reduced where necessary to protect foreign stations. There are also interference restrictions that apply in the case of domestic Class I-A and Class I-B stations.

⁵ See *Report and Order* adopted April 26, 1985 in MM Docket No. 84-281, FCC 85-224, 50 FR 24515, June 11, 1985, as modified on reconsideration, *Memorandum Opinion and Order*, adopted February 3, 1986, FCC 86-79, 103 FCC 2d 532 (1986).

⁶ Critical hours are the two hours after local sunrise. Section 73.187 of the Rules, 47 CFR § 73.187, specifies limitations on the radiation from Class II stations toward Class I stations.

⁷ It is anticipated that between 200 and 300 daytime-only stations would not qualify for nighttime operation under the proposed rule revision, either because they would not qualify for the 0.001 kW (one watt) minimum power proposed in paragraph 11, *infra*, or because they are located within the skywave service areas of Class I stations, which they would subject to unacceptable interference.

⁸ The decision taken in the *Report and Order*, adopted March 28, 1985, in MM Docket No. 84-752, 50 FR 18818, published May 2, 1985, permits authorization of facilities with less than minimum power for the station class if the radiated RMS (root-mean-square) of the station is equivalent to the RMS from a station operating at minimum power and minimum efficiency. For Class II and Class III stations this is 141 mV/m at 1 kilometer.

⁹ The Commission has not yet acted on a recommendation in the *AM Report*, Footnote 1, *supra*, to eliminate minimum-hours requirements, and has not yet reached a decision as to whether it would be desirable to discontinue them.

¹⁰ Alternatively, operation with an RMS of 141 mV/m RMS at 1 kilometer would meet the requirements of this proposed rule.

¹¹ In order to prevent further deterioration of the efficient use of the spectrum, the Commission, in December 1986, announced a freeze on the filing of applications for additional daytime stations that are not mutually exclusive with others previously filed, until we are able to complete our evaluation of the most desirable policy to adopt with respect to the further proliferation of daytime-only stations. Processing continues on previously filed applications for new daytime-only stations and those filed before cut-off dates that are mutually exclusive with them.

¹² A local channel is defined in the Rules as one on which several stations operate unlimited time with power no greater than 1 kW daytime or nighttime.