

AM Station, Operating Hours
Daytime Station
Operation, Hours of Daytime-Only
Post-Sunset Operation
Sunset

Petition for reconsideration granted to an extent and otherwise denied. Section 73.99 of the Commission's Rules amended to permit Class III daytime-only stations to use higher power during post-sunset operation. Section 73.1725(d) governing disputes concerning nighttime resumption of operation by limited-time stations during hours when co-channel Class I station is not operating deleted.

—*Daytime AM B/c Stations*

BC Docket No. 82-538

FCC 84-157

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION**

WASHINGTON, D.C. 20554

In the Matter of:

Hours of Operation of Daytime-only AM
Broadcast Stations

BC Docket
No. 82-538
RM-3938

Amendment of Section 73.81 of the Commission's Rules (Hours of Operation of Dominant and Secondary Stations).

Docket No. 18421¹

Memorandum Opinion and Order

Adopted: April 11, 1984; Released: April 13, 1984

BY THE COMMISSION:

Introduction

1. The Commission has before it a Petition for Reconsideration of the *First Report and Order* in this proceeding 195 FCC 2d 1032 (1983), 48 Fed. Reg. 42944, published September 20, 1983, which was filed by the

¹ We have included the matters outstanding in Docket No. 18421 for disposition in this document. These matters are discussed below.

Daytime Broadcasters Association ("DBA") and responsive pleadings.² In addition, the Commission intends to reconsider certain other matters in this proceeding on its own motion. They are discussed below.

2. This proceeding was begun with a combined *Notice of Proposed Rule Making* and *Notice of Inquiry*.³ As a whole, the proceeding focused on possible rule and policy changes which could help to alleviate some of the difficulties affecting daytime-only AM broadcasters because they are licensed only for operation from local sunrise to local sunset.⁴ The rule making portion dealt with specific rule changes to permit for the first time operation beyond local sunset and to extend the opportunity for pre-sunrise operation by certain Class II stations. Both of these matters were resolved by the *Report and Order*.

3. In the *Report and Order* the Commission decided that it was possible to permit post-sunset operation.⁵ This conclusion was based on the fact that during the transitional period, the potential for interference was notably less than during full nighttime conditions. Taking this into account it was possible to measure the potential for interference and, in most cases, to allow post-sunset operation without causing interference. In fact, that is what the Commission did. Class III stations were permitted to operate two hours beyond local sunset with up to 500 watts power, reduced as necessary to avoid interference. Most Class II stations (those on clear channels) also got post-sunset authority on a non-interference basis. The specific powers varied during the two-hour post-sunset period depending on protection requirements, and in some cases, post-sunset operation was curtailed or for a few was not possible at all.

4. The *Notice of Inquiry* proposed to explore a range of other ways of helping daytime-only stations obtain nighttime operation either on their

² Letters of support for the petition for reconsideration were filed by several daytime-only stations. Oppositions to the petition were filed by the Association for Broadcast Engineering Standards ("ABES"), the American Broadcasting Companies ("ABC"), Clear Channel Broadcasting Service ("CCBS"), Cox Communications ("Cox"), Bonneville International, licensee of Station KSL, Salt Lake City, Utah, ("KSL"), and Multimedia Radio ("Multimedia").

³ 47 Fed Reg. 38937, Published September 3, 1982.

⁴ This limitation arises from the fact that at night the ionosphere reflects AM signals back to Earth hundreds or even thousands of miles away, thereby causing a much greater potential for interference. This means that many stations that are able to operate during the day without causing interference would cause considerable interference if they were to continue that operation at night. However, because the shift from day to night conditions occurs gradually during a transitional period, it is possible to permit some operation during this period without causing interference. Further explanation of AM propagation and related matters is contained in the *Report and Order* (see paras. 2-12).

⁵ Reconsideration, however, has not been sought regarding the Commission decision to enlarge the opportunity for pre-sunrise operation by certain Class II stations, and no further consideration will be given to this matter.

own or another AM channel or on an FM channel. In the *First Report and Order* the Commission decided to defer these issues for subsequent consideration. These matters are discussed in a subsequent section of this document.

PETITION FOR RECONSIDERATION

5. The DBA petition for reconsideration commended the Commission for its action, but it said that some additional steps should be taken to alleviate the difficulties faced by the daytime-only stations. Specifically, it urged the Commission to amend the manner in which diurnal curves will be used to calculate protection requirements imposed on Class II daytime-only stations during the two hour post-sunset period to take into account the effect of the diurnal variation on the protected contour of a Class I station on the frequency. DBA argued that such diurnal calculation are possible to make and are not unduly complex or impracticable as the Commission stated. According to DBA, this is an important matter as it objects to protecting the Class I station's 0.5 mV/m 50% signal in the period before a signal of this intensity is generated.

6. For Class III daytime-only stations DBA argued that the Commission's "worst-case" approach to determine the power to use during the entire post-sunset period is too limiting. Instead, it urged periodic recalculations or averaging the time rather than using "worst-case" which it believes over protects the full-time stations during part of the post sunset period. Finally, DBA objects to the Commission's decision not to entertain waiver requests from Class III daytime-only stations seeking a power of 500 watts based on a showing that a station has operated with this power for years during the pre-sunrise period without causing undue interference to full-time stations. DBA asserts that it is unfair to refuse to consider such requests when the Commission did agree to consider interference objections filed by full-time stations.

7. DBA notes the Commission's concern that persons in remote areas of the United States do not have adequate radio service, but it says this concern should be allayed by the fact that commercial shortwave radio is increasingly available in the United States. DBA contends that shortwave is equally well suited to the type of extended area service the Commission is trying to achieve with AM radio skywave service, and more commercial radio receivers now include one or more short wave bands at no extra cost.⁶

⁶ Finally, DBA noted that the Commission did not address in its *First Report and Order* the various proposals raised in the *Notice of Inquiry*. DBA urged the Commission to act expeditiously on a number of these proposals. Support on this point came from opposition filings as well and, as noted earlier, the Commission on its own motion has decided to act on these matters here.

8. The Association for Broadcast Engineering Standards ("ABES") filing was typical of the oppositions in asserting that the Commission responded as generously as possible to the pleas of daytime-only AM stations for some measure of operating authority in the post-sunset period. ABES and the others insisted that additional relief would be unwarranted. On the issue of the use of the diurnal curves in determining the location of the protected 0.5 mV/m, 50% skywave contours of Class I stations, ABES notes that the Commission considered the merits of DBA's proposal but rejected it because of valid concern about the administrative burden involved and the need for consistency with our international agreements regarding Class I services. According to ABES, DBA makes no factual showing why the Commission should now reserve its conclusions in that matter.

9. ABES also disputes the appropriateness of employing a system of varying operating powers for daytime stations during the course of the post-sunset period, asserting that once again DBA is presenting a matter which had been rejected earlier because it would increase the technical and operational complexity of post-sunset service and would increase the potential for destructive interference to full-time services. Here, too, ABES insists that DBA has failed to provide any new facts or technical showings to alter the Commission's resolution of this issue.

10. Finally, the opponents assert that the Commission should not adopt a policy of granting waivers to permit post-sunset operations in excess of that permissible under the general rule in the absence of any studies upon which the Commission could possibly justify a different result in the public interest. According to ABES, the burden of presenting facts which show that reconsideration of any element of the *First Report and Order* is necessary or desirable rests upon DBA. ABES submits that DBA has failed to sustain that burden.

11. Several other points were added by CCBS. In particular, it disputed the relevancy of short wave. It noted that few Americans are capable of receiving such signals which, in any event, under current Commission rules can only be used to provide international rather than domestic service. In addition, CCBS believes it was proper to distinguish between objections raised by full-time stations regarding new interference within their coverage areas and requests for higher power by daytime-only stations. In the first case, it says that actual loss of service to current listeners would be involved, rather than a limitation on the ability to extend service to listeners not now relying on the service.

SUPPLEMENT TO PETITION FOR RECONSIDERATION

12. After the cycle of pleadings on the original petition concluded, DBA sought and received leave to file a supplement to its petition for reconsideration. In granting DBA's motion, the Commission provided an

opportunity for other parties to respond to the supplement, and opposition filings were received from ABES, Multimedia, Cox and CCBS. In its supplement DBA changed the approach expressed in the original petition and thereby substantially broadened its request for relief. Instead of adjustments in the powers available during the post-sunset period, DBA requested that all Class III daytime-only stations be able to operate until 6:30 p.m. local time with 500 watts power and that Class II daytime-only stations be given substantially increased power. Class II stations on U.S. Class I-A clear channels would be given a minimum power of 100 watts, and those on U.S. I-B's would be given a minimum power of 250 watts. Class II stations on foreign clear channels would be given the maximum power permitted by treaty, but the Commission was asked to press Canada and Mexico to allow even greater power.

13. In support of these requests DBA asserts that many stations are severely limited in the facilities allowed during the post-sunset period. To them this stems from an excessive level of protection to the service of clear channel stations and to the refusal to allow Class III stations to use the same power (500 watts) in the post-sunset period as they are able to use pre-sunrise. In DBA's view, propagation conditions during the pre-sunrise and post-sunset transitional periods are similar so that there is no basis for not giving the stations the same power post-sunset as they have pre-sunrise. DBA asserts this is just one example of how the Commission has given undue weight to technical data, thereby unnecessarily restricting post-sunset service.

14. The oppositions and the engineering showings in support of them make the same basic point: that the supplement provides no new evidence or even any supportive engineering data on which to base any modification of the Commission's decision. Moreover, they assert that DBA has ignored specific findings of the Commission and without support has reasserted claims previously rejected by the Commission. According to Multimedia, for example, DBA is attempting to discredit the Commission's reliance on technical data by asserting that such data was given undue emphasis. Multimedia insists that the engineering impact of post-sunset operations cannot be ignored but must be at the heart of the Commission's decision making process. Multimedia also rejects the DBA's reference to pre-sunrise operations by daytime-only stations as providing a basis for allowing similar operation in the post-sunset period. According to Multimedia, the key issue is the fact that new interference would be caused not whether specific complaints would be made regarding that interference. Even in the terms in which DBA puts it, Multimedia notes that listeners indeed have objected to the loss of service during the pre-sunrise period. Moreover, Multimedia insists that the absence of complaint provides no basis for action since it indicates no more than that

listeners have become resigned to the loss of service, not that such losses have not taken place.

15. Also, in regard to post-sunset operation by Class II stations, the various opposition engineering statements contradict the DBA assertion that the Commission did not consider the matters of the "distortion zone" or the diurnal variations in the development of the 0.5 mV/m 50% contour of the Class I station. The opponents contend that the Commission considered these points and reached sound conclusions which DBA has failed to rebut. Finally, ABES insists that DBA is incorrect in attempting to depict the basic issues as a choice between distant versus local service. Rather, the effect of the relief sought in DBA's Petition for Partial Reconsideration would be the loss of substantial local groundwave services of fulltime Class III stations. According to ABES, throughout this rule making, DBA has consistently failed to support its various positions and assertions with any technical or other studies to demonstrate the claimed benefits to result from the adoption of its proposals. As opposed to the massive record in this proceeding which documents the damage to occur from the operation of daytime-only stations under nighttime propagation conditions, ABES asserts that DBA's unsubstantiated claims to the contrary cannot be accepted.

DISCUSSION

16. In examining the DBA petition as supplemented, several points become clear. First, because of limitations on their hours of operation, daytime-only stations do indeed face serious difficulties in being able to provide effective service to their communities. Obviously, they are strongly interested in being able to operate with the maximum possible power during the post-sunset period. However, as noted by the opponents, no new engineering or other showing was provided to establish that the specific changes sought by DBA would not cause interference or that the interference losses would be acceptable in light of the new service to be provided. Ordinarily, this would lead to procedural denial of the petition, but we believe it is important to give consideration to the larger issue of the need for additional power for post-sunset operation and the effect such operation would have. Therefore, as was the case with the original decision, the Commission has conducted its own studies and computer calculations to determine whether further relief is appropriate and if so what form it should take. Because of the difference between the situations affecting Class II and Class III stations they are discussed separately.

17. *Class III daytime-only stations.* The *Notice* proposed to allow these stations to operate until 6:00 p.m. local time with a power of 500 watts, the same power as they were able to use pre-sunrise. However, in the *First Report and Order*, the Commission concluded that the record

failed to establish that this was appropriate in light of the serious destructive interference which unrestricted 500 watt operation would produce. Therefore, the Commission decided it was necessary to reduce power below the 500 watt level where necessary to avoid causing groundwave interference.⁷ To do this, the Commission did the calculations on a "worst case" basis at the end of the two-hour post-sunset period (SS + 2). Although for many stations this meant that the power was reduced from the original proposal, for all Class III daytime-only stations, the period of post-sunset operation was extended. Instead of ending at 6:00 p.m., post-sunset operation was authorized to continue until two hours after local sunset.⁸

18. Based on a "worst-case" analysis it was necessary to reduce the power for many stations well below the 500 watt level. In fact, a substantial number were reduced below 100 watts. Even though most were able to provide reasonable service even with reduced power, there is no question that the coverage area inevitably was reduced from that available for the same stations during pre-sunrise operation when most Class III stations were able to use 500 watts. That difference has been the cause of much concern and misunderstanding.

19. Many daytime-only stations seem to believe that the Commission based the difference in allowable pre-sunrise and post-sunset powers on a belief that propagation conditions during these two periods differed. Since they thought the two periods to be alike in this regard, they thought there should not be a difference in the authorized powers. Although there are certain propagation differences between the two periods, the distinction in authorized power rested on a quite separate basis. Pre-sunrise power of 500 watts was permitted in 1967, even though the Commission recognized that this could cause serious interference losses. Nonetheless, the Commission was persuaded that extraordinary circumstances warranted accepting such interference. Specifically, the record in Docket No. 14419 contained extensive showings of the need to provide vital weather and school closing information during the pre-sunrise period. This need was shown to be particularly acute during the winter months when the day is shortest. Waiting until sunrise was not a satisfactory alternative if this information were to be disseminated in time. It was because of these emergency-like circumstances that the Commission concluded that pre-sunrise interference losses were justified.

⁷ Class III stations were only required to provide groundwave protection as Class III full-time stations do not provide skywave service.

⁸ Implementation of the full period of post-sunset operation awaits completion of negotiations with Mexico. In the meantime, post-sunset operation cannot extend beyond 6:00 p.m. local time.

20. The post-sunset situation is quite different. In contrast to the record developed regarding the need for 500 watts pre-sunrise, the record in this proceeding is essentially devoid of justification for the creation of the extensive interference that would result from an across-the-board use of 500 watts power for post-sunset operations. In part, this difference is due to the fact that the pre-sunrise and post-sunset periods differ in one crucial respect. In the former, the daytime-only station has been off the air all night and thus had no opportunity at all to disseminate the type of vital information noted in paragraph 19, *supra*. Being able to begin at 6:00 a.m. with 500 watts enables the station to perform this service. It is quite different during the post-sunset period because the station has been on the air all day with full power. As a consequence, it has had an ample opportunity to share any needed information with its listeners. Thus, while operation during the post-sunset period is clearly justified when no interference results, there is no apparent or record evidence on which the Commission could conclude that substantial post-sunset interference losses should simply be ignored as asserted by DBA.⁹

21. Nonetheless, while the interference consequences need to be taken into account, it does not follow that the exact balance struck in the *First Report and Order* must be followed. Because this is an important public interest matter involving the provision of as much service as feasible by daytime-only stations to their communities, we have given it a fresh look. Based on our reexamination, we have concluded that it is possible to allow additional power while at the same time taking the impact of interference into proper account.

22. On review we have examined whether use of the "worst-case" approach throughout the two-hour period based on the potential for interference which is reached only during the final moment of that two-hour period is too restrictive in its power limitation effects. While this approach does avoid interference, it also means that power is reduced more than necessary for the full transition period. One alternative we explored involved the approach suggested in the original DBA petition for reconsideration. Under it we would divide the period involved into two one-hour segments with calculations for each based on the "worst case" at the end of each period. This would leave the second hour unchanged, but it would offer some relief during the first hour, again without causing any interference. However, we will not adopt this method because it offers little help to the stations most needing to increase power.

23. Next we considered an alternative involving making the calculation of the power to be permitted using the mid-time of each hour rather

⁹ Not only do the losses typically exceed the gains by a factor of 10 to 12, these losses usually occur close to the full-time station's own community of license where its own listeners are concentrated.

than the end of the period in question. Applying this to the first hour of post-sunset operation, the calculation would be made at 30 minutes after sunset (SS + 0.5). Using such an approach results in a relative balance between the excess protection which is provided in the first half of the period and the partial protection which is provided during the second half. At the same time, it permits substantially greater power than would be possible using any type of "worst-case" method. Using this method, many more stations would reach a full 500 watts or the same maximum power they use daytime.¹⁰ Many others will obtain substantial powers of 200, 300 or even 400 watts. While using mid-time calculations does permit some interference to occur, it still takes such interference into account and places a reasonable limit on how much can occur. Overall, we believe that using a mid-time calculation balances matters fairly between the needs of these daytime-only stations for additional power while avoiding excessive interference to the service of full-time stations. The rules adopted in the *Report and Order* will thus be modified accordingly.

24. Although most stations will obtain substantial powers as a result of this change, some of them would still be below 100 watts. It is this group that faces the greatest difficulty in providing effective post-sunset service. To deal with this problem, we believe it is appropriate to provide a 100 watt minimum power for use during this post-sunset period by all Class III daytime-only stations, except when doing so would cause interference to a foreign station. Although this would create some additional interference, the amount would be modest because many of these stations already would be near this 100 watt level under our revised approach. Even for those few cases where the interference effect would be greater, this occurs because the station otherwise would have to operate with a highly restricted power. Thus, these are the very stations most in need of the additional power made possible by the 100 watt minimum.

25. The next point to consider is the period during which these enhanced powers would be available. We believe that Class III daytime-only stations should be able to use the power calculated for this first hour until 6:00 p.m., even if that extends beyond one hour. While it is true that some additional interference would occur, we do not believe that it would create unacceptable losses under the circumstances. First of all, this approach is self-limiting. Because this operation would be limited to 6:00 p.m., this means that it would be used only during a few months of the year. Even during those months when it does apply, the increment could well be as little as 15 or 30 minutes. The largest effect would be felt in December when the days are shortest, but even then, the impact would

¹⁰ Some stations are licensed for 250 watts operation and thus cannot be expected to get more power in the post-sunset period than they are licensed to use daytime.

really be significant only in the northern tier of states. However, it is in these localities that the need is greatest and the restrictions on operation by daytime-only stations are the most severe.

26. Being able to operate more effectively during this period has an additional benefit for daytime-only stations. They will be able to generate substantially improved revenues in the Christmas selling season and thereby become a more effective competitor in the market. These benefits accrue to the public as well because the stations's ability to serve its audience would be improved. For all these reasons we believe that this modest extension of the first-hour operations is warranted. Because it is keyed to the needs of the station and its audience when the days are shortest, it is appropriate to key the calculations involved to the interference situation in December. While separate calculations could be made for each month, this would be needlessly complicated and would also be inconsistent with our desire to generally limit "worst-case" interference to December. Likewise, we could base the calculation on the "worst-case" month, but this makes no sense if the month involved is unaffected by this type of operation. Thus, use of December calculations seems most appropriate.

27. On the other hand, the period after 6:00 p.m. is quite different. Although it is technically possible to use a mid-time calculation for the second hour as well, there is no showing of public benefit to justify the significant interference it would create. None of the compelling reasons for an adjustment in the pre-6:00 p.m. period apply here. Moreover, the effect of such operation would occur throughout the year and could affect reception until 10:30 p.m. or even later. Although we believed that it was sensible to allow operation beyond 6:00 p.m., the premise for allowing the additional period of operation until two hours after sunset was that it was possible to do so without causing interference. With this in mind we negotiated an agreement with Canada that contains a provision allowing operation to extend for two hours beyond local sunset. Efforts continue to reach a similar agreement with Mexico. While we remain committed to this goal, there is no basis for special treatment in the period after 6:00 p.m.¹¹

28. Since there is no support in the record for any change in the power which should be available after 6:00 p.m., and any increase would result in new interference, we shall leave those powers generally unchanged from the values shown on the notifications already sent to these stations. However, new authorizations will be sent that will reflect the other

¹¹ Although the most recent proposal of DBA suggests use of a 6:30 p.m. dividing line, an extension to 6:30 p.m. was not proposed in the *Notice*, nor was it the subject of comment by the parties. Therefore, we believe it is inappropriate to consider such an extension on reconsideration for the first time. See 47 C.F.R. § 1.429.

changes we are making herein. In the meantime, the current notification can be relied on to describe the power available after 6:00 p.m. when such operation becomes possible after Mexican agreement has been obtained. Calculations will be made and new notifications will be sent so that stations can prepare to employ the greater power we are authorizing when sunset again occurs before 6:00 p.m. this fall. The new authorizations will contain both powers: the first which can be used until 6:00 p.m. local time and the second (which is calculated on the same technical basis as that now authorized) which can be used after 6:00 p.m. Section 73.99 will be amended to reflect these changes.

29. *Class II Stations.* DBA has objected to the degree to which the Commission found it necessary to restrict the operating powers of Class II daytime-only stations during the post-sunset period. DBA argued that these stations should be permitted to operate during the post-sunset period with the same power levels as those permitted during the pre-sunrise period. Here again the foundation of DBA's argument is its claim that propagation conditions during the two periods are essentially the same. From this DBA concludes that the interference during PSSA operation would be no worse than during PSRA operation.

30. We do not agree with this argument because it fails to take into account the fact that the east-west time relationship between daytime-only stations and co-channel Class I stations is reversed from morning to afternoon. This reversal results in the need for substantially different protection requirements during the two periods. Because of such differences some stations that have never qualified for PSRA operation are able to qualify for PSSA operation. Likewise, some that operate pre-sunrise with substantial power may have reduced power post-sunset or even none at all.

31. DBA repeats its argument that was made in earlier comments in this proceeding that protection to the protected skywave contour of Class I stations should be limited to the contour that is calculated using diurnal factors at various times of the transitional period. This is an issue that was discussed in detail in the *First Report and Order* in paragraphs 37 through 40 where the Commission expressed its concern regarding the cumulative effects of large numbers of daytime-only stations that could result in excessive interference to the skywave service of Class I stations. Some commenting parties had recommended use of the RSS principle in dealing with such cumulative effects. The Commission chose instead to compensate for these effects by adopting rules that assumed that the 0.5 mV/m skywave contour of Class I stations are fully developed at sunset at the Class I station's site. This provides a margin of safety which the Commission believed to be adequate. Several commenters to the Petition for Reconsideration have expressed their views that this approach was a

practical and balanced treatment of this issue. On the other hand, DBA has offered no factual showing and we perceive no overriding public interest benefit that would convince the Commission to alter its decision on this issue.

32. Similarly, DBA raises the issue of skywave phase distortion which results in the so-called "distortion zone" and asserts that the Commission has never officially taken it into consideration in the determination of any issues pertaining to Clear Channel station service. DBA seems to overlook the fact, however, that this is an issue that the Commission discussed in considerable detail in its *First Report and Order* in paragraphs 44 through 47. Upon review of the Report it will be noted that the existence of the distortion zone was in fact used as partial justification for the adoption of rules that permitted greater interference at the 0.1 mV/m groundwave contour of Class I stations than would normally be permitted. The rules adopted permitted interfering signals at the 0.1 mV/m groundwave contour of Class I stations to be as high as 25 uV/m, whereas, normally only 5 uV/m is permitted. Here again, DBA failed to submit any technical showing whatever to demonstrate that the Commission's decision on this issue was improper.

33. DBA also argued that Class I-B stations contribute interference to each other during the transitional periods because of their time differences and resulting different modes of operation (i.e., because of time differences one Class I-B station may still be using its daytime antenna system when it is already nighttime at the other Class I-B station). To exemplify this argument, reference is made to the operations of stations WWVA (Wheeling, West Virginia) and KVOO (Tulsa, Oklahoma), both Class I-B stations on 1170 kHz. DBA asserts that when it is one hour before sunrise in Tulsa, FCC skywave curves indicate that the Wheeling station is putting a powerful interfering skywave signal into the Tulsa station's coverage area. It is thus claimed that the interference caused by these stations to one another would be worsened only very slightly, if at all, if daytime-only stations (operating on the Class I-B channels) were permitted to operate with 250 watts until 6:30 PM local time. However, DBA failed to submit any technical showings which would support such an assertion. On the other hand, Clear Channel Broadcasting Service ("CCBS") submitted interference studies that showed that Class II-D stations operating with 250 watts would cause serious loss to Class I stations of both skywave as well as groundwave services. Using the example of WWVA and KVOO chosen by DBA, it was shown that daytime-only station, KJAS, Jackson, Missouri, operating with 250 watts would cause KVOO to lose 29.2% and 40.9% of its skywave and nighttime groundwave service, respectively. WWVA would lose 35.8% and 30.5% of its skywave and nighttime groundwave service respectively. Further-

more, there is no reason to believe that such a condition would be an isolated instance. Similarly, DBA proposed that daytimers on the Class I-A Clear Channels would be permitted to operate with a minimum power of 100 watts. Here also, however, CCBS demonstrated with interference studies that such operation would result in substantial interference to both skywave as well as nighttime groundwave service of Class I-A station.

34. Because of the above circumstances it is not possible to provide relief for daytime-only Class II stations along the lines that have been urged. Further we cannot sanction increased power without causing devastating interference losses both groundwave and skywave services as illustrated in a map attached as an appendix. It shows the effect of a 50 watt proposed operation in North Carolina on a Chicago station. Particularly noteworthy is the extensive losses of groundwave coverage in the Chicago area itself.

35. Although across-the-board relief for Class II stations is not possible, we can provide relief for a significant group of stations. For the daytime-only stations of foreign clear channels, we can increase their power by doing the calculations at the end of each hour during the two hour post-sunset period. When Phase 1 for a daytime-only station on a domestic Class I clear channel greatly exceeds one hour, we will similarly perform the calculation when it is seen to be advantageous to the daytime-only station. In both instances, it should be emphasized that these are "worst-case" calculations for the period in question.

THE NOTICE OF INQUIRY

36. We address here the separate proposals that we made the subject of inquiry in the belief that further comment and consideration were needed before they would be ripe for decision as to whether rule making should be instituted on them.

37. *Allocations Restrictions in Section 73.37(e)(2) of the Rules.* We invited comments on the desirability of amending Section 73.37(e)(2) of the Rules so as to permit the licensees of daytime-only stations to apply for unlimited-time stations on the Class I-B Clear Channels and on the 41 Regional Channels without having to make the showings generally required by that subsection, e.g., the provision of a first primary service or a first or second local service. On further reflection, we believe it more appropriate to consider that mode of possible relief to daytime-only stations together with other pending proposals for the amendment of the same rule. For example, the National Radio Broadcasters Association referred to RM 3683, its pending petition that the threshold requirements of that rule be discontinued altogether. Accordingly, we shall take the comments filed in BC Docket No. 82-538 into account in considering the broader proposal that we do away with Section 73.37(e) altogether.

38. *Preference for Daytime-only Stations Seeking FM Assignments.* We have decided to deal with this issue in our consideration, in MM Docket No. 84-231, of proposed rule changes affecting the assignment of FM channels. Persons wishing to comment further on it may do so in response to an outstanding *Notice of Proposed Rule Making* in that docket.

39. *Preference for Daytime-only Stations Seeking Unlimited-Time AM Assignments.* Most of the considerations affecting this question also arise under the preceding questions of possible preferences to daytime-only stations seeking FM assignments. The two should be decided consistently. We therefore think it desirable to defer deciding upon the AM aspect of this question until we reach our decision in MM Docket No. 84-231, in which rule making on the FM aspect of the question is now pending.

40. *Expedition of Petitions to Assign FM Channels.* We agree with the comments of parties who felt that the timing involved in the rule making process involving the assignment of FM channels is not sufficiently directly related to the need of daytime-only stations to warrant changing the processing of petitions to assign or reassign FM channels in this manner. We accordingly will not pursue this possibility further.

41. *Low Power FM.* We have had under consideration other proposals to establish a low power FM service, including the petition of the Moody Bible Institute, RM-3914. In a separate action today the Commission has decided not to pursue this matter. In light of that decision regarding the generic question of permitting low power FM, we do not believe that it is appropriate to pursue low power FM in the presently limited context.

42. *Low Power AM Operation during Nighttime Hours.* This proposal, to permit daytime-only stations to operate during nighttime hours at powers not exceeding 500 watts that would protect other stations, was supported by the Daytime Broadcasters Association, individual daytime broadcasters, and NTIA, while others qualified their support with admonitions that more study is needed, and some comments flatly opposed this step. Concerns as to the need for care to assure adequate protection to unlimited-time stations were expressed by several parties including the National Radio Broadcasters Association. Others, including the National Association of Broadcasters, believed it to be improbable that protection requirements would permit daytime-only stations adequate power to render useful service if permitted nighttime operations beyond permitted pre-sunrise and post-sunset operation. We find merit in the suggestion of NAB that we can better direct our energies at this stage to other means of affording relief that promise greater benefits with fewer potential drawbacks. In these circumstances, we believe it desirable to defer further action on the AM low power until its potential advantages

and disadvantages and the need for it can be reviewed further in the light of experience with the improvements that may be realized from the other measures that have been adopted in the rules.

43. *Use of Local Channels.* We have not found in the comments persuasive reasons for initiating rule making at this time on the proposal that daytime-only broadcasters be permitted to switch to local channels at night. The six local channels are already crowded, with as many as 170 unlimited time stations already operating on individual local channels. The record refers to the dual disadvantage of creating still greater crowding on these channels, while not being able to provide sufficiently meaningful scope for nighttime operations by daytime-only broadcasters on the local channels. We, accordingly, are not persuaded that it would be desirable to conduct rule making on this proposal.

OTHER MATTERS

44. *Docket No. 18421 Issues* We have also considered the separate matter of our proposal, in Docket No. 18421, to amend Section 73.81 of our Rules (an old AM rule since redesignated as Section 73.1725(d)), that prescribes procedures to be followed when limited-time stations and co-channel Class I (clear channel) stations disagree as to a definite time when the limited station may resume broadcasting during nighttime hours when the Class I station is not operating. The proposal, which was announced in a *Notice of Proposed Rule Making* adopted January 15, 1969, 34 Fed. Reg. 1059, addresses circumstances which no longer exist. We are aware of no instance in which a Class I station that is co-channel with any of the 16 limited-time stations is silent during nighttime hours when a limited-time station would have interest in resuming operations. We ceased licensing new limited stations in 1959. The circumstances underlying the rule being non-existent, we revoke Section 73.1725(d) and terminate Docket No. 18421. In the very unlikely event that further changes in broadcast practices give rise to questions concerning operations by any of the 16 pre-1959 limited-time stations during nighttime hours when a co-channel Class I station is not operating, we would deal with the matter *ad hoc*, without going through the procedures of Section 73.1725(d), which are obsolete both as prescribed in the rule, and as we proposed, in 1969, to amend it.

45. Accordingly, the Rules will be amended as indicated in the previous discussion, and both proceedings will be terminated.

46. Authority for this action is contained in Sections 303 and 307(b) of the Communications Act of 1934, as amended.

47. IT IS ORDERED, That, the Petition for Reconsideration filed by the Daytime Broadcasting Association IS GRANTED to the extent indicated and in all other respects IS DENIED.

48. IT IS FURTHER ORDERED, That, Section 73.99 of the Commission's Rules IS AMENDED as set forth in the attached Appendix, effective May 21, 1984.

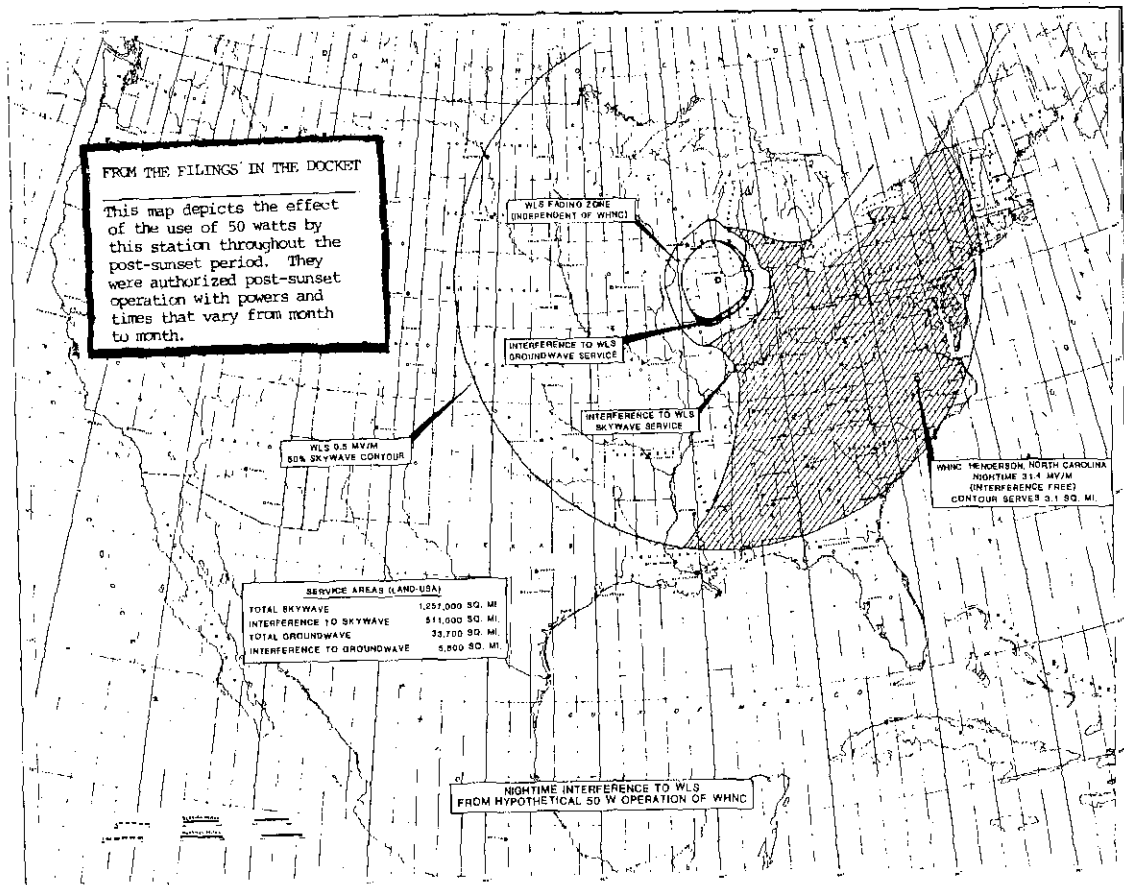
49. IT IS FURTHER ORDERED, That, the proceeding in BC Docket No. 82-538 IS TERMINATED.

50. IT IS FURTHER ORDERED, That, Section 73.1725(d) of the Rules IS DELETED.

51. IT IS FURTHER ORDERED, That, the proceeding in Docket No. 18421 IS TERMINATED.

FEDERAL COMMUNICATIONS COMMISSION

WILLIAM J. TRICARICO, *Secretary*



APPENDIX

1. 47 C.F.R. Section 73.99 is amended by revising subparagraph (e)(4) and by adding a new subparagraph (e)(5) to read as follows:

§ 73.99 Pre-sunrise service authorization (PSRA) and Post-Sunset service authorization (PSSA).

* * * * *

(e) * * *

* * * * *

(4) Class III stations operating PSRA and PSSA are required to provide full protection to co-channel foreign Class II stations.

(5) Class III daytime-only stations operating PSSA beyond 6:00 p.m. local time are required to fully protect domestic full-time Class III stations. The protection that Class III daytime-only stations will be required to provide when operating PSSA until 6:00 p.m. local time will be that which is calculated when it is sunset plus 30 minutes at the site of the Class III daytime-only station. However, a minimum power of 100 watts shall be permitted. For purposes of determining protection, the existing nighttime RSS limit will be used in the determination of maximum power permissible.

* * * * *

2. 47 C.F.R. Section 73.1725 is amended by removing paragraph (d) in its entirety.