

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

MM Docket No. 84-281

In the Matter of

Nighttime Operations on
Canadian, Mexican and
Bahamian AM Clear Channels

MEMORANDUM OPINION AND ORDER

Adopted: October 9, 1987; Released: October 21, 1987

By the Commission:

1. As a result of new international agreements which had been or were being negotiated, the Commission in this proceeding was able to adopt new rules to permit virtually all daytime-only stations on the 14 foreign Class I-A clear channels to operate at night.¹ Moreover, with the exception of 1540 kHz, the Bahamian clear channel, the Commission was able to take the necessary steps to implement such nighttime operation. As described below, partial implementation on 1540 kHz is now possible.

2. Under earlier agreements, priority in the nighttime use of these 14 foreign clear channels was accorded to Canada, Mexico or the Bahamas. In the case of the Canadian and Bahamian clear channels, which were governed by the North American Regional Broadcasting Agreement (NARBA), this meant that no nighttime operation in the U.S. was permitted within 650 miles of the pertinent country. In the case of the Mexican clear channels, which were governed by the 1968 U.S./Mexican Bilateral AM Agreement, no provision was made for nighttime operation anywhere in the U.S. The level of protection provided by both agreements was far in excess of that required to avoid interference. Thus, when new agreements were negotiated based on interference protection rather than priority use of the channel, a significant expansion of nighttime use of these channels in the U.S. became possible.

3. As a result, a rule making proceeding was conducted to determine the best nighttime use of these frequencies. Studies conducted by the Commission revealed that all channels were extensively used by daytime-only stations, thereby limiting the opportunities for establishing new full-time stations. However, these studies also revealed that it would be possible to permit nighttime use of these frequencies by virtually all of the existing daytime-only stations. Rules were adopted permitting such nighttime operation with a power of up to 500 watts, reduced as necessary to avoid interference.² Also, the new rules allowed the filing of applications for new full-time stations where interference considerations would permit.³

4. Since the new bilateral agreement with Canada was in place when the new rules regarding the use of the foreign clear channels were adopted, it was possible to implement nighttime use of the Canadian clear channels

without delay. When the new agreement with Mexico subsequently was implemented, it was possible to take parallel steps to implement nighttime use of the Mexican clear channels. Through these two actions, relief has been provided for the large majority of stations on the foreign clear channels. To date, such relief has not been possible for the daytime-only stations operating on 1540 kHz, the Bahamian clear channel.

5. Unusual circumstances apply to the use of 1540 kHz. It continues to be governed by the provisions of the North American Regional Broadcasting Agreement (NARBA) which provides a nighttime priority to the Bahamas. In addition, its use is governed by the provisions of the Region 2 (Western Hemisphere) AM Agreement signed in Rio de Janeiro in 1981. It is the understanding of the United States and the Bahamas that the Bahamas will act to denounce NARBA and thereby agree to be bound exclusively by the Rio agreement which does not provide such nighttime priority. The necessary steps to denounce NARBA have not yet been taken by the government of the Bahamas.⁴ Nonetheless, in view of the clearly stated intentions of the Bahamas in this regard, the Commission does not believe it is now precluded from partial implementation of nighttime operation on 1540 kHz so long as full international protection is provided. Such implementation, however, must be only partial, as the United States continues to be bound to provide protection to the Bahamian clear channel station (ZNS) under both agreements.⁵

6. As with the other channels, the Commission intends to calculate the permissible powers and to make the required treaty notifications. Once the applicable international notification process is completed, the Commission expects to be able to authorize nighttime operation for many of the daytime-only stations on this frequency. Currently, some stations will not be able to benefit from this action because they are within 650 miles of the Bahamas. However, once NARBA is denounced, this restriction will be removed. In addition, some stations are precluded from nighttime operation because they are inside the 0.5 mV/m 50% skywave contour of station KXEL, Waterloo, Iowa. As a Class I-B station, KXEL is entitled to protection from nighttime interference within that contour, as provided in section 73.182(a)(1)(ii) of the Commission's Rules, 47 C.F.R. 73.182(a)(1)(ii).

7. Also, because of the continuing applicability of NARBA and its more restrictive interference criteria, some stations beyond 650 miles from the Bahamas may be limited in the power they now can utilize. For each station for which nighttime operation is now possible, the Commission plans to issue a Show Cause Order specifying the power it can utilize. Once NARBA has been denounced, a further show Cause Order will be issued granting any possible increase in power.

8. As noted earlier, special provisions apply during the first five years following the implementation of nighttime operation on a particular group of frequencies. For both the Canadian and Mexican channels, the situation was straightforward and no problem arose in having the five-year period begin. The same cannot be said of the Bahamian clear channel for two reasons. First, some stations will continue to be restricted by NARBA from increasing their power to the 250 watt level that would entitle them to protection. Other stations, because they are within 650 miles of the Bahamas, will be precluded by NARBA from any nighttime operation even though such operation may

later become possible. Under such circumstances, no useful purpose would be served by considering the preliminary steps adopted in this item as commencement of the five-year implementation period. In our view, that period should begin only when NARBA is denounced and the new rules are fully implemented.⁶

9. Accordingly, IT IS ORDERED, pursuant to authority contained in sections 303 and 307 of the Communications Act of 1934, as amended, That, subject to the above-described limitations, the authorization of nighttime operation by daytime-only stations on 1540 kHz WILL BE IMPLEMENTED by the issuance of Orders to Show Cause why the license for the affected stations should not be modified to include nighttime operation with the power specified.

10. For further information, please contact Louis C. Stephens at (202) 254-3394.

FEDERAL COMMUNICATIONS COMMISSION

William J. Tricarico,
Secretary

FOOTNOTES

¹ The provisions governing such operation are to be found in section 73.3571(d)(4) of the FCC Rules, 47 CFR 73.3571(d)(4).

² Provision also was made during an initial five-year period for these stations to increase power, up to the 500 watt maximum, through the use of directional antennas or other means that would avoid interference. At the end of this period, stations operating with a power of 250 watts or more would receive interference protection and the maximum nighttime power would increase to 1 kilowatt. Throughout both periods, new full-time stations could be established, subject to applicable interference criteria.

³ Upon reconsideration, the Commission made minor revisions to the new rules. At the same time, the National Black Media Coalition appealed the Commission's decision not to give preferential treatment to minority or noncommercial applicants for new stations on these frequencies. No appeal was taken from the authorization of nighttime operation by daytime-only stations, which therefore remained unaffected when the court remanded the matter to the Commission on procedural grounds. Pursuant to that remand, the Commission recently issued a *Further Notice of Proposed Rule Making* addressing the assignment of new stations to the foreign clear channels. That action is not relevant to the matter addressed in this *Memorandum Opinion and Order*.

⁴ Efforts are continuing to bring about this denunciation by the Bahamas. In addition, similar efforts are underway with the Dominican Republic to have them denounce NARBA and accede to the Rio Agreement.

⁵ However, as a practical matter, it is only the NARBA provision restricting nighttime operation anywhere within 650 miles of the Bahamas that operates as an international impediment to nighttime operation for affected U.S. stations.

⁶ Even though the five-year period has not formally begun, any eligible station may file an application for an increase in power, provided such application results in a minimum power of 250 watts and is consistent with applicable interference criteria, international as well as domestic. However, applications for new sta-

tions cannot yet be filed pending completion of the additional rule making on remand of that aspect of the proceeding. See , note 3, *supra*.