

F.C.C. 62-1214

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C.

In the Matter of
CLEAR CHANNEL BROADCASTING IN THE } Docket No. 6741
STANDARD BROADCAST BAND }

MEMORANDUM OPINION AND ORDER

BY THE COMMISSION: COMMISSIONER LEE DISSENTING AND ISSUING
A STATEMENT; COMMISSIONER HENRY NOT PARTICIPATING.

1. The Commission has before it for consideration various petitions for rehearing, reconsideration, partial reconsideration, and stay of the effective date of all or certain limited specific portions of its Report and Order adopted September 13, 1961 in the above-captioned proceeding.¹

Requests for Stay or Partial Stay and Demands for Hearing

2. Turning first to the requests that we stay the effective date of all or portions of the rule changes, we find nothing therein, despite some assertions of irreparable harm, that would warrant such extraordinary relief. This has been a most extensive proceeding. The conclusions reached reflect more than sixteen years of rule making and hearing. No person can seriously contend that he was not given every opportunity fully and fairly to present his views for consideration. That the issues to be met were not easy of resolution and were not taken lightly can be inferred from the length of the proceeding itself.

3. While technically those pleadings which sought a stay of the effective date of the rule changes until petitions for reconsideration were disposed of are now moot, we do not rest our denial of such requests on that ground. The rule changes, which became effective October 30, 1961, basically provide for applications for new Class II-A stations in accordance with specified procedures. Irreparable injury may not logically be urged as likely to result from the mere acceptance of applications. None of these applications could be acted upon until after January 30, 1962, in accordance with the express terms of the rules adopted. The determination of hearing rights must in each instance await concrete proposals for placement of new stations and the narrowing of issues on consideration of such applications. As to the concern which one party manifests for those who might apply for a Class II-A station "which might never be processed or granted", the risk to the applicant is no great-

¹ The Appendix hereto sets forth the names of those filing petitions.

er than in any other administrative decision which is subject to judicial challenge.

Congressional Action

4. It should be recognized at the outset of our reconsideration that much congressional interest has been manifested in this matter since public notice was given in June 1961 of instructions to the staff as to the decision to be prepared.

5. Bills have been introduced in both houses of Congress which would either prohibit us from "duplicating" any of the Class I-A clear channels or would require us, under certain conditions, to authorize power in excess of 50 kw, or both. Our Report and Order of September 1961 provided that no application for a Class II-A station would be granted prior to January 30, 1962, so that interested parties might have ample opportunity to prepare applications. We have further delayed such grants to provide Congress opportunity to act in the matter should it so desire. Hearings on the various bills have been held before the Communications and Power Subcommittee of the House Interstate and Foreign Commerce Committee at which the Commission expressed its opposition to the bills.

6. On July 2, 1962 the House of Representatives adopted a Resolution (H.Res. 714, 87th Cong., 2d Sess.) expressing the sense of the House that the Commission may, notwithstanding the 1938 Senate Resolution (S.Res. 294, 75th Cong., 3d Sess., adopted June 7, 1938), authorize the use of power in excess of 50 kilowatts on any of the 25 Class I-A clear channels should it find that such operation will serve the public interest, convenience, or necessity. The Resolution also expresses the sense of the House that we should not authorize nighttime duplication of the Class I-A clear channels for a period of one year.

7. The first question with respect to Congressional action concerns the 1938 Senate Resolution opposing power greater than 50 kilowatts. Clear Channel Broadcasting Service (CCBS) directs specific arguments regarding the effect of that Resolution on our decision. Those arguments were also presented at earlier stages of this proceeding and were considered by the Commission in reaching its decision. However, we believe it would be helpful to clarify our position.

8. The reference to Congressional policy in our Report and Order, rather than of decisional significance, was merely intended as a recitation of historical fact, and also as an indication that, if and when higher power is considered for any frequencies, whatever Congressional policy then exists on the matter will be accorded due recognition. We wish to make clear that a majority of the Commission determined, on grounds wholly independent of the 1938 Senate Resolution, that higher power should not be permitted at this time.

9. A majority of the Commission felt, and still feels, that further studies are needed to determine whether such authorization of higher power would be in the public interest. Thus, the Senate Resolution did not affect that part of our decision which reserves for future consideration the question of any additional use to be

made of the twelve reserved Class I-A channels. Moreover, a majority of the Commission believes that the additional unlimited-time assignments provided for can be effectuated without substantial impairment of the wide-area service rendered by the I-A stations, and without impingement on the possibility of sufficient improvement of service through higher power—if that is later concluded to be appropriate—on the other 12 channels better suited for that approach, and perhaps also on some of the 13 now duplicated. This conclusion was the culmination of 16 years of hearings and study and detailed reasons for the result are set forth in our decision.

10. The House Resolution, therefore, has no impact on the Commission's Report and Order of September 1961, because, as noted, absence or elimination of the 1938 Senate Resolution would not have changed that decision, which is reaffirmed herein. However, in its testimony in February 1962, before the Communications and Power Subcommittee of the House Interstate and Foreign Commerce Committee, the Commission indicated it would welcome Congressional guidance on the question of higher power. It was indicated that this would be helpful because a majority of the Commission, while not yet convinced that power in excess of 50 kilowatts would be in the public interest, has carefully preserved the possibility of future utilization of this potential, should further studies convince the Commission that higher power should be authorized. The 1938 Senate Resolution and the 1962 House Resolution look in opposite directions. It would be helpful, therefore, if a current joint expression of the views of Congress could be obtained on this question for guidance in whatever further proceedings are undertaken to evaluate possible use of higher power.

11. The Commission recognizes, as many parties to this proceeding have argued, that a resolution of one House is not legally binding. However, we must, of course, give due consideration to the 1962 Resolution expressing the sense of the House that the Commission refrain from authorizing additional nighttime stations on the Class I-A clear channels until July 2, 1963. Therefore, while we are reluctant to postpone further the effectuation of this decision, we recognize that limited delay requested by the Resolution will give Congress additional opportunity to enact legislation concerning this matter if it should desire to do so. However, we are herein reaffirming the Commission's decision in this matter, and we do not contemplate any further administrative delay beyond July 2, 1963, in implementing that decision. Applications for Class II-A stations will continue to be accepted in the interim. They will be held in abeyance until July 2, 1963, and, absent controlling legislation, will at that time be duly evaluated and acted upon in accordance with the Commission's rules.

12. There is one aspect of the Committee Report (H.Rpt. 1954, 87th Cong., 2d Sess.) accompanying the 1962 House Resolution which goes further than anything stated in the Resolution and deserves comment. That Report envisioned a one-year moratorium as giving "all Class I-A clear channels an opportunity to file with the Commission an application to go to higher power." We feel

constrained to point out, however, that such opportunity is not available. A longstanding Commission rule pertaining to standard broadcast stations provides for no power in excess of 50 kilowatts. One of the reasons this proceeding was initiated was to determine whether that rule should be changed. We have concluded that the present 50 kw limitation should remain unchanged *at this time*. Thus, an application by a standard broadcast station to use power in excess of 50 kw would not be in conformity with the Commission's rules. In the case of those frequencies herein reserved for future disposition, a petition for rulemaking looking toward authorization of higher power could be entertained. In light of the Commission's decision, however, an application merely seeking power in excess of 50 kw is not acceptable and will be returned without prejudice.

13. As evidenced in the House Report and in the comments on the floor, some concern was also expressed as to the effect of our decision on national defense communications. As we advised the House Committee, the one additional nighttime station proposed on each of 13 of the Class I-A clear channels will not cause interference within the normal secondary broadcast service area of the Class I-A stations involved. Additionally, the radio teletype information proposed to be superimposed on the subject station's normal program transmissions is less susceptible to interference because of the special techniques utilized.

14. It is not contemplated that the BRECOM system would depend entirely on the clear channels. In fact, the addition of 50 kw operations by Class II-A stations in the West may well prove to be of some value in such a system. The Commission has worked very closely with the Department of Defense in the BRECOM project, which is still in the experimental and developmental stage. It is, in fact, a joint project of the Federal Communications Commission and the Department of Defense. It is the Commission's informed judgment that the national defense preparedness is not impaired by the clear channel decision now outstanding.

Summary of Basic Problem

15. Our present task is to complete our examination of the petitions for reconsideration without further delay. In so doing, we have re-examined our basic decision. In oversimplified terms, we are faced with this situation. Much of the country receives no nighttime primary radio service. These areas we refer to as "white areas". They do, generally, receive skywave or secondary service but such service is of an intermittent nature and its availability depends upon a multitude of factors including weather, sunspot activity, atmospheric noise, etc. Present unduplicated use of I-A clear channels with a 50 kilowatt power ceiling is certainly an incomplete use of these channels which still leaves us far short of the attainable degree of service to underserved areas. Moreover, our right to I-A priority thereon might be open to serious challenge from our North American neighbors if we do not make fuller use of such channels.

16. To bring about badly needed improvement in nighttime serv-

ice various alternatives have been suggested, which resolve generally into duplication, higher power, or some combination thereof. Higher power offers improvements in nighttime secondary service while duplication holds out the promise of limited added nighttime primary service. Moreover, questions of social and economic import arise in the higher power approach which complicate the simple engineering choice. Duplication of all I-A channels would not bring primary service to all white areas and would largely preclude the benefits of added secondary service which higher power could bring. Either alternative leaves much to be desired and we have attempted through a judicious combination of the possible advantages of the two approaches to reap some of the benefits of each. Thus, through duplication we extend to as many persons as possible the benefits of a first nighttime primary service. This type of service is better and more to be desired than skywave service. We have at the same time, however, retained the status quo on a sufficient number of channels which, should economic, social, and other considerations indicate higher power is in the public interest, can bring a total of four skywave services to practically the entire United States.

Channel by Channel Reappraisal

17. A complete reappraisal, frequency by frequency, has been made of the use to which each of the Class I-A clear channels should be put. A few channels, whether because of technical or international considerations or for policy reasons, clearly fall within the duplicated or the reserved group as set forth in our basic decision. Some others, while the engineering considerations might not point unmistakably to a clear-cut decision that they fall within a particular one of the two categories, have a preponderance of reasons why one solution is to be preferred over the other. In the case of a few, while higher power might be technically feasible, the area they would serve with a secondary service at higher power is otherwise provided for either by present operations or by possible operations at higher power on the reserved frequencies. In a very few cases the choice appears rather difficult when considering the channel on an individual basis. However, applying the general guidelines mentioned at paragraph 26 of the Report and Order of September, 1961, and considering how the two basic objectives are met by the combination of frequencies contained within each group, we are convinced that the decisions, while not easy, are sound.

18. In this connection, before turning to a more detailed consideration of the individual channels, it might be well to emphasize a portion of the concluding observations appearing in paragraph 101 of the Report and Order:

. . . merit attaches to very many of the proposals which have been urged upon us, including some of those which we herein reject. Our essential task in this proceeding has been to select among the myriad solutions offered those which, on net balance, taking into account the many pertinent considerations, would best serve the public interest. The opposing factors bearing upon our judgments in some instances are closely balanced. While recognizing that much can be said for numerous alternative approaches, we now conclude that the course laid out herein both as reflected in the rule changes now adopted

and in the preservation for the time being of the status quo on 12 Class I-A clear channels, represents the best solution available at this time.

640 kc.

19. Since 1944, Station WOI, Ames, Iowa (which is regularly licensed to operate on this frequency daytime with 5 kw non-directionally), has operated with 1 kw power from 6:00 a.m. (C.S.T.) to sunrise at Ames, which is during nighttime hours when sunrise is later than 6:00. Such operation has been permitted under a series of Special Service Authorizations (and more recently under other temporary authority), a type of authorization employed in exceptional circumstances to permit uses of AM frequencies for which provision is not made in the general rules. There is currently pending an adjudicatory proceeding, Docket No. 11290, in which there is at issue the basic question of whether the public interest would be served by continuing to authorize WOI's pre-sunrise operation.

20. The Report and Order, together with Note 1 to Section 3.25 (a) (5) (ii) paves the way procedurally for the acceptance of applications for a pre-sunrise operation on 640 kc at Ames, Iowa.

21. Earle C. Anthony, Inc., licensee of KFI, Los Angeles, the Class I-A station on 640 kc, complains that this issue was outside the record and that our action constitutes a pre-judgment of the adjudicatory issues. We find no merit in either contention. The rules expressly provide that such application will be acted upon only after and in light of the decisions reached in that docket. We fail to see how it can seriously be contended that merely permitting such application suggests pre-judgment. By our procedural action we have not modified KFI's license, nor have we made any substantive findings as to the adjudicatory matters. The issues in both proceedings are such that the inter-relation of the clear channel issues and the operation by WOI on such Class I-A frequency is apparent.

22. We reaffirm our decision that, as a matter of policy, no more than one station in addition to the Class I-A station should at this time be permitted to operate on such channel at night. In our Report and Order we said:

As to the suggestion that more than one unlimited time Class II station be authorized on the same Class I-A channel, we deem it preferable at this time to permit only one unlimited time Class II station on the channels selected for such use. After we have the benefit of the manner in which the new unlimited time Class II stations are utilized, and details of actual performance, interference, etc. become available, we will be in a position to determine whether the public interest warrants assignments of additional unlimited time facilities on these channels, and, if so, to determine under what conditions they should be permitted. We are convinced, however, that such a decision should await further developments and that extension of the plan adopted herein to include such multiple use is not warranted at this time.

Additionally, there is excellent potential for skywave service to western states should KFI eventually utilize higher power. Therefore, 640 kc is included in the group reserved for future consideration.

650 kc

23. The frequency 650 kc, on which WSM, Nashville, Tennessee, is the Class I-A station, while susceptible of duplication, has been

placed in the category as to which no present change is contemplated. WSM is strategically located for providing skywave service to the Southeast — should we upon further study determine higher power should be authorized. Some 18,000,000 of the 25,000,000 people in white areas live east of the Mississippi River, with many of these persons residing in the Southeast where it is difficult to provide skywave service because of the high atmospheric noise levels.

24. If higher power is sometime provided for, the stations best located to provide skywave service to this region are WSM, WLW on 700 kc at Cincinnati, WHAS on 840 kc at Louisville, and WWL on 870 kc at New Orleans. But for the special disposition made of 750 kc, as discussed thereunder, WSB at Atlanta would also fall within this group.

25. Should these stations be permitted to operate with 750 kilowatts, it appears technically feasible for all to serve portions of the Southeast.

26. It should be noted also that this area is virtually unserved at present with type E skywave service from existing Class I-A operations. We feel that, until we complete our further studies on higher power, the potential of these services should be retained.

660 kc

27. KFAR, Fairbanks, Alaska, already operates unlimited time on this frequency in addition to the Class I-A station, WNBC, New York. Although WNBC's potential for serving white areas through the use of higher power appears very limited,² we have declined, at this time, to further duplicate I-A frequencies on which two nighttime operations now exist. This is discussed more fully above under 640 kc. Our Report and Order at paragraph 72 discusses additional reasons why no further duplication of 660 kc is deemed warranted.

670 kc

28. WMAQ, Chicago, is the Class I-A station on 670 kc. Because the same general considerations also apply to the other I-A stations in Chicago, we shall discuss them as a group. Those stations are WGN on 720 kc, WBBM on 780 kc, and WLS on 890 kc. Generally speaking, these stations could be used either for duplication or to offer potential skywave service at higher power. We have reiterated our purpose to bring additional nighttime primary service to white areas while reserving sufficient frequencies having a potential to provide four type E skywave services substantially to the entire country.

29. On balance, our reconsideration has led us to believe that the original disposition made of these frequencies is the better choice. Class II-A stations are proposed thereon for Idaho, Nevada, and Utah. It is technically feasible and desirable that they be used to provide nighttime primary service to underserved areas of the West.

² To provide adjacent channel protection to I-A operations of WMAQ on 670 kc at Chicago and WSM on 650 kc at Nashville, WNBC with higher power would have to direct its radiation northward along the coastal states already well served with skywave signals.

30. As to their skywave service potential at higher power, protection requirements to foreign and domestic adjacent channel assignments would limit radiation eastward and to the south. While they could directionalize toward the West, their potential for improving skywave service to the West is not so great as that of some other Class I-A channels on which we are presently retaining the status quo, namely 640, 820, 830, 1040, 1160, and 1200 kc. As to those frequencies just named, the considerations pointed toward no present duplication. Thus, the Chicago stations can serve our basic objective and are not needed, nor as well suited as some others, for providing skywave service to the West should higher power someday be authorized.

31. Additionally, with specific reference to 670 kc, NBC attacks as incorrect our inclusion (para. 37) of WMAQ as a station whose useful skywave service is confined to the region of the Great Lakes. Whether or not this is the case is not of great significance because the rules adopted in the Clear Channel Report and Order define the 0.5 mv/m-50% skywave contour of the Class I-A stations—wherever it may fall—as the contour which the co-channel Class II-A station must protect. Further, in view of this protection requirement, Figure 6 of the Engineering Affidavit associated with NBC's Comments in response to the Third Notice, which shows a wide area of interference within WMAQ's 0.5 mv/m-50% skywave contour resulting from an assumed cochannel Class II-A operation in Idaho, is of little materiality. The showing is based upon an assumed directional transmitting antenna for the Class II-A station which does not meet the requirements of the rules adopted.

700 kc

32. WLW operates the Class I-A station on this frequency at Cincinnati, Ohio. As discussed more fully in connection with 650 kc, we are reluctant to take any action at this time which would limit its potential for providing improved skywave service in underserved areas of the Southeast.

33. The future course by which this frequency will best serve the public interest is thus left open. We note in passing that the only restriction to an additional assignment on 700 kc is the required adjacent channel protection to KIRO on 710 kc at Seattle. Perhaps, then, it might prove feasible, if otherwise found to be in the public interest, eventually to achieve some benefits of both approaches on this frequency.

720 kc

34. WGN, Chicago—discussed under 670 kc.

750 kc

35. We have reserved 750 kc for use at Anchorage, Alaska, by KFQD, which must vacate 730 kc under the terms of the United States/Mexican Agreement which entered into effect in June, 1961.

36. The Report and Order explained in greater detail the reasons for such action. Our re-examination convinces us that a better replacement for KFQD's loss of 730 kc could not be found. The

proximity in the spectrum of 750 kc to its present 730 kc should permit service to practically the same area and with little required in the way of expense or equipment modification.

37. Atlanta Newspapers, Inc., licensee of WSB, Atlanta, the Class I-A station on 750 kc, argues that duplication should not be provided for on its frequency. We find nothing presented in its contentions which would warrant changing this aspect of our decision. WSB points out the potential it has for providing service to "white areas" in the Southeast at higher power. Once again, we must note that we are fully cognizant that higher power potential exists with respect to some channels other than those on which no action has been taken at this time. We have decided that the duplication provided in the Report and Order is in the public interest. We reaffirm that conclusion and that 750 kc is included within the group duplicated. It should further be noted that, while the decision speaks in terms of future consideration of disposition of the 12 "reserved" channels, the Commission has a continuing duty to see to it that all channels are utilized in a manner which will best serve the public interest. Therefore, just as multiple use of a frequency is mentioned as a possibility for future consideration, so too are we free to consider in the future the use of higher power on the 13 duplicated Class I-A frequencies to the extent such use may be consistent with the duplication permitted herein and other public interest considerations.

760 kc

38. Our decision of September, 1961 went into considerable detail as to why this frequency was selected for use by KFMB, San Diego, California, which loses its present frequency (540 kc) under the terms of the agreement with Mexico. An exhaustive inquiry, taking into account the many factors detailed in our Report and Order, revealed that, of the I-A frequencies, only 760 kc and 830 kc were feasible for use at San Diego. The whole duplication plan adopted provides for nighttime operation on Class I-A frequencies by no more than one station in addition to the dominant I-A station. As discussed below, WNYC, New York City presently operates some nighttime hours on 830 kc and, under the policy adopted, further duplication thereon is precluded at this time. The obvious result is that 760 kc is the only I-A frequency available to solve this unique problem.

39. Further, a study made of all frequencies below 760 kc shows the only other frequency available for such use, because of domestic and international co-channel and adjacent channel restrictions, is 550 kc. Radiation by KFMB on 550 kc would be considerably restricted northward by co-channel operation of KAFY, Bakersfield, California and eastward by co-channel KOY, Phoenix, Arizona. KFMB could not, therefore, operate with its present 5 kw and afford these stations the required protection unless it were to directionalize southward and to the west—in which case much of its signal would be wasted over the Pacific Ocean. (Studies presented by KFMB in this proceeding show such move would result in a reduction in daytime coverage from 18,342 square miles to 1,921

square miles and in nighttime coverage from 884 square miles to 516 square miles).

40. Our assignment of 760 kc to San Diego for use by KFMB is discussed by several interested parties including Marietta Broadcasting, Inc., licensee of KFMB, which defends the decision; The Goodwill Station, Inc., licensee of WJR, Detroit, the Class I-A station operating on 760 kc, which opposes the assignment; and John Poole Broadcasting Co., Inc., licensee of adjacent channel KBIG, Avalon, California, which is involved in a problem of 2 mv/m and 25 mv/m overlap.

41. KBIG, in its Petition for Reconsideration, contends the Commission is in error in failing to consider assignment of 830 kc either for the use of KBIG or KFMB. It states that it had suggested in reply comments the alternative that "KBIG be given 830 kc thereby freeing 760 kc for assignment to KFMB". Petitioner's memory does not serve him well in this instance. Petitioner in his reply comments made no mention of possible use by KBIG of 830 kc but continued to advocate use of that frequency by KFMB. It was only in supplemental comments offered more than a year late and, therefore, not considered by the Commission (see Report and Order, p. 16, fn. 5) that KBIG suggested possible use of 830 kc by it as a daytime only station with at least 10 kw power. This most untimely suggestion, offered only after public notice had been given of the Commission's tentative decision, was not evaluated. All timely filed comments were, however, considered by the Commission in reaching its decision. Moreover, with respect to use of 830 kc by KFMB, this possibility was specifically considered and rejected. It will be recalled that the Third Notice of Further Proposed Rule Making released September 22, 1959, which contemplated a full-time Class II operation on each of 23 Class I-A clear channels, proposed the use of 830 kc in California. The Commission decided that an unlimited time Class II operation should not be permitted on 830 kc at this time. We find no public interest considerations in any of the filings which would warrant upsetting our decision in this regard. The necessity of a waiver of Section 3.37 of our rules because of a 2 mv/m and 25 mv/m overlap with KBIG was expressly recognized in the Report and Order.

770 kc

42. Our decision presents in extensive detail the history of this frequency and the unique circumstances necessitating the decision as to its use. Its disposition was so clearly dictated that, even upon this further reevaluation of the use of each channel, we feel no further comment is required.

43. American Broadcasting Company, licensee of WABC, New York, the Class I-A station on 770, in its Petition for Reconsideration, presents arguments concerned principally with the basic foundation of our decision and restates arguments previously considered by the Commission. Its request that it be permitted to show the advantages of using 660, 880, or 1180 kc rather than 770 kc at Albuquerque has been fully dealt with previously and again denied by our Report and Order (see para. 85(c)). Our earlier

decision was specifically upheld by the United States Court of Appeals on that point. (*American Broadcasting Company v. FCC*, 280 F. 2d 631, 20 R.R. 2001.)

780 kc

44. WBBM, Chicago—discussed under 670 kc.

820kc

45. WBAP/WFAA, Fort Worth/Dallas, conduct a share time operation as the Class I-A station on 820 kc. Present foreign and domestic adjacent channel assignments would impose some nighttime radiation restrictions on the use of such frequency at higher power. However, even providing for such restrictions, this station is well located—by directing radiation toward the northwest—to provide a needed skywave service to all states west of the Mississippi River except for portions of Louisiana, Arkansas, and Washington. Its extensive potential in this regard should be retained pending a final determination on the merits of higher power.

830 kc

46. Since 1943, WNYC, a municipally owned and operated station at New York City, has been permitted under a series of temporary authorizations to operate on 830 kc during certain nighttime hours: 6:00 a.m. (E.S.T.) to local sunrise and from sunset at Minneapolis to 10:00 p.m. (E.S.T.), with power of 1 kw. (WNYC is regularly licensed to operate with 1 kw on 830 kc, with a different directional antenna than it uses nighttime). Notwithstanding the directional antenna employed, WNYC's operation during nighttime hours causes interference within the secondary service area of WCCO at Minneapolis. In a pending adjudicatory proceeding (Docket No. 11227) consideration is being given to the question of whether, balancing the interference caused to WCCO against the service WNYC renders during nighttime hours, the public interest would be served by continuing to permit WNYC's nighttime operation, for which no provision is made in the AM rules governing the use of Class I-A frequencies.

47. The Report and Order, together with Note 2 to Section 3.25(a)(5)(ii) paves the way procedurally for the acceptance of applications for certain nighttime hours of operation on 830 kc at New York City.

48. Midwest Radio-Television, Inc., licensee of WCCO, Minneapolis, the Class I-A station on 830 kc, in its Petition for Reconsideration, raises issues similar to those discussed with respect to the operation on 640 kc of WOI, Ames, Iowa. The discussion there is equally applicable to WCCO's contentions.

49. Moreover, WCCO's argument in this regard that we are paving the way for *regular* operation and that Docket No. 11227 contemplates *temporary* authorization is premature in the light of the procedural nature of our action herein and our disavowal of entering into the hearing issues in this proceeding. WCCO's position, apparently, is that if it is decided in Docket No. 11227 that regular operation by WNYC of the sort described will be permitted, such decision would go beyond the hearing issues involved in that Docket. But

resolution of this argument must await decision in Docket No. 11227. WCCO also points to the fact that, in Note 1 to Section 3.25 (a) (5) (ii) relating to 640 kc and Ames, we specifically limited any pre-sunrise operation to one kilowatt, but did not impose the same limitation in Note 2 dealing with 830 kc and New York City. The reason for not imposing such a restriction in the case of New York City relates to the special circumstances involved in the WNYC operation. There appears to be the possibility that, if WNYC should operate nighttime in a manner somewhat different than at present—e.g., with a different directional pattern and possibly a different transmitter site—it might be possible to operate with power greater than 1 kilowatt and still afford WCCO as much or even greater protection than at present. We do not wish, at this time, to foreclose such possibility. We emphasize, however, that we are not now passing on the merits of the question of operation during certain nighttime hours by WNYC (a question to be decided in Docket 11227). We emphasize also that it is not our intention to permit any nighttime operation by WNYC, whatever the power, which would increase radiation toward WCCO beyond that currently permitted under the special authorization.

50. As in the case of 640 kc, we have refrained, as a matter of policy, from permitting additional duplication at night on the I-A frequency. Any further use of the frequency can, of course, take cognizance of its higher power potential.

840 kc

51. The Class I-A station on this frequency is WHAS at Louisville, Kentucky. This frequency has been reserved for further study. As developed more fully in the discussion of 650 kc, WHAS has a potential for skywave service to southern states which should, for the present, remain unimpaired. Should the stations reserved for their higher power potential eventually operate with 750 kilowatts, WHAS would provide one of the three type E skywave services to most of Florida and about half the land area of Georgia and South Carolina, as well as portions of Louisiana and Texas, and would provide one of four such services in the remainder of Georgia and South Carolina.

870 kc

52. WWL at New Orleans is the Class I-A station on 870 kc. This is one of a group of stations discussed under 650 kc on which no present nighttime duplication is permitted pending further study of higher power. It is well located for providing one of four type E services to extensive areas of the Southeast should the stations on "reserved" channels operate with 750 kilowatts.

880 kc

53. The Class I-A station on 880 kc is WCBS, New York. This frequency is one of a group of clear channel stations located in the Northeast which, by virtue of their location, are ideally situated for duplication by unlimited time stations in the West with negligible effect on present secondary services. Others in this group include

KDKA on 1020 kc at Pittsburgh, WBZ on 1030 kc at Boston, WHAM on 1180 kc at Rochester and WCAU on 1210 kc at Philadelphia.

54. While most of these stations would be subject to certain restrictions on radiation with a power of 750 kilowatts, these general observations can be made: they are not well located for serving the West with skywave service; the public interest would not be served simply by utilizing them to add to the abundant skywave services available in the Northeast; and while some of them could serve some white areas in the Southeast we are retaining a potential for service to that area on frequencies located in the South and Southeast—as more fully discussed under 650 kc.

55. These stations, therefore, do not possess a higher power potential service to white area such as would require that no action be taken with respect to them at this time. On the other hand, they possess greater flexibility for assignment to states in the West where new unlimited time Class II-A stations in New Mexico, Wyoming, and Montana, as well as one in North or South Dakota or Nebraska and another in either Kansas, Nebraska, or Oklahoma, can render much needed nighttime primary service as set forth in our basic decision.

890 kc

56. WLS, Chicago—discussed under 670 kc.

1020 kc

57. KDKA, Pittsburgh—discussed under 880 kc.

1030 kc

58. WBZ, Boston—discussed under 880 kc.

1040 kc

59. The Class I-A station on 1040 kc is WHO at Des Moines, Iowa. Because its location is so near that of KMOX, St. Louis (1120 kc), these frequencies have been considered together. Both are somewhat centrally located and could be duplicated to bring primary service to the West. Their location is well suited, also, to providing skywave service at higher power. However, here the similarity ends. KMOX on 1120 kc is virtually surrounded by Class I adjacent channel stations which severely limit its higher power potential, whereas WHO would need to protect only one Class I adjacent channel—and that is in the East—so its higher power potential should be retained. Thus, these two frequencies readily lend themselves to different treatment with 1120 kc being used to bring nighttime primary service to the West and 1040 kc remaining unduplicated at this time.

60. Columbia Broadcasting System, licensee of KMOX, in a Petition for Reconsideration, contends KMOX should not have been duplicated and that, if a choice is to be made between 1120 and 1040 kc, 1040 kc should be duplicated because 1120 kc has a greater potential for service to white areas with higher power. The Commission has examined the corrected engineering study submitted by CBS, which purports to show that the potential for improved

skywave service which would accrue to KMOX, operating with 750 kw on 1120 kc at St. Louis, Missouri, is substantially identical to that of WHO operating with 750 kw on 1040 kc at Des Moines, Iowa. We are not persuaded by this showing because we find that in order to achieve the wide area skywave service portrayed as resulting from the high power operation of KMOX, the Class I stations operating in Omaha, Nebraska, Charlotte, North Carolina, Shreveport, Louisiana, and New York, New York on channels adjacent to KMOX would be required to accept substantial reductions of their nighttime primary service. This is true whether the engineering standards set out in Exhibit 109 of the Clear Channel proceeding or the engineering standards of the Commission's Rules are used to evaluate service and interference.

61. More specifically, the Commission's Rules, including amendments adopted in the Clear Channel Report and Order, require that the 0.5 mv/m groundwave contour of Class I stations be protected from interference. The operation of KMOX as shown in the Petition for Reconsideration does not meet this requirement. In contrast, similar operation of WHO, which has only one Class I station (Boston) adjacent to it, does satisfy this requirement. It follows that KMO, operating within the requirements of the Commission's Rules, does not afford the same potential for improved skywave service as does WHO, similarly operating within the requirements of the Commission's Rules. We find no reason, therefore, to alter our conclusions in this regard.

1100 kc

62. KYW, Cleveland, is the Class I-A station on this frequency. Radiation restrictions to prevent adjacent channel nighttime interference to Class I-B stations WBAL, Baltimore and KTHS, Little Rock, on 1090 kc and to WBT, Charlotte, and KFAB, Omaha, on 1110 kc essentially preclude any nighttime high power operation on 1100 kc.

63. Conversely, duplication of 1100 kc will provide nighttime primary service to white area. It has been selected for an unlimited time assignment in Colorado.

1120 kc

64. KMOX, St. Louis—discussed under 1040 kc.

1160 kc

65. The Class I-A operation on this channel is KSL, Salt Lake City. This station is uniquely suited to provide secondary service at night to substantial white areas in the western states by virtue of its location in the center of the extensive white area in the West. At this stage, therefore, we preserve its potential for improving skywave service.

1180 kc

66. WHAM, Rochester—discussed under 880 kc.

1200 kc

67. WOAI, San Antonio, is well located to serve much of the cen-

tral and western portions of the country with a skywave signal radiated northwesterly at a power of 750 kilowatts. We have, therefore, taken no action at this time with respect to this frequency.

1210 kc

68. WCAU, Philadelphia—discussed under 880 kc.

Processing of Pending Applications on Channels Adjacent to the 12 Reserved I-A Channels.

69. Inter-Cities Broadcasting Company requests that Section 1.351(b) of the Rules be changed to permit handling on a case-by-case basis those applications on frequencies within 30 kc of one of the 12 Class I-A channels reserved for future disposition which were in a hearing status with the record closed as of the date of adoption of the Report and Order herein. It contends such parties should be given an opportunity to show that their proposals do not interfere with the future optimum use of the Class I-A clear channels. Lake Huron Broadcasting Corporation asks that applications on certain designated frequencies be processed in normal course where it can be shown that grants thereof will not risk prejudice to possible future plans for the use of the 12 reserved I-A channels. Several others want all such applications in hearing status to be processed. Another asks that all applications for new stations on 710 kc filed prior to October 30, 1961 be processed. The matters raised by these petitions were considered by the Commission and the details of how applications for frequencies adjacent to a Class I-A clear channel are to be handled are set forth in the Further Supplement to Report and Order adopted January 31, 1962 in this docket, and in Section 1.351 of the Commission's rules as amended that date.

Prohibition of New Daytime Assignments on Class I-A Channels

70. Harvey Radio Laboratories, Inc., William H. Buckley, tr/as Tri-Counties Broadcasting Company and John M. Norris, all applicants for new daytime facilities on I-A clear channels, complain of the prohibition of new daytime assignments on the I-A channels and contend the ban is unlawful for having allegedly been imposed without notice and rule making. That the issue in this proceeding encompassed the broad question of what use of the clear channels would best serve the public interest cannot be denied. Nor is it in any way beyond the Commission's power or duty to impose the ban on daytime applications on the I-A clear channels to preserve the gains contemplated as a result of this lengthy study and to protect and provide for a planned future orderly development of the use of such frequencies. The Commission recognizes that private interests and the public interest do not always coincide, but our task is to inquire into and uphold the public interest.

Failure to Provide a "Cut-off" Date for Class II-A Applications

71. Some contend that, while no Class II-A applications could be acted upon prior to January 30, 1962, we should also provide for a maximum period of time during which such applications can be

filed. Failure to do so, it is argued, might mean the new Class II-A assignments could lie fallow for months or years. Other types of applications, it is said, could be delayed in the interim. And it is further urged that lack of a cut-off date encourages prospective applicants for the new assignments to delay filing in order to top the "white area" showing of earlier-filed applications on the same frequency. The Commission, while not precluding future consideration of such a course if it later appears desirable, does not deem it necessary at this time. It is to be hoped, of course, that applicants will file promptly. Should applications not be forthcoming within a reasonable period of time, the matter may be further re-examined. In any event, this is a matter better left, in our judgment, for determination in light of our experience with such applications in the coming months.

Denial of Educational Reservations

72. The National Association of Educational Broadcasters takes issue with our decision not to reserve any of the new Class II-A assignments for non-commercial educational use. The Commission recognizes that time lags occur before educators can receive proper authorization and funds to make application for broadcast facilities. We are not persuaded, however, that the public interest requires reservation of some of the Class II-A stations for educational use. The public interest will best be served if new Class II-A stations can be established quickly and start rendering needed service to the public. If there is commercial demand for the frequencies, the public interest would not be served by refusing to meet such demand and by withholding use of certain frequencies for possibly extended periods of time to see if there is sufficient educational interest.³ On the other hand, should there not be commercial interest in some of the frequencies, the time lag would appear sufficient for interested educational groups to pursue the matter. Moreover, we have indicated that no such application could be acted upon for a period of 90 days (i.e., prior to January 30, 1962.) Thus, some time is afforded all interested parties in charting their future course of action.

Other Arguments

73. The three networks, Clear Channel Broadcasting Service and Westinghouse Broadcasting Co., Inc. in substance either oppose the basic result reached or contend that a final decision should be made now as to all 25 Class I-A frequencies. These arguments attack the very foundation of our decision and present, for the most part, ideas that were previously expressed. They are adequately dealt with throughout the Report and Order itself which, we believe, makes clear the reasons we reached the conclusions expressed therein. Some suggestions, however, are worthy of brief note. Westinghouse would have us specify locations which can meet the 25% test and offer some reasonable likelihood of financial success. We

³ Of the 30 educational groups filing comments pursuant to the Third Notice, nine indicated some interest in obtaining a frequency. Of those in states to which Class II-A stations have been assigned, one party states it has funds available which, in that instance, obviates the need for a reservation.

have already rejected (para. 42) requests that we name specific communities for the new Class II-A stations. Further, we noted (para. 44) that the extent to which the facilities here made available are utilized depends upon the judgment of prospective applicants and licensees.

74. Westinghouse contends that the decision raises a problem under Section 307(b) of the Communications Act of 1934, as amended. This section requires the Commission to make "such 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." Westinghouse does not attack the present allocation of Class II-A stations *per se* as a violation of that Section, but contends that the present duplication will make it difficult if not impossible to carry out the 307(b) mandate if and when we authorize higher power on some frequencies. The Commission is very much cognizant of 307(b) considerations and every effort has been made to secure a fair, efficient and equitable distribution of facilities consistent with the achievement of the goals sought. In point of fact, an underlying consideration of this whole proceeding has been to bring service to areas now lacking it—which is simply another way of saying we are trying to make the distribution more fair, efficient and equitable than it has been. To preclude this on the basis of some possible future difficulty in another connection would be unjustified. Moreover, we cannot agree that the contention has substance because our studies show that the group of channels selected for future consideration, if higher power is authorized, would provide four skywave services throughout the nation. By any reasonable interpretation we feel the standards of Section 307(b) have here been fully complied with.

75. NBC contends that the 25% area-or-population test should be modified to establish a more meaningful minimum. The rule in question requires a showing that at least 25% of the area or 25% of the population to be served is without any other primary service. Satisfaction of either requirement is necessary to establish a basis for authorization of the new facility. This does not, however, preclude consideration of other pertinent features of the proposed operation. We should point out, nevertheless, that our basic concern is with the extensive land area that does not now have any primary service. The limitation in the extent to which a single station can render a groundwave service at standard broadcast frequencies, under a power limitation of 50 kilowatts, adverse conductivity and other terrain features, etc., is well-known and inherent in the standard broadcast band. The Commission has recognized these limitations and is aware of the limited extent to which individual stations can contribute to elimination of the deficiency. Nevertheless the overall problem continues to be basically one of obtaining area coverage. Obviously a service to an area with no population whatsoever would be pointless and as between two areas both without service, provision for service to the area with the greater population is ordinarily to be preferred. If we were to assume a case where an applicant meets the 25% test on

the basis of area, rather than population, and meets the other requirements of the rules so that his application is acceptable for filing and if it is found upon examination that he proposes to serve a virtually uninhabited region, then the Commission, in the absence of other applications for the frequency, will be faced with the question of whether it is more in the public interest to grant such application, wait for other applicants to file for the frequency, or consider some alternate disposition of the frequency. The Commission's decision is, obviously, grounded upon an expectation that it will work. Should demand not develop for the frequencies, it does not mean the Commission will be forced to sit idly by and let the present less efficient use of the I-A frequencies continue.

76. NBC contends the Commission should consider the alternative of authorizing FM stations rather than the proposed Class II-A stations. It suggests that when, in October 1947, the Commission ruled that the subject of FM was irrelevant in this proceeding the issues were directed substantially at the general question of establishing high power, wide service area Class I stations in the West, and that since the Class II-A stations would be limited in their coverage, this "change of viewpoint" requires re-evaluation of FM's potential usefulness in these areas. Among other things, NBC's concept of the issues of the proceeding is too narrow. For example, the original order of February 20, 1945 initiating the proceeding included the following:

WHEREAS, the Commission has received many applications requesting authorization for the operation of additional stations and for the use of higher power on the clear channel frequencies;

Issue 7 read as follows:

7. What new rules or regulations, if any, should be promulgated to govern the power or hours of operation of Class II stations operating on clear channels.

77. By Memorandum Opinion and Order of December 30, 1947, the Commission reviewed and reaffirmed its decision to exclude all information concerning FM broadcasting. It noted that the clear channel proceeding has always been considered as pertaining to and concerning the standard broadcast band. Its concern, at that time, that such information would merely serve to delay a conclusion of the proceeding is certainly more urgent today in view of the years which have intervened. Moreover, it is of interest that NBC, while filing comments at every stage of this proceeding, has not seen fit to raise the question until now.

78. NBC contends that neither the former rules nor the rules adopted in the Clear Channel Report and Order include a requirement to determine directional antenna performance in accordance with FCC's Report, TRR 1.2.7., or a substitute which would permit a realistic determination of the actual extent of interference caused to the Class I-A stations. The Report referred to is principally a statistical analysis of data acquired from a series of tests and measurements made of certain selected directional antenna systems in actual use by broadcast stations. Empirical formulas are developed as a possible tool for improving in small degree the predictions required in assessing performance, including interference

effects of a broadcast station utilizing a directional antenna.

79. Like many of the refined prediction and evaluation tools developed during the course of the Clear Channel proceeding, the merits of their use in the proceeding itself by no means implies that they should be incorporated in Commission rules or that the detailed and complicated processes involved should be adopted as routine application processing procedure. The petitioner, in effect, is suggesting that this be done and that we modify the present approach to the use of directional antennas used to control interference between broadcast stations. Whatever considerations evolve from any further inquiry along these lines will apply to directional antennas used by any class of station. Based on the limited data available there is no assurance that any significant increase in accuracy would result from the use of these theories. The Commission does not feel that the data acquired and conclusions reached form a sufficient basis for changing the rules at this time.

80. Clear Channel Broadcasting Service (CCBS) sets forth a number of alleged inconsistencies in our Report and Order. Careful analysis of these charges, however, reveals that CCBS would simply have reached different conclusions. The attack, for the most part, is upon our recognition that the situation is not black or white and that some merit attaches to many of the proposals offered. We further recognized (see para. 101 of Report and Order, quoted in part in para. 17 hereof) that the opposing factors bearing on our judgments were often closely balanced. CCBS' recitation seizes upon our language and alleges it is "inconsistent" where it differs somewhat from a conclusion CCBS would draw or from a contention it has presented which may have some merit to it but was found outweighed by other factors. We believe the decision read in its entirety amply supports our findings.

81. CCBS contends we failed to resolve Issues 9 and 10 as originally designated in our Order of February 1945. They read as follows:

9. Whether and to what extent the clear channel stations render a program service particularly suited to the needs of listeners in rural areas.

10. The extent to which the service areas of clear channel stations overlap and the extent to which this involves a duplication of program service.

We fail to understand CCBS' concern here because it points out that issue 9 should be resolved in accordance with its Comments of August 15, 1958 which indicated, among other things, that the fact the record is outdated "does not lead to the conclusion that the record is too outdated to provide a sound basis for resolving the basic issue posed in this proceeding—namely, how to improve service to the vast underserved areas and populations." Moreover, CCBS urges that we find Issue 10 "irrelevant to the basic considerations involved in this proceeding." If in the one instance we are not precluded from deciding the basic questions and in the other the issue is contended to be irrelevant, CCBS would not be aided by their resolution.

82. We did not, and do not now, deem it essential to prolong our decision by a useless repetition of historical detail of this vol-

uminous and protracted proceeding. As CCBS recognizes, the Further Notice of April 15, 1958 resolved many of these issues and, at least strongly implied that others—such as Issue 9—were not essential to a resolution of the basic questions involved in the proceeding (with which, as we have seen, CCBS expressly agrees). We have previously noted that this whole proceeding, once of extremely wide scope, has over the years been considerably narrowed. As a result, the original 11 issues have long since been modified by subsequent rule making notices directed at more specific solutions.

83. CCBS also contends we must consider the pressure from other nations to use frequencies on which the United States has Class I clear channel rights. Our efforts in this proceeding to better utilize these frequencies should be an advantage, rather than a detriment, to us in any future international negotiations.

CONCLUSION

84. We adhere to our belief that, on balance, the adopted solution represents the best result available at this time. The Report and Order read in its entirety and in the light of the above language makes unnecessary any more detailed rebuttal of many of the arguments now advanced that some different solution should have been adopted. In this connection, some petitioners simply restate the case for higher power. Others ask that more than one Class II station be permitted on a frequency. Nothing new was found in these requests which had not been fully presented to the Commission for its consideration before the Report and Order was adopted.

85. A majority of the Commission sincerely believes that this decision serves the public interest. There is no easy or clear-cut solution to the many problems involved. For the reasons given in the September, 1961 Report and Order and as further stated herein, we adhere to our decision in all respects. We further reaffirm the conclusion that we are unable to determine that higher power is warranted at this time but that—if it proves to be in the public interest at some future date—we have retained freedom of action on a sufficient number of channels which, in the combination carefully selected, will enable the claimed benefits of higher power to be realized.

86. Upon our re-examination several minor typographical errors have been discovered. In view of the public notice of clarification released October 27, 1961, and reading the Report and Order in its entirety, we do not believe parties will be misled. For example, 890 kc was inadvertently omitted from paragraph 35. However, it correctly appears in paragraph 37 and in the Rules in Sections 3.22 and 3.25(a)(1). The one correction in this regard, to which we invite special attention is the reference in the Appendix (Instruction No. 8) to a paragraph 3.182(c). No such section appears in the rules and the reference thereto should be omitted.

87. We have carefully considered all petitions filed. We have, perhaps, included more detail than was necessary but deemed it desirable to discuss those new arguments raised by the parties.

However, as noted, we have found nothing to warrant different disposition of the basic premises and conclusions of the proceeding and no reason to re-examine arguments which were before us and considered by us before reaching our decision in this docket.

88. Several parties filed Oppositions to various of the Petitions for Reconsideration. While we have not made specific reference to such oppositions we have considered the arguments presented which, in many instances, are the same as those reasons relied upon by the Commission.

89. In view of the foregoing, IT IS ORDERED, This 21st day of November, 1962, That the Petitions for stay, partial stay, rehearing, reconsideration and partial reconsideration, listed in the Appendix hereto, ARE DENIED except that those filed by Inter-Cities Broadcasting Company, Lake Huron Broadcasting Corp., S & W Enterprises, Inc. *et al.*, Sands Broadcasting Corp. *et al.*, and West Side Radio ARE DISMISSED AS MOOT to the extent that the relief requested therein has already been granted by the Commission on its own motion in the Supplement to Report and Order released herein on November 1, 1961 and the Further Supplement to Report and Order adopted January 31, 1962.

FEDERAL COMMUNICATIONS COMMISSION,

BEN F. WAPLE, *Acting Secretary.*

APPENDIX

A. *Petitions for Reconsideration*

1. American Broadcasting Company
2. Atlanta Newspapers, Inc. (WSB, Atlanta, Ga.)
- *3. Columbia Broadcasting System, Inc.
4. Clear Channel Broadcasting Service (CCBS)
5. Creek County Broadcasting Company, *et al.* (Applicants for 1220 kc)
6. Earle C. Anthony, Inc. (KFI, Los Angeles, Calif.)
7. Genesee Broadcasting Corp. (WHAM, Rochester, N. Y.)
8. The Goodwill Stations, Inc. (WJR, Detroit, Mich.)
9. Harvey Radio Laboratories, Inc., *et al.* (Applicants for 670, 720 and 820 kc)
10. Inter-Cities Broadcasting Co. (Applicant for 1220 kc)
11. Lake Huron Broadcasting Corp. (Applicant for 1070 kc)
12. Meredith Broadcasting Co.
13. Midwest Radio-Television, Inc. (WCCO, Minneapolis, Minn.)
14. National Association of Educational Broadcasters
15. National Broadcasting Company, Inc.
- *16. John Poole Broadcasting Co., (KBIG, Avalon, Calif.)
17. Sands Broadcasting Corp., *et al.* (Applicants for 1150 kc)
18. Seattle, Portland & Spokane Radio (KXL, Portland, Oregon)
19. S & W Enterprises, Inc., *et al.* (Applicants for 900 kc)
20. Westinghouse Broadcasting Company, Inc.
21. West Side Radio (Applicant for 710 kc)
22. WGN, Inc. (WGN, Chicago, Ill.)

B. *Petitions for Stay*

1. Clear Channel Broadcasting Service (CCBS)
2. Midwest Radio-Television, Inc. (WCCO, Minneapolis, Minn.)

C. *Oppositions to Petitions for Reconsideration or for Stay*

1. All-Alaska Broadcasters, Inc. (KFAR, Fairbanks, Alaska)

* Included request for a stay.

2. Atlanta Newspaper, Inc. (WSB, Atlanta, Ga.)
3. City of New York Municipal Broadcasting System (WNYC, New York)
4. Clear Channel Broadcasting Service (CCBS)
5. Crowell-Collier Broadcasting Corporation (KFWB, Los Angeles, Calif.)
6. Iowa State University of Science and Technology (WOI)
7. Marietta Broadcasting, Inc. (KFMB, San Diego, Calif.)
8. Midwest Radio-Television, Inc. (WCCO, Minneapolis, Minn.)
9. National Broadcasting Company, Inc.
10. Seattle, Portland & Spokane Radio (KXL, Portland, Oregon)

DISSENTING STATEMENT OF COMMISSIONER ROBERT E. LEE

I dissent to the action taken by the Commission in refusing to reconsider its action in this proceeding for substantially the same reasons that I gave in my dissent in the Report and Order adopted September 13, 1961, wherein I stated that no substantial improvement in service throughout the United States can be expected unless higher power is authorized to Class I stations. It is clear that the licensing of special Class II-A stations on roughly half of the clear channels will not make a significant contribution towards serving nighttime "white areas" and will serve to inhibit future efficient use of these channels by Class I stations.

The resolution passed by the House of Representatives in 1961 favored a year moratorium to permit Class I stations to file applications for increased power and after a year these channels could be duplicated. While I am pleased that the House of Representatives did not impose legislation in matters where the Commission is presumed to be expert, as I see it the form of action—a resolution rather than a bill—was an act of deference to Commission authority. It should be treated accordingly. By only passing reference is consideration shown to the very essence of the resolution, that being the matter of higher power for Class I stations and duplication by Class II stations on the same frequencies. There is no reason given in the Opinion or known to me why higher power and duplication on the same channels must be considered only in the alternative.

The Memorandum Opinion and Order adopted by the majority re-evaluates the 1961 Report and Order to the extent that it gives reasons why some channels are better suited for duplication than for future consideration for higher power. It is my position that no hairline decision need or should be made. Our international treaty obligations certainly must be given consideration and full effect. Adjacent channel stations must be afforded their rights. It is my view that the fair and orderly way to evaluate these matters is to afford Class I stations the opportunity to file applications for powers in excess of 50 kw and then on the basis of these applications to determine from these concrete proposals, which in many instances would require directional antennas, whether they would satisfy the traditional public interest criteria. I am not convinced that adjacent channel interference problems cited by the majority as an inhibition to higher power would be of significant import, particularly in view of the fact that adjacent channel interference constitutes a substitution of service. Where and how does the public lose service? I submit that we are sparring with windmills.