

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 87-3

In the Matter of

Adjustment of Pre-sunrise
Operations by Daytime-only
AM Radio Broadcast Stations

FIRST REPORT AND ORDER

Adopted: March 24, 1987;

Released: April 3, 1987

By the Commission:

1. In the *Notice of Proposed Rule Making* we adopted in this proceeding on January 6, 1987, 52 FR 2566, published January 23, 1987, we invited comment on our proposal to amend the rules governing pre-sunrise operations by daytime-only AM radio broadcast stations. The purpose of the rule change is to offset, insofar as possible, the effects on broadcast service by daytime-only stations arising from the fact that, under Pub. L. No. 99-359, daylight saving time will now start on the first Sunday in April, instead of the last Sunday. Unless present requirements relating to pre-sunrise operations were adjusted, the change in the start of daylight saving time would have an adverse effect on daytime-only stations and their listeners. We accordingly proposed to permit daytime-only stations that can do so without infringing international agreements, to operate between 6:00 a.m. local time and local sunrise, using a minimum of 50 watts power or such higher power as they have been individually authorized to use presunrise. This operating time extension was proposed to apply during April of each year between the first Sunday and the last day of the month.¹

2. We find that the record before us is insufficient for us to decide upon a permanent rule structure. Thus, this *First Report and Order* makes interim adjustments to permissible pre-sunrise operations by eligible daytime-only stations between April 5 and April 30, 1987. We shall conduct further rule making before we adopt definitive rule changes applicable to future years. The interim adjustments are those proposed, as stated in the previous paragraph, except that pending further rule making the minimum power will be 10 watts instead of the proposed 50-watts. The Commission will, as soon as possible, but in no event later than April 1, 1987, issue notifications to licensees that qualify for pre-sunrise operation in April 1987 at powers greater than those specified in previously issued authorizations.

BACKGROUND

3. As a general matter, daytime-only stations are not permitted to operate with their regularly licensed facilities until local sunrise. The FCC determines the time when local sunrise occurs at each station as of the fifteenth day

of each month. That time, adjusted to the nearest quarter-hour, is prescribed in each station's license as the hour, expressed in local standard time, when it may start using its regularly licensed daytime facilities during that month. Since it advances local time one hour, the effect of daylight saving time on daytime-only stations is to delay, for the remainder of the month, the time they may begin daytime operation. The later start in the use of daytime facilities during the month of April deprives the public of one hour of a daytime-only station's service with daytime facilities during the important "drive time."² The effect is especially acute in the case of daytime-only stations that do not qualify for Pre-Sunrise Service Authorizations (PSRA'S),³ and therefore may not operate at all during all or part of the lost hour of morning broadcasting.

4. Congress recognized that the earlier start of daylight saving time would affect service by daytime-only stations. It directed, in § 2(d)(1) of Pub. L. No. 99-359 that:

... the Federal Communications Commission shall, consistent with any existing treaty or other agreement, make such adjustment by general rules, or by interim action pending such general rules, with respect to the hours of operation of daytime standard amplitude modulation broadcast stations, as may be consistent with the public interest, including the public's interest in receiving interference-free service.

THE COMMENTS

5. Eleven parties listed in the Appendix filed comments. No reply comments were received. Support for the proposed rule changes was expressed by the Maryland-District of Columbia-Delaware Broadcasters Association, WSAF, WATH and Voice of the Master.⁴ The National Association of Broadcasters (NAB) expressed general support, but felt concerned at the resultant interference to groundwave signals of some clear channel stations. NAB urged the Commission to weigh carefully whether, taking into account the the public interest factors unique to this proceeding (including the Congressional mandate and the limited period of adjusted pre-sunrise operation), it might be preferable to use some approach other than a 50-watt minimum power. The Association for Broadcast Engineering Standards (ABES), in principle, opposes the authorization of minimum pre-sunrise power that would cause interference to both the groundwave and skywave service rendered by Class I-A stations. In recognition of "mitigating" circumstances, however, ABES asks that, if the Commission adopts the proposed rule, it make it clear that this adjustment is for the sole purpose of offsetting the effects of Pub. L. 99-359, and that it will not constitute a precedent for action in other circumstances.

6. The Clear Channel Broadcasting Service (CCBS) submitted engineering studies showing that the pre-sunrise use of 50 watts or 25 watts could cause interference to the skywave and groundwave service areas of Class I clear channel stations. CCBS accordingly advocates that the minimum power be fixed at 10 watts. This would generally assure protection against interference to the groundwave (primary) service areas of Class I stations, although it would cause interference within their skywave (secondary) service areas. CCBS also differed with the anticipation expressed in the *Notice supra*, that the added

interference caused by stations operating under the proposed rule would occur, typically, for only 15 to 30 minutes a day during the added period of daylight saving time in April. Data provided in the Engineering Statement accompanying the CCBS comments indicates that in some areas the period of such added interference would range from 45 to 60 minutes each day, and that in some cases it could be as long as 75 minutes. CCBS believes that in no case should pre-sunrise operation be extended more than one hour. CCBS states also that letters received by several clear channel stations during experience in 1973 with a 50-Watt minimum pre-sunrise power authorization such as the one now proposed indicated that it caused substantial interference to service by clear channel stations.⁵ CCBS argues that allowing the amount of interference that may be expected to result from the proposed 50-Watt minimum pre-sunrise power for daytime-only stations would be contrary to the intent of § 2(d)(1) of Pub. L. No. 99-359, which directs the Commission to take into consideration the public interest in interference-free service, in adjusting the rules governing station operation by daytime-only stations.

7. Empire State, licensee of clear channel station WGY, Schenectady, N.Y., citing examples of the long range and uncertain character of skywave interference, opposes the proposed rule changes, and advocates that, instead of adopting them, the Commission provide each AM daytime-only station with a 50-watt FM station, an action that is beyond the scope of this proceeding. Palmer, licensee of clear channel station WHO, Des Moines, Iowa, also opposed the proposed rule, stating that the period between 5 and 8 a.m. is the "critical listening time" for the WHO audience. Palmer calculates, on the basis of an engineering study accompanying its comments, that between nine and ten million persons within WHO's groundwave service area would no longer be able to receive interference-free service from the station during the pertinent period. After noting WHO's farm and news programming during the early morning hours, Palmer concluded that its loss would be disproportionate to the service gain for daytime-only stations under the proposed rule, and referred to the express Congressional mandate that the Commission consider the public's interest in interference-free signals. Therefore, Palmer argues, the proposed rule change should not be adopted.

8. Price also opposes the proposed rule, arguing that the present rule governing pre-sunrise operations—Section 73.99, 47 CFR 73.99—strikes the right balance between the needs of clear channel and daytime-only stations. WGN advocates the middle position put forward by CCBS: establishing a minimum power of 10 watts, rather than 50 watts, on the basis that this strikes a better balance between the interests of service from unlimited-time and daytime-only stations, in keeping with the Congressional mandate to consider the public interest in interference-free service. Supporting engineering data accompanying the WGN comments depicted the overlap of desired and interfering signals for clear channel station WGN(AM), Chicago, Illinois.

DISCUSSION

9. The instructions in § 2(d)(1) of Pub. L. No. 99-359 confronts the Commission with the need to make difficult decisions. It is a familiar characteristic of signal propagation in the AM band that skywave reflection from the

ionosphere of even low-power transmissions can cause interference during the nighttime at distances of hundreds of miles. Any augmentation of pre-sunrise operations by daytime-only stations above that which provides full protection to unlimited-time stations will inevitably increase the level of interference received by other stations. Thus, the mandate of Pub. L. No. 99-359 must be understood as calling upon the Commission to establish an appropriate balance between augmented pre-sunrise service by daytime-only stations and resultant incremental interference to other stations.

10. Our task, therefore, is to determine the power level for pre-sunrise operations by daytime-only stations that will enable them to reach a meaningful number of potential listeners, while not causing undue interference to service provided by other stations in this country that are licensed to operate during nighttime hours. As we have already noted, Congress has expressly forbidden any action that would involve infringement of international obligations of the United States. Therefore, it is only with respect to stations within the United States that the Commission must seek to establish an appropriate balance between service gains and losses. That balance cannot be found in a simple comparison of the numbers of persons who gain pre-sunrise service with the numbers of others who lose it. This is especially apparent in the case of daytime-only stations assigned to the Class 1-A clear channels. The primary service areas of the clear channel stations typically range from 100 to 200 miles from their transmitters, and protected secondary skywave service is provided beyond this to approximately 750 miles from their transmitters. Even at the low powers contemplated for pre-sunrise operations by daytime-only stations, as the comments noted above observed, the population of wide areas within which the signals of the clear channel stations would be subjected to interference would be substantial. Conversely, the potential audiences of daytime-only stations operating pre-sunrise at low power would total far fewer persons.

11. In these circumstances, given the Congressional intent that some relief be provided to daytime-only stations, we must turn to factors other than comparative population counts for guidance as to where to strike the balance between augmented pre-sunrise service by daytime-only stations and optimal preservation of service provided by other stations. For this purpose, we think it appropriate to take into account the fact that low-power pre-sunrise operations by daytime-only stations will provide service primarily—in some cases, exclusively—to the local communities to which they are assigned. By contrast, the interference those operations will cause would affect persons living at comparatively great distances from the communities to which clear channel stations are assigned. It is not a derogation of the potential usefulness of clear channel service at considerable distances from their principal communities to recognize, and attach decisive importance to, the needs of members of the immediate communities where daytime-only stations are assigned. In balancing the public interest considerations pertinent to our decision, we think that our legislative mandate compels us to attach more importance to preservation of the capacity of daytime-only stations to provide local service during the April morning drive-time periods affected by the earlier start of daylight saving time than to the preservation of service by clear channels at very great distances from their principal communities.

The well known characteristics of nighttime AM signal propagation permit no other conclusion, for no relief could be provided to daytime-only stations, that predominantly serve nearby listeners, without causing interference to vastly larger areas distant from clear channel stations.

12. Recognizing the trade-offs, we must determine where to strike the appropriate balance. We believe that the comments by CCBS, and the licensees of several clear channel AM stations suggest a reasonable approach. They advocate reducing the minimum power permitted for pre-sunrise operations by daytime-only stations to 10 watts, at which the primary, groundwave service rendered by Class 1 clear channel stations would generally be protected. Since the groundwave service of these stations is relatively constant, compared with the variable, intermittent, and less reliable secondary service rendered by their skywave signals, we believe that the primary focus of our concern here should be on the protection of groundwave service, not skywave service. It appears appropriate to protect the groundwave service of clear channel stations against interference, but undesirable to foreclose the opportunities for early morning broadcasting by daytime-only stations during the extended period of daylight saving time by requiring them to protect skywave service. As previously noted, groundwave service, although it generally ranges out 100 to 200 miles, reaches listeners far less remote from the station than those within the secondary service area, which extends out to approximately 750 miles from the transmitter.

13. The trade-off for preserving the groundwave service areas of major unlimited-time stations is, thus, reduced service range for some daytime-only stations during their pertinent April pre-sunrise operations. Fixing the generally applicable minimum power for pre-sunrise operations of daytime-only stations at 10 watts, as CCBS proposed, rather than the 50-watt level contemplated in the *Notice*, would result in shorter range for the pre-sunrise service of daytime-only stations that would have to be held to 10 watts in order to protect the groundwave service of clear channel stations. On the other hand, since the test that would be applied under the CCBS proposal is protection to groundwave service, it is possible that some daytime-only stations could operate at higher powers than under the proposal in the *Notice*. Although the *Notice* proposed not going below a 50-watt minimum, the basis for calculating permissible pre-sunrise powers was protection to the skywave, as well as the groundwave, service of clear channel stations. As we understand the alternative put forward by CCBS, the permitted power for pre-sunrise operations during the pertinent period would be based on protecting only the groundwave service of the clear channel stations. On this basis, some daytime-only stations that would have been held down to 50 watts because of interference to skywave service might be permitted more than 50 watts if their permissible power were calculated on the less rigorous basis of protecting only the groundwave service of the clear channel stations. We believe that the CCBS proposal might provide the proper balance between clear channel stations and daytime-only stations. We think it desirable, before attempting to reach final decision on this matter, to invite further comment, directed particularly to the approach that has been suggested by CCBS, and to the appropriate basis on which to evaluate, comparatively, the benefits of enhanced local service to some members of the listening public against

the consequent interference to service available to others. We plan to issue a further Notice in the near future, inviting further comment on these and related issues.

14. Meanwhile, the statute makes it incumbent upon the Commission to alleviate the adverse effects that the earlier start of daylight saving time will have on service by daytime-only broadcast stations in April 1987. Pub. L. No. 99-359 provided the means for accomplishing this by expressly authorizing the Commission, pending completion of this rule making, to make appropriate adjustments by "interim action." We will exercise this authority by permitting pre-sunrise operations during April 1987 on the basis as proposed in the January 6, 1987, *Notice of Proposed Rule Making, supra*, except that, in lieu of the proposed minimum power of 50 watts, we adopt, in the interim, a minimum power of 10 watts that will be applied during 1987. We shall shortly notify the daytime-only stations that are affected by the 10-watt power minimum the specific powers that they may use during pre-sunrise operations conducted between 6 a.m. standard time and local sunrise from April 5, 1987, (the first Sunday in April, this year) through April 30, 1987, inclusive. Daytime-only stations that do not receive a specific notification for this period will be permitted to operate using facilities specified in pre-sunrise service authorizations previously issued.

PAPERWORK REDUCTION ACT

15. The action taken herein has been analysed with respect to the Paperwork Reduction Act of 1980 and found to contain no new or modified form, information collection or record-keeping, labeling, disclosure, or record retention requirements; and will not increase or decrease burden hours on the public.

REGULATORY FLEXIBILITY ANALYSIS

I. Need and Purpose of the Action.

The action taken here carries out a statutory instruction that the FCC adjust the hours of broadcasting by daytime-only AM radio stations appropriately to reflect the advance of the start of daylight saving time to the first Sunday in April. Insofar as is consistent with international agreements and the public interest, the rule lessens the burden placed on daytime-only stations whose start of daily operations would otherwise be deferred by an hour starting the first Sunday in April, 1987.

II. Summary of Issues Raised by Public Comment in Response to the Notice of Proposed Rule Making in this proceeding.

The only significant issues raised are those noted in paragraphs 5 through 8, *supra*.

III. Significant Alternatives Considered and Rejected.

For the reasons discussed in paragraphs 9 through 14, the Commission is aware of no reasonable alternatives to the action taken herein. It balances the need for relief, and for moderation of resultant interference, applies the interim conclusions reached to relief to be provided during April, 1987, and provides for further opportunity to review the

associated questions before the adoption of definitive rule changes that would be regularly applicable in future years.

ORDERS

16. Accordingly, pursuant to authority contained in Section 2 of Pub. L. No. 99-359, 15 U.S.C. 206(a), and taking into consideration: (a) the desirability of conducting further rule making before reaching final decision concerning what definitive rule changes would best fulfill the purposes of that statute; and (b) the need to give immediate effect to the interim provision applicable to pre-sunrise broadcasting in April 1987 in order to assure that the relief it provides will be timely, **IT IS ORDERED**, effective **March 24, 1987** That:

(1) The Chief of the Mass Media Bureau shall promptly issue to each daytime-only AM radio broadcast station whose minimum pre-sunrise operating power hereunder may not exceed 10 watts, an authorization to operate pre-sunrise between 6 a.m. local time and local sunrise, during the period April 5, 1987 through April 30, 1987, in accordance with the below stated conditions.

(2) The authorization of pre-sunrise operations by daytime-only stations during the above-stated period in April, 1987 shall be subject to the requirement that protection be provided to stations in other countries in accordance with international obligations of the United States.

(3) The Chief, Mass Media Bureau shall determine, and shall state in the authorizations directed to individual daytime-only stations, the powers at which they may conduct pre-sunrise operations during the above-stated period, using the antenna system that it is licensed to start using at local sunrise. He shall fix that power at the the highest level, not exceeding 0.5 kW, that each station may use while duly protecting other stations against objectionable interference; provided that such power shall in no case be less than 10 Watts unless a lower level, or refraining from pre-sunrise broadcasting altogether, should be necessary to provide due interference protection to stations in other countries.

(4) Daytime-only stations receiving authorizations for pre-sunrise operations in conformance with the above-stated requirements and conditions may so operate during the above-prescribed period, without filing applications for such authorization, but only after submitting to the Chief, Mass Media Bureau, FCC Headquarters, Washington, DC 20554, a written statement containing the information which will be specified in the authorization.

(5) Daytime-only stations that do not receive authorizations issued hereunder, but that have previously issued PSRA's, may, during the prescribed hours of April 1987, operate at the powers authorized in such PSRA's.

17. **IT IS FURTHER ORDERED**, That, this docket **SHALL REMAIN OPEN** for further rule making pursuant to a *Further Notice of Proposed Rule Making* that we will issue in due course.

FEDERAL COMMUNICATIONS COMMISSION

William J. Tricarico,
Secretary

APPENDIX

PARTIES WHO FILED COMMENTS:

Association for Broadcast Engineering Standards (ABES)
Clear Channel Broadcasting Service CCBS)
Empire State Radio Partners, Ltd. (Empire State), licensee of clear channel station WGY, Schenectady, NY.
Maryland-District of Columbia-Delaware Broadcasters Association, Inc. (MD-DC-DE Asso.)
National Association of Broadcasters (NAB)
Palmer Communications, Inc. (Palmer), licensee of clear channel station WHO, Des Moines, IA.
Price Communications Corporation (Price), licensee of five clear channel stations:

KOB, Albuquerque, NM
KOMA, Oklahoma City, OK
WLAC, Nashville, TN
WOWO, Fort Wayne, IN
WWKB, Buffalo, NY

Safe Broadcasting Corporation, licensee of daytime-only station WSAF, Triton, GA (WSAF)
Wath, Incorporated, (WATH) Licensee of daytime-only station WATH, Athens, OH
WGN Continental Broadcasting Company (WGN), licensee of clear channel station WGN, Chicago, IL
Voice of the Master

FOOTNOTES

¹ Starting daylight saving time on the first Sunday in April, instead of the last Sunday of that month, will mean that daylight saving time will begin three or four weeks earlier than previously. It will begin four weeks earlier in years when the first Sunday of April falls on the first or second day of the month. In years (like 1987) when the first Sunday falls between April 3 and April 7, daylight saving time will begin three weeks earlier than heretofore.

² Drive time is the period of peak radio listening during the morning hours when most people are traveling between home and place of work. It is thus a time of heightened opportunity for broadcasting service to the radio listening public, and a period of significantly high advertising revenues that are important to a station's ability to compete by providing desired program services.

³ Section 73.99 of the Commission's Rules, 47 CFR 73.99, establishes the conditions under which daytime-only stations that qualify to do so may be issued PSRA authorizing them to operate pre-sunrise between 6 a.m. local time and local sunrise, using the antenna systems they are licensed to employ starting at local sunrise. Eligibility to do so and the reduced power levels that may be used depend, under the rule, on the channel

occupied, the need to protect other stations against interference, and limitations that derive from international commitments of the United States with respect to interference protection to stations in other countries.

⁴ Voice of the Master also proposed the creation of a new class of low powered AM stations, which is outside the scope of this proceeding. This proposal will be associated with other comments under consideration concerning the overall program of possible revisions to the AM rules which is separately before the Commission.

⁵ In 1973, the Commission adopted a minimum power of 50 watts for pre-sunrise broadcasting during extended daylight saving time. That action was taken as an interim measure pending further consideration of the basis for such operations that it would be appropriate to adopt in the form of definitive rule amendments. Within a year, however, the fuel crisis that had precipitated that extension of daylight saving time abated sufficiently that the period of daylight saving time was restored to its traditional scheduling. The need for it having thus ceased, the Commission ended the special provision for pre-sunrise operations during extended daylight saving time without reaching a conclusion on the mooted question of the power level it would have been appropriate to prescribe in a definitive rule amendment.