Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FCC 74-135
08038

In the Matter of	)	
	)	
Amendment of Part 73 of the Commission's Rules to provide a one-hour advancement in the sign-on times of daytime AM broadcast stations to recoup the morning hour lost by the enactment of year-around-Daylight Saving Time.	)	Docket No. 19902

O R D E R

Adopted: February 6, 1974 Released: February 11, 1974

By the Commission:

1. On December 18, 1973, we adopted an Order (FCC 73-1324) defining the pre-sunrise operating privileges of daytime-only AM broadcast stations pending resolution of matters at issue in this proceeding. In general terms, the relief provided in that Order allows daytime stations with no foreign protection problems to "back up" their licensed sign-on times by one hour, using the facilities described in their pre-sunrise service authorizations (PSA's). Stations ineligible for a PSA were, by the blanket provisions of paragraph 7(f) of that Order, allowed to commence operation one hour prior to local sunrise with a power of 50 watts, if in so doing, no violation of existing international agreements would occur.

2. In the Notice of Inquiry and Proposed Rule Making (FCC 73-1323) issued in this proceeding, comments were requested on various related matters, including the status of PSA-holders with specified pre-sunrise powers of less than 50 watts, as well as an undetermined number of technically eligible licensees who have never applied for PSA's --presumably because of the severity of time and/or power restrictions under existing PSA rules. Paragraph 10(b), Notice.

3. After the adoption of the December 18 Order, a number of daytimers --including those holding low-power PSA's as well as those eligible therefor-- have requested special relief from pre-sunrise power restrictions which, it must be conceded, are unrealistically low in terms of effective community service; e.g., WJKM, Hartsville, Tennessee (3.1 watts); WNWI, Valparaiso, Indiana (10 watts); WAHT, Annville-Cleona, Pennsylvania (0.85 watts); KYMN, Northfield, Minnesota (4.2 watts); KOLM, Rochester, Minnesota (1.15 watts); WGTR, Natick, Massachusetts (1.6 watts); and WAVS, Fort Lauderdale, Florida (2.5 watts). Under existing PSA rules, these restrictions are designed to protect U.S. co-channel dominant stations to the west of the daytime station. Some of these licensees are attempting to compete in the same market with other daytime stations currently ineligible for a PSA but nonetheless permitted to operate one hour prior to local sunrise

with a power of 50 watts pursuant to paragraph 7(f) of the December 18 Order. Since all stations involved in this comparison operate on U.S. clear channels, the argument is made that to hold "eligible" stations to existing PSA power restrictions, while at the same time providing a flat 50-watt pre-sunrise operating power for stations presently ineligible for a PSA, is basically inequitable and should be corrected.

4. Despite the additional nighttime skywave interference which will be inflicted on the U.S. clear channel services by the grant of the relief requested, we have concluded that considerations of basic fairness require that, pending outcome of rule making, all daytime stations assigned to U.S. I-A and I-B clear channels (except those on U.S.-shared I-B clear channels, where such power would not provide foreign protection) be placed on the same 50-watt footing with respect to pre-sunrise operating power. In reaching this conclusion, we stress that we are in no way prejudging the outcome of rule making or of the specific issues raised in paragraph 10(b) of the Notice.

5. Authority for the adoption of this Order is contained in section 6 of PL 93-182 and section 4(i) of the Communications Act of 1934, as amended. Because of the urgent need for the interim adjustments herein ordered and because we interpret PL 93-182 as permitting these adjustments to be made without regard to hearing rights which might otherwise be asserted by affected fulltime stations under section 316 of the Communications Act, we find that compliance with the notice and effective date provisions of the Administrative Procedure Act (5 U.S.C. 553) is not required.

6. Accordingly, IT IS ORDERED, That effective February 20, 1974, and pending further action of the Commission, the Order (FCC 73-1324) adopted December 18, 1973, IS MODIFIED in the following particulars:

(a) Amend paragraph 7(d) to read as follows:
Class II (secondary) daytimers assigned to U.S. I-A and I-B clear channels and presently holding PSA's may achieve the one-hour advancement by adhering, throughout the year, to the sign-on times specified in outstanding Commission letters with the pre-sunrise facilities described in their PSA's: Provided, That if the authorized pre-sunrise power is less than 50 watts, the operating power may be increased to 50 watts during the hour immediately preceding local sunrise if no co-channel skywave interference to foreign stations would result (see paragraph 1, Appendix); and: Provided further, That on or before April 15, 1974, stations availing themselves of the 50-watt option shall give written notice to the Commission setting forth the date such operation commenced, describing the method whereby the power reduction from the licensed value has been achieved (if different from that presently employed for PSA operation), and including calculations to establish that the 50-watt pre-sunrise operation causes no objectionable interference to any foreign station. The PSA mode(s) of operation shall be continued until the standard (non-advanced) sign-on times specified in their station licenses, at which times they shall shift to the daytime facilities authorized therein.

(b) Add a new paragraph 7(g) to read as follows:
Class II (secondary) daytimers assigned to U.S. I-A and I-B clear channels and currently eligible for a PSA but who have not applied therefor because the allowable pre-sunrise power would be less than 50 watts may, on the effective date of this Order, commence operation one hour prior to local sunrise with a power of 50 watts into the daytime or critical hours antenna system, as appropriate, if no co-channel skywave interference to foreign stations would result (see paragraph 2, Appendix), and may continue such mode of operation until the standard (non-advanced) sign-on times specified in their station licenses: Provided, That on or before April 15, 1974, stations availing themselves of this privilege shall give written notice to the Commission setting forth the date such operation commenced, describing the method whereby the power reduction has been achieved, and including calculations to establish that the 50-watt pre-sunrise operation causes no objectionable interference to any foreign station; and: Provided further, That in no event shall operation under this paragraph commence earlier than 6:00 a.m. local time or local sunrise at the controlling foreign I-B clear channel station (if any) to the east, whichever is later - see paragraph 3, Appendix.

(c) Amend paragraph 8 to read as follows:
IT IS FURTHER ORDERED, That any licensee or permittee eligible for a PSA specifying a pre-sunrise power of more than 50 watts must apply for and obtain such PSA before the privileges conferred by this Order shall become operative.

7. IT IS FURTHER ORDERED, That the requests for special relief described in paragraph 3 of this Order ARE GRANTED to the extent indicated, and in all other respects ARE DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Vincent J. Mullins
Secretary

Appendix

APPENDIX

1. The following daytime stations hold PSA's but are precluded from increasing PSA powers because of foreign interference conflicts:

KANN - Ogden, Utah
KBIL - Liberty, Mo.
KCLT - Lockhart, Tex.
KCOM - Comanche, Tex.
KGRI - Henderson, Tex.
KHYM - Gilmer, Tex.
KILR - Estherville, Iowa
KKIM - Albuquerque, N.M.
KLPR - Oklahoma City, Okla.
KORC - Mineral Wells, Tex.
KSTA - Coleman, Tex.
WKBA - Vinton, Va.
WKYE - Bristol, Tenn.
WLUX - Baton Rouge, La.
WSER - Elkton, Md.
WTYN - Tryon, N.C.
WXVA - Charleston, W. Va.
WYNA - Raleigh, N.C.
WYNX - Smyrna, Ga.

2. The following daytime stations are eligible for PSA's under section 73.99 of the rules but are precluded from 50-watt PSA operation because of foreign interference conflicts:

KGGH - Houston, Tex.
(new) - McComb, Miss.
WMAG - Forest, Miss.
WXTN - Lexington, Miss.

3. The following daytime stations are eligible for PSA's under section 73.99 of the rules but with sign-on times later than 6:00 a.m. local time because of their geographic relationship to foreign I-B clear channel stations:

KMLO - Vista, Cal.
KNBA - Vallejo, Cal.
KNCR - Fortuna, Cal.
WKDR - Plattsburgh, N.Y.