

FCC 68-859

BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In the Matter of  
AMENDMENT OF SECTION 73.99 OF THE COM-  
MISSION'S RULES (PRESUNRISE SERVICE } Docket No. 18023  
AUTHORITY) TO SPECIFY 6 A.M. "LOCAL  
TIME"

FIRST REPORT AND ORDER  
(Adopted August 21, 1968)

BY THE COMMISSION: COMMISSIONER COX CONCURRING AS TO THE CHANGE TO LOCAL TIME BUT ABSTAINING FROM VOTING ON THE BALANCE OF THE MATTERS COVERED; COMMISSIONER WADSWORTH ABSENT; COMMISSIONER JOHNSON CONCURRING IN THE RESULT.

1. This proceeding concerns amendment of section 73.99, the "presunrise" rule, to specify "6 a.m. local time" instead of "6 a.m. local standard time" as the starting time for presunrise operations conducted under Presunrise Service Authority (PSA).<sup>1</sup> Canada has concurred in a corresponding change in the language of the Canada-United States presunrise agreement of 1967 (TIAS 6268). The change would reflect the fact that "advanced" or "daylight-saving" time has become almost universal in the conterminous United States following enactment of the Uniform Time Act of 1966, and therefore during the months from late April until late October 6 a.m. "standard time" (using that term in its traditional sense, as for our purposes it must be) means 7 a.m. "local time". Since stations can use their licensed daytime facilities after local sunrise, this is not a great problem in May, June and July, when sunrise is often 5 a.m. standard time or earlier; but it becomes a substantial problem in August and September and, for the great majority of daytime-only stations, it delays sign-on until 7 a.m. for most of October. We recognized this as a problem in the memorandum opinion and order issued on reconsideration in the presunrise proceeding last October (docket 14419, FCC 67-1143; 10 FCC 2d 283, 11 R.R. 2d 1571) and in the notice of proposed rulemaking herein we expressed the tentative view that an adjustment should be made, to provide a uniform 6 a.m. sign-on in terms of the time standard actually observed in the community.

2. As developed in the record herein, there are substantial differences between the circumstances pertaining to the regional and I-B channels, on the one hand, and the U.S. I-A channels on the other. The present document deals only with class III stations on the regional channels

<sup>1</sup> The term "presunrise operation" where used herein means use of daytime or critical-hours facilities before local sunrise. It does not refer to use of licensed nighttime facilities during these hours, or to sign-on at local sunrise when that is before 6 a.m.

and class II stations on I-B channels. The decision with respect to Class II stations on U.S. I-A channels will be issued at a later date. *Comments Concerning Stations on the Regional and I-B Channels*<sup>2</sup>

3. Supporting comments: formal comments supporting the proposal were filed on behalf of 101 stations on these channels, including eight daytime-only class II stations, 24 fulltime regional stations, and 69 daytime-only regional stations.<sup>3</sup> Most of these are quite brief, and many stations filed in joint comments, so that the comments number about 35. There were no reply comments concerning these channels. These stations, along with other commenting parties, are listed in appendix A hereto. Daytime Broadcasters Association (DBA) also filed a comment supporting the proposal.

4. Of the comments of the daytime-only stations, most endorsed our tentative view that a 6 a.m. "local time" sign-on should be adopted and sometimes noted with approval our statement in the docket No. 14419 decision that a 7 a.m. "local time" sign-on, which nearly all daytimers would be limited to under the present rule in October, is simply not early enough in terms of the life of the community to meet the need for local informational service which the record in docket No. 14419 established.<sup>4</sup> Numerous stations in these and other comments assert the need for and desirability of a uniform sign-on time, reasonably early in the day and geared to the life of the community, which—particularly after enactment of the Uniform Time Act of 1966—is generally based on daylight-saving or "advanced" time from late April until late October. It is asserted that the rule change is necessary to be consistent with the Uniform Time Act (which adopted daylight-saving time for other purposes) and to bring standard broadcasting into conformity with community life. The present rule, it is said, leads to an illogical situation, since people live by the clock, not the sun, in our increasingly urban society. Some stations urge that the change is necessary to correct what they regard as a somewhat anomalous development of recent years, i.e., while in docket No. 14419 the Commission was trying to make provision for a reasonable amount of presunrise local broadcasting starting at 6 a.m., the Uniform Time Act was in effect negating that effort by making 6 a.m. "local time" the same as 5 a.m. "sun time" during half the year. It is also asserted that the change would only restore the possibility of having a desirably early and uniform sign-on time which most daytimers enjoyed under former section 73.87.

5. A number of stations point to the absence of any interference complaint against their earlier and more extensive presunrise opera-

<sup>2</sup> As to the I-B channels, the points advanced by the eight class II stations filing are the same as those of regional daytime stations, without reference to any special aspect of the situation on these channels. The same is true of the comments of Association on Broadcasting Standards, Inc. (ABS), opposing the proposal, some of whose members are fulltime class II stations, CBS, expressing doubt as to the merit of the proposal, is the licensee of one I-B station; but its comments did not deal with problems on specific channels.

<sup>3</sup> There were also a number of letters and informal comments supporting the proposal. One class IV station (LaGrange, Ga.) urged that some relief be given to class IV stations with respect to presunrise operation, stating that it is difficult for them to compete with daytime-only stations; and another (Auburn, N.Y.) expressed the view that the proposal is a further deviation from sound engineering standards designed to impose a reasonable limit on interference. This station is in the same community with a daytime-only station.

<sup>4</sup> 8 F.C.C. 2d 693, 715; 10 R.R. 2d 1580, 1605.

tions as reason for the change. It is urged by some parties that, while the change would result in some additional interference to fulltime service (as we recognized), the fulltimers affected have benefitted from the general reduction in interference resulting from the new restrictions contained in section 73.99 (presunrise operation limited to no more than 500 watts power and 6 a.m. and after, compared to full day facilities and as early as 4 a.m. under the former rule), and that the benefits from the additional service definitely outweigh any detriment from additional interference caused. Attention is called to the statement in the notice that the interference level resulting during the daylight saving months (when 6 a.m. local time would be 5 a.m. "sun time") would be less than that prevailing under the present rule in January; and it is asserted that if we (correctly) viewed the latter as being of less significance than the benefits accruing from presunrise service, we should certainly take the same view as to the daylight-saving portion of the year.

6. Many daytime stations urge the importance of the hours involved here in terms of informational service to their communities and areas, providing such material at a time when it is needed and when the audience is available to receive it (before schoolchildren leave for schools or buses, before farmers and factory workers leave for work, etc.). It is asserted by a number of stations that the audience at this time is larger than it is at other times of the day, and it would be a definite public disservice to deprive them of this valuable broadcasting. Audience reliance on this service is asserted by several stations. Among the types of material said to be important for presentation during these hours are farm information, weather, local and general news, information about school closings, and changes in schoolbus schedules, road and traffic conditions, announcements of community activities, school lunch information, and similar material. Stations WAEW (Crossville, Tenn.) and WXXX (Hattiesburg, Miss.) attached supporting letters to their comments from civic, school, and agricultural officials, urging the importance of service at 6 a.m. local time for some of these purposes.

7. Daytime stations pointing to the need for presentation of their farm programming at an early hour (it is stated that farmers are in the fields well before 7 a.m.) include KATR, KEST, KGRN, KXXX (in an earlier petition incorporated herein), WAEW, WALY, WBKN, WILE, WJOT, WMUU, WNCC, WOTT, WTCR, and WXXX. Specific points urged include: Importance of early weather and other information for the farming and timber industries (KATR, Eugene, Oreg.) and numerous fruitgrowers in the area (WCCW, Traverse City, Mich.); the importance of early farm information from the only AM stations in communities in agricultural areas (KGRN and WILE); value of market information at 6:25 a.m. so farmers can take their livestock to appropriate city markets (WAEW, Crossville, Tenn., indicated in a supporting letter); need for farm information to reach farmers listening between 5:30 and 6:30 (WXXX, in a supporting letter from the county agent); need to reach the farm audience with information before 7 a.m. since it must do its work on "sun time" (WJOT); the need for early AM service to bring part of a longstand-

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ing 5:30-6:30 farm program to those many rural listeners without FM sets (WGSA); need for pre-7 a.m. broadcasting to present Clemson University and Southeastern market information to wide area rural audiences, as well as country and western music (WGUS) or religious programing (WMUU); need to provide weather and farm information to the 60 percent of the 500,000 people served which is nonurban (WTCR, Ashland, Ky.); the undesirability of the present restriction in cases where stations are already hampered in reaching wide area farm audiences by the new presunrise time and power restrictions (WOTT); and need to present early morning programing (all of the first half-hour of the day) of local and national agricultural information to the areas of substantial farm audience (KEST). The extensive showing of station KXXX, Colby, Kans., in its filings in docket No. 14419 has been discussed before and need not be further mentioned here (see report and order in docket No. 14419 (app. A), and memorandum opinion and order in the same proceeding, 8 F.C.C. 2d 708, 713; 10 R.R. 2d 1595, 1602; 10 F.C.C. 2d 290-291, 11 R.R. 2d 1581-1582). A class II station on a I-A channel (WRFD) asserts that early market reports are particularly important during August and September, the harvest months.

8. Several stations mention the need for presenting significant material to audiences before they leave for work. Station WHUT (Anderson, Ind.) mentions its longstanding "factory whistle" 6 to 7 a.m. program, designed to reach workers starting their shifts at 7. Similar claims are made by WGTA (Summerville, Ga.), WDYX (Buford, Ga., mentioning the fact that most of the work force there must leave for work in other places), WHIE (Griffin, Ga.) and WHIP (Mooresville, N.C.). The need for reaching workers with work schedule changes is mentioned. Stations WAEW and WXXX, in comments and supporting letters, mention the need to reach workers, public employees, etc., beginning work at 7; WTCR makes a similar claim. Stations WENN (Birmingham) and KCOH (Houston), which have long signed on well before 6 a.m. and feature Negro programing, assert the importance of providing significant material of various types to that segment of the population, which goes to work early; WTMP, Tampa, makes a similar claim.

9. Numerous stations mention the need for school closing and school-bus cancellation announcements. Usually it does not appear how much of a problem this is during the months involved here (letters supporting WAEW's comments refer to the particular need in times of ice and snow); but WGTA refers to area schools starting in August, "producing daily bus route schedule changes." Transmissions necessitated by severe weather conditions may be undertaken irrespective of presunrise limitations provided the emergency operation complies with the provisions of section 73.98 of the rules. See in this connection the petition for reconsideration of station KXXX and the previous discussion thereof (see para. 7).

10. Various stations assert other particular needs for early morning informational material. These include: Early weather and fishing information in recreational areas (WCCW and WDYX, the former pointing out that this is an important industry in Michigan with the

trout season beginning at the end of April); the same with respect to commercial as well as recreational fishing, at the height of the season from August to October (KLEB, Golden Meadow, La.); information about windstorms, electrical storms and hurricanes (WGTA and Florida stations WCWR and WELE); the need to bring wire and network news to audiences when they are available, with less than half of the audience subscribing to daily newspapers (WTCR); the importance of the only AM station in a county as an informational medium (WLEM, Emporium, Pa., WDXE, Lawrenceburg, Tenn., and WTPR, Paris, Tenn.); early weather information for building contractors as well as farmers (KJEF, Jennings, La.); and the need to continue a 6-6:30 Portugese-language program unique in the area, said not to be suitable for effective presentation on FM (KGEN, Tulare, Calif.).

11. A number of daytime stations refer to the economic effect of being confined to a 6 a.m. "standard time" sign-on. Stations KATR, KEST, KGEN, and WENN (and to a lesser extent others) emphasize the extent to which their operations have already been curtailed under the new presunrise rule (all previously began operating at 5 or 5:30 a.m. with full daytime facilities) and assert the loss of revenue involved; KGEN, which has a companion FM station, asserts that it has been able to absorb some of the billing losses on FM, but that there are practical limits on the extent to which FM can perform this function. WENN asserts that its previously high ratings have already declined. KATR, KEST, KBER (San Antonio), and WOTT (Watertown, N.Y.) assert the need for the additional time to help them compete with full-time stations in their communities (WOTT calls attention to the fact that its competitor is both full-time and newspaper-owned). KBER, KGRN, WBRJ (Marietta, Ohio), WILE, and WOTT assert that a uniform sign-on time is necessary to build up consistent listening to agricultural and other public-service programming. WOTT, KBER, and WBRJ assert the need for reaching the "commuter audience" during "drive-time" which would be adversely affected if a 7 a.m. sign-on is required. Three of these stations, which feature country-and-western formats, assert that they appeal to an adult audience, of which the "commuter audience" is an important segment. WBRJ (which did not operate presunrise until the docket No. 14419 decision because it was conditioned against it) asserts the importance of a uniform sign-on time in attracting clock-radio listeners.

12. As described by WENN and some other stations (including KATR, WJOT, WMUU, WTMP, and WAVO, Decatur, Ga.) the limitation to a sign-on later than 6 a.m. local time will have various adverse effects from the station's standpoint. The time involved is said to be very valuable, and its loss represents loss of needed revenue. Some advertisers buy time during these periods or not at all, and will be lost to the station (WAVO asserts that it would lose a longstanding 6:45 a.m. sponsor). Others will continue, but their commercial material will have to be run during other times of the day, resulting in an undesirable spacing of commercials during such other times or turning into commercial time periods which are now devoted to nonrevenue

public service activities. It is said that the loss of revenue involved will, or at least might, affect the station's ability to present desirable public-service material. KGEN asserts that successful commercial operation is necessary to the maintenance of well-balanced, localized programming and a high-quality staff. In its earlier petition for reconsideration KXXX asserted the extreme importance of early hours to advertisers interested in the farm audience, and asserted that the total effect of the presunrise rules (meaning sharp reduction in both power and hours) would jeopardize the 25 percent of its revenue which comes from "farm" accounts.

13. To a degree, some of the comments are misleading in that they imply that the existing restriction would be to 7 a.m. local time during the entire daylight-saving portion of the year. This is the case with very few stations in the United States and only one filing here (KIZZ, El Paso, Tex.) where sunrise is 6 a.m. central standard time in June and later during all other months; the station points out the extreme effect of the rules on it. With respect to the 68 daytime regional stations filing (besides KHAT), the limiting effect of a 6 a.m. "standard time" presunrise sign-on is as follows:<sup>5</sup> all but four (stations in Tennessee, Alabama, and Florida, which can sign on at local sunrise at 6:45 a.m. c.d.s.t.) would be limited to 7 a.m. local time in most of October. In September, 35 would be limited to 7 a.m., 16 could sign on at 6:45, 16 at 6:30, and one (Crossville, Tenn.) at 6:15. In August, 12 would be limited to 7 a.m., 16 could sign on at 6:45, 10 at 6:30, 12 at 6:15, and 18 at 6 (or in some cases earlier). All but two would be affected for the last days in April. In May (and usually in July) KIZZ would be limited to 7 a.m., 5 stations to 6:45, 11 to 6:30, 16 to 6:15, and 35 could sign on at 6 or earlier local time. In June, KIZZ would be limited to 7 a.m., nine others to 6:30, seven to 6:15, and the remainder (51) could sign on at 6 or earlier.<sup>6</sup>

14. As to the stations specifically mentioned in paragraphs 7 through 12 above (aside from WRFD), all would be required under the present rule to sign on after 6 a.m. local time in the last few days of April, and, of course, they would not be so limited during the last few days in October after daylight-saving time ends.<sup>7</sup> Aside from the effect in April, and counting October as a full month, these stations under the present rule would lose broadcast time after 6 a.m. local time as follows (the figures are the number of post-6 a.m. minutes per day unavailable

<sup>5</sup> This discussion is based on average times shown in Commission records for the locations of these stations, and assuming that all of the conterminous United States (where all of these stations are located) observes "advanced" time from the last Sunday in April until the last Sunday in October, except Arizona.

Station KHAT, Phoenix, has not been included in these figures or the discussion in pars. 11 and 14, because Arizona has elected not to observe daylight-saving time during 1968, according to our information. This station thus is not limited to sign-on after 6 a.m. at any time and would not be affected by the proposed rule change.

<sup>6</sup> Of the eight class II stations on I-B channels filing comments, the rule change would give four 1 additional hour in October (the other four would not gain); in September it would give 1 hour to two, 45 minutes to one, 30 minutes to four and 15 minutes to one; in August it would give 1 hour to one, 45 minutes to one, 30 minutes to three, and 15 minutes to three; all would gain time during the last few days of April; in May, two would gain 15 minutes and two 30 minutes; one would gain 15 minutes in June; and in July one would gain 30 minutes and three 15 minutes. The lesser effect in four cases (e.g., no gain in October) results from the fact that these stations (all in the eastern time zone) are limited by sunrise at the class I-B station to the east, at New York City, Philadelphia, or Schenectady.

<sup>7</sup> In 1969, 1970, and 1971, respectively, daylight-saving time begins on Apr. 27, 26, and 25, and the last day is Saturday, Oct. 25, 24, and 30.

in the respective months set forth immediately preceding the station or stations mentioned) : Of the 17 stations mentioned in paragraph 7 as emphasizing agricultural programming, four would be limited only in September and October (KXXX 30 and 60, WAEW 15 and 45, and WALY and WOTT 45 and 60 minutes).<sup>8</sup> Six would be limited in 3 months, August, September, and October (KATR, KGRN, WBKN, WGSA, and WXXX, 15, 45, and 60, and WNCC, 30, 60, and 60). Five would be limited in 5 months, May, July, August, September, and October (KEST, WCCW, WJOT, and WTCR, 15, 15, 45, 60, and 60, and WILE, 15, 15, 30, 60, and 60). Two would be limited for 6 months, May through October (WGUS and WMUU, 30, 15, 30, 45, 60, and 60). Of the stations mentioned in paragraph 8 (other than WAEW, WTCR, and WXXX just mentioned), one would be limited in 3 months, August, September, and October (WENN, 15, 30, and 45) ; one would be limited during 5 months: May, July, August, September, and October (WHIP, 15, 15, 45, 60, and 60) ; and six would be limited during 6 months, May through October (WTMP, WHIE, and WGTA, 45, 30, 45, 60, 60, and 60; WHUT, 30, 15, 30, 60, 60, 60; KCOH, 30, 15, 30, 45, 60, and 60; and WDYX, 30, 30, 30, 60, 60, and 60). Of the stations mentioned in paragraph 10 as urging various other needs (and not just mentioned above), four would be limited for 3 months, August, September, and October (KGEN and WLEM, 15, 45, and 60, and WDXE and WTPR, 15, 30, and 60) ; one would be limited for 5 months, May, July, August, September, and October (KLEB, 15, 15, 30, 45, and 60) ; and three would be limited for 6 months, May through October (WCWR, 45, 30, 45, 60, 60, and 60; WELE, 30, 30, 30, 45, 60, and 60; and KJEF, 15, 15, 15, 30, 60, and 60). Of the three stations mentioned in paragraphs 11 and 12 concerning economic impact (and not covered above), one would be limited during 5 months, May, July, August, September, and October (WBRJ, 15, 15, 30, 60, and 60) ; and two would be limited for the 6 months from May through October (WAVO, 30, 30, 30, 60, 60, and 60; and KBER, 45, 30, 45, 60, 60, and 60).<sup>9</sup>

15. Supporting comments by fulltime regional stations: Section 73.99 of the rules permits fulltime class III and some fulltime class II stations to obtain PSA's for presunrise use of their daytime modes of operation from 6 a.m. standard time with up to 500 watts power (there are certain other restrictions on class II stations). In addition, following a "stay" order issued by the U.S. Court of Appeals for the Second Circuit (New York) in October 1967, fulltime stations have been able to obtain temporary authority to use their daytime modes during the same hours with whatever power above 500 watts (up to full daytime power) could be used consistent with foreign protection requirements (and in the case of class II stations, certain protection requirements as to cochannel U.S. class I stations). This "stay" order was issued because of the pending appeals of various parties from our "presunrise" decision; these appeals were denied and the Commission affirmed

<sup>8</sup> In its petition for reconsideration KXXX made the argument that, with most of its audience located in the central time zone although Colby is in the mountain time zone, 6 a.m. m.s.t for it is 8 a.m. "local time" for many of its listeners.

<sup>9</sup> Thus, WAVO could not present its 6:45 program, specifically mentioned, during 3 months of the year, late April, August, September, and most of October.



on May 10, 1968 (*WBEN, Inc., et al. v. U.S. and FCC*, C.A. 2, docket Nos. 31688 et al.). These operations, with more than 500 watts power, are permitted to continue pending further judicial review which has been sought; but (unless such review requires continuation) they will be terminated in the near future, so that presunrise operation by fulltimers, as well as daytimers, will be only pursuant to PSA and with no more than 500 watts. Use of daytime modes of operation is, of course, not necessary for these stations to operate before sunrise, since they have regularly licensed nighttime facilities; but these are usually considerably more restrictive than the facilities authorized for daytime use (lesser power, directional compared to nondirectional, etc.), and numerous fulltimers have applied for and received PSA's and temporary authorizations. However, even with the availability of temporary authority for presunrise power in excess of 500 watts, only a minority of fulltime stations have elected to use their adjusted daytime facilities rather than their licensed nighttime facilities, and this number probably will decline when all such operation is limited to 500 watts or less.<sup>10</sup> The remainder will use authorized nighttime facilities during the presunrise period.

16. Of the 24 fulltime stations supporting the proposal—all on regional channels and all holding PSA's or temporary authority (or both)—a number filed general comments, either jointly with daytime stations without discussion of the fulltime station's situation or blanket assertions that use of daytime facilities gives better service than the more restrictive nighttime directional patterns with considerable "null" areas. Some of the comments (e.g., KTLI, KAGO, and KGMS) are essentially a plea for use of full daytime facilities from 6 a.m. local time; but others assert the importance of using daytime modes of operation even with less than 500 watts. Station KPFL, Lafayette, La. (250 watts), asserts that even so limited its early morning service contours will encompass more people with needs and interests tied to the principal community than would operation with licensed nighttime facilities; and KLVV (Pasadena, Tex.), likewise limited to less than 500 watts, stresses the need to reach the large Spanish-speaking audience (said to have no other Spanish-language medium available at this hour) with informational material before it leaves for work shifts starting at 6 or 7. Station KVOL, Lafayette, La. (temporary authority for 850 watts), urges the need to bring farm and market news to a large rural area, asserting that such information is not available from other stations (the economy resulting from not having to employ a first-class operator for directional operation during the presunrise period is also noted).

<sup>10</sup> Of approximately 830 fulltime class III regional stations in the conterminous 48 States, 201 hold PSA's; 78 of these also hold temporary authority for use of more than 500 watts; and 107 hold temporary authorizations for such higher power but have not applied for PSA's, a total of 308 authorized presunrise operations. This compares with approximately 1,050 out of 1,225 daytimers on regional channels which has PSA's. On the I-B channels, very few fulltimers (only nine) have presunrise authority, and the percentage of daytimers with PSA's is also smaller.

In the remainder of the United States (Alaska, Hawaii, Puerto Rico, the Virgin Islands, and Guam) nearly all stations are authorized for fulltime operation, usually with the same facilities day and night; there is only one authorized presunrise operation (a daytimer in Alaska on 630 kc/s).

17. Opposing comments: aside from the general CBS comments (footnote 2 above), three parties opposed the extension of presunrise operation on these channels, because of the additional interference involved. These were Association on Broadcasting Standards, Inc. (ABS), and the licensees of fulltime class III stations KXOK, St. Louis (630 kc/s) and WBEN, Buffalo (930 kc/s). ABS and WBEN participated in the basic presunrise proceeding, opposing operation as there proposed and decided on, and their later appeals from the decision in docket No. 14419 were recently denied as noted above. The record in that proceeding also contained information as to KXOK, although it did not file comments.

18. KXOK and WBEN both claim (on the basis of engineering showings discussed below) that the additional interference to them resulting from a presunrise starting time of 5 a.m. "suntime" (6 a.m. local time) would be excessive (disputing the statement in the notice herein that it would not be). On the basis of conventional nighttime interference computations, it is stated that the R.S.S. limit to KXOK at 4 a.m. c.s.t. in October would be 5.19 mv/m, when four cochannel eastern time zone stations could commence operation under the proposal (5 a.m. e.s.t.), rising to 8.67 mv/m at 5 a.m. c.s.t. when six other central time zone stations could begin operating, compared to a normal nighttime limit of 2.18 mv/m and normally protected contour of 2.5 mv/m (the limit includes two mountain time zone stations after 6 a.m. c.s.t. (5 a.m. m.s.t.)). In the case of WBEN, a similar engineering exhibit portrays the interference from 13 eastern zone cochannel stations to be 14.5 mv/m at 5 a.m. e.s.t. in October, rising to 15.4 mv/m at 6 a.m. e.s.t. when six cochannel central zone stations would begin operation, compared to a normal nighttime limit of 2.08 mv/m and a normally protected nighttime contour of 2.5 mv/m. A considerable "loss" area lies between these contours in both cases.

19. Various arguments are urged against the proposal by these parties. KXOK asserts that the docket No. 14419 decision—including limiting presunrise operation to 6 a.m. standard time—was an appropriate balance and, in view of the lesser need for presunrise operation during summer months, the availability of FM to many daytime stations and the possibility of other operation outside of licensed hours during emergencies, the further erosion through interference from the proposed extension of presunrise hours is not warranted.<sup>11</sup> WBEN asserts that we cannot permit additional presunrise operation by the stations mentioned by it without information as to the interference impact on it versus the service area gained, the availability of other service during these hours to the respective areas and the programing to be gained and lost—information which we do not have and could not expect to get in the short time allowed for comments. ABS opposes the proposal "unless it is modified to curb interference to existing AM broadcast services," and labels it a "proposal to extend further

<sup>11</sup> KXOK essentially repeats language from the decision on reconsideration in docket No. 14419 (par. 4, 10 F.C.C. 2d 284-285, 11 R.R. 2d 1575) concerning the relative value of presunrise operation during daylight-saving time months as compared to winter months. However, our statement was advanced as a possibility rather than an absolute fact and followed by a recognition of the values of a uniform 6 a.m. sign-on.

the presunrise operating privilege in derogation of sound engineering principles," without the justification claimed to exist for presunrise operation generally (e.g., there is no need for school cancellation announcements during these months). It is claimed that our basic presunrise decision was arbitrary and capricious, made without the findings required by sections 303(f) and 307(b) concerning the quantum of service to the public to be gained and lost; that we apparently view that decision as dispositive of the present question; and have in fact decided this matter and are only giving "lip-service" to administrative requirements of due process; and that we have underestimated the interference actually involved here. ABS asserts here, as it did in its unsuccessful court appeal, that the Commission had adopted a "qualitative" approach to evaluating service and interference, without explanation or giving criteria used in applying such a concept. (It is said that we do not know, or apparently intend to determine, the service loss which will result from the presunrise extension.) ABS does not accept our view expressed in the Notice that the value of the service rendered will exceed the loss through interference.

20. ABS, and to a lesser extent WBEN and CBS in the general comments noted above, object to the manner in which this proceeding has been conducted, the short dates for comments, and apparent hurry to reach a decision, which, it is said, indicates that we have already reached a conclusion. ABS asserts that the proceeding is thus not designed to elicit data on which a "qualitative" determination can be based; and that, especially here where a very short time for comments was allowed, there is a heavy burden on the Commission to establish the factual basis for a change in the rule and it is not the duty of the public, in such a short time, to overcome a fixed idea by detailed factual showings. WBEN states that if the time for comments is appropriately extended it will file additional material.<sup>12</sup> It is also asserted that a quick decision is not necessary since presunrise starting time is not a factor until August; and that we should not decide this proceeding until judicial review of the basic presunrise decision has been completed.

21. WBEN refers specifically to the 6 a.m. to 7 a.m. (e.d.t.) period when it claims interference would be increased as described in its engineering showing. It mentions nine communities (including Hamburg and East Aurora) lying between its normally protected nighttime contour (2.5 mv/m) and the 14.5 mv/m contour resulting from presunrise interference and without local broadcast stations; it is stated that these will lose its service during this period, including a 6 a.m. newscast largely devoted to local and regional news, including news of this area and these communities. It is asked whether the Commission can conclude, on the information before it, that additional presunrise op-

<sup>12</sup> The notice of proposed rulemaking was adopted herein on Feb. 14, 1968, public notice of its issuance was given on that date, the text of the notice was released on Feb. 16, and it was published in the Federal Register on Feb. 21. In the notice we noted the desirability of resolving this matter before the advent of daylight saving time on Apr. 28, observed that the considerations are much the same as those concerning the presunrise question generally and much of the material submitted would probably be similar to the voluminous filings in docket No. 14419, and urged parties to incorporate by reference material filed there and in docket No. 17562. The dates for comments and reply comments were specified as Mar. 15 and Apr. 1; WBEN filed on Mar. 15. No party requested an extension of time.

eration should be permitted for station WIZR, Johnstown, N. Y., when the licensee thereof is an FM permittee and there is a fulltime station in adjacent Gloversville, N. Y.<sup>13</sup>

22. The three parties in their engineering showings study the amount of additional presunrise hours of operation involved in the proposed change. The KXOK and WBEN showings (both prepared by the engineering firm of A. Earl Cullum, Jr. & Associates) show the additional hours each of the 31 stations on 630 kc/s and 930 kc/s listed as interference sources would operate during October assuming 27 days of daylight-saving time (in all but two cases where 45 minutes of presunrise operation is involved, the additional time is an hour a day or 27 hours in the month, and total presunrise operation for the stations would range from  $20\frac{1}{4}$  hours (in the two cases) to  $47\frac{1}{4}$  hours). The ABS showing related to October and other months involved and was based on locations at various latitudes in the United States ( $30^\circ$ ,  $34^\circ$ ,  $38^\circ$ ,  $42^\circ$ , and  $46^\circ$ ); it showed the amount of presunrise operation under the present rule and the proposed rule and the amount and percentage of increase. At the  $30^\circ$  location the time would be increased annually from 98 to  $174\frac{3}{4}$  hours, or more than 78 percent; at  $46^\circ$  it would rise from  $174\frac{1}{4}$  to  $227\frac{3}{4}$ , or nearly 31 percent, with intermediate values at the other latitudes.<sup>14</sup>

23. The engineering showings of KXOK and WBEN list the daytime-only and full-time stations considered to be sources of presunrise interference (12 for KXOK, 19 for WBEN), the individual limit from each determined by nighttime standards assuming use of daytime facilities with 500 watts or (in three cases) the lesser values necessitated by foreign protection requirements, and the R.S.S. limitation from these individual limits including all of the stations listed, mentioned above. In the Notice herein it was stated that the impact of presunrise interference would be limited (inter alia) by time differentials between the interfering stations and the affected station; it is asserted that this is true in the case of KXOK (with the interfering stations lying in three time zones) but that it is not a substantial factor in the case of WBEN, where the addition of central zone stations at 6 a.m. e.s.t. (6 a.m. c.d.t.) would only slightly increase the limit to WBEN already existing from eastern zone stations.

24. In evaluating these showings, certain things should be borne in mind. First, the R.S.S. limits to KXOK and WBEN were computed including the individual limits from all of the listed stations, without applying the "50-percent exclusion principle" used in R.S.S. calculations, under which signals of less than a certain value in relation to larger signals are not included. If that principle had been applied

<sup>13</sup> The individual limit from this station to WBEN, using conventional nighttime computations, is shown to be 4.69 mv/m, the fourth highest of the limits from the stations listed on 930 kc/s.

<sup>14</sup> Insofar as it purports to depict the hours of presunrise operation by stations in the United States at various latitudes the ABS showing is an oversimplification, since sunrise time, and the amount of presunrise operation involved, varies with longitude as well as with latitude. The exhibit does not state what locations were used in the calculations; from examination it appears that it was based on locations at or near the latitudes mentioned and the 90th meridian. The exhibit shows no presunrise operation in May, June, or July except in the extreme southern location ( $30^\circ$ , July only); but, as shown in the material discussed above, this is by no means true of the United States generally, and the statements by ABS and WBEN to the effect that little or no presunrise operation takes place between April and August are therefore somewhat misleading.

the R.S.S. value would be somewhat less.<sup>15</sup> Second, as we have often pointed out, the hours involved here are during the transitional period, when full nighttime propagation and interference conditions do not obtain. This would also minimize the potential interference received. Third, in both cases a number of full-time stations are listed as among the sources of interference using daytime facilities with 500 watts (or in two cases less). These include four on 630 kc/s and 10 on 930 kc/s. It is far from certain which of these stations will elect to operate on this basis before sunrise; as noted above only a minority of full-time regional stations have done so up to now even though, temporarily, some could use more than 500 watts power. On 630 kc/s, only one of the full-time stations listed (at Ironwood, Mich.) has sought presunrise authority; on 930 kc/s, only three of the 10 stations listed have so applied (KWOC, WITN and WKCT). The situation on 930 kc/s may change when the special restrictions on presunrise operations on that frequency (limited by court order to those which will protect WBEN by nighttime standards) can be removed; but here as elsewhere it is far from certain that all or most full-time stations will elect to use daytime facilities before sunrise; and thus the interference actually would be considerably less than that shown, even on the other assumptions used.

25. It should also be borne in mind as to 630 kc/s (though not 930 kc/s) that by and large presunrise interference is something which has existed before, and in greater amount when stations could use full facilities beginning as early as 4 a.m. local standard time. This is discussed more fully in the conclusions.

26. ABS incorporates by reference a good deal of material filed by it in docket No. 14419 and in its court appeal from that decision. Most of this, which has been considered either by us or the court in affirming the Commission, need not be discussed at length here; pertinent matters are dealt with in the conclusions herein and the material is summarized in appendix B hereto. We do discuss at this point engineering material filed in docket No. 14419 long after the record therein was closed, based on skywave measurement data and analysis, which was noted in the presunrise decision but not fully considered because it was late filed for that proceeding but not, of course, for this one. ABS refers to it in support of its argument that we underestimate the amount of presunrise interference.

27. The July 1966 ABS filing was based on skywave measurements taken from November 1, 1964, to February 28, 1965, at Seattle on station KEX, Portland, Oreg., a path of 147 miles. The sunrise and sunset measurements were analyzed to obtain upper decile (10 percent) values and median (50 percent) values; the former were then used to derive a diurnal curve and factor applicable to various times before sunrise similar to that proposed in docket No. 14419 but showing considerably higher values (at 1¾ hours before midpoint sunrise, the

<sup>15</sup> See the decision concerning a petition by WSAI, Cincinnati, Ohio (1360 kc/s), against 37 PSA's on that channel, filed in Nov. 1967 and denied in December 1967 (memorandum opinion and order adopted Dec. 20, 1967, FCC 67-1363, 11 F.C.C. 2d 89, footnote 2). In that decision we considered an interference showing (by the same firm) also prepared including all listed stations without the 50-percent exclusion principle. We pointed out the different result which would be obtained if that principle were applied, and noted that material filed by that firm in docket No. 14419 had used this principle.

KEX-derived factor would be 1.58 of second-hour-after-sunset values, compared to 0.94 under the docket No. 14419 factor; at 15 minutes before sunrise the respective values would be 1.12 and 0.35). Applying these values to a specific hypothetical situation on 1150 kc/s (interference to station KAYO, Seattle, from two Washington State, daytime-only stations operating with 500 watts), the R.S.S. limit for the various times before sunrise was determined under both standards, and the values obtained by using the KEX-derived curve were of course much higher; e.g., 11.6 mv/m compared to 7.2 mv/m at 6 a.m. in December, and 9.1 mv/m compared to 3.5 mv/m at 7:15 in December. It was concluded that skywave interference values steadily increase after the second hour after sunset until the second hour before sunrise (being 30 percent higher), and do not attenuate appreciably until sunrise at the midpoint. It was stated that this raises a substantial question as to the accuracy of the docket No. 14419 curve, and it was urged that docket No. 14419 not be decided until study of the applicable physical phenomena was completed; appointment of a government-industry committee for this purpose was urged.

28. The February 1967 filing contained in its first part an analysis of generally similar measurements made on WBZ, Boston, in New York City, and on WHAM, Rochester, in Philadelphia (path lengths of 175 and 245 miles respectively) from November 1, 1965, to February 28, 1966. The same type of conclusion was reached, with particular attention to the higher values close to sunrise than those close to sunset (analysis of the upper decile (10 percent) data showed values during the 15 minutes before midpoint sunrise which were 68 percent of the second-hour-after-sunset values on one path and 76 percent on the other compared to values during the 15 minutes immediately after midpoint sunset which were 31 percent and 45 percent respectively of second-hour values). The second part of this study consisted of a derivation of the "Secant law" for the purpose of analyzing vertical-incidence measurements taken in a CCIR-sponsored measurement project in South Africa in 1961, and applying the result to oblique transmissions in the standard broadcast band in the United States. A similar result was obtained, generally correlating with the U.S. measurements mentioned. It was concluded generally that there is roughly a half hour difference between sunrise and sunset transitional conditions, so that conditions at sunset are roughly the same as those a half hour after sunrise. It was again stated that sufficient data exists so that a method of predicting skywave interference can be arrived at, and further study was urged. ABS expressed again its opposition to the docket No. 14419 presunrise proposal on the ground of excessive interference.

29. Other data: KXOK and WBEN mention the availability of full-time AM and/or FM service as minimizing the need for further presunrise operation. Of 17 daytime stations mentioned as interference sources, five are in communities with full-time AM stations, in five other cases there is full-time AM service from a community nearby or in the same county (or both); and in seven cases there is no local, nearby, or in-county full-time AM service (none of these are in urbanized areas). Of the five cases where there is no local but nearby full-time

AM service, in two cases the AM station has an FM affiliate (Lovington, N. Mex., and Johnstown, N.Y.); in Auburndale, Wis., the AM station is associated with an educational FM network; and Milford, Del., and Holyoke, Mass., have FM service available from nearby or in the same county but not locally (Milford has a vacant FM channel assigned; there is none available at Holyoke). Of the seven cases where there is no local or nearby full-time AM service, in four there is an affiliated FM station (Albertville, Ala., Toccoa, Ga., Thibodaux, La., and Sevierville, Tenn.); in Thomasville, Ala., there is an unoccupied FM channel assigned and an FM station in the same county but over 25 miles away; in Magnolia, Ark., there is nonaffiliated local FM service but no additional channel assigned; and in Aitkin, Minn., there is an FM channel assigned but no local, in-county or nearby service. All of the KXOK nighttime service area receives full-time and presunrise St. Louis AM service (including I-A station KMOX), as does all or nearly all of the WBEN service area in the United States from Buffalo stations (including I-B station WKBW). KXOK is not an FM licensee and there are no channels available. WBEN is the licensee of a wide-coverage FM station.<sup>16</sup>

30. Appendix A shows the same information with respect to the 69 daytime stations filing herein; as shown there, 40 are in places with no full-time AM outlet, in 19 of these cases there is no nearby or in-county full-time AM service, and in five cases there is no local, nearby, or in-county full-time AM or FM service or FM channel assigned. A study of stations on 1590 and 1600 kc/s, selected because these have a large number of stations, shows generally the same picture.<sup>17</sup>

#### CONCLUSIONS: THE REGIONAL CHANNELS

31. As to the regional channels, on careful consideration of the record herein we conclude that the tentative view expressed in the notice herein is correct, and that section 73.99 of the rules should be amended to read "6 a.m. local time" instead of "6 a.m. local standard time," as the starting time for operations conducted under PSA's, which will permit a reasonably early uniform sign-on time by most class III daytimers throughout the year geared to the "local clock time" of the listener. In the October 1967 memorandum opinion and order in docket No. 14419, we expressed the idea that the months of the year involved here—the daylight-saving time months from late April until late October—are perhaps not those when presunrise operation is of the most significance to the station or its audience, for example as valuable as winter months of adverse weather conditions and the high commercial activity of the pre-Christmas period. Two parties opposing the change (ABS and KXOK) express the view that this is the case, and the increase in presunrise operation and resulting interference entailed is therefore not warranted. However, we conclude that there

<sup>16</sup> In late-filed comments in docket No. 14419 WBEN showed alleged loss of service to it but did not claim any "loss" area not served presunrise by other Buffalo stations. In addition to WKBW, full-time class III Buffalo stations WGR and WEBR serve portions of the WBEN nighttime area.

<sup>17</sup> Of the 88 daytime stations on 1590 and 1600 kc/s now holding PSA's, 65 are in places with no full-time AM outlets, including the following where there is no local, nearby, or in-county full-time AM or FM service or FM channel assigned: Lafayette, Nashville, and Thomaston, Ga.; Mount Vernon, Ind.; Eminence and Lebanon, Ky.; Wayne, Nebr.; Bryson City and West Jefferson, N.C.; St. Helens, Oreg.; and Carthage, Tex.

is a substantial need for presunrise informational service of local origin during these months, also, as shown by the material discussed in paragraphs 7 through 10, above. These are not, to be sure, the months when bad-weather conditions make necessary frequent announcements concerning school and schoolbus cancellations (one of the most frequently urged considerations in support of presunrise operating privileges); and when severe weather conditions create real emergency situations, the emergency operating rule (sec. 73.98) permits operation on a very specific basis. But aside from these matters there appears from the above-discussed material to be a substantial need for provision of other kinds of information, such as agricultural material, news, road and traffic conditions, etc., and to supply informational announcements to members of the audience before they leave for work or school. The facts set forth (pars. 29-30) support the conclusion we reached in docket No. 14419 that presunrise operation should be provided for, on a limited basis, in the interest of bringing needed service where it is otherwise lacking. The needs demonstrated for the additional service during the "advanced time" months make it clear that the benefits from the relaxation of the rule outweigh the detriment from interference.

32. The restrictive effect of the present rule has been noted above (see pars. 13-14). The same is true with respect to the stations on 630 kc/s and 930 kc/s mentioned by KXOK and WBEN, and the daytime stations on 1590 and 1600 kc/s also referred to in paragraph 30, above.<sup>18</sup>

33. We are aware, as ABS and KXOK point out, that the adjustment proposed and decided on herein represents, to a degree, a departure from the proposal contained in the 1962 further notice in docket No. 14419, as well as the decision reached in that proceeding, both of which provided for presunrise operation starting at 6 a.m. local standard time. In connection with the decision to make this change, it is appropriate to discuss briefly the background of "daylight saving time" and the presunrise proceeding.

34. "Daylight saving" or "advanced" time has been part of American life for half a century, or since 1918, and overall has prevailed in an increasing portion of the country during the years between then and the Uniform Time Act of 1966. However, except for wartime years it was always a matter of State or local option, not in effect in substantial part of the United States—perhaps particularly those less thickly settled States of the South, Southwest, and West where listeners must rely on daytime-only stations for local AM service—subject to change from year to year, and, equally important, where in effect prevailing for varying period of the year, such as May 1 to September 1 or late April to late September. Under these circum-

<sup>18</sup> Of the 17 daytime stations mentioned by KXOK and WBEN, three would be limited to sign-on after 6 a.m. local time in 6 months (late April to late October), two in 5 months, one in 4 months, six in 3 months, and five in 2 months. Fifteen would be limited to 7 a.m. in most of October, five in September also, and one in August as well. Of 87 daytime stations on 1590 and 1600 kc/s holding PSA's, 32 would be limited to sign-on after 6 a.m. during 6 months, 12 during 5 months, five during 4 months, 24 during 3 months and 14 in 2 months (excluding late April and counting October as a full month). Eighty-five would be limited to 7 a.m. sign-on during most of October, 55 also in September, 20 during August as well, and one in all of the daylight-saving time months. These figures do not include a station at Tucson, Ariz., not affected by the standard time problem (see footnote 5).



stances, it would have been difficult, perhaps impossible, to devise a practicable presunrise rule in terms of a particular starting time expressed in "local time." The difficulty would have been even greater in basing the necessary international agreement on such a concept. Therefore the 1962 further notice, and the proposal to Canada and tentative agreement reached at the administrative level in October 1965, were in terms of 6 a.m. "local standard time."

35. The enactment of the Uniform Time Act of 1966, effective April 1, 1967, of course changed this situation, by adopting "advanced time" from the last Sunday in April until the last Sunday in October as a matter of national policy except where a State elects to remain on non-advanced time all year; and in 1967 and 1968 the advancement has generally prevailed throughout the continental United States. However, the Canadian agreement was negotiated and formalized in terms of 6 a.m. "local standard time," and our domestic rules therefore could not have been adopted on another basis. The parenthetical statement in the docket No. 14419 decision mentioned by KXOK, that we believe presunrise operation should be confined to 6 a.m. local standard time and after was consistent with this agreement. What we had in mind was the assertion by a number of stations in that proceeding that use of daytime facilities at an earlier time than 6 a.m. (e.g., 5 or 5:30 a.m.) should be permitted, a view which we rejected for reasons which that statement and the following language were designed to express. The matter of operation at 6 a.m. "local time" instead of 6 a.m. "standard time" was not in fact raised in the proceeding, no commenting party discussing this point even though some urged the importance of operation earlier than 6 a.m. generally (for the most part, the material in that proceeding related to the winter months, and, as mentioned, daylight-saving time was less prevalent in 1963 when the record in that proceeding was made).

36. This particular point was raised in a number of petitions for reconsideration, was recognized in the memorandum opinion and order on reconsideration, and later specifically proposed as a change in the rules in the notice in the present proceeding, after it appeared from conversations with Canadian representatives that the necessary change in the Canadian presunrise agreement was a possibility. We expressed in the notice herein the tentative view that the adjustment should be made if it were internationally possible. After carefully considering the record herein, we are of the same view. We conclude that the benefits from the provision of early-morning service on a uniform "local clock time" basis, which the change will make possible, outweigh the losses from the resulting interference.

37. Interference considerations: As to the interference which would result from the proposed change, we note the showings of ABS and the two individual stations mentioned. There will be some additional interference, although (for reasons mentioned in par. 24) this would not appear to be as great as these showings indicate. Two other facts should be borne in mind: First, as mentioned in the notice it does not appear that, overall, the interference level would be higher during

the daylight-saving months than the standard time months under the present rule, and may well be less in some cases; and second (noted in par. 25), usually this would be preexisting interference, not a new condition. Also, as mentioned in the notice, the effect of any additional interference is lessened by time differentials between stations.

38. As to the first point, presunrise interference between stations at particular locations varies with the extent to which such operation takes place before sunrise at the pertinent locations: The earlier and further from sunrise, the greater the interference; the later and closer to sunrise, the less the interference. January is the month of latest average sunrise during the entire year and October is the month of latest average sunrise during the daylight-saving time period, and a comparison of interference levels under the proposal in January and October can be made by comparing 6 a.m. (local time and standard time) in January with 6 a.m. "local time" (5 a.m. standard time) in October. Since the difference between 5 a.m. and 6 a.m. is 1 hour, the area of inquiry is whether average sunrise in January is less than 1 hour, 1 hour, or more than 1 hour later than that in October. In general, and for the groups of stations previously discussed herein, it is slightly more than 1 hour later in January, and therefore, interference levels in January would, overall, be slightly higher.<sup>19</sup>

39. With respect to the 6 a.m. (local time) sunrise interval during the year generally, it is of course less in some standard time months than in October or January; but likewise it is less during other daylight-saving time months. At St. Louis, the average interval between 6 a.m. local time (5 a.m. standard time) and average sunrise is 45 minutes during the three daylight-saving time months when presunrise operation is generally prevalent (August to October), compared to an average of 54 minutes between 6 a.m. (standard time) and average sunrise during the five standard-time months when presunrise operation generally prevails (November through March). At Buffalo the respective averages are: August-October, 55 minutes; November-March, 75 minutes. Of the 12 stations mentioned by KXOK on 630 kc/s as interference sources, the August-October average is less than the November-March average in at least half of the cases. Of the 19 stations on 930 kc/s mentioned by WBEN the August-October average is less in the great majority of the cases.

<sup>19</sup> "Average sunrise" as used herein means average sunrise time as defined in our rules (sec. 73.79) and specified in Commission authorizations: Actual sunrise on the 15th day of the month, rounded off to the nearest quarter-hour.

At a fairly large number of locations in the southern part of the country, where annual variations in sunrise and sunset times are relatively small, average sunrise in January is only 45 minutes later than that in October (it is never less). At many locations in the country—perhaps half—it is 1 hour later, so that the January and October difference is the same. At a large number of locations in the northern part of the Nation (including all of the States along the northern border except Ohio and Pennsylvania, and including more locations than those in the first group mentioned) sunrise in January is  $1\frac{1}{4}$  or  $1\frac{1}{2}$  hours later than that in October. Thus, overall, the difference is slightly greater than 1 hour.

As to the 93 regional stations filing herein, average sunrise is 45 minutes earlier in October for eight, 1 hour earlier for 39,  $1\frac{1}{4}$  hours earlier for 43, and  $1\frac{1}{2}$  hours earlier for three. Of the 12 stations on 630 kc/s mentioned by KXOK, it is 45 minutes earlier for one, 1 hour earlier for nine,  $1\frac{1}{4}$  hours earlier for one, and  $1\frac{1}{2}$  hours earlier for one; of the 19 such stations on 930 kc/s mentioned by WBEN it is 1 hour earlier at 10,  $1\frac{1}{4}$  hours earlier at eight and  $1\frac{1}{2}$  hours earlier at one (the difference is 1 hour at St. Louis and  $1\frac{1}{4}$  hours at Buffalo). Of the 101 stations on 1590 and 1600 kc/s now holding PSA's, it is 45 minutes earlier at four, 1 hour earlier at 47,  $1\frac{1}{4}$  hours earlier at 46, and  $1\frac{1}{2}$  hours at four.

40. As to the second point, we have noted in previous decisions that presunrise operation (and interference) is, in general, not a new phenomenon, since the majority of regional stations engaged in it under the former rule; and, since it was with full daytime facilities (usually greater than 500 watts) and could start at 4 a.m. standard time, interference under the restrictions adopted in 1967 would be expected to be, overall, less than that existing earlier. This was of course not true on 930 kc/s, and perhaps a few other frequencies where stations were active in "policing" their channels against presunrise interference (and in other individual situations where stations were precluded); but it was true overall.<sup>20</sup>

41. The same is true with respect to the time period involved here as far as a comparison with 1967 conditions is concerned, since "advanced" time prevailed nationally during that year and previous presunrise operations were permitted to continue as before until it ended on October 28.<sup>21</sup> It cannot be determined exactly how interference under the proposal would compare with that during earlier years, since the Commission did not require specific information concerning presunrise operation under former section 73.87 and also, with daylight-saving time not then in effect in a substantial part of the nation, stations interested only in a 6 a.m. (local time) sign-on and located there would not have operated during this time period. However, it appears that a fairly large number of regional daytime-only stations have operated before 6 a.m. local time (sometimes as early as 4 a.m.), and of course, daylight-saving time was fairly prevalent in the United States in the years before 1967, and for stations in these areas the nationwide adoption of daylight-saving time did not involve a change in operating hours.<sup>22</sup> In both situations, of course, operation was usually with full daytime facilities, greater than 500 watts. Thus, in this respect also, it appears that the sources of the interference which would result from

<sup>20</sup> Of the regional stations filing herein, stations on 1600 kc/s now holding PSA's, and the 12 on 630 kc/s mentioned by KXOK, only 15 were precluded from presunrise operation either as new authorizations or because of complaint (none of the 12 on 630 kc/s). One of those filing was reduced to 500 watts presunrise after complaint (WDXE), and complaints against four were pending at the time of the presunrise decision and dismissed (WBOB, WGTA, WLEM, WRAA). Of the daytimers included in those groups mentioned, during 1967 and years immediately preceding, 20 could use 5 kw presunrise, 65 could use 1 kw, and 30 500 watts (these take into account cases where stations were required to operate with less than authorized daytime facilities either because of complaint or where greater daytime facilities were authorized after January 1962 and presunrise operation was with former lesser facilities). On 930 kc/s presunrise operation was usually precluded in that part of the country where it would affect WBEN, but even so some of the stations mentioned by WBEN indicated in their PSA requests of late 1967 that they had been using full day facilities before sunrise starting at 4 or 5 a.m. (WJBY and KWOC). On 1590 kc/s it was also precluded for numerous stations (usually because of complaint by station WAKR, Akron), but numerous others were not precluded, including 5 kw operations at Atmore, Ala., and Lafayette, Ga.

See the WSAI decision of December 1967 (footnote 15, above) for a study of comparative interference levels under former sec. 73.87 and the present presunrise rule, on a channel where there was a substantial amount of presunrise complaint activity.

<sup>21</sup> To the extent stations able to operate presunrise did not start at 5 a.m. standard time during the daylight-saving time months of 1967, it was because they were not interested in such operation. Presumably such lack of interest, which was probably true in relatively few cases, would still prevail so that they would not operate during this additional time now.

<sup>22</sup> As of 1965, daylight-saving time was in statewide effect in 15 States, in 16 States it was a matter of local option, and in 19 States it was not observed at all. See World Almanac (1966), p. 536.

Of the regional stations filing herein, eight indicated (either in their present comments or earlier petitions for reconsideration in docket No. 14419), that they have signed on at 4:30, 5, or 5:30 a.m. local time (KATR, KEST, KGEN, KMA, KXXX, WENN, WGSA, and WHUT). Numerous others indicated longstanding sign-on times of 6 a.m. local time and earlier.

the proposed rule existed in the past, and overall interference is probably considerably less than in earlier years, due to present restrictions on presunrise hours and operating power.

42. Since the operations which would result in interference have thus largely been in existence under the permissive provision of former section 73.87 of the rules, the proposed change would merely continue that service, which, as noted above, appears to be one of significance.

43. In the notice herein, we observed that the number of stations affected by the additional interference which would be created under the proposed rule, and the degree thereof, is limited by time differentials between the stations involved. While WBEN states that this is not significant in its case, overall, it is a significant consideration, as mentioned, especially if the term "time differentials" is used (as we meant it in the notice) to mean not only actual differences in permissible sign-on time resulting from location in different time zones, but also differentials in sunrise times between stations in the same zone, and taking into account the transitional character of the period involved with respect to the intensity of skywave transmission. For example, it means that interference from a station located far to the west of a cochannel station would be of relatively little significance on the latter; 5 to 6 a.m., m.s.t., would be 7 to 8 a.m. e.s.t., which is usually well after sunrise at the latter location even in October, even though well before sunrise at the western station's location. In the converse situation, where the potentially interfering station is located far to the east, the interference to the western station would more closely approach full nighttime conditions, since darkness prevails over the entire path; but 5 to 6 a.m. e.s.t. is 3 to 4 a.m. m.s.t., or 4 to 5 a.m. m.d.s.t., and it is likely that the earlier hour involved is one of less significance to the station affected and its audience, if indeed it is operating at all at that time. The time zone differential also means that, as to the important 6 a.m. to 7 a.m. local time period (5 a.m. to 6 a.m. standard time) stations would be affected by the proposed rule change only as to stations located within their time zones, since stations in zones to the east can already operate presunrise under the present rule, and stations in zones to the west could not operate presunrise until the end of this period. Operation during the preceding hour (5 a.m. to 6 a.m. local time, 4 a.m. to 5 a.m. standard time) would be affected only by operations in the time zone immediately to the east; operation during the hour from 7 to 8 a.m. local time (6 to 7 a.m. standard time) would be affected only by operations in the time zone immediately to the west, the impact of which is relatively small in the case of both KXOK and WBEN compared to that from stations in the same zone which can operate during this time under the present rule, or, after their own local sunrise, with full daytime facilities.

44. Individual consideration: It is apparent from the foregoing that, overall, the change should be adopted in the public interest since the service benefits will outweigh the interference detriments. WBEN and KXOK call attention to facts of their specific situations; but, as we mentioned in the docket No. 14419 decision (report and order, par. 19, and app. A thereto, par. 30) it is simply not possible to take into account the facts of individual stations in adopting and applying rules

in this area. This was true in the basic presunrise proceeding, and is equally true here, where the same vast numbers of stations are involved. The facts of these situations illustrate the impossibility of such an approach. For example, on 930 kc/s, we would have to consider vis-a-vis WBEN the facts of numerous daytime stations—area gained or lost, other services, etc.—in order to determine what presunrise operation (or its extension to 6 a.m. “local time”) should be permitted and where it should not. Moreover, since other fulltimers on the channel would be entitled to protection consideration on the same basis—e.g., the 10 others in the eastern half of the United States mentioned by WBEN—it would be necessary to consider all of these and whatever other daytimers might affect them. Such a consideration would obviously be extremely complex, burdensome and time consuming, well beyond the value which any additional information gained might have. On the majority of regional channels, with more stations, the problem would be even greater. As we stated in the docket No. 14419 decision (app. A, par. 30) :

“We do not conceive that a more particularized approach, either by hearing or otherwise, would throw significantly more light on the appropriate course of action in a given situation, anything like enough to warrant the burden involved.”<sup>23</sup>

45. Even if individual consideration were possible, the result in these two situations would not necessarily be clear. In the case of KXOK an important factor might be the extent of FM availability for daytimers on its channel since it does not have an associated FM station; but, as we stated in the presunrise decision (report and order in docket No. 14419, app. A, par. 21) at the present time this does not appear to be a complete answer to the provision of needed presunrise service, perhaps particularly in outlying areas. The discussion in that document is still apposite and need not be repeated here. Another factor which would probably have to be taken into account is the fact that the interference complained of is not new (none of the stations was precluded from operating) but may well be less than that previously existing when stations operated presunrise with full power. As to WBEN, the interference will, for the most part, be occurring for the first time; but WBEN is an FM licensee of long standing. In neither of these cases can it clearly be determined that the presunrise operations complained of would not be permitted to extend to 6 a.m. “local time” if individual consideration were possible and were afforded in these situations.<sup>24</sup> This illustrates the small value of individual inquiry, in relation to the burden involved, mentioned above.

<sup>23</sup> The burden of individual consideration would be even greater if programing is included, as WBEN apparently requests. The doubtful validity of any case-by-case consideration of presunrise program content was recognized by the Second Circuit U.S. Court of Appeals in affirming the basic presunrise decision. *WBEN, supra*, Slip Opinion, pp. 2247-2248.

<sup>24</sup> WBEN raises the question of individual consideration in the context of one specific situation, interference to it as against additional presunrise time for daytime station WIZR, Johnstown, N.Y. Even here, the result is not necessarily clear, since the fulltime station in a nearby community is a class IV and may not serve presunrise the same area (in other directions from Johnstown) that WIZR would serve. This illustrates the rather dubious value of such inquiry in relation to the burden involved. We recognized in the presunrise decision that “new zones of interference” would be created in some cases. As noted, WBEN is a longstanding FM licensee, which has sometimes attempted to protect its wide-area coverage by seeking changes in the FM Table of Assignments to remove the possibility of

46. Conceivably, a rule could be adopted limiting eligibility for the additional time in one or more of various respects, such as only to stations which would have been "eligible" under the proposal in docket No. 14419 (those in communities with no fulltime station and not in urbanized areas), only to those in communities without existing (or existing or potential) local FM service or not where the AM station itself is affiliated with a local FM station, or only to stations which have operated presunrise in earlier years, or only to 250 watts power. However, all of these were considered in connection with the basic presunrise decision and rejected (see the discussion in the report and order in docket No. 14419, par. 19; app. A, pars. 20-21, 24-25, 28). We see no more reason to adopt any or all of these approaches in the present case. The interference involved will, overall, be no more than, and may well be less than, that involved at other times of the year in presunrise operation under the present rule.

47. Fulltime regional stations: The conclusions above have dealt chiefly with daytime-only regional stations, leaving the question as to whether the same additional operation should be provided for unlimited-time regional stations, where, of course, it is not necessary for their operation during the period involved. A number of such stations supported the proposal (see pars. 15-16). None of the opponents of the additional presunrise time made a distinction between daytime and fulltime stations.

48. We are of the view that in these cases also the rule should be changed to read 6 a.m. "local time". We note in this connection the service benefits mentioned by stations such as KPEL and KLVL (par. 16), and, also, the desirability of giving fulltimers a measure of protection against daytimer interference during the additional period, if they choose to use it, and of avoiding discrimination against fulltime stations in this respect as in the basic presunrise arrangement. The discussion in the docket No. 14419 report and order (par. 19 and app. A, par. 29) covers this subject and need not be repeated. Taking into account that only a minority of fulltime regional stations are likely to engage in PSA operation rather than using nighttime facilities (see par. 15 above), we are of the view that the additional interference will not outweigh the benefits.

49. Other general arguments: The earlier ABS material incorporated here by reference contains a number of arguments, most of which have been discussed and disposed of either by us or the U.S. Court of Appeals (C.A. 2) which considered its appeal and affirmed the Commission. These discussions need not be repeated here. One argument made on appeal was that we failed to attach appropriate weight to the value of fulltimer service as shown in the docket No. 14419 material; the showing was evaluated in the presunrise decision (report and order, app. A, pars. 6 and 17) and the court found our treatment appropriate. In any event, ABS did not submit any such material in the present proceeding. As to the difference between a "quantitative" and "qualitative" approach,<sup>25</sup> the basis of our decision

interference to it. The FM station can present the AM programing during the limited number of hours involved here, and it may be that FM is of more significance in the case of a long-established stations such as this than with a newer facility such as WIZR-FM.

<sup>25</sup> The word "qualitative" is one originating with ABS in its reply brief on appeal.