

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

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FCC 68-194
12379

In the Matter of)
)
"Pre-sunrise" operation by Class II) Docket No. 18036
stations on U.S. Class I-A channels)
before 6 AM.)

NOTICE OF PROPOSED RULE MAKING

Adopted February 21, 1968 ; Released February 26, 1968

By the Commission:

1. Section 73.99 of the Commission's Rules now limits pre-sunrise operation by all stations to 6 AM and after 1/, a limitation required by the pre-sunrise agreement with Canada formalized June 12, 1967 (TIAS 6268). In petitions for reconsideration of the decision in Docket 14419 (the over-all pre-sunrise proceeding) and other requests filed during the latter part of 1967, various Class II stations on U.S. I-A channels, located west of the dominant co-channel station, urged that this restriction be removed as to them--Canada having no stations on these channels--and that, as under former Section 73.87, pre-sunrise operation be limited only by the time of sunrise at the dominant station and 4 AM. In the Memorandum Opinion and Order adopted last October in that proceeding, we denied these requests but stated that discussions would be held with Canadian authorities concerning possible modification of the agreement in this and another respect. 2/ Such discussions were held during January, and modification of the agreement--so as to eliminate this limitation with respect to

1/ The Canadian agreement and Section 73.99 now read in terms of 6 AM local standard time, i.e., time without the daylight saving time advancement which is now almost universal in the conterminous U.S. However, recent discussions have been held with Canadian authorities concerning possible modification of the agreement to specify 6 AM "local time", and in a Notice of Proposed Rule Making adopted February 14, 1968 (Docket No. 18023), it is proposed to modify Section 73.99 accordingly. This would apply to all frequencies. The present proceeding concerns operation before 6 AM "local time".

"Pre-sunrise operation" whereused herein means use of daytime or "critical hours" modes of operation before local sunrise, and does not refer either to use of nighttime facilities before sunrise by fulltime stations, or to use of daytime or critical hours facilities before 6 AM when local sunrise is earlier than that hour, as it is during some months of the year.

2/ Memorandum Opinion and Order in Docket 14419, adopted October 11, 1967 (10 F.C.C. 2d 283, 11 R.R. 2d 1571); see also Memorandum Opinion and Order concerning KFAX and KGBS adopted November 29, 1967 (FCC 67-1309).

stations on U.S. I-A channels--appears to be a possibility. It is the purpose of this Notice to invite comments on the question of whether Section 73.99 should be modified so as to permit pre-sunrise operation by Class II stations on U.S. I-A channels, located west of the dominant station, earlier than 6 AM local time, and if so on what terms and conditions. Issuance of this Notice does not indicate a present Commission view that such operation would be desirable or in the public interest, and, of course, adoption of such a rule change is contingent on obtaining formal Canadian concurrence in a corresponding change in the agreement. 3/

2. In seeking reconsideration in Docket 14419, and other requests and submissions during late 1967, four Class II stations indicated that they had been operating pre-sunrise, earlier than 6 AM, during all or a substantial part of the year, being able to do so because of their location well to the west of the dominant station. These included KFAX, San Francisco, KGBS, Los Angeles, KIEV, Glendale (Cal.), and KMMJ, Grand Island (Neb.). The West Coast stations have been signing on at 5 AM during all or most of the year; KMMJ has been operating from 5:15 AM during months when sunrise at Atlanta permits it. It appears that other stations, including KXA (Seattle), KXL (Portland) and KSKY (Dallas), have similarly operated earlier than 6 AM during all or part of the year. 4/

3. The question to be decided here is whether such operation should be permitted if the Canadian agreement can be modified to allow it. There are a number of considerations on both sides: (1) the service would generally be one which has existed in the past and on which the public has come to rely; (2) with few stations on these channels compared to the I-B and regional frequencies, there are fewer sources of actual or potential interference (there are no more than 6 Class II stations, including fulltime stations on some channels, in the continental United States on any I-A frequency), and in general no more assignments can be

3/ In addition to the present matter and modification to specify 6 AM "local time", general subjects discussed included possible modification to permit use of daytime facilities by Class I-B stations where such operation would provide full nighttime protection to co-channel fulltime stations in the other country (as requested by Station KFAB, Omaha). Modification of the agreement in this respect also appears to be a possibility; we have under consideration the question of whether any further action in this area appears warranted.

4/ In the conterminous 48 states, there are, on the 24 U.S. I-A channels other than 770 kc/s, 28 daytime-only or limited-time Class II stations located west of the co-channel dominant station, plus 10 fulltime Class II-A stations authorized or applied for, and a fulltime Class II station at San Diego. On 770 kc/s, the exact status of fulltime Station KOB, Albuquerque, has yet to be determined; if it is regarded as a "dominant" station along with WABC, there is one limited-time Class II station to the west of it; if WABC is regarded as the only dominant station there are three daytime-only or limited-time Class II's to the west (counting KUOM-WCAL, which share time, as one station).

made under present allocation rules; 5/ (3) a 6 AM limitation has been imposed on all other pre-sunrise operations and reasons of equity and technical parity may indicate a similar restriction here; (4) pre-sunrise operation may be a significant source of interference to the wide-area service of Class I-A stations and also to Class II-A stations designed to render extensive "white area" service at night; and operation earlier than 6 AM, further before local sunrise, would be likely to cause even more interference; (5) while a number of these stations, as mentioned, have operated earlier than 6 AM local time during all or a large part of the year, it may be that the need for local informational service which makes pre-sunrise operation desirable has largely been met by the existing provision for starting operation at 6 AM, particularly if the rule is changed to read 6 AM "local time".

4. Therefore, comments are invited on the question of whether, and if so, to what extent, Class II stations on U.S. I-A clear channels, located west of the co-channel dominant station, should be permitted to operate before 6 AM local time, with such operation of course not to begin earlier than sunrise at the Class I station. Narrower aspects of this broad question, on which comments are invited, include the following:

(a) if such operation is to be permitted, should it be permitted to begin at 4 AM "local standard time" (i.e., 5 AM local time during the daylight-saving time months), as was permitted under former Section 73.87, or should some later time, such as 5 AM local time, 5:30 AM local time, etc., be selected? (In no event would operation be permitted before sunrise at the dominant station).

(b) if such operation is to be permitted, should the maximum permissible power be that to be decided on for post-6 AM pre-sunrise operation in Docket 17562 (where we have proposed a 500-watt limit) or should it be a lesser power than that decided on for the later hours?

(c) should any operation before 6 AM local time, if permitted, be only where the station would operate with facilities affording a specified degree of protection to the Class I station, and if so, what should that degree of protection be?

(d) should such operation be permitted only on frequencies where there are no fulltime stations in the conterminous 48 states other than the dominant station--i.e., not on frequencies having Class II-A stations authorized or applied for, or 770 kc/s? 6/ If

5/ The only new assignment in the conterminous 48 states could be a Class II-A station on 890 kc/s (Utah).

6/ We do not mean that we regard protection of the service of these stations as more important than protection of Class I-A service. But if a particular daytime-only or limited-time pre-6 AM operation would cause substantial interference to both kinds of service, preclusion might be warranted.

such operation is to be permitted on these frequencies, what standards of protection should be provided with respect to Class II-A stations and for Station KOB, Albuquerque, New Mexico?

(e) to what extent should fulltime stations in the conterminous U.S. on these channels (those referred to in the above subparagraph and on 760 kc/s at San Diego) be permitted to use daytime facilities before 6 AM, bearing in mind the need for protecting the dominant station to the east, the possible answer to question (d) above, and the fact that pre-sunrise use of daytime facilities is not necessary for the stations to broadcast during these hours?

(f) whether, aside from whatever other restrictions may be appropriate, pre-sunrise operation should be limited to that engaged in during the year prior to October 28, 1967 (we are tentatively of the view that while maintenance of existing operations may be desirable, it would not be in the public interest to contribute to further interference inroads on Class I-A service by permitting more extensive pre-sunrise operation than that which has taken place up to now).

5. We are not presenting for consideration the question of operation before 6 AM local time by Class II stations located east of the I-A station. The issues of whether such stations should operate pre-sunrise at all, and of re-defining the pre-sunrise starting time as "6 AM local time", are under consideration in Dockets 17562 and 18023. Of the five Class II stations so situated which have expressed an interest in pre-sunrise operation recently (in requests filed during the latter part of 1967 and in comments in Docket 17562) none seeks an earlier hour, and, considering the fact that any pre-sunrise operation by these stations occurs before sunrise at the dominant station, we do not propose to consider pre-6 AM operation by them except during months when their own local sunrise is earlier.

6. Modification of the existing pre-sunrise agreement with Canada in respect to this type of operation would be on the basis that, if and when fulltime Canadian stations are assigned on any of these frequencies, they receive full protection under the standard of the North American Regional Broadcasting Agreement (NARBA), before 6 AM and that the pre-sunrise agreement of June 1967, would apply to operation after 6 AM. While this is not an immediate consideration since there are now no such stations, the rule modification under consideration here would contain a provision that any pre-sunrise operation authorized will be subject to subsequent modification where necessary to achieve this result, just as all present pre-sunrise operation is subject to modification in light of subsequent assignments in foreign countries.

7. The U.S./Mexican agreement provides for fulltime Mexican stations on four U.S. I-A channels. Our proposal for pre-6 AM operation would require any such operation pursuant to pre-sunrise operating authority (PSA), to afford these stations full protection under the nighttime standards of the U.S./Mexican agreement.

8. It is desirable to resolve this matter before sunrise again occurs relatively late after the mid-summer months. Accordingly, and since the question of pre-sunrise operation by Class II stations on U.S. I-A channels has just been explored at length by interested parties in Docket 17562, we are setting fairly short dates for comments and reply comments, March 22 and April 8 respectively. Parties are urged to incorporate by reference material filed in Docket 17562, rather than re-submitting it.

9. Pursuant to applicable procedures set out in Section 1.415 of the Commission's Rules, interested parties may file comments on or before March 22, 1968, and reply comments on or before April 8, 1968. All relevant and timely comments and reply comments will be considered by the Commission before final action is taken in this proceeding. In reaching its decision in this proceeding, the Commission may also take into account other relevant information before it, in addition to the specific comments invited by the Notice.

10. In accordance with the provisions of Section 1.419 of the Rules, an original and 14 copies of all comments, replies, pleadings, briefs, and other documents shall be furnished the Commission.

FEDERAL COMMUNICATIONS COMMISSION

Ben F. Waple
Secretary