

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In the Matter of "PRESUNRISE" OPERATION BY CLASS II STA- TIONS UNDER PRESUNRISE SERVICE AUTHORI- ZATION ON U.S. I-A CLEAR CHANNELS. AMENDMENT OF SECTION 73.99 OF THE COMMIS- SION'S RULES (PRESUNRISE SERVICE AUTHORI- TY) TO SPECIFY 6 A.M. "LOCAL TIME." "PRESUNRISE" OPERATION BY CLASS II STA- TIONS ON U.S. CLASS I-A CHANNELS BEFORE 6 A.M.	}	Docket No. 17562 Docket No. 18023 Docket No. 18036
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REPORT AND ORDER

(Second Report and Order in docket No. 18023)

(Adopted July 29, 1969)

BY THE COMMISSION: COMMISSIONERS COX AND JOHNSON ABSENT.

1. These proceedings are concerned with regularizing the sign-on practices of class II (secondary) daytime and limited-time standard broadcast stations assigned to the U.S. I-A clear channels. The presunrise operating privileges of class III (regional) stations, class II stations assigned to I-B clear channels, and class I-B clear channel stations were permanently adjusted after lengthy rulemaking proceedings in docket No. 14419—*Report and Order*, 8 F.C.C. 2d 698 (1967), aff'd in *WBEN, Inc. v. United States*, 396 F. 2d 601 (2d Cir.) (1968), cert. denied, 393 U.S. 914 (1968). Sections 73.87 and 73.99 of the rules, adopted in connection with that proceeding, forbid regular program transmission outside licensed hours by daytimers and limited-time stations on class III and class I-B channels except in accordance with a supplemental type of authorization called a Presunrise Service Authority (PSA). More than 1,500 PSA's are currently outstanding.

2. At present the early morning operating practices of class II stations assigned to U.S. I-A clear channels are regulated by 73.99 (b) (1) of the rules and the note thereto, under which they may, if located west of the cochannel dominant station, commence operation either at 6 a.m. "standard" (nonadvanced) time or sunrise at the dominant station, whichever is later.¹ Full-daytime or critical-hours power is used, depending upon the licensed postsunrise mode of operation. For class II stations east of the cochannel dominant station, presunrise operation is flatly prescribed.

¹ This applies to presunrise operation only, it being understood that all stations may observe their licensed sign-on. During the late spring, summer months, and early fall months this is often earlier than 6 a.m.

(c) Power levels for permissible PSA operations—par. 8(b), supra—to be determined by the following protection requirements:

(1) 500 w. (or licensed starting power, if less than 500 w.), or such lesser power as may be necessary to provide full treaty protection to foreign class II unlimited time stations (if any) assigned to the same channel.

(2) Foreign interference to be calculated in accordance with applicable treaties. Domestic interference effects resulting from PSA power levels of 500 w. or less to be disregarded, because the protected contour is in fact collapsing from the moment of sunrise at the dominant station.

(d) Daytime or critical hours antenna system to be employed, as appropriate.

(e) PSA requests (if any) by class II-A stations, and by other class II fulltimers operating on U.S. I-A clear channels (KFMB, San Diego, and other stations in Hawaii, Alaska, and Puerto Rico), to be judged on a case-by-case basis in line with par. 39 of the appendix.

(f) As in the case of other PSA's, authorizations issued under the rules herein adopted to be subject to suspension, modification or withdrawal without prior notice or right to hearing, if necessary to resolve interference conflicts, to implement agreements with foreign governments, or in other circumstances warranting such action, including further developments with respect to 770 kc./s. presently under consideration in docket No. 6741.

9. Under the formula set forth in paragraph 8(c), above, daytime-only and limited-time class II stations west of the cochannel I-A station will be limited to 500 w. power, or 250 w. if that is their authorized daytime power. The 250-w. limit will apply to stations KIKK, Pasadena, Tex. (650 kc./s.), KSEO, Durant, Okla. (750 kc./s.), KSPI, Stillwater, Okla. (780 kc./s.), KJIM, Fort Worth, Tex. (870 kc./s.), KCLE, Cleburne, Tex. (1120 kc./s.), and WAVI, Dayton, Ohio (1210 kc./s.).

10. In the notice of proposed rulemaking which initiated one of the above-captioned proceedings (docket No. 17562, F.C.C. 67-768), as well as in the report and order in docket No. 14419, supra, we expressed the tentative view that class II daytime- and limited-time stations operating on U.S. I-A clear channels should be subject to the same power limitation (500 w.) as are PSA holders generally. The reasons underlying this view were that it is undesirable to permit one group of PSA holders to operate at higher power than others, and that a general limitation of 500 w. would effectively control early morning skywave interference on the U.S. I-A clear channels. For the reasons stated in the appendix hereto, we feel that the general 500-w. PSA power ceiling has continuing validity, particularly in view of the fact that the United States-Mexican "Presunrise" agreement, when it becomes effective, will make the 500-w. ceiling mandatory across the board. We note in passing that the settlement reached herein is more lenient than the international settlement reached in the Mexican negotiations, since class II skywave effects at PSA power levels of 500 w. and less are ignored in evaluating domestic interference. On this basis, we do not believe that we are jeopardizing the integrity of the U.S. I-A clear channel services.

11. Further revision of section 73.99 of the rules will, of course, become necessary upon ratification of the United States-Mexican "Presunrise" agreement and its entry into force. In the meantime, the decisions reached in the above-captioned proceedings may be carried out simply by deleting of the present note to section 73.99(b) (1).

12. Authority for the adoption of this report and order is contained in sections 4(i), 303(c), 303(e), 303(r), and 307(b) of the Communications Act of 1934, as amended. The change concerning 6 a.m. local time is a relaxation of an existing restriction on presunrise operation, which otherwise would affect numerous stations starting August 1; therefore it is appropriate to make this change in the rules effective immediately (see 5 U.S.C. 553).

13. Accordingly, *It is ordered*, That effective August 1, 1969, the note to section 73.99(b) (1) of the rules *Is deleted*.

14. *It is further ordered*, That notwithstanding the above effective date, operations currently conducted under said note *May be continued* through September 14, 1969, but with sign-on times *adjusted* to 6 a.m. local time (or sunrise at the dominant station, whichever is later). After September 14, 1969, presunrise operations *shall be conducted* only pursuant to a PSA.

15. *It is further ordered*, That to expedite the grant of PSA's to stations affected by these proceedings, the Commission will accept and act on letter requests by eligible class II daytime and limited-time stations, specifying the power of 500 w. (or licensed facilities, if less), without the interference calculations otherwise required by section 73.99 of the rules. Such requests shall, however, contain a description of the method whereby any proposed power reduction will be achieved, and should be filed no later than September 1, 1969.

16. *It is further ordered*, That the waiver request filed August 31, 1967, by Radio Akron, Inc., licensee of radio station WHLO, Akron, Ohio, *Is dismissed* without prejudice to possible resubmission upon conclusion of proceedings in dockets Nos. 11290 and 16298.

17. *It is further ordered*, That the petition for review and final action filed June 30, 1965, the request for immediate action on pending complaint or alternative relief filed October 26, 1967, and all supplementary and related complaints and pleadings filed by Columbia Broadcasting System, Inc. (WCBS, New York), in connection with the presunrise operations of radio station WRFD, Worthington-Columbus, Ohio, *Are dismissed as moot*.

18. *It is further ordered*, That motions filed by Storer Broadcasting Co. (KGBS), Frances Maye Barnett et al. (KSWS), Cornell University (WHCU), and Loyola University (WWL), for acceptance of late or additional comments in dockets Nos. 17562 and 18036, *Are granted*; and the motion to strike filed February 27, 1968, by Plough Broadcasting Co. (WJJD), *Is denied*, to the extent that additional comments filed on behalf of radio station KSL have been considered, and in all other respects, *Is granted*.

19. *It is further ordered*, That proceedings in dockets Nos. 17562, 18023, and 18036 *Are terminated*.

FEDERAL COMMUNICATIONS COMMISSION,

BEN F. WAPLE, *Secretary*.

18 F.C.C. 2d

APPENDIX

Discussion and analysis of the comments in dockets 17562, 18023, and 18036, discussion of pertinent international agreements, and conclusions in these proceedings.

1. *The questions involved.* These three proceedings involve four questions: (1) The power to be permitted for presunrise operation by class II stations on U.S. I-A channels located west of the cochannel I-A station, specifically whether the same 500-w. ceiling on such operation should be imposed as that now applied to presunrise operation on other channels under section 73.99 of the rules (docket 17562 as instituted in June 1967); (2) whether the permissible presunrise starting time should be adjusted for these stations from 6 a.m. standard (nonadvanced) time to 6 a.m. local time (which is 5 a.m. standard time during the daylight-saving-time portion of the year) as it was for other stations in the docket 18023 decision of August 1968; (3) possible operation before 6 a.m. local time (pre-6 a.m. operation) by western class II stations on these channels; and (4) whether, and if so to what extent, presunrise operation should be permitted for eastern class II stations on these channels, those located east of the cochannel I-A station and therefore with their own local sunrise generally earlier than sunrise at the I-A location (docket 17562, as enlarged by further notice of proposed rulemaking issued October 17, 1967).

2. *The comments generally.* Comments were filed in docket 17562 by Clear Channel Broadcasting Service, Inc. (CCBS), an association of I-A licensees including those of the I-A stations on 9 channels also having class II stations, and individually by five of the CCBS member stations (KFI (640 kc./s.), WSB (750 kc./s.), WFAA and WBAP (share time on 820 kc./s.), and KSL (1160 kc./s.)). Comments were also filed in that proceeding by Columbia Broadcasting System, Inc. (CBS), National Broadcasting Co., Inc. (NBC), and Westinghouse Broadcasting Co., Inc. (Westinghouse), among them the licensees of nine I-A stations, and by the individual licensees of three other I-A stations (WCCO (830 kc./s.), WWL (870 kc./s.), and WHAM (1180 kc./s.)). American Broadcasting Co., the licensee of I-A stations on 770 kc./s. and 890 kc./s., did not file. These parties favored either adoption of the 500-w. restriction on western class II presunrise operation and continued prohibition against eastern class II presunrise operation, or further restrictions on or elimination of presunrise operation on these channels entirely. CCBS went still further in its requests.

3. Comments and/or reply comments were filed in docket 17562 by 11 daytime-only or limited-time western class II stations, generally opposing the proposed 500-w. limitation. Five of these are on the Pacific Coast, far from the I-A location (KFAX, KGBS, KIEV, KXA, and KXL); six are located further east (KSKY and WESC on 660 kc./s., KMMJ on 750 kc./s., WJAG on 780 kc./s., WRFD on 880 kc./s., and WLDS on 1180 kc./s.). Five eastern class II stations also filed in this proceeding, in support of presunrise operation by such stations, which four of them have engaged in in the past (WHLO on 640 kc./s., WAIT and WIKY on 820 kc./s., WHCU on 870 kc./s., and WJJD on 1160 kc./s.). Comments favoring such operation were also filed by the law firm of Daly and Joyce.

4. Parties filing in the later dockets 18023 and/or 18036 proceedings, concerning time of presunrise operation, included CCBS, CBS, NBC, and the licensees of I-A stations KFI, WCCO, WHAM, and WSB. Daytime- or limited-time class II stations filing included KFAX, KGBS, KIEV, KMMJ, KXA, KXL, WAIT, WESC, WHLO, WJAG, WJJD, and WRFD, mentioned above, and KOZN (660 kc./s.), KJIM (870 kc./s.), and WOI (640 kc./s.), not previously filing. Daytime Broadcasters Association also filed in docket 18023. Also, for the first time, in docket 18036, there were filings by three fulltime stations other than I-A on these channels: Class II-A station KSWB, Roswell, N. Mex., station KFMB, San Diego, and station KOB, Albuquerque. Although filed only in this docket of very limited scope, these pleadings really relate to the basic question of presunrise operation by such stations, and are so considered.¹

¹ Of the filings mentioned in these paragraphs, the following are not considered further herein: Those of KFI and CCBS insofar as they refer to the record in the hearing proceeding concerning presunrise operation by WOI, Ames, Iowa (docket 11290); that of WOI (a reply to the KFI-CCBS references); and those of WCCO, which relate essentially only to either the presunrise operation by WNYC, New York, N.Y., which is the subject of adjudication (docket 11227), or possible new assignments on this channel, which cannot occur under present rules. We also do not consider certain material purporting to be filed in docket 18036 on behalf of station KFAB, a I-B station at Omaha, Nebr., which is not involved in these proceedings concerning the I-A channels.

5. *The pertinent international agreements and their limitations.* One of the limiting factors which must govern any presunrise operation to be permitted is the United States-Canadian presunrise agreement of June 1967 (TIAS 6268, formalized June 12, and effective July 1, 1967), as modified in August 1968, to specify 6 a.m. local time instead of 6 a.m. standard time. This agreement does not contain any power limitation, but it does limit presunrise operation to 6 a.m. local time and after. Thus, as long as it remains in its present form, the pre-6 a.m. operation contemplated for possible authorization in docket 18036 cannot be permitted.

6. Also highly pertinent is the recent United States-Mexican presunrise agreement, signed by representatives of the United States and Mexico on December 12, 1968, ratified by the U.S. Senate on June 19, 1969, and now awaiting ratification by Mexico and then entry into force, along with the general United States-Mexican agreement concerning standard broadcast matters to which it is a supplement. This limits presunrise operation by those classes of stations permitted it, in either country, to 6 a.m. local time and after, and to no more than 500-w. power (less if necessary to protect cochannel stations in the other country in accordance with the standards of the general agreement.²

7. These international agreements limit the scope of these proceedings in that:

(a) Docket 18036, concerning pre-6 a.m. operation, must be terminated without further consideration, since such operation conflicts both with the recent United States/Mexican agreement and the earlier United States/Canadian agreement. Therefore, while some parties sought to be permitted presunrise operation at an earlier hour, it cannot be further considered. This docket was begun on the premise that through negotiations with Canadian authorities a change in the United States/Canadian agreement to permit such operation might be possible (see notice of proposed rulemaking in docket 18036, F.C.C. 68-194, footnote 1). However, since then the Mexican agreement has been formalized, and in view of the likelihood that it will enter into force in the near future there is no reason to continue to seek such an accommodation with Canada.³

(b) The provisions of the agreements mentioned permit presunrise operation up to certain limits of time and power, but of course they do not require the countries to authorize it. There remain for consideration the contentions of various I-A parties, particularly CCBS, that rather than the proposed 500-w. limit, all presunrise operation on these channels by class II stations should be precluded.

General Considerations

8. Before proceeding to a more detailed discussion of the various situations and showings contained in the records of these three proceedings, it is appropriate to set forth certain general matters, arguments and considerations raised by the record, and whose recital here will simplify the detailed consideration.

9. *The CCBS requests.* In addition to supporting the existing and proposed restrictions on class II presunrise operation (to 500-w. power and 6 a.m. standard time and after, and no such operation for eastern class II stations), as mentioned above CCBS requests steps toward further restrictions on class II operation on

² The United States-Mexican presunrise agreement begins as follows:

The Government of the United States of America and the Government of the United Mexican States * * * have agreed to permit certain broadcasting stations in the standard band to operate for a limited period of time prior to local sunrise and for a period of time after local sunset, using all or part of their authorized daytime facilities (in lieu of authorized nighttime facilities) with a maximum of 500-w. power. For that purpose, both Governments * * * have agreed as follows:

Article I. *Presunrise Operation.*

A. Program transmission is permissible during the period from 6 a.m. local time to local sunrise (presunrise operation); for this purpose, the Time Conversion Tables included in Annex I will be used.

The limitation of up to 500-w. power represents part of the mutual accommodation reached between the two nations concerning their stations' operations. It was believed that this restriction would result in meaningful presunrise service with a minimum of interference.

³ It is quite likely that, at least in most cases, the same result would have been reached apart from international understandings, for purely domestic reasons. As we stated in the memorandum opinion and order on reconsideration in docket 14419 (October 1967, F.C.C. 67-1143, 10 F.C.C. 2d 283, 11 R.R. 2d 1571, par. 34): "* * * We are not persuaded that, in general, earlier operation has enough public interest to warrant the extensive interference entailed during the pre-6:00 a.m. period, when interference conditions more closely approach, or equal, full nighttime conditions. Like the matter of power, this is part of the balance and compromise which must be reached."

these channels going beyond the limitations proposed in these proceedings, including (besides preclusion of presunrise operation) restriction on or preclusion of operation during the critical hours 2 hours after local sunrise and before local sunset, a general reallocation designed to clear 40 AM channels, and authorization of higher power. For reasons discussed there, we adhere to the decision reached in 1959 in docket 8333, the Daytime Skywave proceeding, not to impose critical-hours restrictions on existing class II facilities (all of these class II stations have been in existence, though not necessarily with the same facilities, for at least 20 years).⁴ The general AM reallocation also urged, while it might be desirable in some respects in the interests of improving service, would also be extremely difficult in view of the extremely crowded condition of the AM band and the only slightly lesser congestion in the FM service in much of the Nation. In the absence of specific proposals this does not warrant present consideration. The matter of completely precluding presunrise operation by class II stations on these channels is more germane to this proceeding and is discussed below, as is the matter of higher power for I-A stations.

10. *Equity and technical parity.* The presunrise rules adopted in 1967 in docket 14419, as changed recently to read 6 a.m. local time, limit class III stations, and class II stations on I-B channels, to presunrise operation no earlier than 6 a.m. local time, and to no more than 500-w. power. We expressed in the notices of proposed rulemaking in dockets 17562 and 18036 the belief that considerations of equity and technical parity indicate, or may indicate, that the same restrictions should therefore apply to western class II stations on I-A channels. This suggestion drew no support, and considerable opposition from class II stations. It was urged that any disparity resulting from not applying the same restrictions is de minimis in relation to the basic disparity in AM station assignments, with widely varying powers and hours; that this has never been a consideration in a.m. allocations where stations are assigned on the basis of service and allocations efficiency, using different levels of facilities for different purposes; that use of full facilities presunrise represents efficient use of the particular channel in the class II station's area; that parity is no basis on which to destroy existing service; that in the decision on reconsideration in docket 14419 we stated that waivers of the power restriction would be granted where full protection of cochannel stations is shown and in that statement obviously we did not consider such considerations relevant; that parity is actually increased when the class II station must compete with numerous fulltime stations operating with higher power (KGBS, Los Angeles, KXA, Seattle, and WRFD, Columbus); that the proposed 500-w. limit would mean actual disparity in terms of amount of reduction required (KGBS, which now uses its 50-kw. daytime facilities, would face a 99-percent reduction, whereas the maximum reduction for a regional station is 5 kw. to 500 w.); and that these stations are now at a disadvantage as compared to regional stations because most of them (of western class II stations, all but the five west coast stations) cannot sign on at 6 a.m. all year since sunrise at the I-A station is later in winter months.

11. *Individual consideration.* One of the important considerations in the basic presunrise decision (docket 14419), was that it was out of the question from an administrative standpoint to examine the facts of the thousands of individual situations involved on the regional channels. Storer Broadcasting Co. (KGBS, Los Angeles, 50 kw.), urges that individual consideration in the present proceedings is both possible and appropriate, in view of the much smaller number of situations and the great differences in the facts they present concerning distance from the I-A station, extent of the interference to it, the amount of power reduction which would be involved, and the power needed to adequately serve the class II market.

12. *CCBS nighttime groundwave service showing.* One of the tools used in our evaluations herein is the map submitted by CCBS, WWL, and station WHCU showing nighttime groundwave service in the continental United States and white or gray areas having no or only one such service. This map, prepared late in 1961, is an up-dated version of a map prepared by CCBS during the Clear Channel proceeding (docket 6741) and portrays type B groundwave service, that regarded as satisfactory taking into account not only interference but other factors, such as fading and atmospheric noise, not normally used in the evaluation

⁴ See 27 F.C.C. 687, 696; 18 R.R. 1845, 1854.

of standard broadcast service and proposals. These maps are based on the concepts set forth in exhibit 109 in the Clear Channel proceeding, which we recognized in the decision there as a comprehensive and realistic means of evaluating a.m. service, even though it was not adopted for general application use because of its complexity.⁵ In view of the meritorious nature of this type of analysis, it is appropriate to use here the map based on it. It should be noted that the CCBS map reflects authorized nighttime operations, and does not take into account presunrise operations such as those involved here, either as affording service or as sources of interference during the hours involved. As CCBS points out, the authorization of more fulltime operations from the late 1940's until 1961 did not change the nationwide nighttime white area situation substantially, nor has it changed since in any substantial degree.

13. *Skywave service after sunrise at the I-A location.* One point urged by CCBS and some other I-A parties—in connection with restricting class II operations further than protection of groundwave service requires (and also protection beyond the 0.5-mv./m. 50-percent skywave contour)—is that skywave service exists, or would exist in the absence of interference, after sunrise at the I-A station. This is said to be true because: (1) A 0.5-mv./m. 50 percent of the time signal exceeds that value during part of the time so as to be usable; (2) there are receivers capable of utilizing signals of a lower value (supported by an engineering affidavit); (3) in certain areas of the United States, such as the Plains, man-made noise is low so that only a low-value signal is required for adequate reception; and (4) while skywave transmission decays after sunrise at the transmitter location, atmospheric noise is also at a low level during the hours after sunrise, so that a residual skywave service of significance is provided, or would be in the absence of cochannel interference. It is asserted in the CCBS engineering showing (based on CCIR material), that a signal of 63 uv./m. during the early morning hours is as useful as a 500-uv./m. (0.5-mv./m.) signal in the evening.

14. We believe that there is some merit in these assertions, and that some degree of protection to postsunrise skywave service is warranted in the interest of improving skywave service on which much of the Nation must rely for its AM radio. This is one reason for not permitting presunrise power of more than 500 w. However, we do not believe it sufficient to support a restriction on presunrise operations to below 500 w. (or daytime facilities if less), a power we have previously concluded is appropriate to permit a reasonable amount of local service and avoid excessive interference. See the June 1967 decision in docket 14419, appendix A, par. 28 (8 F.C.C. 2d 698, 715).

15. *The significance of higher power for I-A stations.* CCBS et al. urge that power for I-A stations considerably more than the present 50-kw. level is the real key to improved AM service in the Nation, and that presunrise operation by these class II stations is undesirable because it would both make such an approach more difficult to adopt and, because of interference, seriously diminish the service benefits from higher power in cases where it is authorized. Various class II parties contend that this development—which has been under consideration for many years—is too speculative to warrant curtailment of long-standing class II operations, and provision can be made for reevaluating them in light of higher power if it is ever adopted. We agree with the latter view. The higher power question is a complex one, involving technical, economic, and sociological considerations, and it is not now determined whether it will be authorized (on a regular basis or experimentally) and, if so, for how many or which stations. This possibility should not be the basis for restricting or precluding operations of long standing. However, we also believe that, in view of the substantial service benefits which higher power would bring (in the absence of interference) if it is concluded to be in the public interest, the presunrise operations which are now being put on a regularly authorized basis should not be permitted to be an automatic obstacle to such development if it is decided on. But these are matters for the future. Any higher power developments will involve further proceedings, and in the course of these we can take whatever steps are necessary to make appropriate adjustments in existing presunrise operations. Also, as far as western daytime- and limited-time class II stations are concerned, this is a possible consideration in only a small number of cases, since most such stations are on duplicated channels.

⁵ See 31 F.C.C. 565; 21 R.R. 1801, 1819.

16. *Diurnal evaluation.* The presunrise hours are a transitional period, when full nighttime propagation and interference conditions do not prevail, and nearly all of the parties filing engineering material recognized this in their showings as to interference. CCBS prepared its material on the basis of a diurnal curve (CCBS curve) derived from data submitted in docket 8333; the Daytime Skywave proceeding, which was rejected there in favor of standards based on FCC exhibit 1 in that proceeding (see 27 F.C.C. 832-834). The same curve was used by Westinghouse (KDKA and WBZ), Loyola University (WWL), and class II station WHCU (570 kc./s.); CBS used a curve based on FCC exhibit 1 in docket 8333, and the curves proposed in docket 14419 were used by Storer in a very helpful study of the limits imposed by western class II operations on I-A groundwave service.⁶ NBC used a diurnal curve showing generally similar results although not stating how it was derived.

17. Storer asserts that the CCBS curve, which shows more interference than the docket 14419 curves, overstates the amount of presunrise interference; on the other hand, in docket 14419, the curves we proposed were vigorously attacked as showing less than the actual interference (in particular, as being based on postsunset data whereas presunrise interference is in fact greater than that after sunset). We have not adopted standards for evaluating presunrise interference and do not do so here. It does not appear that use of one set of curves instead of another would affect any decisions reached herein.

18. In support of its position urging restrictions on class II operation after sunrise, CCBS showed the impact of such interference from eastern class II stations on I-A service, in some cases substantial. As already mentioned, we do not consider imposing restrictions on such operation.

19. *Absence of complaint.* An argument made by numerous class II stations, both western and eastern, is that their operation should be allowed to continue without restriction because it has taken place for a number of years without complaint of interference from the I-A station or from listeners. This we regard as a factor of relatively little significance. Under AM allocation rules, interference is a statistical matter, not always easily susceptible of physical determination or coming to the attention of the affected station. Moreover, and perhaps more significant, since these are existing operations, often of long standing, it may well not have occurred to listeners to complain of interference, at least in recent years; it may have been regarded as a fact of life. The question here, we recognize, is not of preserving existing I-A service, but of improving it. Also, of course, it is the duty of the Commission (using the best tools available to it), not that of listeners or affected stations, to implement the mandate of the Communications Act to prevent interference between stations and further the more effective use of radio (sections 303 (f) and (g)).⁷

20. *Programing showings.* Some of the class II parties urge (as has been argued before) that complete protection of wide-area class I-A skywave and groundwave service is not an important consideration because these stations, or most of them, present during the presunrise hours material of interest primarily or exclusively to their own metropolitan areas (traffic reports, etc.). WAIT suggests that if they are to occupy cleared channels, they likely should be regarded as having a fiduciary obligation to present material sepecifically aimed at the white area audience. As to the programing of I-A stations, WWL (New Orleans, 570 kc./s.) showed all of its programing during the 4-7-a.m. period, and CCBS submitted material as to the farm programing of its nine I-A member stations involved here (during the presunrise period and at other times). These showings are discussed below where appropriate in individual situations. KFI, Los Angeles (640 kc./s.), made some reference to the nature of its nighttime programing. The other I-A licensees made no showings of this sort. Of the class II stations (other than Pacific Coast stations where little or no restriction is being imposed herein), WRFD (west), and WHCU (east), made detailed showings as to their program-

⁶ On the basis of the absence of significant interference, Storer urges that the five west coast stations, and KMMJ, Grand Island, Nebr., be permitted to use full daytime facilities before sunrise. The showing purported to include all western class II stations, in support of Storer's contention that their circumstances differ widely and individual consideration is feasible and appropriate.

⁷ Since the class II operations involved here are, by and large, existing ones, on which audiences have come to rely, their curtailment or termination is not to be undertaken lightly. *Hall v. FCC*, 237 F. 2d 567, 572; 14 R.R. 2009, 2012 (1956). Restrictions are adopted herein only where they appear warranted after consideration of the particular circumstances.

ing during the presunrise period, and there were fairly specific references by KSKY (west), and WHLO (east). The general significance of this matter is discussed in par. 27, below.

The Arguments of the I-A Parties in Docket 17562, Generally

21. Some of the arguments of general applicability advanced by CCBS and other I-A parties in docket 17562 have been discussed above, and their submissions concerning particular situations are dealt with below. The other arguments of general pertinence advanced by these parties are discussed in the next few paragraphs; generally speaking, all the points raised in the record are included within the CCBS comments and reply comments. These contentions relate especially to operation by eastern class II stations, which involves interference to the multiple AM clear channel skywave service structure and also extensive groundwave interference to I-A service; but they also relate to western class II operation in the latter connection. The CCBS comments were made in support of restrictions on class II operation going far beyond the scope of this proceeding, and higher power; but they relate pro tanto to the restrictions at issue in docket 17562 on presunrise operation, in the context of the present I-A service structure limited to 50-kw. power,⁸ and the interference showings are generally based on 50-kw. operations.

22. CCBS et al. urge that the service of I-A stations should receive a very high degree of protection against interference from cochannel presunrise (as well as critical hour operations) in order that their skywave transmitters may provide reliable service to the radio desert, the more than half of the conterminous United States which is white area, receiving no primary service at night,⁹ and so that their extensive groundwave service may not be diminished so as to add to the white area. It is claimed that our present proposal is far from enough; more protection is needed, not less. It is asserted that presunrise operations such as those involved here cause such interference to both groundwave and skywave, and should be eliminated; CCBS asserts that the threshold question is whether rural and small-town America should be deprived of the skywave and groundwave service of I-A stations¹⁰ so that a relatively minuscule amount of additional service in generally well-served areas may be provided by urban class II stations.¹¹ It is claimed that the only way to bring really improved service to these areas is by higher power (duplication having yielded little in this respect), and two CCBS members (WSB and KFI), showed the impact on higher power operation by their stations (which they seek), which would be greater than that on their present operations.

23. In reply comments, CCBS claims that the showings made by the class II's as to the value of their service which would be lost, the small amount of time involved in presunrise operation, and the small area they can serve because of interference from the I-A station, are totally inadequate to justify the loss through interference (usually interference to groundwave, as well as to all or

⁸ The arguments of CCBS in dockets 18023 and 18036, concerning time of presunrise operations, are discussed in pars. 44-45, below.

⁹ As CCBS points out, the tremendous increase in the number of stations in recent years has not substantially changed the white area picture. In 1947, it was 1,802,665 square miles containing some 23,252,000 people; in 1957 it was 1,725,000 square miles containing some 25,630,000 people and in 1961 it had actually increased, to 1,726,293 square miles (containing 25,106,000 people). Eastern class II station WAIT (Chicago), in comments supporting class II presunrise operation generally, asserts that, in view of the great population increase in the United States generally in the last two decades, the fact that the white areas have about the same population as they did in 1947 indicates that service to them is now relatively of less importance (as noted, the population actually decreased from 1957 to 1961, though the area was greater).

¹⁰ It is said that this I-A service is necessary to fulfill our oft-stated first AM allocations objective, the provision of some service to all. (The second is provision of as many choices to as many listeners as possible; the third is to provide local service to as many listeners as possible.)

¹¹ Of the 31 western daytime-only or limited-time class II stations, only 11 are in communities with no fulltime AM service, and many are in large cities. CCBS asserts that all 11 of these communities have nearby fulltime AM service available, but if this term is used in its usual sense it is true only of Glendale, Calif. (adjacent to Los Angeles). In many of the other 10 cases the nearest fulltime AM service is from 30 miles or more away, as shown by the nighttime map presented by CCBS and other parties. Of the 11, nine are FM licensees or (one) permittee; in one other case there is a local FM station licensed to another party; and in one (Wadesboro, N.C.), there is no local or nearby FM station or channel, and the nearest fulltime AM service is from Charlotte, some 43 miles away.

most of the I-A station's skywave, service).¹² It is also pointed out that in the presunrise decision in docket 14419, we noted that new zones of interference would be created on other channels as a result of our decision, but that other service, including Clear Channel service, is generally available to those new loss areas (see docket 14419, 8 F.C.C. 2d 698, 703; 10 R.R. 2d 1580, 1588); and thus clear channel service is relied on to serve areas losing service from stations on other channels as a result of that decision.¹³

24. As mentioned above and noted in particular cases below, CCBS submitted a showing of the farm programing presented by its member I-A stations involved here (during early morning hours and at other times), and the record also contains material as to the programing of WWL, and KFI. In support of its claim as to the value of wide-area skywave service, CCBS also refers to a mail survey made by some of its members in 1958, showing listening in many counties outside of the groundwave service area.¹⁴

25. CCBS and other I-A parties urge that the Commission adhere to conclusions reached in earlier proceedings involving operations on clear channels, including: docket 12274 (*Extended Hours of Broadcasting for Daytime Standard Broadcast Stations*, 25 F.C.C. 1135 (1958)), the 5 to 7 proceeding in which we concluded that operation by class II stations during these non-daytime hours would destroy all skywave service on virtually all clear channels in addition to substantial groundwave service losses (25 F.C.C. 1159, 1165-1187); docket 12729 (*Daytime Operation from 6 a.m. to 6 p.m.*, 27 F.C.C. 53 (1959)), the similar 6 to 6 proceeding, and others.

Western Daytime and Limited-Time Class II Stations

26. *Consideration of further restriction beyond 500 w. or lesser daytime facilities.* As noted above, CCBS, and also Westinghouse, urge that we go beyond the 500-w. limitation proposed in the notice and preclude all presunrise operation by western class II stations on these channels. While not strictly within the scope of this proceeding as delineated in the notice and further notice, this argument is sufficiently germane to the general subject to warrant consideration at this point. However, we do not find warrant in the material filed for either preclusions of presunrise operation by these stations, or limitation on the permissible power to less than the 500 w. or lesser daytime facilities proposed in the notice. It must be borne in mind that these are, in general, long-standing operations, whose curtailment is not to be undertaken lightly. *Hall v. FCC*, 237 F. 2d 567, 572; 14 R.R. 2009, 2012 (1956). As mentioned above, we conclude, here as elsewhere, that a 500-w. power level is desirable to permit the rendition of a reasonable amount of local service. As the Storer study above shows, imposition of this limit will result in substantial improvement of I-A groundwave service; as mentioned in paragraph 14, above, we do not believe that the objective of protecting I-A skywave service after sunrise at the I-A location is sufficient to warrant reduction to less than this general power level. We recognize that this

¹² As to the small amount of time involved, emphasized by some of the class II's, CCBS and one of its members (the licensee of WBAF) point out that the same argument can be applied to the service gained by the class II presunrise operation; and assert that the reduction in hours involved would under this theory be patently insubstantial in relation to the provision of news, weather, and entertainment to all of the United States via improved I-A skywave service.

¹³ It is asserted that class II presunrise operation creates the intolerable situation of interfering with I-A groundwave service and thus increasing white area, at the same time interfering with skywave service which is the only means of serving such area. In the notice herein, we mentioned, as possible reason for not imposing the same 500-w. limit on class II's on these channels as on other presunrise operations, the fact that these channels are different, i.e., fewer stations (and generally speaking no possibility of new ones), and fewer foreign problems. CCBS asserts that the difference really goes the other way; the real difference is that presunrise operation causes interference to wide-coverage and badly needed I-A groundwave and skywave service, and should be eliminated. CBS asserts that because there are fewer stations the presunrise operation of any one causes a greater loss than on other frequencies.

¹⁴ This showing was submitted in docket 12274, the 5 to 7 extended hours proceeding decided in 1958. As set forth in the report and order therein (25 F.C.C. 1158), in response to announcements made in June 1958, stations WSM, WGN, WWL, and WHO received mail from listeners in a number of counties and States ranging from 100 counties in 27 States (WFO) to 718 counties in 36 States (WSM). These were outside of the groundwave service area. Stations WLW and WOAL, not involved here, were also included. This likely represented largely evening rather than early morning listening, since sunrise is at its earliest in June and skywave transmission therefore diminishes at an early hour.

will still leave substantial interference in some cases—e.g., WRFD, Worthington-Columbus, Ohio, where according to Storer the limit to WCBS will still be 1.28 mv./m. when evaluated on a diurnal basis—but CBS has made no showing herein of the wide-area value of its I-A operation to justify a greater restriction, and the same is true of other I-A stations.

27. We have also noted in this connection the arguments of CCBS, and the showings as to the early-morning programing of its members, including four I-A stations on channels having western daytime-only or limited-time stations: (WSM, WSB, WHAS, and WHO). We do not find this material persuasive as a basis for further restriction on what are, generally, long-standing operations.¹⁵ As mentioned in par. 6 of the report and order herein, programing considerations can be of little significance in decisions such as this, because programing is subject to change with changes in ownership, and indeed otherwise (for example, as WRFD points out, the farm programing efforts of some I-A stations have declined during recent years). Rather, they must be based on basic engineering considerations, concerning service and interference; and we conclude, for reasons stated, that the proposed restriction is all that should be imposed in light thereof. Therefore we do not give further consideration herein to reduction in presunrise power below 500 w. or daytime facilities where they are less.

28. *Permitting power higher than 500 w. in some cases.* The notice in docket 17562 proposed to limit presunrise operation by western class II stations to no more than 500-w. power for basically two reasons: (1) Reasons of equity and technical parity appeared to indicate imposition of the same limitation here as on all other presunrise operations; (2) it appeared to be a reasonable compromise between provision for local service and avoidance of excessive interference to I-A and II-A service. As mentioned in paragraph 10, above, a number of class II parties attacked the first concept as one of no significance here, where there is involved the curtailment of existing service. As to the second, besides urging that in some cases the interference is of no consequence, Storer and some others urged that individual consideration of particular situations is in order. See paragraph 11, above.

29. As indicated earlier, upon entry into force of the new United States/Mexican presunrise agreement a limitation to 500 w. will be required by the terms of this international agreement. At such time—which is expected to be in the near future—all presunrise use of daytime facilities, will be limited to no more than 500 w. (or daytime power levels if less). While this agreement does not as yet govern pending its entry into force, we do not believe there is reason to permit higher power operations during the interim period, which is expected to be brief.

30. In this connection, we observe that with respect to western class II stations under consideration here, the same limitation would have been generally dictated by domestic considerations, irrespective of any international arrangements. For example, as shown in the Storer Broadcasting Co. showing mentioned above, use of full daytime power by 12 of these stations would cause interference within the 0.5-mv./m. groundwave contour of the I-A station, even on the basis of the docket 14419 diurnal curve which was attacked in that proceeding as an understatement of the interference involved, and the same appears to be true in three other cases not covered in the Storer showing.¹⁶

Three of the stations mentioned above and covered by the Storer showing filed comments herein, and are discussed in par. 33 and footnote 17, below.

31. Radio stations KMMJ, Grand Island, Nebr. (750 kc./s., limited by WSB, Atlanta), WESC, Greenville, S.C. (660 kc./s., limited by WNBC, New York), and KSKY, Dallas, Tex. (also on 660 kc./s.) deserve special comment. WESC, which

¹⁵ In the case of WSB, the farm programing shown does not occur during the time period involved here, since it is always either before sunrise at Atlanta, or before 6 a.m. local time (CST or CDST) at Grand Island, Nebr., Durant, Okla., and (PT) Portland, Oreg., the western class II locations. The CCBS showing in docket 18023 is incorrect in its analysis of sunrise times. In the case of WHAS, the times of interference from WTUP, Mobile, is minimal (only 15 minutes per day during 2 months, even assuming the starting time is adjusted to 6 a.m. local time). Interference to WHO will be substantially reduced when station KIXL, Dallas, the class II station on its channel, operates presunrise with 500 w. instead of its daytime 1 kw. As to WSM, the class II station on the channel (KIKK, Pasadena, Tex.) operates with only 250 w., and we do not believe that further restriction is warranted.

¹⁶ The three stations not covered by Storer's showing are those at Mobile, Ala., and Carrollton, Ga., which are shown in the CCBS and NBC exhibits as substantial sources of presunrise interference, and KUOM-WCAL on 770 kc./s., which would be sources of more interference than WEW on the same channel, shown by Storer.

is located inside WNBC's 0.5-mv./m. (50-percent skywave) contour, operates with a critical hours antenna designed to suppress radiation in the direction of WNBC to the equivalent of 0.1 kw. As quid pro quo for this high degree of suppression, far beyond that required by our rules, WNBC consented to WESC's operation prior to sunrise, New York, absent which WESC was entitled to only a slight increment of presunrise operation (up to 30 minutes in January). WESC's current mode of operation, as redefined in 1968 and specifically conditioned on the outcome of the above-captioned proceedings, calls for a 6:30 a.m. local time sign-on with no more than 7750 w. into the critical hours directional antenna system. (The reduction of power from 10 kw. to 7750 w. is necessary to afford protection to a class II fulltimer in Mexico City.) Because of WESC's impact on WNBC's early morning skywave service and the existence of fulltime broadcast services in the Greenville area, we feel that this arrangement must be terminated. This view is reinforced by the likelihood of early ratification of the United States-Mexican "Presunrise" agreement, under which the WESC operation would in any event have to be reduced to 500 w. WESC's agreement with WNBC is no longer recognized by our rules, nor can it be accorded decisional weight under circumstances in which such recognition would frustrate sound allocations policy. In re WGSB, 17 F.C.C. 2d 966 (1969). WESC may, of course, apply to modify its critical hours operation to achieve the maximum transitional hours coverage obtainable under our rules. Although neither KMMJ nor KSKY is located inside their dominant stations' 0.5-mv./m. (50-percent skywave) contours, their 0.025 (10-percent skywave) interfering contours would preclude operation with powers above 500 w. We have carefully reviewed the comments filed by these stations, including material filed in reply to KMMJ by WSB, and conclude that presunrise operation at powers above 500 w. would not be warranted, even on an interim basis.

32. KSKY emphasizes the value of its early morning agricultural and religious programming and its distance from the dominant station (WNBC). KMMJ stresses the value of its wide-area presunrise service (agriculture, said to be outstanding, weather, school-closing announcements, etc.), the need for full power to cover this area, and the absence of impact on WSB's service in the Southeast, where it is of significance, particularly in view of the greater interference from the other western station on the channel (at Durant, Okla.) at the same time, and the still greater residual skywave interference to WSB from eastern class II stations immediately after their own sunrise (particularly WPDJ, Clarksburg, W. Va.), which assertedly makes the individual impact from KMMJ's directionalized 10 kw. operation of no consequence. However, as WSB shows, interference from KMMJ destroys all but a small portion of whatever skywave service WSB would render during these hours (all except an area in the East and Southeast lying east of Atlanta), and skywave interference to skywave service is evaluated on an individual, rather than an R.S.S., basis. See *Flathead Valley Broadcasters*, 5 R.R. 2d 550 (1965); *Argus Press Company*, 14 F.C.C. 490 (1950). We note that in all of these stations' cities there are other stations limited to presunrise operation with 500 w. (fulltime regional station KRGI in Grand Island).

33. In the case of three other stations which filed herein opposing the restriction, the 500-w. limit is clearly warranted by groundwave as well as skywave interference considerations. These are WJAG, Norfolk, Nebr. (780 kc./s.), WRFD, Worthington-Columbus, Ohio (880 kc./s.), and WLDS, Jacksonville, Ill. (1180 kc./s.).¹⁷

¹⁷ According to the Storer exhibit concerning groundwave interference, the presunrise operation of each of these stations with full day facilities limits the cochannel I-A station to a contour higher than 1 mv./m., even using the docket 14419 curves for diurnal evaluation. In the case of WRFD (5 kw.), the limit to WCBS is more than 4 mv./m. according to the Storer material. A reduction in radiation in these cases is clearly necessary to improve I-A groundwave service, as well as skywave service. WJAG's chief claim is the need for its agricultural and other service in a sparsely settled rural area without much nighttime radio service (CBS in reply claims that much of its area is served from Omaha, and Yankton, S. Dak.). WJAG is a class C FM permittee. WRFD's chief claim is its early morning farm programming, which it is said, would be jeopardized by the time and power restrictions involved if it is limited to 500 w. and 6 a.m. local or standard time, along with the lack of CBS complaint for 18 years before 1965 and failure of CBS to show what use it makes of its I-A facilities. Our view on these matters has been set forth above. CBS in reply points out the lack of total impact on the farm programming mentioned (which cannot in any event be presented at times because it is earlier than sunrise New York, and can be presented at other times because it is later than sunrise at Columbus), the popularity with much of the farm audience of other times such as noon for getting farm information, and the

34. *KGBS and class II-A station KSWs (1020 kc./s.)*. Storer, on behalf of KGBS, Los Angeles, and KSWs, the class II-A station at Roswell, N. Mex., explored in docket 18036 the question of presunrise impact from KGBS (and from KDKA, the I-A station at Pittsburgh), on the presunrise service of KSWs. Storer seeks to use its full 50-kw. directional facilities. Its argument in urging that both stations should use full day facilities before sunrise (although its request is not tied to that) in substance urges five points: (1) Neither KGBS, nor KSWs if it so operates, cause significant interference to the I-A station at Pittsburgh if they use full day facilities, taking into account the greater interference from two Illinois class II stations on the channel (WCIL and WPEO) at the same time;¹⁸ (2) the nighttime limit from KDKA to KSWs at Roswell is 4.83 mv./m., and that is the extent of protection to which KSWs is entitled even though as the time at Pittsburgh draws away from sunrise the interference from KDKA is less;¹⁹ (3) KGBS (using full facilities) does not cause interference to KSWs under the provisions of the Commission's rules and, even if a diurnal evaluation is made using the docket 14419 diurnal curves; the combined interference from KDKA and KGBS is never more than 4.83 mv./m. during the period after 6 a.m., m.s.t., when KSWs currently commences operation;²⁰ (4) with respect to operation at an earlier hour, if KSWs uses night facilities at times before 6 a.m., m.s.t., Storer agrees to reduce KGBS to 25 kw. and, so operating, would not increase interference from it and KDKA to a level higher than 4.83 mv./m.;²¹ but (5) in fact KSWs as well as KGBS would serve more area (including more white area in the case of KSWs) if they both operated with full day facilities,²² resulting in a more efficient use of the channel and preservation of the existing KGBS service.²³ Storer asks that a rule permitting such operation be adopted. KSWs opposes this arrangement and any presunrise operation by KGBS, on the ground of interference to it, including impact on skywave service which it assertedly renders even though it is not recognized by the rules. Later pleadings by Storer and KSWs continue the controversy and are accepted and considered here.

35. We cannot agree with the approach used by Storer in analyzing this situation, mentioned above (footnote 19). If it is regarded as entirely a nighttime one, under conventional nighttime standards the nighttime limit from KGBS, 4.63 mv./m., when combined with the nighttime limit from KDKA, 4.83 mv./m., results in an R.S.S. limit obviously considerably more than the latter alone (nearly 6.7 mv./m.). If the situation at Pittsburgh is regarded as becoming one of daytime conditions after sunrise there, then the interference to KSWs as Roswell from KGBS—over an all-dark path for a considerable time after sunrise Pittsburgh—is the only interference to be considered and is very substantial, as shown

availability of this material on other stations such as class I stations WLW, WJR, and WOWO (WRFD asserts that these stations currently present less of such material than formerly). As CBS also points out, WRFD has an associated FM station, with wide-coverage super-maximum facilities.

¹⁸The highest limit shown in the Storer engineering study from KGBS to KDKA is 0.804 mv./m. at sunrise Pittsburgh (7:30 a.m. e.s.t., 4:50 p.s.t.) in December. At the same time the limit from KSWs with day facilities would be 0.286 mv./m., compared to limits of 1.57 mv./m. and 1.41 mv./m. from WCIL and WPEO, the Illinois stations. These and other limits are diurnally calculated.

¹⁹The argument is that KDKA imposes a normal nighttime limit of 4.83 mv./m. on KSWs, establishing the degree of protection to which that station is entitled for presunrise purposes; but that, under the Commission's rules, interference from KDKA disappears and is regarded as nonexistent after sunrise at Pittsburgh, so that the interference from KGBS—4.63 mv./m. under full night conditions—is the only interference to be considered and is less than 4.83 mv./m.

²⁰At 6 a.m. m.s.t. (5 a.m. p.s.t.) in January, the limits (diurnally adjusted) from KDKA and KGBS would be 2.27 mv./m. and 4.26 mv./m., respectively, giving an R.S.S. value of 4.827 mv./m. This is the highest limit shown for that hour or later.

²¹On this basis, the KDKA and KGBS limits at 4 a.m. p.s.t. in November would be 3.33 mv./m. and 3.27 mv./m. respectively, for an R.S.S. limit of 4.66 mv./m., the highest limit shown for this operating arrangement.

²²The comparison made is between the area within the 4.83-mv./m. contour KSWs has with its 10-kw. nighttime facilities, and the area it would, assertedly, have with its 50-kw. day facilities and limited to 5.7 mv./m. (the R.S.S. value of the diurnally adjusted limits from KDKA and KGBS with 50 kw., at 4 a.m. p.s.t. in November, respectively 3.33 and 4.63 mv./m.). This is not a valid comparison, since KSWs does not in fact have a 4.83-mv./m. limit after sunrise Pittsburgh.

²³It is claimed that—one of few Los Angeles 50-kw. stations—KGBS serves a tremendous area during these hours, bringing a valuable and highly popular program format (with much public service material) to large audiences which are active at these hours in this all night metropolitan area, and particularly to the many motorists with AM but not FM car radios, in this area where transportation is generally by private automobile. KGBS has an associated FM station.

by Storer and noted above. If a diurnal analysis of the situation on the channel is made—which is essentially Storer's way of evaluating it—as shown by Storer and mentioned above the KGBS interference constitutes a very substantial limit on the service which KSWs could otherwise render. It is always more than the interference from KDKA, and during most of this presunrise period, it is so much more than the KDKA limit does not enter into the R.S.S. calculation.

36. Therefore, there is a very substantial impact from KGBS on KSWs. Considering the multitude of AM and FM services in Los Angeles (including two 50-kw. class I stations and KGBS-FM), the lack of nighttime service in New Mexico, and the purpose for which class II-A stations are assigned as mentioned above, we believe that a reduction to 500 w. in the presunrise power of KGBS is appropriate in light of the material of record herein, in addition of course to the fact that when it enters into force the United States/Mexican "Presunrise" agreement will require it. We do not believe that, so limited, presunrise operation by KGBS will substantially impair the wide-area service, in a needful area, which class II-A station KSWs is designed to render, or constitutes any infringement of that station's rights, to hearing or otherwise. To the extent that KSWs renders sky-wave service, as it claims, it has been able to do so with KGBS operating presunrise at full power, and its potential will be improved by the reduction to 500-w. power adopted herein.

37. *Fulltime stations other than I-A.*²² Section 73.99 (a) and (b), and the note following paragraph (b), refer to class II stations, without specifically mentioning fulltime class II stations on these channels. The notice in docket 17562 mentioned fulltime as well as daytime class II stations, and simply proposed to remove the note which permits presunrise use of full power.

38. CCBS and other I-A parties urged in docket 17562 that class II-A and other fulltime class II stations on these channels should not be permitted presunrise operation with other than authorized nighttime facilities. It was said that if using full power with daytime facilities they cause great interference to the cochannel I-A station; and if limited to 500 w. they violate the fundamental purpose for which II-A stations are assigned, service to wide, underserved white areas with high-power nighttime facilities. It is also pointed out that, having authorized nighttime facilities; they do not need presunrise privileges in order to operate. No fulltime stations on these channels (other than I-A) filed in docket 17562 or 18023; however, three such stations filed in docket 18036. These were class II-A station KSWs, class II station KFMB, San Diego (760 kc./s.), and station KOB, Albuquerque, whose status on 770 kc./s. is presently undecided. KSWs, opposing presunrise operation by KGBS, Los Angeles, as mentioned above, disavowed any interest in use of daytime facilities before sunrise. KOB simply asked that the Commission withhold action on any presunrise decision as to 770 kc./s. until resolution of KOB's status, and that meanwhile no action be taken which would prejudice KOB's rights on the channel. KFMB, on the other hand, seeks use of full daytime facilities (5 kw., nondirectional rather than its directional nighttime array) starting at 4 a.m. It claims that its situation warrants special consideration because it gave up its more favorable lower frequency (540 kc./s.) to aid implementation of the earlier United States/Mexican agreement, and because of the great distance between it and cochannel I-A station WJR, Detroit, with no other stations affected. The CCBS material concerning WJR shows some interference from presunrise operation by KFMB with day facilities.

39. In our judgment, use of full facilities presunrise by these stations is out of the question, as violative of the basic allocation concepts governing the I-A channels. We do not here decide that presunrise use of daytime modes of operation with 500-w. power (or less) should be precluded by rule, and accordingly are not changing the presunrise rule except by deleting the note permitting full daytime power to be used. However, any PSA request by fulltime stations on these channels will be scrutinized carefully to determine whether grant thereof would be in the public interest and preferable to requiring them to use authorized nighttime facilities during the hours involved. The area and population losses inherent in such proposals would appear to eliminate them from favorable consideration.

²² Most fulltime class II stations on these channels are located outside of the continental United States and operate with the same facilities day and night. This discussion applies to class II-A stations and KFMB, San Diego, and station KOB, Albuquerque, whose status is undecided.

40. The action taken herein in no way prejudices the situation of station KOB on 770 kc./s. Presunrise operation by daytime and limited-time stations on the channel may be engaged in with 500 w., but it does not appear that this will limit KOB's service to an extent substantially greater than it is already limited by WABC, the I-A station. If, in proceedings presently pending in docket 6741, it is decided that KOB should operate as a class I station (which is not the Commission's proposal), appropriate steps can then be taken with respect to cochannel presunrise operations.

Docket 18023: Adjustment to 6 a.m. local time

41. Under the note to section 73.99(b) (1), western class II stations on these channels are presently limited to presunrise operation starting at 6 a.m. standard time which means 7 a.m. local time during the April-October daylight-saving portion of the year, although of course they can sign on at an earlier hour when their own local sunrise is earlier. The August 1968 decision in docket 18023, changing the rule to 6 a.m. local time for class III stations and class II stations on I-B channels, specifically refrained from making the same adjustment for these stations, because of the different considerations applicable to the I-A channels which required further evaluation. See first report and order in docket 18023, F.C.C. 68-859, 14 F.C.C. 2d 393.

42. Comments were filed by CCBS and KFI opposing the change as to these class II stations, and also by CBS in opposition (although not with particular reference to these channels). Comments favoring the change for stations generally were filed by Daytime Broadcasters Association, and western class II stations KFAX and KJIM (part of joint comments without particular reference to the I-A channels). Comments particularly relating to the I-A channels, and favoring the proposed change, were filed by western class II stations KXA, KXL, WRFD, KOZN, KMMJ, and eastern class II stations WHLO, WJJD, and WOI.²⁵

43. The arguments advanced by the class II parties are generally the same as those urged by class III and other class II stations in the 6 a.m. proceeding and noted in the first report and order mentioned. They include the desirability of preserving existing service which many of these stations have rendered during the hours in question and on which listeners have come to rely, the need for an early sign-on to reach farm audiences and the generally early-rising population of the area, the hampering effect on the station and the community of a late sign-on particularly in October,²⁶ and the need for a sign-on reasonably early in terms of the life of the community. It is also urged by some that if sign-on at sunrise at the I-A location is permitted during the winter months, it should be at all times during the year.

44. CCBS and KFI oppose the change because of the increased interference to I-A service which would be involved. CCBS urges the following points: (1) Since most of the western class II stations cannot sign on at 6 a.m. because sunrise at the I-A location is later, the change involved here will not give them the uniformity of sign-on time which has been so highly stressed by daytimers generally in seeking this adjustment;²⁷ (2) for the same reason, presunrise operation by these stations starting at 6 a.m. local time in the summer and early fall months is often further before sunrise than is 6 a.m. (local standard time) in winter, and thus the interference levels created will often be the highest of those occurring during the year;²⁸ (3) the change will in many cases considerably increase

²⁵ See footnote 1, above, concerning the filings of KFI and WOI.

²⁶ Except for the Pacific coast stations, most of these western class II stations are located in the western portions of the eastern and central time zones (Ohio, Georgia, South Carolina, Nebraska, Oklahoma, and Texas). Therefore, their own sunrise is late during a large part of the year, and they depend on presunrise hours for early morning operation, probably to a greater extent than do regional stations overall.

²⁷ Only the 5 Pacific coast stations can sign on all year at 6 a.m. or an earlier hour. All of the other daytime- and limited-time class II stations are in the central and eastern time zones, and are therefore limited in January and some other winter months to sign-on later than 6 a.m. local time, by virtue of the sunrise time at the I-A location.

²⁸ CCBS states that this is true in 10 cases (incorrectly including one station but also excluding one which should have been included), and in 13 others the maximum time before local sunrise during the daylight-saving time period would be the same as the maximum during the winter. One of the 10 is KIKK, Pasadena, Tex., on 650 kc./s. CCBS shows that (using the CCBS diurnal curves), the interference limitation from KIKK to the groundwave service of WSM, the cochannel I-A station at Nashville, would be greater in August than

the total time of presunrise operation by these stations and thus the duration of interference to I-A service;²⁸ (4) the interference to I-A service thus created will occur at the time of year when such service is of most importance, to rural audiences during the growing and harvest seasons and when people are traveling on the highways in large numbers (vacationers, truckers, etc.); (5) viewed as a group, these stations do not represent much in the way of needed local service which is important at an early hour, since most of them are in or near cities with abundant fulltime AM and FM service (see par. 22 and footnote 11, above), and therefore the interference from presunrise operation during the additional time is not justified.

45. After careful consideration of this matter, including the arguments just mentioned, we are of the view that the 6 a.m. local time adjustment should be made for these stations, just as it was in the 1968 decision for stations on other channels. We adhere to the conclusions reached there (e.g., pars. 31-32, 45-46, 14 F.C.C. 2d 406-407, 412-413), concerning the desirability of providing for the rendition of broadcast service, bringing informational and other material, at an hour reasonably early in terms of the life of the community, which now nearly always is geared to advanced time during the April-October period. We are aware, as CCBS points out, that in most cases such operation by these stations is not necessary to aural, or even AM, service to the community. But this is not always true (see par. 22 and footnote 11, above), and even where it is we believe that the provision for a 6 a.m. local time sign-on is desirable to remove a substantial impediment to these stations' operation and provide for a uniform and reasonably early sign-on during most, even if not all, of the year.²⁹ These benefits we believe outweigh the additional interference which will result. Certain other considerations should be pointed out. First, the considerations of equity and technical parity, which are one reason for imposing a general 500-w. limitation on these operations as mentioned above, likewise apply here to indicate a relaxation of the starting time to 6 a.m. local time, as has been done for other stations in our 1968 decisions. Second, the interference from the additional operation thus permitted will be lessened materially by the 500-w. limit imposed on all of these stations which are substantial sources of potential interference to I-A service, and the overall presunrise situation will be substantially improved by the reduction in power of 20 stations which have hitherto been permitted to operate with full daytime power presunrise. Third, to a substantial extent the operation thus permitted is that which has taken place in the past, with full daytime power, and therefore the change will simply remove a restriction and permit resumption of past service, limited as prescribed herein to avoid excessive interference.³⁰

The Eastern Class II Stations

46. The 28 eastern class II stations on U.S. I-A channels (including WOI and WNYC, whose presunrise operation is not considered herein, and one on

it is in January (ranging from 0.66 to 0.34 mv./m. in August compared to 0.5 to 0.25 mv./m. in January). The situation in this respect appears to be somewhat different from that on the regional channels, where, overall, the time between 6 a.m. d.s.t. and sunrise in October and the other advanced-time months is less than it is between 6 a.m. s.t. and sunrise in January and the winter months, and hence, interference levels are lower. See the first report and order in docket 18023, pars. 38-39, 14 F.C.C. 2d 393, 409.

²⁹ In one case, (WTUF, Mobile, 840 kc./s.), presunrise operation can take place only if the adjustment to 6 a.m. local time is made.

³⁰ As noted earlier, local sunrise for many of these stations is relatively late and therefore they must rely on presunrise time during substantial portions of the year.

³¹ The 6 a.m. local time change will mean additional presunrise operation (and whatever interference results therefrom) as compared to 1968 and 1969 up to now, since such operation has been limited to 6 a.m. standard time. However, as compared to 1967 the change will not represent any additional operating time, since presunrise operations were permitted under the earlier, more liberal rules until October 23 of that year, with full power. Advanced time was in effect starting April 1, 1967, so stations which wished to sign on at 6 a.m. local time (which is a fairly common starting time for stations generally) signed on at 5 a.m. standard time. As to earlier years, when these and other stations could sign on at 4 a.m. but advanced time was not in effect nationally or in some of the States where these stations are located (e.g., Nebraska, Oklahoma, and Texas), some probably operated during the 5 a.m.-6 a.m. (standard time) hour and some not; those that did of course used full power. In the case of KIKK, Pasadena, Tex., specifically mentioned by CCBS as a source of summertime interference (footnote 28, above), examination of its 1968 renewal application shows 39½ hours of operation during the composite week (days in 1966 and 1967) indicating operation generally starting as early as sunrise Nashville permits. See in this connection the first report and order in docket 18023, pars. 40-42 (14 F.C.C. 2d 410-411).

1210 kc./s. in Puerto Rico) are on 13 of the 25 U.S. I-A channels. Presunrise operation by all of these stations, whose sunrise time is generally earlier than that at the I-A location, would seriously impair or destroy completely skywave service on these channels by the cochannel I-A stations during part or all of the presunrise period, at least if conventional nighttime interference standards are used in evaluating the interference, as shown both in the present proceedings and in earlier considerations of 5 to 7 and 6 to 6 extended hours of operation (docket 12274 (1958), and docket 12729 (1959)). Such a serious impairment of the multiple skywave service structure, through authorization of a large number of interference-producing class II operations before sunrise, it is not to be considered without a very substantial showing that the public interest would be served. Viewed as a group, these 26 stations appear to represent only a modest amount of greatly needed aural service or potential service, either in terms of early-morning service to underserved areas or service of local origin.³² Therefore, while we give some consideration to presunrise operation by these 26 stations generally, our attention is directed primarily to the question of permitting such operation by the five stations (other than WOI) on whose behalf comments herein were filed. These are WHLO, Akron (640 kc./s.); WAIT, Chicago, and WIKY, Evansville, Ind. (820 kc./s.); WHCU, Ithaca, N.Y. (870 kc./s.); and WJJD, Chicago (1160 kc./s.). All but WAIT have operated presunrise in the past; WJJD terminated its operation in 1965 following a complaint by cochannel I-A station KSL, Salt Lake City; the operations of WHLO and WIKY were terminated after our adoption in 1967 of the new presunrise rule clearly precluding eastern class II presunrise operation on these channels; and the operation of WHCU continues pursuant to Court order pending its appeal from adoption of that rule and denial of its request for waiver. As far as is known, these are the only presunrise operations by eastern class II stations on these channels which have taken place in recent years. The law firm of Daly and Joyce also filed comments supporting the cause of presunrise operation by these stations.

47. The further notice in docket 17562, which enlarged that proceeding to include the matter of presunrise operation by these stations on the basis of the requests of WHLO and WHCU, stated the question as involving the public value of such class II usages vis-a-vis cochannel U.S. I-A nighttime services which they would inevitably limit, to some degree, as well as secondary issues going to the circumstances under which such operation should be permitted and the degree of skywave interference protection to be afforded class I stations. Some of the arguments advanced by these class II parties have only a small relation, if any, to the question of *public value* as opposed to their own private interest. This is true, for example, of the economic arguments of WHCU³³ and similar arguments advanced by WIKY and WAIT. We recognize that the hours involved here are often periods of high audience and revenue potential, as has often been asserted in presunrise proceedings. But considering the amount of time involved—which is small for these stations as it is for the I-A stations—we are not persuaded that their economic situations would suffer from the absence of presunrise time to an extent which will substantially impair their ability to operate in the public interest or to compete with other stations.³⁴ The matter of a uniform sign-on, which some of these stations urge, is likewise largely a matter of private

³² Of the 26 stations, 13 are in communities with no fulltime AM outlet; in three of these cases (Forest City and Kannapolis, N.C., and Ithaca, N.Y.), there is a local station with presunrise authority, and in four other cases the community is in an urbanized area close to a city with fulltime AM service (East Lansing, Mich., Hempstead, N.Y., Bethlehem, Pa., and Arlington, Va.). Ten of these 13 stations are associated with FM stations; there is other local FM service at Kannapolis, N.C., and a vacant FM channel at Dunn, N.C.

³³ WHCU, licensed to Cornell University, claims that it is self-sustaining and only marginally profitable, and the anticipated annual loss of \$30,000 in revenue would mean a deficit and less time for public-service programming.

³⁴ As shown by its comments, WHCU's actual presunrise operating schedule including about 165 hours. WHCU as a limited-time station can operate until sunset at New Orleans, and presunrise time represents about 3.5 percent of its annual operating hours. In the case of limited-time stations WAIT and WJJD, the number of annual presunrise hours and percentage is about the same (about 162 hours a year). Limited-time station WHLO, Akron, has a relatively late sunrise and more annual presunrise hours, about 300, 5.4 percent of its operating hours. In the case of WIKY, daytime-only, 142 hours of annual presunrise operation represent about 3 percent of annual operating hours. These figures assume sign-on at 6 a.m., local time, which these stations seek; a 6 a.m. standard time sign-on would mean fewer hours and a smaller percentage.

concern insofar as it may lead listeners to turn to other stations. To the extent the listener inconvenience involved is a public-interest factor (as claimed by WHLO with supporting letters), we cannot find that provision for a uniform sign-on, as such, is a consideration even closely approaching in significance the interference impact which such operations have on I-A service. We point out in this connection that a large group of stations—those on foreign I-A channels, numbering more than 500—have not had and do not have such uniformity, and the same is true of many class II stations on U.S. I-A and I-B channels.

48. Another argument made by some of the parties is that their presunrise operations are not only significant as rendering valuable, relied-upon service for a long period, but have existed without complaint by the I-A station or listeners of interference (and sometimes with the I-A station's agreement.³⁵ Therefore, it is urged, they should be permitted to continue and in view of the absence of demonstrated impact in these cases similar operation by other stations should be permitted. We can attach little significance to the absence of complaint, for reasons already stated (par. 19).

49. *Interference to I-A groundwave service.* Except for WHCU, these commenting parties almost completely ignore the matter of interference to I-A groundwave service from their presunrise operations, which is substantial in all cases except WHLO. In the case of WAIT and WIKY on 820 kc./s., CCBS shows, on the basis of diurnal evaluation using the CCBS curve, that in January both stations cause interference within the 0.5-mv./m. groundwave contour of WFAA/WBAP, the I-A stations at Dallas-Fort Worth, even after sunrise at the class II locations (WAIT to a maximum of 1.57 mv./m. if using its full 5 kw. or 0.64 mv./m. using 500 w.). During the presunrise period the interference would be greater.³⁶ In the case of WJJD, the interference to the groundwave service of KSL on 1160 kc./s. would be less and CCBS does not show it; but it appears that it would fall within the 0.1-mv./m. contour even if WJJD were limited to 500 w. WHCU and I-A station WWL (870 kc./s.) both discuss at length the extent of interference to WWL's groundwave service; both using the CCBS diurnal curve in their evaluation. While the showings differ, it appears that the interference occurs within the 0.5-mv./m. contour along somewhat more than half of that contour from east to west (in the direction of WHCU) at about the WHCU presunrise starting time in 6 months of the year. Later in the presunrise period the interference is less, as it is in some other months when the operation begins closer to sunrise; but it occurs within the WWL 0.1-mv./m. contour at all times and in all directions.³⁷

³⁵ The WHCU operation dates from 1956, on the basis of an understanding of consent, on a temporary basis, by Lorola University, licensee of cochannel I-A station WWL. There was no complaint by WWL until, after this matter was raised following the Commission's 1967 presunrise decision, it terminated by letter of Nov. 7, 1967, any agreement which had existed. The WHLO and WIKY presunrise operations took place for 10 years or more; it is stated, as far as we know correctly, that there was no complaint from the I-A station or listeners, and the station may not even have been aware of the operation. WJJD terminated its operation in 1965 on complaint by KSL (the only such complaint against an eastern class II presunrise operation). KSL, in further comments accepted for this limited purpose since WJJD's argument was first advanced in reply comments, asserts that this was prompted by hundreds of complaints from listeners after KSL commenced 24-hour operation. The WJJD and KSL comments conflict as to the extent to which KSL operated during the early morning hours in previous years; *Standard Rate and Data* shows both 24-hour and lesser operation at various times. The other I-A stations on these channels have operated 24 hours a day at least 5 days a week.

³⁶ During part of the presunrise period interference from these stations is less than that from WOSU, Columbus, Ohio (5 kw.), immediately after its own sunrise; but such operation takes place during less than half of the hours involved in presunrise operation at Chicago and Evansville starting at 6 a.m.

³⁷ WWL's showing is of interference conditions at S.R. midpoint minus 1¼ hours, and at later times. The S.R. 1:15 conditions prevail at or near the beginning of WHCU presunrise operation in January, February, late April, September, most of October, November, and December, according to WHCU's analysis of its presunrise starting time in relation to sunrise. WHCU claims, on the basis of diurnal analysis, that it causes interference within WWL's 0.5-mv./m. contour, on the 15th of each month, for the following number of minutes: January, 25; February, 25; October, 30; November, 16; and December, 14 (out of 60 minutes operation); for 19 of 45 minutes on September 15, and not at all on March or August 15. As mentioned below, WHCU and WWL differ somewhat as to the location of the WWL 0.5-mv./m. contour. Presunrise operation by WHCU begins at 6 a.m. local time or an hour before sunrise Ithaca if less; it does not occur during most of April and all of May, June, and July.

50. It appears from the CCBS nighttime groundwave service map (also used by WWL and WHCU), that the three I-A stations mentioned are important in serving areas without other service at long distances from their locations, so that any change in their groundwave service increases or decreases white area. Other presunrise operations may serve some, but not a large amount, of this area in the case of WFAA/WBAP; such operations in the WWL area serve only starting at 6 a.m. central time (7 a.m. Ithaca time), which is after most of WHCU's presunrise operation (the same is true of WJJD-KSL).

51. *WHCU, Ithaca, N.Y.* The parties supporting the cause of eastern class II presunrise operation advance a wide range of arguments in support of their positions, including some relating to particular situations and others more generally applicable. The latter can best be evaluated in the context of the situation of WHCU, Ithaca, N.Y., on 870 kc./s., since this is in most respects the most meritorious of the cases involved here other than WHLO (which involves special considerations and is discussed below), and also since it was more thoroughly explored, in three sets of comments filed by Cornell University, the licensee of WHCU, and Loyola University, licensee of cochannel I-A station WWL, New Orleans. The question is whether WHCU's presunrise operation of 12 years' standing—which takes place during slightly more than 8 months a year, starting at 6 a.m. local time except in most of October, December, and January, when it begins at 6:15 or 6:30—should be permitted to continue, in light of the particular facts involved and the various arguments of general significance urged on both sides.

52. *WHCU-WWL gains and losses.* WHCU puts the question in terms of a 307 (b) equitable adjustment of operating hours vis-a-vis WWL, and WAIT frames it as a matter of the larger and more effective use of radio (sec. 303(g) of the Act). If only the conventional criteria normally used in evaluating standard broadcast proposals are used, on the basis of the material submitted herein WHCU must necessarily lose under either of these concepts, in view of the areas and populations served compared to those lost to WWL through interference to its groundwave and skywave service, and the other service available to the gain and loss areas. This is true if the situation is evaluated on the basis of conventional nighttime propagation standards contained in the rules and normally used in considering operations, during non-daytime hours; and it is also true if a diurnal evaluation is made, as WHCU and WWL have presented their material (using the CCBS diurnal curve). As shown in the record, WHCU renders a presunrise a.m. service to a fairly small area and population, and it provides the only such service to a much smaller area and population, since another Ithaca station operates presunrise with the same power.²⁹ The interference involves a double loss, to both groundwave and skywave service. The former is discussed in paragraph 79, below. The skywave service impact is tremendous if evaluated on the conventional nighttime basis, great even if a diurnal evaluation is made as it has been by WHCU and WWL (using the CCBS curve), and substantial even if weight is attached to WHCU showings based on 5-to-1 and 10-to-1 interference ratios, which WHCU claims are more appropriate than the 20-to-1 standard set forth in the rules (the significance of this matter is discussed below).³⁰

²⁹ WHCU claims primarily to serve Tompkins County (Ithaca), with an area and population of about 500 square miles and 66,000 people; it also cites as indicating wider coverage the use of its school-announcement service by communities up to 20 (and in one case, on an emergency basis, 30) miles from the station. WWL claims that at various times in the presunrise period WHCU is limited by WWL to 7.6 or 10.5 miles from its transmitter; the latter would include most, but not all, of Tompkins County. As to the service rendered presunrise by WTKO, Ithaca, WHCU in three comments in docket 17562 does not mention this station, even though it was mentioned by the Commission as a pertinent circumstance in our November 1967 consideration of WHCU's request for continued presunrise authority (memorandum opinion and order, F.C.C. 67-1309, par. 5; 10 F.C.C. 2d 928, 924-25, 11 R.R. 2d 959, 961), and by WWL in reply comments. We assume that, operating on a higher frequency and with a high limit during these hours from the numerous fulltime and presunrise operations on its channel, WTKO serves a smaller area than does WHCU, but in the absence of any showing we cannot assume that the difference is great.

³⁰ In initial comments, using full nighttime standards, WWL showed WHCU as destroying all of its skywave service within the 0.5-mv./m. 50-percent contour, containing

53. If consideration is given to the total aural-service picture, including AM as well as FM, the balance is even less favorable to WHCU. With its wide-coverage class B facilities, WHCU-FM provides a good predicted FM signal (1 mv./m. or stronger) to a distance of 35 miles or more from Ithaca, including all of WHCU's claimed presunrise area. There is FM service from two other Ithaca commercial stations. FM service is not available in the WWL loss areas to the same extent.⁴⁹

54. *WHCU-WWL: Other considerations.* We turn, then, to consideration of whether any or a combination of a number of factors urged by WHCU and other class II parties should change this result. We give these matters more consideration than would normally be true in evaluating a standard broadcast proposal, both because the WHCU operation is one of long standing and because of the vigorous expressions concerning the need for the service, both by the station and by public officials in supporting letters.

55. *The amount of time involved.* It is urged that the amount of time involved in these presunrise operations is so small—only about 2 percent or less of the I-A station's annual broadcasting hours, and also small in relation to the time it can render skywave service—that the marginal adjustment involved in permitting them should be made for this reason. This factor, as such, is of little significance. If the time is small with respect to I-A stations, it is not a great deal larger for the class II stations (3.5 percent in the case of WHCU), and is not enough to affect substantially their ability to render adequate service to the public in their communities and surrounding areas. Compared to the double loss (to I-A ground-wave and skywave service) which their operations generally involve, this is not a significant factor as such.

56. *The nature of the respective services.* It is urged that allowing class II operations such as that of WHCU to continue permits the rendition continuously throughout the year, of a valuable, locally oriented informational service on which audiences have come to rely and which they need in their daily activities (and which in the case of WHCU represents the first AM service since the previous afternoon or evening). This material cannot be presented at an earlier hour because the station cannot broadcast then, and, it is argued, it cannot be presented later and reach listeners who have left for work or school and who need the emergency and other material (school-closing announcements, etc.) in planning their daily activities. Thus, if the service is to be of any value, it is said, it must be available presunrise.⁴¹ By contrast, it is urged, any I-A service which is

30,300,000 people and substantial white area. WWL later showed diurnal conditions at SR-1.00 on January 1 (5:56 a.m.), with WHCU destroying WWL's skywave service in all of the United States except Louisiana, Texas, Oklahoma, most of Mississippi, Arkansas, Florida, and New Mexico, about half of Alabama, and portions of five other States. Later WHCU showings portrayed the situation within the WWL 0.5-mv./m. 50-percent skywave contour only, at various presunrise times and on the three signal-ratio bases mentioned. At the presunrise starting time in January, it is shown that (20-to-1) interference to WWL occurs in slightly less than half of the area within that contour, to about 350 miles from New Orleans at its closest point and extending from Florida to central Illinois, southern Iowa, and eastern Kansas. The showing is that there is no interference using a 5-to-1 ratio at one-half hour after the presunrise starting time or later; using a 10-to-1 ratio there is interference at the one-half-hour mark but not at sunrise Ithaca; using the standard 20-to-1 ratio there is interference at sunrise Ithaca in October but not in January. Nearly all of the interference areas shown contain a large portion of white area. The five smallest interference areas shown (two using 5-to-1, two 10-to-1 and one 20-to-1), all contain 30 or more counties, in four or more States, all or large parts of which are white area.

⁴⁹ In the area of Louisiana and Mississippi, lying 25 miles on either side of WWL's 0.5-mv./m. groundwave contour, containing all or part of 39 counties or parishes, there are 14 communities having FM stations, six with class C and eight with class A. Thus, to the extent FM service is available, it is often not of local origin as is that available around Ithaca in WHCU's presunrise area. The same is true of the white areas within the area of WHCU interference to WWL skywave.

⁴¹ "While it is true that an hour is only an hour, all hours are not the same. The important fact is to render community service. If the hour in question is lost, the information that people would have obtained is lost, as they will have already made their daily plans." (Letter from the Supervisor of the town of Ithaca, Aug. 15, 1967, submitted with WHCU's comments.)

WHCU emphasizes particularly its information programming—weather and school announcements, of particular significance in this severe winter area, farm information, other emergency messages, etc. Its complete schedule and that of WWL are set forth on the next page.

gained through removal of the interference will be only a service which potential listeners have hitherto been able to live without, a distant service rendered by a I-A station often not concerned with distant (particularly skywave) listeners and obviously unable to present material of particular significance to all of the large skywave area involved. Moreover, it is said, any skywave service thus gained is one available to listeners only during part of the year (generally, the winter months) when the time involved is before sunrise at the I-A location, and thus cannot be relied on by listeners during much of the year and can be of little significance to them. It is argued that to the extent the I-A stations do present any material of significance to skywave audiences during the hours affected in these months, they should be required to reschedule them into other hours when they can render skywave service during this part of the year.⁴² WHCU asserts that presunrise interference to I-A skywave service should be permitted where (as in its case) it does not affect unlimited time skywave service.⁴³ It is also urged (generally and with respect to 820 kc./s.) that the skywave service for which the I-A parties claim protection is at best a 50-percent one, varying and subject to such factors as adjacent-channel skywave interference which make it of less importance compared to the reliable local class II groundwave service involved.

⁴² WAIT terms the early-morning skywave service rendered during these months (and not at other times when nighttime hours are less) service by inadvertence, or bonus hours. It elaborates this concept as follows: Presunrise operation at Chicago, starting at 6 a.m. standard time, averages 50 minutes per day in 4 months (November through February). During these months the I-A station's skywave service period (sunset to sunrise at its location) averages 13 hours a day compared to 10 hours during the March-October period, an increase of 30 percent, which presunrise impact would reduce to about 25 percent. It is urged that I-A stations can easily reschedule into this remaining 25 percent any material, such as farm information, which becomes unavailable because of presunrise interference during the hours affected. This argument is not entirely correct even on the basis stated, since presunrise operation at Chicago averages an hour per day during the 4 months, and the sunset-sunrise period at Dallas-Fort Worth averages about 13.5 hours during these months compared to 11 hours from March to October, an increase of 23 percent which presunrise operation would reduce to about 15 percent. Operation starting at 6 a.m. local time, which all of these class II stations seek, would increase the presunrise time, and it is also greater in other cases such as WMCU. Also, much of this winter bonus time is evening hours, which can hardly be considered the same as interference-free broadcast time available the next morning.

⁴³ WHCU attempts to distinguish its situation by asserting that its location is not greatly to the east of New Orleans and therefore its presunrise operation occurs relatively close to sunrise at that city and has less impact on WWL's service than does operation by some other eastern class II stations on cochannel I-A service. Actually, WHCU is farther east than any other station on 870 kc./s., and farther to the east of its cochannel I-A station (and therefore with sunrise and presunrise times generally more before sunrise at that station) than all but five of the 26 eastern class II stations involved here. As to permitting operation which does not interfere with unlimited time skywave service (that available all year), if this concept were adopted it would permit presunrise operation by all eastern class II stations except WHLO, since in all other cases sunrise at the I-A location in June is as early or earlier than 6 a.m. (local time) at the class II location. Adoption of this concept is clearly not warranted.