

SENATE COMMITTEE ON COMMERCE

1. Warren G. Magnuson (Chairman) - Washington
Home: Seattle, Washington, County: King
Possible contact:

Home business office: Closed office in Seattle.
Phone:

He may be in and out of Washington. Nothing definite.
- 2.* John O. Pastore (Chairman) Sub-committee - Rhode Island.
Home: Cranston Rhode Island, County - Providence.
Possible Contact:

Home business office: 301 P.O. Annex, Providence.
Phone: GH 1-4583
Will be in Providence until January.
3. *A. S. Mike Monroney - Oklahoma.
Home: Oklahoma City. County: Oklahoma, Cleveland, Canadian.
Possible contact:

Home business office: 114 N. Broadway, Oklahoma City.
Phone: CE 5-1103
On vacation until 17th or 18th of Dec. Check after that.
4. George A. Smathers - Florida
Home: Miami, Florida. County: Dade
Possible contact:

Out of the country. Be back about January 3.
5. *Strom Thurmond - South Carolina.
Home: Aiken, South Carolina. County: Aiken.
Possible contact:

Home business office: P.O. Bldg. Aiken, Phone: Midway 9-2591.
Will see people December 21 and December 28 only.
6. Frank J. Lausche - Ohio.
Home: Cleveland, Ohio. County: Cuyhoga
Possible contact:

Home business office: Carter Hotel, Cleveland.
Is in Washington now, perhaps a day or so back in Ohio, before Jan.

7. *Ralph Yarborough - Texas
Home: Austin, Texas. County: Travis.
Possible contact:

Home business office: 309 U.S. Court House, 200 W. 8th St.
Phone: GR 8-2573.
Will be in and out.
8. Clair Engle - California.
Home: Red Bluff, Calif. County: Tehama
Possible contact:

On vacation until around Xmas. In and out after that.
9. E. L. Bartlett - Alaska
Home: Juneau, Alaska. County: First.
Possible contact:

Is in Far East now. Don't know when he will return.
- 10.*Vance Hartke - Indiana
Home: Evansville, Indiana. County: Vanderburgh.
Possible contact:

Out of the country. Should be back in U.S. on Dec. 12 and return
to Washington about that time.
- 11.*Gale W. McGee - Wyoming.
Home: Laramie, Wyoming. County: Albany.
Possible contact:
Home business office: 142 N. Center, Casper. Phone: 2-9377.
Washington office closed.
12. *Norris Cotton - New Hampshire.
Home: Lebanon, New Hampshire. County: Grafton.
Possible contact:

Home business office: 18 School Street, Concord, New Hampshire
Phone: 224-7477.
Will be there until Congress convenes.
13. Thruston B. Morton - Kentucky.
Home: Louisville. County: Jefferson.
Possible contact:

Home business office: 304 Madrid Bldg. Louisville.
On vacation until Dec. 17. May be in Washington for a few days
after that, then back to Kentucky.

14. *Hugh Scott - Pennsylvania.

Home: Philadelphia. County: Philadelphia.

Possible contact:

Home business office: 4004 U.S. Courthouse, Philadelphia.

Phone: WA 5-8181.

On Naval Reserve duty. Check Mrs. Dorsch, Secretary in Philadelphia office for further schedule.

J. CARLTON LOSER
5TH DISTRICT, TENNESSEE

JOHN E. HARRIS, SECRETARY

DISTRICT OFFICE:
469 U.S. COURTHOUSE
NASHVILLE, TENNESSEE

COMMITTEES:
JUDICIARY
DISTRICT OF COLUMBIA

Congress of the United States
House of Representatives
Washington, D. C.

November 15, 1962

Mr. Jack Dewitt
WSM Radio
National Life Building
Nashville, Tennessee

Dear Jack:

I am enclosing a copy of the letter received today from Mr. Newton N. Minow, Chairman of the Federal Communications Commission, Washington, concerning the application filed by Station WSM, which is self-explanatory.

If I should receive a copy of the decision, I will let you know.

With kindest personal regards, I am

Sincerely,



J. CARLTON LOSER

h

FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON 25, D. C.

NOV 9 1962

IN REPLY REFER TO:

8831

Honorable J. Carlton Loser
Member of Congress
469 U.S. Courthouse
Nashville 3, Tennessee

Dear Congressman Loser:

Reference is made to your letter of October 30, 1962 concerning the application, filed by Station WSM, Nashville, Tennessee, for an increase in power from 50kw to 750kw.

On October 24, 1962, WSM, Incorporated, licensee of Station WSM, Nashville, Tennessee, filed a "Petition for Waiver of Rules and for Acceptance of Application" which includes inter alia, as a basis therefor, the reasons set forth in your letter.

Since the matter is presently before the Commission for decision, it would not be appropriate for me to comment on the merits of your letter or the petition. However, you can be certain that the petition will receive full consideration in the light of the Communication's Act of 1934, as amended, and the Commission's Rules.

Upon adoption of a decision by the Commission, a copy will be sent to you promptly.

Sincerely yours,



Newton N. Minow
Chairman

CENTRAL BROADCASTING CO.
WHO AM-FM-TV
DES MOINES, IOWA

November 21, 1962

Hon. Robert T. Bartley
Commissioner
Federal Communications Commission
Washington, D. C.

Dear Commissioner:

When you called the other day regarding the use of 1040 kc for VOA transmissions, naturally we had nothing to go on regarding the interference WHO might cause the VOA station operating off the Keys.

Jack DeWitt's letter to me with the enclosed map will give you the idea of the relative effectiveness of your VOA transmitter. More importantly, however, it goes to show what this VOA transmitter is doing to WHO, as least as far as Nashville, Tennessee is concerned.

I thought we should bring this to your attention as you may or may not be well acquainted with WHO's position in the BRECOM relay, being the last station transmitting east-to-west directly to SAC Air Force Base with an underground antenna. At least this seems serious enough to bring the matter to your direct attention in your capacity as Defense Commissioner.

Best personal regards.

Sincerely yours,



Paul A. Loyet

bc - Mr. Jack DeWitt

NATIONAL BROADCASTING COMPANY, INC.

A SERVICE OF RADIO CORPORATION OF AMERICA

RCA Building, Radio City, New York 20, N.Y.

CIRCLE 7-8300

THOMAS E. KNODE
VICE PRESIDENT

November 16, 1962

Mr. John H. DeWitt, Jr.
WSM, Incorporated
Nashville 3, Tennessee

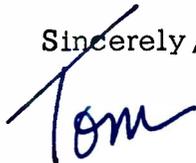
Dear Jack:

I appreciated reading the editorial in the NASHVILLE
TENNESSEAN concerning WSM's request for higher
power. Thanks for sending it on.

You always were first.

Warmest personal regards.

Sincerely,

A handwritten signature in blue ink that reads "Tom". The signature is written in a cursive style with a large, sweeping "T" and a simple "om" following it.

Tom Knode



Clear Channel Broadcasting Service

Roy Battles
Director

Shoreham Building
Washington 5, D. C.

November 19, 1962

Mr. John H. DeWitt, Jr.
President & Station Manager
WSM, Inc.
301 - 7th Avenue North
Nashville 3, Tennessee

Dear Jack:

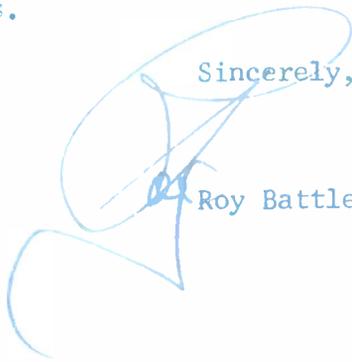
Right you are. A. P. Miller has left Washington to join the Civil Defense staff in Region 7.

The new acting director of Civil Defense Warning and Communication is Mr. Harry E. Roderick, Acting Director, Civil Defense Warning and Communications, Room 3B 289, the Pentagon, Washington 25, D. C. His telephone number is OXFord 7-4321, and he still has Miss Wilson as secretary.

Roderick, you will note, bears the title "Acting". He is a long-time employee of Civil Defense in the Warning and Communications area.

Best wishes.

Sincerely,


Roy Battles

RB/bh
cc: Mr. Eagan



Sponsored by Independently Owned
Clear Channel Radio Stations

November 27, 1962

Mr. E. C. Tracy
Radio Corporation of America
Industrial Electronic Products
Camden 2, New Jersey

Dear Ed:

I appreciate so much your invitation to visit your seminar on high power transmitters to be held at Cherry Hill. While the question of high power is temporarily moot because of the FCC action of recent date we still are interested in seeing what you have to offer. Also it would give me a great deal of pleasure to visit Princeton University to see the C-Stellarator of the Matterhorn Project. Unfortunately, I have to be away all next week and feel that I cannot at this time attend your seminar much as I would like to do this.

Best regards.

Sincerely yours,

John H. DeWitt, Jr.

JHD:am

RADIO CORPORATION OF AMERICA

INDUSTRIAL ELECTRONIC PRODUCTS

CAMDEN 2, NEW JERSEY



November 19, 1962

Mr. John H. DeWitt
W S M
7th & Union Streets
Nashville, Tennessee

Dear Jack:

We are pleased to announce a two day seminar to be held in Camden and Princeton, New Jersey, on Tuesday and Wednesday, December 11 and 12. The meeting will start at 9:00 a.m. Tuesday morning, December 11 at the Cherry Hill Inn. The seminar will be concerned principally with 500 KW and 750 KW AM broadcast transmitter design philosophy, circuitry, descriptions and specifications. Some information will also be provided on the many different models and sizes of Ampliphase transmitters which have been built. There will also be a complete demonstration of a 50 KW broadcast band Ampliphase transmitter.

The second day's program will include a trip to Princeton, New Jersey, for a tour of the C-Stellarator facility of the Matterhorn Project. This project relates to research on controlled Thermonuclear fusion. This unique facility, sponsored by the Atomic Energy Commission, involves a concentration of hundreds of megawatts of energy in a limited space around a 40 ft. vacuum vessel. The r-f generating, control and vacuum equipment was developed by RCA.

Please mail the enclosed card so that arrangements for your attendance may be made. We would suggest arrival on Monday night, December 10. Limousines from the airport are available to Cherry Hill Inn throughout most of the day; cabs are also available. The most direct route to the Cherry Hill Inn is to suggest to the driver that he take the Ben Franklin Bridge route.

A handwritten signature in blue ink that reads "E. C. Tracy".

E. C. Tracy
Manager, Broadcast Sales Dept.

November 28, 1962

Mr. James D. Shouse
Crosley Broadcasting Corporation
Crosley Square
Cincinnati, Ohio

Dear Jimmy:

When we received the very bad news of last Wednesday from the Commission regarding our efforts for high power I couldn't help but think of the statesmanlike manner in which you received Ward Quaal and me and agreed to go along with us and the other members of CCBS on a regular application basis even though you had committed yourself to the experimental route. I must admit in retrospect that I was overly optimistic in my assessment of the situation.

Apparently there have been forces at work within the Commission which we did not anticipate and it will be most interesting to see when the next Congress commences how the Commission's decision will sit with some of our strong supporters in that body. I have noted, as I am sure you have, that the regional and daytime stations are attempting a strong counter move directly and through the various state organizations. The letter sent out by Howard Wolfe of Michigan has an amazing note at the bottom in which it purportedly quotes Ken Cox at the now infamous Hidden Valley meeting. I feel sure that Roy Battles has sent you a copy of this letter.

In view of the current situation, I wonder if you, Rocky and Clyde might be considering placing of your application before the FCC on an experimental basis. Certainly little could be lost by so doing.

Warmest regards.

Sincerely yours,

John H. DeWitt, Jr.

JHD:am

cc: Mr. E. W. Craig
bcc: Mr. Ward Quaal
, Mr. Roy Battles

LAW OFFICES OF

KIRKLAND, ELLIS, HODSON, CHAFFETZ & MASTERS

WORLD CENTER BUILDING - 16TH AND K STREETS, N. W.

WASHINGTON 6, D. C.

TELEPHONE STERLING 3-3200

CHICAGO OFFICE
PRUDENTIAL PLAZA
CHICAGO 1, ILLINOIS

LOUIS G. CALDWELL
(1891-1951)
HAMMOND E. CHAFFETZ
REED T. ROLLO
DONALD C. BEELAR
PERCY H. RUSSELL
KELLEY E. GRIFFITH
PERRY S. PATTERSON
R. RUSSELL EAGAN
CHARLES R. CUTLER
FREDERICK M. ROWE
ALOYSIUS B. McCABE

November 2, 1962

JOSEPH DU COEUR
RAYMOND B. LARROCA
JOHN P. MANWELL
RONALD J. WILSON
JAMES M. JOHNSTONE
DONALD L. GUNNELS
MAX H. CROHN, JR.

Mr. Reynolds

Mr. Ward L. Quaal
Executive Vice President
WGN, Inc.
2501 West Bradley Place
Chicago 18, Illinois

Dear Ward:

Yesterday's Commission releases contained the information that KBOI, Boise, Idaho, tendered for filing an application to change frequency from 950 kw to 670 kc; to increase power from 5 kw to 50 kw; and to change from directional antenna during nighttime hours to directional antenna during critical hours.

As you know, KBIO is controlled, as is KID, Idaho Falls, which applied for 720 kc, by the Mormon Church.

Cordially,



R. Russell Eagan

RRE:bw

cc: Messrs. DeWitt, Battles
& Sujack

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington 25, D. C.

B
FCC 62-1209
27631

In re Applications of)
)
WSM, INCORPORATED (WSM))
Nashville, Tennessee)
)
Has: 650 kc, 50 kw, U. Class I-A)
Requests: 650 kc, 750 kw, U. Class I-A)
)
THE GOODWILL STATIONS, INC. (WJR))
Detroit, Michigan)
)
Has: 760 kc, 50 kw, U, Class I-A)
Requests: 760 kc, 750 kw, U, DA-I, Class I-A)
)
CROSLEY BROADCASTING CORPORATION (WLW))
Cincinnati, Ohio)
)
Has: 700 kc, 50 kw, U, Class I-A)
Requests: 700 kc, 750 kw, U, Class I-A)
)
WGN, INC. (WGN))
Chicago, Illinois)
)
Has: 720 kc, 50 kw, U, Class I-A)
Requests: 720 kc, 750 kw, U. Class I-A)
)
For Construction Permits)

MEMORANDUM OPINION AND ORDER

By the Commission: Commissioner Lee dissenting and voting to grant.

1. The Commission has before it the above-captioned applications accompanied by petitions and/or requests for waiver of various Commission's Rules to permit the acceptance for filing of the applications.

2. The listed applicants are Class I-A Clear Channel stations presently operating at 50 kw of power and seeking an increase

to 750kw of power. In the Commission's Report and Order in the Clear Channel Matter (Docket No. 6741), adopted September 13, 1961, ^{1/} the facilities of Stations WSM and WLW were not duplicated to permit the operation of a Class II-A station on the frequency, but were reserved for further study to determine what would be the optimum use of the frequency, i. e. should the frequency be duplicated or should the existing Clear Channel stations be authorized to operate with higher power. The frequency utilized by Station WJR was not reserved for future disposition, but was duplicated by providing that Station KFMB, San Diego, California would move to this frequency. The frequency utilized by Station WGN was to be duplicated in the States of Nevada, or Idaho.

3. By Memorandum Opinion and Order adopted this date, the Commission reaffirmed its Clear Channel Report and Order by denying the petitions for reconsideration directed against it, and also concluded that operation of the unduplicated Clear Channel stations with power in excess of 50 kw should not be authorized at this time.

4. Therefore, the controlling consideration with respect to the above-captioned applications is the disposition of the requests for waiver of Section 3.21(a)(1) of the Commission's Rules, the provisions of which limit operating power to 50 kw for Class I-stations. The petitioners claim that House Resolution 714 of the 87th Congress authorizes the Commission to permit operations with power in excess of 50 kw. This House Resolution reflects a view contrary to the 1938 Senate Resolution, but we cannot say that the House Resolution requires the Commission to authorize power in excess of 50 kw for Clear Channel stations upon the basis of applications such as these. In our opinion, orderly procedure would seem to require that the merits of authorizing use of power in excess of 50 kw be evaluated in a rule-making procedure previous to firm commitment to that course of action, and that the rules be amended to spell out the conditions and circumstances under which such operation may be authorized in the public interest if it is determined that such a course will serve this interest.

5. The Commission has indicated the desirability of further study before reaching a definite decision regarding higher

^{1/} 31 F. C. C. 565, 21 R. R. 1801

power and a further rule making procedure is a proper vehicle for such a study. It is suggested that the advocates of higher power, including prospective licensees, may more appropriately present their case by a petition for rule-making in the matter rather than by attempting to obtain consideration of individual applications inconsistent with present rules.

6. Returning to consideration of the instant applications, it is noted that Stations WSM, WGN, and WJR allege, as a basis for their request for waiver, that operation with 750 kw would be consistent with the Department of Defense position favoring increased power communications operations; would aid civil defense and disaster operations; and would provide better understanding between the United States and the Latin-American countries. These purposes are of course laudable, but we do not think that a showing has been made of sufficient force to override the requirements of orderly procedure. In short, it is the Commission's view that there has not been a sufficient showing to warrant waiver of Section 3.21(a)(1) of the Rules, and accordingly, the applications will be returned to the applicants without prejudice.

7. The requests for waiver of Section 1.354 and Section 3.24(g) of the Rules are moot due to the Commission's decision not to authorize operation with power in excess of 50 kw at this time. Therefore, these questions will not be discussed because our action in denying a waiver of Section 3.21(a)(1) is dispositive of the applications.

ACCORDINGLY IT IS ORDERED, That the request for waiver of Section 3.21(a)(1) of the Commission's Rules and acceptance of the above-captioned applications tendered for filing ARE DENIED; the above-captioned applications ARE HEREBY RETURNED; and the requests for waiver of Sections 1.354 and 3.24(g) of the Commission's Rules ARE MOOT.

FEDERAL COMMUNICATIONS COMMISSION

Ben F. Waple
Acting Secretary

Adopted: November 21, 1962

Released: November 27, 1962

C
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P
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FEDERAL COMMUNICATIONS COMMISSION

28176

Washington 25, D. C.

PUBLIC NOTICE - B
November 23, 1962

Report No. 4436 BROADCAST ACTIONS

The Commission en banc, by Commissioners Minow (Chairman), Hyde, Bartley, Lee, Craven, Ford and Henry, took the following actions on November 21:

COMMISSION REAFFIRMS 1961 CLEAR CHANNEL DECISION

By Memorandum Opinion and Order, the Commission reaffirmed its September 13, 1961, decision in the AM clear channel proceeding (Docket 6741) which opened 13 clear channels to a secondary station each, to serve unserved or underserved areas in certain states, and reserved for future consideration possible changes in the other 12 channels, including the question of higher power.

In so doing, the Commission denied or dismissed as moot 24 petitions for reconsideration or stay of its 1961 decision.

The reaffirming action notes that unless Congress precludes such course by legislation before July 2, 1963, the Commission plans to then begin making grants in accordance with its 1961 decision.

The Commission points out that on July 2, 1962, the House adopted a resolution expressing the latter's view that the FCC may, notwithstanding a 1938 Senate resolution opposing power greater than 50 kilowatts (the present maximum), authorize higher power on any of the 25 clear channels and, further, House belief that nighttime duplication on clear channels should not be authorized for a period of one year.

Comments the Commission:

"The House Resolution . . . has no impact on the Commission's Report and Order of September 1961, because . . . absence or elimination of the 1938 Senate Resolution would not have changed that decision, which is reaffirmed herein. However, in its testimony in

April 1962, before the Communications and Power Subcommittee of the House Interstate and Foreign Commerce Committee, the Commission indicated it would welcome Congressional guidance on the question of higher power. It was indicated that this would be helpful because a majority of the Commission, while not yet convinced that power in excess of 50 kilowatts would be in the public interest, has carefully preserved the possibility of future utilization of this potential, should further studies convince the Commission that higher power should be authorized. The 1938 Senate Resolution and the 1962 House Resolution look in opposite directions. It would be helpful, therefore, if a current joint expression of the views of Congress could be obtained on this question for guidance in whatever further proceedings are undertaken to evaluate possible use of higher power.

"The Commission recognizes, as many parties to this proceeding have argued, that a resolution of one House is not legally binding. However, we must of course, give due consideration to the 1962 Resolution expressing the sense of the House that the Commission refrain from authorizing additional nighttime stations on the Class I-A clear channels until July 2, 1963. Therefore, while we are reluctant to postpone further the effectuation of this decision, we recognize that limited delay requested by the Resolution will give Congress additional opportunity to enact legislation concerning this matter if it should desire to do so. However, we are herein reaffirming the Commission's decision in this matter, and we do not contemplate any further administrative delay beyond July 2, 1963, in implementing that decision. Applications for Class II-A stations will continue to be accepted in the interim. They will be held in abeyance until July 2, 1963, and, absent controlling legislation, will at that time be duly evaluated and acted upon in accordance with the Commission's rules."

Commissioner Lee dissented and issued statement;
Commissioner Henry not participating.

FOUR AM APPLICATIONS FOR HIGH POWER RETURNED

By Memorandum Opinion and Order, the Commission denied requests by WSM, Inc. (WSM), Nashville, Tenn. (650 kc, 50 kw, U); The Goodwill Stations, Inc. (WJR), Detroit, Mich. (760 kc, 50 kw, U); Crosley B/cg Corp. (WLW), Cincinnati, Ohio (700 kc, 50 kw, U); and WGN, Inc. (WGN), Chicago, Ill (720 kc, 50 kw, U), for waiver of Section 3.21(a)(1) of the rules, without prejudice, and returned their tendered applications to increase power to 750 kw. Their requests for waiver of Sections 1.354 and 3.24(g) of the rules are moot due to the Commission's decision not to authorize operation with power in excess of 50 kw at this time. Commissioner Lee dissented.

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LAW OFFICES OF
KIRKLAND, ELLIS, HODSON, CHAFFETZ & MASTERS
WORLD CENTER BUILDING - 1627 AND K STREETS, N. W.
WASHINGTON 6, D. C.
TELEPHONE STERLING 3-3200

CHICAGO OFFICE
PRUDENTIAL PLAZA
CHICAGO 1, ILLINOIS

November 23, 1962

MEMORANDUM TO CCBS GENERAL MANAGERS
AND CHIEF ENGINEERS

The Commission announced today that on November 21, it had adopted separate Memorandum Opinions and Orders which:

1. Reaffirmed the September 13, 1961 Clear Channel Decision (Docket 6741) to duplicate 13 of the Clear Channels, and
2. Returned the 750 kw applications filed by WSM, WJR, WLW and WGN and denied their petitions to waive certain rules, including the rule which limits power to 50 kw (Rule 3.21 (a) (1)).

Commissioner Lee dissented to both actions, and Commissioner Henry did not participate in the first.

The Commission's press release, a copy of which is attached hereto, states that applications for fulltime stations on the 13 duplicated Clear Channels will be processed commencing July 2, 1963, unless the Congress legislates to the contrary prior to this time. The press release also notes that it would be "helpful * * * if a current joint expression of the views of Congress could be obtained * * * for guidance in whatever future proceedings are undertaken to evaluate possible use of higher power".

As soon as the texts of the two Memorandum Opinions and Orders are released, we shall send you copies.

Reed T. Rollo
Percy H. Russell
R. Russell Eagan

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FEDERAL COMMUNICATIONS COMMISSION

28176

Washington 25, D. C.

PUBLIC NOTICE - B
November 23, 1962

Report No. 4436 BROADCAST ACTIONS

The Commission en banc, by Commissioners Minow (Chairman), Hyde, Bartley, Lee, Craven, Ford and Henry, took the following actions on November 21:

COMMISSION REAFFIRMS 1961 CLEAR CHANNEL DECISION

By Memorandum Opinion and Order, the Commission reaffirmed its September 13, 1961, decision in the AM clear channel proceeding (Docket 6741) which opened 13 clear channels to a secondary station each, to serve unserved or underserved areas in certain states, and reserved for future consideration possible changes in the other 12 channels, including the question of higher power.

In so doing, the Commission denied or dismissed as moot 24 petitions for reconsideration or stay of its 1961 decision.

The reaffirming action notes that unless Congress precludes such course by legislation before July 2, 1963, the Commission plans to then begin making grants in accordance with its 1961 decision.

The Commission points out that on July 2, 1962, the House adopted a resolution expressing the latter's view that the FCC may, notwithstanding a 1938 Senate resolution opposing power greater than 50 kilowatts (the present maximum), authorize higher power on any of the 25 clear channels and, further, House belief that nighttime duplication on clear channels should not be authorized for a period of one year.

Comments the Commission:

"The House Resolution . . . has no impact on the Commission's Report and Order of September 1961, because . . . absence or elimination of the 1938 Senate Resolution would not have changed that decision, which is reaffirmed herein. However, in its testimony in

April 1962, before the Communications and Power Subcommittee of the House Interstate and Foreign Commerce Committee, the Commission indicated it would welcome Congressional guidance on the question of higher power. It was indicated that this would be helpful because a majority of the Commission, while not yet convinced that power in excess of 50 kilowatts would be in the public interest, has carefully preserved the possibility of future utilization of this potential, should further studies convince the Commission that higher power should be authorized. The 1938 Senate Resolution and the 1962 House Resolution look in opposite directions. It would be helpful, therefore, if a current joint expression of the views of Congress could be obtained on this question for guidance in whatever further proceedings are undertaken to evaluate possible use of higher power.

"The Commission recognizes, as many parties to this proceeding have argued, that a resolution of one House is not legally binding. However, we must of course, give due consideration to the 1962 Resolution expressing the sense of the House that the Commission refrain from authorizing additional nighttime stations on the Class I-A clear channels until July 2, 1963. Therefore, while we are reluctant to postpone further the effectuation of this decision, we recognize that limited delay requested by the Resolution will give Congress additional opportunity to enact legislation concerning this matter if it should desire to do so. However, we are herein reaffirming the Commission's decision in this matter, and we do not contemplate any further administrative delay beyond July 2, 1963, in implementing that decision. Applications for Class II-A stations will continue to be accepted in the interim. They will be held in abeyance until July 2, 1963, and, absent controlling legislation, will at that time be duly evaluated and acted upon in accordance with the Commission's rules."

Commissioner Lee dissented and issued statement;
Commissioner Henry not participating.

FOUR AM APPLICATIONS FOR HIGH POWER RETURNED

By Memorandum Opinion and Order, the Commission denied requests by WSM, Inc. (WSM), Nashville, Tenn. (650 kc, 50 kw, U); The Goodwill Stations, Inc. (WJR), Detroit, Mich. (760 kc, 50 kw, U); Crosley B/cg Corp. (WLW), Cincinnati, Ohio (700 kc, 50 kw, U); and WGN, Inc. (WGN), Chicago, Ill (720 kc, 50 kw, U), for waiver of Section 3.21(a)(1) of the rules, without prejudice, and returned their tendered applications to increase power to 750 kw. Their requests for waiver of Sections 1.354 and 3.24(g) of the rules are moot due to the Commission's decision not to authorize operation with power in excess of 50 kw at this time. Commissioner Lee dissented.

November 16, 1962

The Honorable J. Carlton Loser
U. S. House of Representatives
Washington, D. C.

Dear Carlton:

It is not always possible to have things come out as one would wish and for that reason it was a source of great regret that you were not re-elected to carry on the fine record which you have made in the U. S. House of Representatives. Your record as a public servant has been outstanding and I, like thousands of other people, feel that you have represented the grand old Hermitage district with great distinction as would become the gentleman that you are.

We are deeply grateful here at WSM for your fine efforts in our behalf to bring to the attention of other members of Congress the clear channel story and other issues which have faced us.

With very best wishes.

Sincerely yours,

C
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J. CARLTON LOSER
5TH DISTRICT, TENNESSEE

JOHN E. HARRIS, SECRETARY

DISTRICT OFFICE:
469 U.S. COURTHOUSE
NASHVILLE, TENNESSEE

COMMITTEES:
JUDICIARY
DISTRICT OF COLUMBIA

Congress of the United States

House of Representatives
Washington, D. C.

469 U. S. Courthouse
Nashville 3 Tennessee

November 8, 1962

Mr. John H. DeWitt, Jr.
President
WSM, Incorporated
Nashville 3 Tennessee

Dear Jack:

Thank you for your letter of November 2, 1962
and the editorial enclosed.

With kindest personal regards, I am

Yours very truly,



J. CARLTON LOSER

D

November 19, 1962

Mr. Roy Battles
Clear Channel Broadcasting Service
532 Shoreham Building
Washington, D. C.

Dear Roy:

C
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We had an example on Wednesday of the effect of the daytime association propaganda against the clear channels in connection with the passage of the annual resolution on clear channels of the Tennessee Farm Bureau at their meeting here in Nashville. They finally passed a good resolution, but not before a daytime operator who is a member of the Bureau from Sevierville, Tennessee (daytime 5 KW, 930 KC regional) made a strong pitch against the clear channel resolution. His talk was as full of convincing untruths as I have heard; for example, he said among other things, that the allocation setup under which clear channels were instituted years ago was completely obsolete and that the many stations in the country which now exist day and night were sufficient to bring news and entertainment to the entire country without need or continuation of the clears. He moved to table the motion on the clear channel resolution and through a standing vote, by a close margin, it was tabled. John McDonald then asked to be heard, upon which it was necessary for the delegates to vote. Upon receiving a unanimous affirmative vote, John spoke after which there was a motion to untable the resolution, which carried. After that a member spoke to the effect that they really didn't know enough about this issue to pass on it and indicated that it should be dropped, whereupon someone in the audience suggested that I be called upon to give a more technical explanation of it. They then voted to let me speak, which I did, and I am happy to report that the resolution passed unanimously after that.

It was obviously a case of the Farm Bureau people not being informed on the issues except through misinformation which has been given them by the daytimer.

All good wishes.

Sincerely yours,

John H. DeWitt, Jr.

JHD:am

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by these stations and
in these southern regi-
several maps which are
be achieved through the
channels. In addition, we
of Cuba which will exist on the coverage through the year from the recently
installed VOA stations at Marathon and Tortuga, Florida. I believe that
the following points can be supported without any question.

ent to the people
We have prepared
coverage which could
of the U. S. 1-A clear
the nighttime coverage

(1) The United States has only two treaties which govern standard band broadcasting in this North American region. One is known as NARBA which was signed in Washington in 1950 to which Canada, Cuba, Dominican Republic, United States and the United Kingdom for its territories, the Bahamas and Jamaica, are signatories. The other treaty was signed with the United Mexican States in 1957. There are no treaties between the U.S. and any Central or South American countries which allocate frequencies in the broadcast band among the various nations involved. The NARBA Treaty, as well as the Mexican Treaty, set out certain channels, as local, regional and clear. The U. S. has exclusive use of certain of the clear channels and the treaties do not provide for any top limit on power on these 1-A channels. At the time the Treaty was signed with Mexico some of their stations were and still are operating with power greatly in excess of 50 KW. The only power limitation on our 1-A clear channels which exists today is self-imposed in the rules of the FCC. The Communications Act of 1934 which created the FCC does not impose any such limitation. In the North American Treaty there are certain provisions with respect to certain 1-A stations in the U. S. (WJR, Detroit and KFI, Los Angeles) which would require those stations to limit their radiation toward Cuba in case their power is increased above 50 KW. I have been informed by people within the Broadcast Division of the FCC that they and the State Department no longer regard these restrictions as valid in view of the current Cuban situation.

(2) Skywave signals from existing clear channel stations using adequate power seem to be the only practicable means of bringing service to the vast number of square miles within the Caribbean area at night. The problem is similar to the coverage of the white area in the United States at night. It is not possible to provide groundwave signals from any point within the Caribbean area which will render service at night to the populations involved.

Map #1 shows the half millivolt nighttime signals which would be produced by three stations:

WSM, Nashville - 650 KC (owned and operated by the National Life and Accident Insurance Company)

WSB, Atlanta - 750 KC (owned and operated by the Cox Newspaper interests)

WVL, New Orleans - 870 KC (owned and operated by the Loyola University of the South)

There is a thing called the latitude effect which tells us that signals sent via skywaves are far stronger in the lower latitudes than in the high latitudes (I have listened to WSM, as well as other 1-A clears, night after night in the National Hotel in Havana and Montego Bay, Jamaica). In addition, to WSM, WSB and WVL, 1-A's listed below could be increased to 750 KW which would provide skywave coverage over the areas shown on map #2:

WBAP-WFAA, Ft. Worth & Dallas - 820 KC (owned and operated by the Star Telegram and Dallas News)

WOAI, San Antonio - 1220 KC (owned and operated by the Southland Industries)

KFI, Los Angeles - 640 KC (owned and operated by Earle C. Anthony, Inc.)

There is a very great advantage in utilizing a number of stations for several reasons, the main one being that it is far more difficult for the Cubans to jam a number of high power stations than one or two stations of low power. The only other interference which might result on these channels would be from atmospheric noise which will be present at certain times of the year no matter what type radio coverage is used and interference from small stations in Central America which might be using our clear channels in the absence of a treaty. If the above listed stations are increased in power, the small stations undoubtedly will move to other channels because they cannot suffer the increased interference. It will be noted that a combination of stations shown on Maps 1 and 2 would do much to cover the entire Caribbean region, including Mexico. These maps only depict coverage at night. Stations listed could not be relied upon for any appreciable coverage in the daytime with the exceptions of KFI and WOAI in Mexico and perhaps WVL in Mexico, Guatan and Cuba.

(3) Maps 3 and 4 show the result of our study of the coverage which will be afforded at night by the recently installed VOA transmitters in the Florida Keys. It is our feeling that these stations are essential for daytime coverage of Cuba and should be continued on that basis but it is apparent that their nighttime coverage is only a fraction of that desired

COPY

of S. America

because of the serious interference which they experience from the primary stations on the channels (WHO and WHAM). In making these studies we have used data from the FCC which was collected in connection with the North American Treaty Conference. The commercial stations in Miami, such as WGBS, will be of little value at night in Cuba because of the distance of Miami from the northern shore of that island and the interference which they will suffer from other stations on their regional and I-B clear channels.

As you can see from maps 3 and 4, the VOA stations cover only the northern fringe of the North Cuban provinces and do nothing to afford coverage in the southern part of these provinces or to Pinar Del Rio and Oriente provinces.

C
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JHD:am

CLEAR CHANNEL BROADCASTING SERVICE
SHOREHAM BUILDING
WASHINGTON 5, D. C.

Mr Reynolds

November 14, 1962

R. Russell Eagan, Esq.
800 World Center Building
16th & K Streets, N W.
Washington 6, D. C.

Dear Russ:

William Greene of CBS called on November 12 to discuss mutual problems.

During the course of his conversation he said that CBS was still in the process of trying to figure out whether or not the economics of the situation would permit CBS to file for adequate power on any of their I-A channels. In short, he said a decision is not expected in this area in the near future.

Sincerely,

Roy Battles

RB/bh
cc: Mr. DeWitt
Mr. Quaal

CHARLES A. HALLECK
SECOND DISTRICT, INDIANA

HOME ADDRESS:
RENSSELAER, INDIANA

OFFICE OF THE MINORITY LEADER
HOUSE OF REPRESENTATIVES
WASHINGTON, D.C.

November 15, 1962

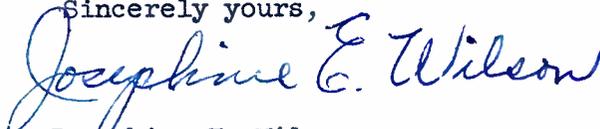
Mr. John H. DeWitt, Jr., President
WSM, Incorporated
Nashville 3, Tennessee

Dear Mr. DeWitt:

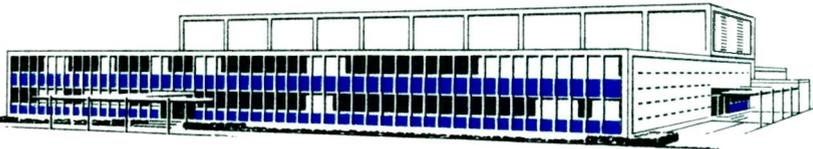
Mr. Halleck has remained in Indiana following the election, and in his absence, I am acknowledging receipt of your letter and the enclosed editorial.

This will be brought to Mr. Halleck's attention at the earliest opportunity.

Sincerely yours,



Josephine E. Wilson
Legislative Clerk



Radio/720 Television/channel 9

wgn inc.

2501 West Bradley Place • Chicago 18, Illinois • LAkeview 8-2311

Ward L. Quaal Executive Vice President and General Manager

November 15, 1962

Dic. 11-12-62

Mr. John H. DeWitt, Jr., President
WSM
Nashville 3, Tennessee

Dear Jack:

Thank you for your kindness in remembering me with copies of the interesting communications you have just received pursuant to your filing for higher power.

I am especially interested in the comments made in reply to the gentleman from Alabama.

Kindest wishes and thank you, Jack.

Sincerely,

Ward L. Quaal
Ward L. Quaal

WLQ/ck

*Jack - I rec'd Kefauver remarks today
re WGN - Be calm - I
WBBM - I'm fairly sure
this now
Ward
(Heels to "A")
mess*

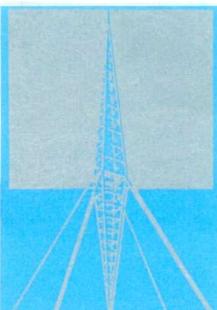


from JACK DEWITT

Mr. John J. Hooker, Jr.

I thought you might like to see this before we send it on to Ward Quaal. If you will have your secretary call mine when you are through reading it, I will have our messenger pick it up.

JHD



CLEAR CHANNEL

JOHN H. DEWITT, JR.
PRESIDENT

WSM
INCORPORATED

WSM-TV
CHANNEL 4

650 KILOCYCLES

50,000 WATTS

*** NASHVILLE 3, TENNESSEE



M E M O R A N D U M

November 16, 1962

Since Wednesday, November 14th, we have given some study to the problem of coverage of the Latin American countries by radio stations designed to bring news and entertainment to the people in these southern regions of the North American area. We have prepared several maps which are attached showing the nighttime coverage which could be achieved through the use of high power on several of the U.S. 1-A clear channels. In addition, we have prepared maps showing the nighttime coverage of Cuba which will exist on the average throughout the year from the recently installed VOA stations at Marathon and Tortuga, Florida. I believe that the following points can be supported without any question.

(1) The United States has only two treaties which govern standard band broadcasting in this North American region. One is known as NARBA which was signed in Washington in 1950 to which Canada, Cuba, Dominican Republic, United States and the United Kingdom for its territories, the Bahamas and Jamaica, are signatories. The other treaty was signed with the United Mexican States in 1957. There are no treaties between the U.S. and any Central or South American countries which allocate frequencies in the broadcast band among the various nations involved. The NARBA Treaty, as well as the Mexican Treaty, set out certain channels, as local, regional and clear. The U. S. has exclusive use of certain of the clear channels and the treaties do not provide for any top limit on power on these 1-A channels. At the time the Treaty was signed with Mexico some of their stations were and still are operating with power greatly in excess of 50 KW. The only power limitation on our 1-A clear channels which exists today is self-imposed in the rules of the FCC. The Communications Act of 1934 which created the FCC does not impose any such limitation. In the North American Treaty there are certain provisions with respect to certain 1-A stations in the U.S. (WJR, Detroit and KFI, Los Angeles) which would require those stations to limit their radiation toward Cuba in case their power is increased above 50 KW. I have been informed by people within the Broadcast Division of the FCC that they and the State Department no longer regard these restrictions as valid in view of the current Cuban situation.

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OWNED AND OPERATED BY THE NATIONAL LIFE AND ACCIDENT INSURANCE COMPANY

M.D. Lutz memo to Welch - 2-18-63

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WWL, New Orleans - 870 KC (owned and operated by the Loyola University of the South)

There is a thing called the latitude effect which tells us that signals sent via skywaves are far stronger in the lower latitudes than in the high latitudes (I have listened to WSM, as well as other 1-A clears, night after night in the National Hotel in Havana and Montego Bay, Jamaica). In addition, to WSM, WSB and WWL, 1-A's listed below could be increased to 750 KW which would provide skywave coverage over the areas shown on map #2:

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As you can see from maps 3 and 4, the VOA stations cover only the northern fringe of the North Cuban provinces and do nothing to afford coverage in the southern part of these provinces or to Pinar Del Rio and Oriente provinces.

John H. DeWitt

JHD:am

M E M O R A N D U M

November 16, 1962

C TO: MR. PAUL LOYET
MR. W. F. RUST

FROM: JOHN H. DEWITT, JR.

Subject: Voice of America stations on 1040 and 1180 KC

O Yesterday George Reynolds, Johnie Campbell and I spent sometime computing the coverage which the subject stations would produce in Cuba at night using FCC groundwave and skywave curves and a Cuban conductivity map which was prepared by NARBEC in 1948 under Ralph Renton's direction.

P The attached maps show the results. These are being sent through one of the members of the USIA Advisory Committee to the VOA along with other maps showing the nighttime coverage which could be produced in Latin America through the use of a number of our clear channels operating at high power such as WSB, WSM, WWL, WOAI, WFFA-WBAP and KFI. The coverage of the VOA stations at night as is evident from the maps is quite inadequate as the objective of VOA is to bring information through these stations to the entire population of Cuba. The position which we are taking here is that the VOA would be far better off to champion high power on existing clear channels for night coverage but to use the 50 KW stations in the Florida Keys for daytime coverage only.

Y Last evening at 6:00 PM while driving in from our transmitter I monitored 1040 and 1180 and found that on the first frequency the ratio of signals averaged about 1 to 1, on 1180 the station at Marathon, Florida was at least 20 times the strength of WHAM most of the time. It was the hams would call an R9 signal.

A new BRECOM test is coming up shortly in which WHO will be a key station, as usual. There is a serious doubt in our mind as to whether WHO can be received successfully through the interference from the Tortuga station at SAC, Chicago and St. Louis. We plan to ask WHO to run five nights next week so that preliminary checks can be made.

JHD:am

November 19, 1962

Mr. Roy Battles
Clear Channel Broadcasting Service
532 Shoreham Building
Washington, D. C.

Dear Roy:

C
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We had an example on Wednesday of the effect of the daytime association propaganda against the clear channels in connection with the passage of the annual resolution on clear channels of the Tennessee Farm Bureau at their meeting here in Nashville. They finally passed a good resolution, but not before a daytime operator who is a member of the Bureau from Sevierville, Tennessee (daytime 5 KW, 930 KC regional) made a strong pitch against the clear channel resolution. His talk was as full of convincing untruths as I have heard; for example, he said among other things, that the allocation setup under which clear channels were instituted years ago was completely obsolete and that the many stations in the country which now exist day and night were sufficient to bring news and entertainment to the entire country without need or continuation of the clears. He moved to table the motion on the clear channel resolution and through a standing vote, by a close margin, it was tabled. John McDonald then asked to be heard, upon which it was necessary for the delegates to vote. Upon receiving a unanimous affirmative vote, John spoke after which there was a motion to untable the resolution, which carried. After that a member spoke to the effect that they really didn't know enough about this issue to pass on it and indicated that it should be dropped, whereupon someone in the audience suggested that I be called upon to give a more technical explanation of it. They then voted to let me speak, which I did, and I am happy to report that the resolution passed unanimously after that.

It was obviously a case of the Farm Bureau people not being informed on the issues except through misinformation which has been given them by the daytimer.

All good wishes.

Sincerely yours,

John H. DeWitt, Jr.

JHD:am

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON 25, D. C.

Dear Jack:

I received your note with the editorial from the Tennessean and appreciate your sending it in to me. For your information, I forward this reply just received from the F. C. C. I'll continue to keep you posted. Regards.

IN REPLY REFER TO: 8110

Estes Kefauver, USS

NOV 6 1962

NOV 7 1962

Honorable Estes Kefauver
United States Senate
Washington 25, D. C.

Dear Senator Kefauver:

This will acknowledge receipt of your memorandum of October 27, 1962, and an attached letter from Mr. John H. DeWitt, Jr., concerning an application by Radio Station WSM, Nashville, Tennessee, to increase power from 50 kw to 750 kw.

You are, I am sure, aware of the fact that present Commission Rules do not provide for the operation of any station with more than 50 kilowatts. The possibility of authorizing higher power has been under consideration in connection with the Clear Channel Hearing but is not provided for by the decision that has been rendered in that matter. The Commission has, however, indicated in the decision that it will at a later date reconsider the possibility of authorizing higher power on some of the United States clear channels.

With respect to the WSM application, the Commission will first have to pass on its acceptability under present rules. I will be glad to see that you are advised of the Commission's action in this regard.

Sincerely yours,



John F. Cushman
Administrative Assistant
to the Chairman

Enclosure

WILLIAM H. NATCHER
SECOND DISTRICT, KENTUCKY

WASHINGTON OFFICE:
117 HOUSE OFFICE BUILDING

COMMITTEE:
APPROPRIATIONS

TELEPHONE:
CAPITOL 4-3121
EXT. 3501

Congress of the United States
House of Representatives
Washington, D. C.

November 10, 1962

Mr. John H. DeWitt, Jr.
President
WSM, Incorporated
Nashville 3, Tennessee

Dear Mr. DeWitt:

This is to acknowledge receipt of your letter of November 2nd and to thank you for sending me a copy of the Nashville Tennessean editorial in connection with WSM's request for increased power.

With kind personal regards, I am

Sincerely yours,



William H. Natcher, M. C.

G. ELLIOTT HAGAN
FIRST DISTRICT, GEORGIA

COMMITTEE
AGRICULTURE
SUBCOMMITTEES:
CONSERVATION AND CREDIT
DAIRY AND POULTRY
FAMILY FARMS
FORESTS
RESEARCH AND EXTENSION

COUNTIES:

BRYAN	LIBERTY
BULLOCH	LONG
BURKE	MCINTOSH
CANDLER	MONTGOMERY
CHATHAM	SCREVEN
EFFINGHAM	TATTNALL
EMANUEL	TOOMBS
EVANS	TREUTLEN
JENKINS	WHEELER

Congress of the United States
House of Representatives
Washington, D. C.

HOME ADDRESS:
SYLVANIA, GEORGIA

November 8, 1962

Mr. John H. DeWitt, Jr.
President
W S M, Incorporated
301 Seventh Avenue, N.
Nashville 3, Tennessee

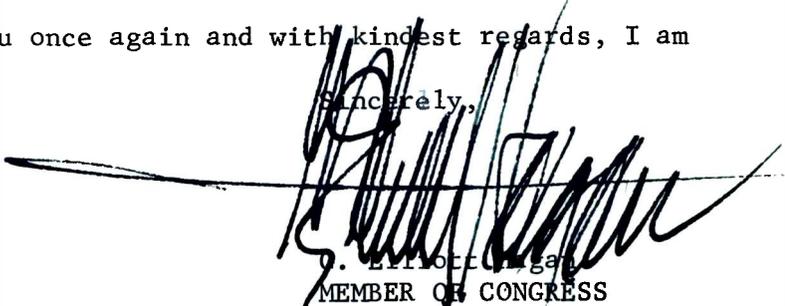
Dear Mr. DeWitt:

This will acknowledge and thank you for your letter of recent date in which you enclosed a copy of the editorial carried by the Nashville Tennessean newspaper concerning WSM's application for an increase in power from 50 KW to 750 KW on your clear channel.

I have read this timely editorial with careful interest and appreciate your thoughtfulness in sending it to me.

Thank you once again and with kindest regards, I am

Sincerely,


G. Elliott Hagan
MEMBER OF CONGRESS

GEH:lw

ARMISTEAD I. SELDEN, JR.
6TH DISTRICT, ALABAMA

COMMITTEE:
FOREIGN AFFAIRS

COUNTIES REPRESENTED:
BIBB PERRY
CHILTON SHELBY
GREENE SUMTER
HALE TUSCALOOSA

Congress of the United States
House of Representatives

WASHINGTON ADDRESS:
437 HOUSE OFFICE BUILDING

DISTRICT ADDRESS:
POST OFFICE BUILDING
TUSCALOOSA, ALABAMA

Washington, D. C.

November 8, 1962

Mr. John H. DeWitt, Jr.
President
WSM Incorporated
Nashville 3, Tennessee

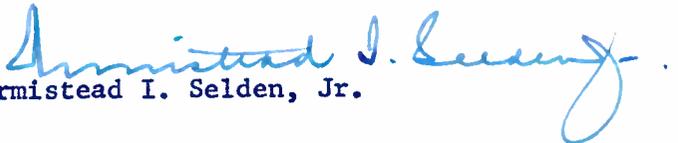
Dear Mr. DeWitt:

Thank you very much for your letter of November 2nd and the enclosed article from the Tennessean newspaper, which were called to my attention upon my arrival in Washington.

I have read the editorial with great interest, and I certainly appreciate your advising me of the progress being made relative increasing the transmission power of WSM radio.

My very best regards.

Sincerely yours,


Armistead I. Selden, Jr.

AIS/gs

JAMES C. DAVIS
5TH DISTRICT, GEORGIA

COMMITTEES:
POST OFFICE AND CIVIL SERVICE
DISTRICT OF COLUMBIA

529 HOUSE OFFICE BUILDING

HOME ADDRESS:
STONE MOUNTAIN, GEORGIA

CONGRESS OF THE UNITED STATES
HOUSE OF REPRESENTATIVES
WASHINGTON, D.C.

November 5, 1962

Mr. John H. DeWitt, Jr., President
WSM, Incorporated
Nashville 3, Tennessee

Dear Mr. DeWitt:

I have received your letter of November 2nd, enclosing copy of an editorial from the NASHVILLE TENNESSEAN of October 27th, concerning WSM's application for an increase in power.

I have noted the item with interest, and I appreciate very much your making a copy available for my information and interest.

With all good wishes, I am

Sincerely yours,

A handwritten signature in black ink that reads "James C. Davis". The signature is written in a cursive style and is positioned to the right of the typed words "Sincerely yours,". There are some circular scribbles or marks overlapping the signature.

JCD:ew

~~ROBERT A. EVERETT~~
8th DISTRICT, TENNESSEE

HOME ADDRESS:
UNION CITY, TENNESSEE

COMMITTEE ON
HOUSE ADMINISTRATION
VETERANS' AFFAIRS

SECRETARY:
HOPE HART

Congress of the United States
House of Representatives
Washington, D. C.

Union City, Tennessee
November 8, 1962

Mr. Jack H. DeWitt, Jr.
WSM, Incorporated
Nashville 3, Tennessee

Dear Jack:

I certainly do appreciate your sending me the editorial from the Nashville Tennessean. I am with you one thousand percent in this matter.

With every good wish, I remain

Sincerely your friend,



Robert A. Everett

PHIL M. LANDRUM
9TH DISTRICT, GEORGIA

COMMITTEE:
EDUCATION AND LABOR

HOME ADDRESS:
JASPER, GEORGIA

OFFICE ADDRESS:
318 HOUSE OFFICE BUILDING
WASHINGTON, D.C.

Congress of the United States
House of Representatives
Washington, D. C.

November 5, 1962

Mr. John H. DeWitt, Jr.
WSM, Incorporated
Nashville 3, Tennessee

Dear Mr. DeWitt:

Permit me to acknowledge your letter
of November 2, with enclosure. I appreciate
your sending this.

Sincerely yours,

A handwritten signature in blue ink, appearing to read "P. Landrum", with a long, sweeping underline.

PML:mac

JOHN J. FLYNT, JR.
FOURTH DISTRICT, GEORGIA

COUNTIES:

BUTTS	MERIWETHER
CARROLL	NEWTON
CLAYTON	PIKE
COWETA	SPALDING
FAYETTE	TALBOT
HEARD	TROUP
HENRY	UPSON
LAMAR	

COMMITTEE
ON
APPROPRIATIONS

ASSISTANT
DEMOCRATIC WHIP

HOME ADDRESS:
GRIFFIN, GEORGIA

Congress of the United States
House of Representatives
Washington, D. C.

Griffin, Georgia
November 9, 1962

Mr. John H. DeWitt
WSM Incorporated
Nashville 3, Tennessee

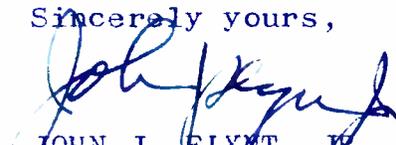
Dear Sir:

This will acknowledge and thank you for your letter of November 2, 1962, and for the editorial which you attached.

I am very pleased to have a copy of this editorial and I appreciate your thoughtfulness in sending it to me.

With kindest regards and best wishes,
I am

Sincerely yours,


JOHN J. FLYNT, JR.
Member of Congress

J. W. FULBRIGHT, ARK., CHAIRMAN

JOHN SPARKMAN, ALA.
HUBERT H. HUMPHREY, MINN.
MIKE MANSFIELD, MONT.
WAYNE MORSE, OREG.
RUSSELL B. LONG, LA.
ALBERT GORE, TENN.
FRANK J. LAUSCHE, OHIO
FRANK CHURCH, IDAHO
STUART SYMINGTON, MO.
THOMAS J. DODD, CONN.

ALEXANDER WILEY, WIS.
BOURKE B. HICKENLOOPER, IOWA
GEORGE D. AIKEN, VT.
HOMER E. CAPEHART, IND.
FRANK CARLSON, KANS.
JOHN J. WILLIAMS, DEL.

United States Senate

COMMITTEE ON FOREIGN RELATIONS

November 7, 1962

CARL MARCY, CHIEF OF STAFF
DARRELL ST. CLAIRE, CLERK

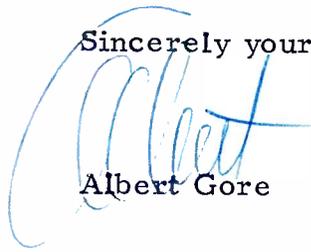
Mr. John H. DeWitt, Junior
WSM, Incorporated
Nashville 3, Tennessee

Dear Jack:

Thanks for sending me a copy of the Tennessean editorial approving WSM's application for authority to increase its power output. I have been in touch with the Federal Communications Commission about this matter and hope that a favorable response will soon be forthcoming.

With kindest regards,

Sincerely yours,



Albert Gore

AG:pb

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON 25, D.C.

NOV 5 1962

IN REPLY REFER TO:

3110

Honorable Kenneth A. Roberts
House of Representatives
Washington 25, D. C.

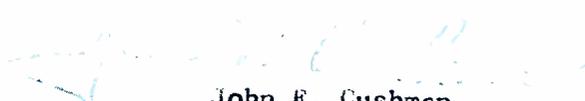
Dear Congressman Roberts:

This will acknowledge receipt of your memorandum of October 27, 1962, and an attached letter from Mr. John H. DeWitt, Jr., concerning an application by Radio Station WSM, Nashville, Tennessee, to increase power from 50 kw to 750 kw.

You are, I am sure, aware of the fact that present Commission Rules do not provide for the operation of any station with more than 50 kilowatts. The possibility of authorizing higher power has been under consideration in connection with the Clear Channel matter but is not provided for by the decision that has been rendered in that matter. The Commission has indicated, however, that it will again consider the possibility of authorizing higher power on some of the United States clear channels.

The first question which the Commission will have to pass on will be the acceptability of the WSM application under present rules. I will be glad to see that you are advised of the Commission's action in this regard.

Sincerely yours,


John F. Cushman
Administrative Assistant
to the Chairman

Enclosure

OREN HARRIS
4TH DIST., ARKANSAS

CHAIRMAN:
COMMITTEE ON INTERSTATE
AND FOREIGN COMMERCE

HOME ADDRESS:
EL DORADO, ARKANSAS

SECRETARIES:
WILLIE HARRIS
CHRISTINE CHRISTIE
RUTH COLLINS

Congress of the United States
House of Representatives
Washington, D. C.
November 6, 1962

Mr. John H. DeWitt, Jr., President
W S M, Incorporated
Nashville 3, Tennessee

Dear Jack:

This is to acknowledge your letter enclosing copy of editorial from the Nashville Tennessean regarding the request of WSM for increase in power.

I appreciate hearing from you, and I am glad to have the information.

With kindest regards,

Sincerely yours,


OREN HARRIS, M.C.

OH:m

M E M O R A N D U M

May 14, 1962

TO: MR. E. W. CRAIG

FROM: JOHN H. DEWITT, JR.

SUBJECT: Clear Channels

Scoop Russell called Wednesday, May 9th, to say that he had been in touch with Mr. Oren Harris and that Mr. Harris had conferred with Minow as of very recent date. Minow will buy the idea of the twelve clear channels which are not proposed to be duplicated getting a grant for higher power. In addition, he is agreeable to adding WGN, WJR and KMOX, St. Louis to the list. I asked Scoop if NBC had any objections to KMOX which is owned by CBS getting the grant and he said that they did not. What they do not want is to have higher power granted to CBS in Chicago or New York where it would be directly competitive with their stations.

Since WSB was left out, I felt obligated to tell Leonard Reinsch about this which I did through his man, Frank Gaither. When I was in Atlanta on April 30th I had a meeting with Frank and Leonard Reinsch. At that time Leonard expressed himself very strongly against the idea of WSB being granted higher power. I would not be surprised if Leonard has made some deal such that WSB would only be duplicated in Alaska as has been proposed by the Commission so that it would remain at 50 KW.

Scoop Russell went on to say that Minow had told Mr. Harris that the Commission could not act on a directive from the Interstate Commerce Committee of the House alone. I presume that this is because Minow cannot convince Craven, Bartley and Cross to go along unless he has a stronger directive. What Minow wants is a resolution calling for higher power on the twelve stations plus WJR, WGN and KMOX. Such a resolution in Minow's mind would nullify the Wheeler resolution passed in the Senate in 1938.

Friday while talking with Ward Quaal he remarked that we had victory in our grasp. He said, "We can smell the high power."

It will not be easy in the opinion of Scoop and others to get the resolution through the House because of the potential daytimer opposition. These people are still stirring up trouble. Apparently we have convinced the Sub-committee of Mr. Harris' Committee headed by Mr. Moulder of Missouri that we are not such bad people. He was an ardent daytime champion

but he has now managed to separate this from the clear channel high power issue and last week reported out of his Sub-committee a decision asking the FCC to hold up duplication of all 25 clear channels for one year after the bill is acted upon favorably by the House.

JHD:am

P. S. On Monday, May 14th, we had a conference call between Battles, Eagan, Quaal, Shouse, Sholis and DeWitt. Battles wanted to talk over the current situation in order to get some direction on how to proceed.

Later Scoop Russell called me to report on his May 13th meeting with Mr. Oren Harris. Our own people agreed that the only course that we could possibly follow would be to support Mr. Harris in his desire to get a resolution through the House. Scoop Russell reported that Mr. Harris still wished to get such a resolution through and that he had been assured by Minow that this would serve as sufficient backing for the Commission to proceed. Harris now feels, as does Minow, that all 25 stations should be given the opportunity to present their case for higher power and accordingly the resolution will be directed to the end of telling the Commission that it should announce that all 25 will be considered on a case by case basis.

NBC does not want higher power and I was told by Scoop that CBS in St. Louis (KMOX) cannot get it because of side channel interference problems.

May 14, 1962

C O N F I D E N T I A L

Note to: Messrs. Quaal, Sholis, Shouse, Dewitt & Egan
From: Roy Battles

Following this morning's conference call, Jack Dewitt talked with Scoop Russell who reported he saw Oren Harris yesterday (Sunday) socially.

Scoop reported to Jack that Mr. Harris has had another conference with FCC leadership relative to the Clear Channel legislation. Mr. Harris now feels that he may recommend:

1. That the full House Commerce Committee delay action on the Clear Channel-higher power matter until the Committee meets again in executive session probably on May 24, 1962.

2. That the language of the Clear Channel-higher power legislation be changed from that proposed by the Subcommittee to specifically direct the FCC to make a case-by-case study of each of the 25 I-A Clears to see which of those channels could utilize higher power without creating serious side-channel interference problems. The language would also specifically authorize the FCC to grant higher power where it served the public interest.

I am unable to verify this report from sources on the Hill to this moment so it appears that Mr. Harris may not share this information with these sources up to this time.

Jack Dewitt, meanwhile, is conducting a preliminary study of the over-all side-channel interference problem on the 25 I-A channels so as to be able to provide this information, on a tentative basis, before May 24, 1962.

Scoop reaffirmed his previous statement that NBC is not going to recommend to Mr. Harris privately as we had feared that it would oppose the authorization for higher power on I-A channels.

ROY BATTLES

May 16, 1962

Mr. Charles Jeffers
Station WOAI
San Antonio, Texas

Dear Charlie:

Yesterday George Reynolds, Johnie Campbell and I made what the real estate people call "a windshield appraisal" of the side channel interference problem relative to the twenty-five ~~W~~'s if their power is increased. We did not consider skywave to skywave or skywave to groundwave interference since the first consideration would be groundwave to groundwave. In the case of WOAI there is one station, KLIF in Dallas, which might possibly have a legitimate complaint against your operating at high power.

Since this could develop into a critical situation, I would suggest that you immediately have a careful study made of this problem as well as any other problems that might develop in order to place yourself in readiness for a defense if and when the Commission proposes to authorize high power.

Best regards.

Sincerely yours,

John H. DeWitt, Jr.

JHD:am

May 16, 1962

Mr. Paul Loyet
Station WHO
Des Moines, Iowa

Dear Paul:

Yesterday George Reynolds, Johnie Campbell and I made what the real estate people call "a windshield appraisal" of the side channel interference problem relative to the twenty-five 1-A's if their power is increased. We did not consider skywave to skywave or skywave to groundwave interference since the first consideration would be groundwave to groundwave. In the case of WHO there are four stations on 1050 KC that might possibly have a legitimate complaint against your operating at high power. They are WECL, Eau Claire, Wisconsin; KSIS, Sedalia, Missouri; KLOH, Pipestone, Minnesota and WDW, Decatur, Illinois.

Since this could develop into a critical situation, I would suggest that you immediately have a careful study made of this problem as well as any other problems that might develop in order to place yourself in readiness for a defense if and when the Commission proposes to authorize high power.

Best regards.

Sincerely yours,

John H. DeWitt, Jr.

JHD:am

May 16, 1962

Mr. Orrin Towner
Station WHAS
Louisville, Kentucky

Dear Orrin:

Yesterday George Reynolds, Johnie Campbell and I made what the real estate people call "windshield appraisal" of the side channel interference problem relative to the 25 1-A's if their power is increased. We did not consider ~~skywave~~ skywave to skywave or skywave to groundwave interference since the first consideration would be groundwave to groundwave. In the case of WHAS there are ~~two~~ stations that might possibly have a legitimate complaint against your operating at high power. They are KBOA on 130 KC at Kennett, Missouri and KFUD on 150 KC at Clayton, Missouri.

Since this could develop into a critical situation, I would suggest that you immediately have a careful study made of this problem as well as any other problems that might develop in order to place yourself in readiness for a defense if and when the Commission proposes to authorize high power.

Best regards.

Sincerely yours,

John H. DeWitt, Jr.

JHD:am

May 16, 1962

Mr. Robert Holbrook
Station WSB
Atlanta, Georgia

Dear Bob:

Yesterday George Reynolds, Johnie Campbell and I made what the real estate people call "a windshield appraisal" of the side channel interference problem relative to the twenty-five LA's if their power is increased. We did not consider skywave to skywave or skywave to groundwave interference since the first consideration would be groundwave to groundwave. In the case of WSB there are two stations that might possibly have a legitimate complaint against your operating at high power. They are both on 740 KC and are located at Montgomery, Alabama and Barnwell, South Carolina.

Since this could develop into a critical situation, I would suggest that you immediately have a careful study made of this problem as well as any other problems that might develop in order to place yourself in readiness for a defense in order that if and when the Commission proposes to authorize high power.

Best regards.

Sincerely yours,

John H. DeWitt, Jr.

JHD:am

May 16, 1962

Mr. Carl Meyers
WGN, Incorporated
2501 West Bradley Place
Chicago, Illinois

Dear Carl:

Yesterday George Reynolds, Johnie Campbell and I made what the real estate people call "windshield appraisal" of the side channel interference problem relative to the 25 1-A's if their power is increased. We did not consider skywave to skywave or skywave to groundwave interference since the first consideration would be groundwave to groundwave. In the case of WGN there are two stations that might possibly have a legitimate complaint against your operating at high power. They are both on 720 KC and are located at Bowling Green, Ohio and Merrill, Wisconsin.

Since this could develop into a critical situation, I would suggest that you immediately have a careful study made of this problem as well as any other problems that might develop in order to place yourself in readiness for a defense if and when the Commission proposes to authorize high power.

Best regards.

Sincerely yours,

John H. DeWitt, Jr.

JHD:am

G. F. LEYDORF, P. E.
CONSULTING ENGINEER

211 Savings & Loan Building
Birmingham, Michigan

May 12, 1962

Mr. John H. DeWitt, Jr., President
WSM, Incorporated
Nashville 3, Tennessee

Dear Jack:

Thank you very much for your letter of 13 April 62 and the enclosure. The delay was no inconvenience to me and was to be expected because of the NAB Convention. The Miller memo to you is full of information on alerting problems which I am glad to have.

I gather from your letter that Beta does not have any SIGALERT equipment. If this is correct, we do not have any convenient way of exploring SIGALERT transmissions to determine the degree of incompatibility with our FSK system. I would expect that SIGALERT would be subject to interference from 60 WPM FSK at frequencies near 42 cycles per second whenever multipath propagation effects are appreciable. On the other hand I would expect relatively slight interference from SIGALERT to FSK, because of the relatively small potential phase modulation available with the low amplitude, low frequency modulation of the old SIGALERT. As I recall, the SIGALERT signalling frequencies were all below 30 cycles, so it is possible that SIGALERT and 60 WPM FSK are reasonably compatible.

I feel, as you do, that sub-sonic AM signalling such as SIGALERT has no application in alerting the general population. It may, however, be useful in alerting specialized groups in localities and regions and the persistent promotion of it may result in FCC approval of it for such purposes. Since KFI has practical experience with the system, and may still have the necessary equipment available, I wonder if they might not be willing and able to make some compatibility tests and furnish the results to CCBS.

Enclosed you will find the copy of my February letter to Donn Chown. Perhaps he, Glenn, you and I can get together sometime this season and sail the New Horizon, which is available for charter at Annapolis. I have had a rough time during the past month with flu and several colds. Things seem to be returning to normal the last few days.

Mr. John H. DeWitt, Jr. - 2

You will find time and expense notes and our invoices for February and March enclosed.

Best regards to all.

Sincerely yours,


G. F. Leydorf

GFL:11

2756 Buckingham
Birmingham, Mich
8 Feb 62

Dear Don:

a mutual friend of ours,
Jack DeWitt has become
interested in the "New Horizon"
a fiberglass sloop manufactured
by Ray Green in Toledo. This
boat seems to be ideally suited
to the conditions found in
Kentucky Lake, where Jack
plans to use it most of the
time

I seem to recall that you
did not entirely approve of
this particular craft when
I mentioned it one time
recently, but circumstances
did not permit a discussion.

Last week Jack asked me
what I thought of the "New
Horizon", and I mentioned

your remark and suggested
that I write and invite you
to enlighten both of us. So-
leave this.

Louise and I have enjoyed
our recent visits with the
Chowes, and look forward
to more in the near future.

Yours truly

Fritz

c.c. has been
sent to Jack De Witt

Mrs Donna M. Chowen
Route 4 Box 363
Vienna, Va
August 11, 1963
Vienna, Virginia

TIME AND EXPENSE RECORD

February, 1962

Date	Description	Time
1	Hearing on HR 8210, 8211, 8228 and 8274 in Hearing Room 1334, House Office Building. Testimony of Pucinski, Bennett, Dingle, Battles and DeWitt.	7½ hrs.
2	Reviewed sub-committee members' questions and considered possible ways of clearing up same. In a telephone conference with DeWitt suggested re-explaining AM channels, oversimplifying by neglecting adjacent channel interference in the first go-around, also the desirability of testimony by a friendly witness on the importance of priorities in international law.	1 hr.
	Weather (sleet) prevented attendance at hearings.	
	Telephone toll charges	\$0.55
8	Telephone conferences with Friedenthal, Reynolds and Campbell on whereabouts of atmospheric noise ratio demonstration recordings. Also tried to locate recordings made by WJR, using the above, which showed how raising power from 50 kw to 750 kw would improve service in various areas of the country. Also discussed were the availability of co-channel station interference recordings used in FCC Doc. 6741 and BRECOM twilight effects and remedies such as diversity and the use of backup stations like WSM, WSB and WWL.	2 hrs.
	Telephone toll charge - Birmingham to Nashville	\$6.00
9	Telephone conference with Haehnle regarding reliability of BRECOM. Arranged for meeting on 10 Feb. Discussed FCC Mimeo 14521.	¼ hr.
	Telephone toll charges	\$2.92

TIME AND EXPENSE RECORD (CONTINUED)

Date	Description	Time
10	Conference with Haehnle, Lantzer and Dooley at WLW transmitter. Studied summaries of percentage of good copy at WSM, WLW, WGN, WJR and WHO for the months of December and January. Methods of improvement such as diversity, backup and loop antennae were discussed. The WLW FSK installation was demonstrated. The oscilloscope modulation monitor appeared to be particularly useful. FCC Mimeo 14521 was studied and discussed.	4 hrs.
12	Conference with DeWitt and Reynolds. Study summaries of BRECOM reliability data from WLW and means of improving results. Probable BRECOM network test schedule was discussed. In late afternoon, visited WSM transmitter with Reynolds and saw BRECOM installation in operation, receiver modification and repair bench and phase-lock unit assembly bench.	6 hrs.
	Previous telephone charges not yet billed	
	Birmingham to Nashville \$4.68 25 January 62	
	Total expenses (all telephone)	\$14.15

TIME AND EXPENSE RECORD

March, 1962

Date	Description	Time
1	Telephone call to KFI, C. Mason. Arranged to meet with Blatterman, Mason and Curran at KFI on morning of 2 March. Telephone call to KMPC, L. Sigmon. Visited Sigmon, discussed SIGALERT and DART.	3 hrs.
2	<p>Conference at KFI studios with Blatterman, Mason and Curran. Of the distant stations, KSL is the most dependable, with KOA second, doing somewhat better than KOB, which is third. Of the more distant stations, WFAA-WRAP seems the best. Lake Elsinore, fifty miles from KFI is the only site providing all day reception of KSL. Further effort to receive KSL at or near the KFI transmitter was discussed. The application of a loop receiving antenna was discussed.</p> <p>Curran is concerned with the obstacles to high power at KFI composed of the Cuban restriction, 620 KCD at Mt. Shasta, Calif., 630 U Monterey, Calif., and Reno, Nevada.</p>	3 hrs.
7	<p>Telephone call to WOAI, Jeffers in AM to arrange visit in afternoon. During visit saw WOAI studios. Discussed foreign interference on clear channels. No significant changes apparent except what might be jamming on 700-710 kc.</p> <p>Discussed optimum vertical plane radiation pattern for WOAI. Hard to decide where to put start of fading, best answer could be "as far away as possible".</p> <p>Discussed anomalous propagation due to dry limestone formations in southern Texas. Nothing significant noted.</p>	4 hrs.
16	Telephone call to CCBS office re work next Monday.	¼ hr.

TIME AND EXPENSE RECORD (CONTINUED)

March, 1962

Date	Description	Time
19	Study and check FCC exhibits. Check JSC, JHD comments on same. Discussed errors on FCC exhibits with Barr over telephone. Explained phenomena on WLW, WJR and KFI reception tapes to Battles, also discussed what FCC maps show.	10 hrs.
31	Study and select CCBS material to take to NAB convention, Chicago.	2 hrs.
Total (telephone) expense \$0.75		

May 10, 1962

Mr. Clyde Haehnle
Crosley Broadcasting Corporation
Crosley Square
Cincinnati 2, Ohio

Dear Clyde:

I beg off completely as to my "red" contract but I do wish to tell you that I have listened to the record which you made demonstrating the differences between 50 KW and 750 KW and was impressed with its technical excellence and accuracy. This is a great piece of sales material which will be hard to refute.

Best regards.

Sincerely yours,

John H. DeWitt, Jr.

JHD:am

Crosley Broadcasting Corporation

WLW the nation's station

CROSLY SQUARE • 140 W. NINTH ST. • CINCINNATI 2, OHIO

7 May 1962

Mr. J. H. DeWitt, Jr.
President
WSM Incorporated
National Life Building
Nashville, Tennessee

Dear Jack,

Does your title of "Colonel" give you the authority to negotiate with the Commies for Nashville? Are you a traitor?

Comrade Haehnle (Serial #6741)

CH/cf

**DeWitt Asks Time to Study
Reds' Contract With City**

Radio and Television Stations

AM: WLW CINCINNATI
/ WLW-T CINCINNATI • WLW-D DAYTON
TV / WLW-C COLUMBUS • WLW-A ATLANTA
/ WLW-I INDIANAPOLIS

COPY

CENTRAL BROADCASTING COMPANY
1002 Brady Street
Davenport, Iowa

William D. Wagner
Secretary

May 4, 1962

WHO, WHO-FM, & WHO-TV
Des Moines

Mr. Roy Battles, Director
Clear Channel Service
Shoreham Building
Washington, D.C.

Dear Roy:

It was very nice visiting with you regarding the Clear Channel situation. To reiterate what I told you yesterday, Ray Guth and I had a very nice dinner meeting with Congressman Fred Schwengel. To sum up what was said, Congressman Schwengel promised to do all he could to help the Clear Channel cause. He told me he and his wife were very close friends of Oren Harris and his wife and that this friendship would permit him to urge Rep. Harris to use all possible haste in the Clear Channel legislation.

I also asked that he be furnished the Clear Channel case in layman's language. I suggested that in addition to such type of information that it might be well for you to talk to him first hand regarding the merits of our problem. This the Congressman said he would be very happy to do and suggested that you make an appointment with him thru his Administrative Assistant, Charles Freburg. Charlie at one time was one of our valued employees and is still friendly to our interests. I had lunch with him yesterday and told him that you would contact him for an appointment with Congressman Schwengel.

Ray Guth and I also saw Senator Jack Miller and Senator Hickenlooper from Iowa yesterday afternoon. Senator Miller has already made a statement regarding the Clear Channel case when S. 2290 was introduced. He assured me that he would be most happy, when the Senate Committee hearing is held, to reiterate his stand on Clear Channels before the Committee. Senator Hickenlooper, although not saying he would perform this identical act, did say that he was always in favor of the Clear Channel legislation, had not changed his viewpoint and would continue to lend it his support.

Roy, that about sums up our trip to Washington. Both Ray Guth and I feel that the people we saw will do everything possible to help in the passage of H.R. 8210 and S. 2290.

Sincerely,

/s/ Bill Wagner
Secretary

CROSLY BROADCASTING CORPORATION
CROSLY SQUARE
CINCINNATI

JAMES D. SHOUSE
CHAIRMAN OF THE BOARD

April 30, 1962

Mr. John H. DeWitt, Jr.
President
WSM and WSM-TV
Nashville, 3, Tennessee

Dear Jack:

I am terribly sorry but your note to me of April 9 got sidetracked in what has grown to be quite an avalanche of clear channel material.

I certainly am delighted to agree to give Bernice a raise and buy an electric typewriter for her if this has not already been done.

Will try and be more prompt in the future on matters of this kind. With kindest regards.

Very sincerely



J. D. Shouse

File CCBS

CBS RADIO

A Division of Columbia Broadcasting System, Inc.

485 MADISON AVENUE, NEW YORK 22, NEW YORK • PLAZA 1-2345

ARTHUR HULL HAYES
President

February 28, 1962

Honorable Morgan M. Moulder, Chairman
Subcommittee on Communications and Power
Committee on Interstate and Foreign Commerce
House of Representatives
House Office Building
Washington 25, D. C.

Dear Mr. Chairman:

We have followed with interest the hearing which your Subcommittee is conducting on pending legislation which would amend Section 303(c) of the Communications Act of 1934.¹ We respectfully request that this letter and the enclosed draft resolution be made part of the record of this hearing before this Subcommittee.

On June 13, 1961, the Federal Communications Commission (herein referred to as "Commission") issued a Public Notice setting forth instructions to its staff for the preparation of a decision in a rule making which the Commission commenced in 1945 and which is known as the Clear Channel Proceeding.² The sense of these instructions was for the staff to prepare a Report and Order providing for the authorization of an additional station on a specified channel in the case of 13 of the 25 so-called clear channels and to retain in status quo the 12 remaining stations.

Following the issuance of this Public Notice, the bills which are the subject of this hearing were introduced. The effect of this legislation would be to prohibit the assignment of another station on any of the 25 clear channels³ and in the case of two of the four bills, authorize the Commission to license stations to operate with a power in excess of 50 kilowatts. Legislation identical to two of the House bills and with no reference to higher power has been introduced in the Senate.⁴

On September 13, 1961, the Commission issued its Report and Order amending its Rules and Regulations to provide for the issuance of licenses to

1. H.R. 8210, H.R. 8228, H.R. 8211 and H.R. 8274.
2. Docket No. 6741.
3. With the exception of those which had been authorized prior to July 1, 1961.
4. S. 2290.

applicants for new Class II unlimited time stations on the 13 clear channels.¹

In his dissenting statement Commissioner Lee pointed out:

"...new service to less than one percent of the area in the United States which is without such service is hardly the decision the country has been waiting for the last sixteen years. Had the Commission deliberately swept the clear channel proceeding under the rug, it could not have done so more effectively." (Tr 229)²

Why then was a decision made which admittedly accomplished so little and which the Chairman of the Commission termed "...a half-way measure..." (Tr 260)? We have reviewed the transcript of the hearing before this Subcommittee on February 13, 1962, when the Chairman and members of the Commission testified concerning the proposed legislation. We believe the answer as to why the industry and the Commission are in this half-way dilemma may be that members of the Commission have been inhibited in the exercise of their judgment by Senate Resolution 294 adopted June 13, 1938. This resolution expressed the sense of the Senate to the effect that it was against the public interest for stations to operate at a power in excess of 50 kilowatts. Repeatedly in testimony before this Subcommittee, Commissioners indicated the force which this 23-year old resolution has had.

For example: Commissioner Ford, in his prepared statement, indicated support for the principle of endorsement of higher power set forth in H.R. 8210 and H.R. 8228 and stated that "in view of S. Res. 294, 74th Congress, 3rd Session, adopted in 1938 opposing higher power, an expression of the current sense of the Congress--either by way of a resolution or an amendment to the Act--would be extremely helpful prior to any action by the Commission in this controversial area." (Tr 220)

Commissioner Lee, in his prepared statement for this hearing, noted again that the majority had given "due recognition to a resolution passed by the United States Senate in 1938..." (Tr 224)

Commissioner Craven testified as follows: "Now, I also must give some weight to the Senate resolution, which while it may not have any legal impact, nevertheless is an expression of sentiment of policy on the part of one body of Congress." (Tr 241)

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1. Under this Report and Order the four CBS Class I-A frequencies are specified for new Class II stations (WCBS, New York, 880 kc; WCAU, Philadelphia, 1210 kc; WBBM, Chicago, 780 kc; KMOX, St. Louis, 1120 kc).
 2. These references are to pages of the transcript of Hearings of this Subcommittee held February 13, 1962.

Chairman Minow said with respect to higher power, "This is a highly complicated area on which I don't think the Commission has taken a position, largely because of the 1938 Senate resolution, and the different views here and there." (Tr 243)

Again, Commissioner Craven answered Congressman Younger's question concerning Congress's passing an authorization for higher power saying "It would be helpful from the standpoint of the Senate resolution, at least. It would remove that and give us a degree of flexibility which I think is highly desirable." (Tr 241, 242), and Chairman Minow agreed with Commissioner Craven in the following manner: "I would certainly concur in that, Congressman Younger. There is an area of confusion here, as has been pointed out by Commissioner Craven and Commissioner Ford and Commissioner Lee, with respect to what the Congressional policy is in this area. We would welcome a clarification of it." (Tr 242)

The Commission's Report and Order referred to the Senate resolution but the extent to which this resolution inhibited the decisional process of the Commission in this proceeding was not apparent until the testimony before this Subcommittee on February 13th.

This inhibition may well have been one of the prime factors in causing the Commission to reject the "strict engineering finding or recommendation" that the best way to improve service is by keeping the clear channels unduplicated and increasing their power. (See the testimony of Commission Engineer, James E. Barr, Assistant Chief, Broadcast Bureau, Tr 237-239)

We believe it is patently clear that the economic, social and political considerations which may have moved the Senate in 1938 to place its restriction on higher power have disappeared from the radio broadcasting scene. We submit that the major factor which should motivate the Commission in this Clear Channel Proceeding is the improvement of radio service and, as Mr. Barr and Commissioner Craven testified, this can best be done by higher power. We are hopeful that the members of this Subcommittee are in agreement.

Regulation of the spectrum is a complex matter which the Congress has found appropriate to delegate to an administrative agency. While Congress does retain the ultimate power and attendant responsibility in this area, clearly expertise is required and Congress may not wish to intrude upon the judgment of those primarily charged with the formulation of rules and regulations to implement the public policy considerations involved. However, in this instance, both the Commission and members of the Congress appear to recognize the necessity for an expression of Congressional policy and guidance in the area of higher power.

In their testimony, members of the Commission repeatedly requested the guidance of Congress on this matter (Tr 220, 241, 242, 247, 249). The position of the Commission may be summed up in the following colloquy between Chairman Harris and Chairman Minow:

"Mr. Harris. Would it not help, if the Congress were to decide a policy matter regarding these matters without telling you what channels to assign and where and actually get into the field of allocation?

Mr. Minow. Yes, sir. I think expressions of opinion and policy would be most helpful to us. If you felt that higher power in the situation of today's radio did not involve any serious competitive disadvantages or dislocations to those in the industry." (Tr 335)

We submit that the now unnecessary limitation of 50 kilowatts should be removed and we believe that the better method of achieving this is the method which was used to impose the limitation in the first instance-- by resolution.

If the sense of Congress is to the contrary and the limitation set forth in the 1938 Senate resolution is to be retained, we believe, once again, it is important for Congress to indicate this to the Commission at this time. In either event, a Congressional Resolution would afford the Commission a statement of policy on higher power which the Commission has indicated is most desirable and which would permit the Commission to review its decision in the Clear Channel Proceeding in order to eliminate its "half-way measure" characteristics. As Chairman Harris of the full Committee recognized, the vital question involved is whether higher power was to be authorized as a matter of policy. (Tr 324) The request by the Commission to the Congress for guidance on this policy question should not go unanswered. As the guidance which Congress gives the Commission on the question of higher power will bear so vitally upon the Commission's decision in the Clear Channel Proceeding, the Commission might well, we believe, wish to reconsider its Report and Order and issue a decision consonant with the public policy pronouncement of Congress. For its possible assistance to the Subcommittee, we are submitting with this letter a draft of a resolution which we believe would achieve the desired result.

We appreciate very much having the opportunity to express our views for the record on this very important matter.

Very truly yours,



Enclosure

ATTACHMENT TO LETTER OF ARTHUR HULL HAYES,
PRESIDENT OF CBS RADIO,
DATED FEBRUARY 28, 1962

RESOLVED that it is the sense of the House of Representatives of the Congress of the United States that because the political, social and economic factors involved in the authorization of higher power in excess of fifty kilowatts for stations operating in the standard broadcast band (535-1605 kilocycles) are at variance with those which obtained at the time the Senate of the United States expressed its sense in Senate Resolution 294, adopted June 13, 1938, to the effect that power in excess of fifty kilowatts was against the public interest, and because there remain substantial areas of the country which depend upon skywave service for nighttime reception of transmissions on the standard broadcast band, and because power in excess of fifty kilowatts may well be the best way to improve such skywave service to under-served rural and remote areas at night, radio broadcast stations in the standard broadcast band should be authorized to operate at such power, including power in excess of fifty kilowatts, as may be determined by the Federal Communications Commission from time to time to be in the public convenience, interest or necessity;

AND FURTHER RESOLVED that it is the sense of the House of Representatives of the Congress of the United States that the aforementioned Senate Resolution may have had an inhibiting effect upon the Commission, and because the question of higher power was involved in the determination of the so-called Clear Channel Proceeding (Docket No. 6741) which was the subject of a Report and Order issued by the Commission on September 13, 1961, the Federal Communications Commission, on its own motion, may wish to reconsider its Report and Order in the light of this Resolution and, in view of the prospect of higher power, reconsider whether the public convenience, interest or necessity will be served by the authorization of a second unlimited time standard broadcast station, to the extent that such authorization has not been made as of July 1, 1961, on any of the Class I-A clear channel frequencies.

Being in individual stations

LOUIS G. CALDWELL
(1891-1951)
HAMMOND E. CHAFFETZ
REED T. ROLLO
DONALD C. BEELAR
PERCY H. RUSSELL
KELLEY E. GRIFFITH
PERRY S. PATTERSON
R. RUSSELL EAGAN
CHARLES R. CUTLER
FREDERICK M. ROWE
ALOYSIUS B. MECABE

LAW OFFICES OF
KIRKLAND, ELLIS, HODSON, CHAFFETZ & MASTERS
WORLD CENTER BUILDING - 16TH AND K STREETS, N. W.
WASHINGTON 6, D. C.

TELEPHONE STERLING 3-3200

CHICAGO OFFICE
PRUDENTIAL PLAZA
CHICAGO 1, ILLINOIS

March 27, 1962

JOSEPH DUROEUR
RAYMOND G. LARROCA
JOHN P. MANWELL
RONALD J. WILSON

Mr. John H. DeWitt, Jr.
WSM, Inc.
301 - 7th Avenue North
Nashville 3, Tennessee

Dear John:

As you know, KID, Idaho Falls, has filed an application to change its frequency from 590 kc to 720 kc, to increase its daytime power from 5 kw to 50 kw and its nighttime power from 1 kw to 25 kw.

Enclosed for your information is a photocopy of Howard Head's engineering analysis.

We would be very much interested in your reactions to his comments on Technical Report TRR 1.2.7.

I have always been under the impression that you and Fritz Leydorf believe that suppression ratios above a certain point are impractical and do not produce the theoretical results.

My impression from reading Howard's report is that he takes a different view.

Since this is a matter which affects all members of CCBS, we would very much appreciate the benefit of your analysis.

Cordially,



R. Russell Eagan

RRE:bw
Encl.

cc: Messrs. Quaal, Meyers
and Battles



A. D. RING
STEPHEN W. KERSHNER
HOWARD T. HEAD
CHARLES S. WRIGHT
MARVIN BLUMBERG

A. D. RING & ASSOCIATES

CONSULTING RADIO ENGINEERS

1710 H STREET, N. W.
WASHINGTON 6, D. C.

TELEPHONE
REPUBLIC 7-2347

CABLE ADDRESS
RINGCO
WASHINGTON DC

March 24, 1962

Mr. Carl J. Meyers
WGN, Inc.
2501 West Bradley Place
Chicago 18, Illinois

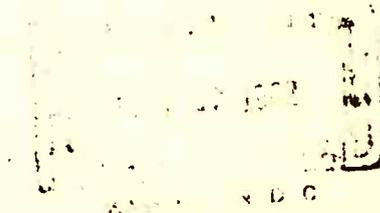
Dear Carl:

Referring to Russ Eagan's letter to you of March 14, we have studied the engineering portions of the application of KID, Idaho Falls, Idaho, to change frequency from 590 kc to 720 kc. Daytime power would be increased from 5 kw to 50 kw, and the nighttime power from 1 kw to 25 kw.

KID proposes to use a three-tower directional antenna both day and night, employing different radiation patterns for daytime and nighttime operation. We laid out the pertinent contours for both WGN and the KID proposal and find that the proposed operation meets the requirements of the Commission's engineering standards both day and night. Unless there should appear to be some worthwhile engineering argument going beyond the scope of the Commission's Standards, there would not appear to be a technical basis for objection to the proposal.

Russ specifically asked that we look into the proposed nighttime directional antenna system in light of the Commission's Technical Report TRR 1.2.7. This is a report prepared by one of the Commission's long-haired theoreticians who never saw an AM directional antenna in his life until we took him down to Paducah a few years ago and showed him one. Even then his reaction was - "Those are nice looking towers, but where is the directional antenna?"

TRR 1.2.7 suggests various criteria for establishing the maximum degree of suppression to be considered practical for a directional antenna. One of these cri-



Mr. Carl Meyers
March 24, 1962
Page 2

teria suggests that the minimum suppression be no lower than 9% of the RSS of the individual vectors of the directional array. For example, a three-tower directional in which each tower radiated an individual field of 100 mv/m would have an RSS of 173 mv/m with 9% of that value being 15.6 mv/m.

In the case of the proposed KID nighttime array, the radiation must be suppressed to 18.5 mv/m along a direct bearing toward WGN, and over the entire arc toward the WGN nighttime service area, varying degrees of suppression are required ranging from 30 mv/m along a bearing of 54° True to 57.5 mv/m along a bearing of 124.7° True.

Applying the RSS criterion, we find that the RSS of the proposed KID nighttime array is 1030 mv/m. Nine per cent of this value is 92.7 mv/m, and thus the KID array will have to suppress the signal to considerably less than 9% of the RSS, in fact, to something less than 2% of the RSS. If we could invoke the criteria suggested by TRR 1.2.7, this might form a ground for opposition to the KID proposal. For two reasons, however, I doubt that such an opposition would get very far.

For one thing, the treatment in TRR 1.2.7 is far too abstract. All cases are lumped together, and no recognition is given to such factors as suitability or unsuitability of transmitter sites. The topographic maps and photographs indicate the KID transmitter site to be very well suited to use as a directional antenna site, and even if the TRR 1.2.7 criteria were believed to apply on the average, this site is much better than average and better performance would be expected. Furthermore, no one with practical experience in the adjustment of directional antennas really believes in the criteria established in TRR 1.2.7, and our own experience has indicated that as a practical matter, directional antennas can actually be made to function much better than TRR 1.2.7 would indicate.

Even assuming if anyone took the TRR 1.2.7 criteria seriously, however, there is an even more important second reason why we doubt that this would be a particularly effective weapon against the KID application. The potential shortcomings of directional antennas have been called to the Commission's attention many times in Docket No. 6741, and we have no doubt that the Commission is fully aware of the possibili-

Mr. Carl Meyers
March 24, 1962
Page 3

ties that some of the new Class II-A stations may be required to employ fairly tight-fitting directional antennas. I seriously doubt that the Commission would pay any attention to this argument in a specific case when it has ignored the same argument repeatedly in the general case in the past.

We have our doubts about the ability of Idaho Falls to support a 50 kw radio station. This, however, is not an engineering consideration and on a strictly engineering basis, there would not appear to be any grounds for opposition to the KID application.

Very truly yours,

A. D. RING & ASSOCIATES

Howard T. Head

HTH:jt

CC: Mr. Russell Eagan

LOUIS G. CALDWELL
(1891-1951)
HAMMOND E. CHAFFETZ
REED T. ROLLO
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CHICAGO OFFICE
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CHICAGO 1, ILLINOIS

March 28, 1962

JOSEPH DuCOEUR
RAYMOND G. LARROCA
JOHN P. MANWELL
RONALD J. WILSON

**Mr. Edwin W. Craig
Chairman of the Board
National Life & Accident Insurance Co.
Nashville 3, Tennessee**

Dear Mr. Craig:

On March 16, Congressman Dingell called and requested that we draft a Proposed Amendment to H. R. 8210 (H. R. 8210 was introduced by Congressman Dingell on July 18, 1961).

After hearings were held before a Subcommittee of the House Commerce Committee on H. R. 8210 and related bills, Congressman Dingell decided that his bill as originally drafted was subject to criticism that it was placing the Congress too much in the field of allocations. He also wanted to incorporate in the Proposed Amendment a provision reconciling, insofar as possible, the views of Commissioners Lee and Ford as expressed in the hearing. Accordingly, he asked specifically that the Proposed Amendment provide:

1. A prohibition against any further breakdowns of the I-A's for a period of one year.
2. Authorization of higher power for I-A's during the first year after enactment.
3. Protection of secondary service areas on the basis of higher power after one year, and
4. Authority for the Commission, after one year, to require I-A's to apply for power increases if they had failed to do so during the first year.

Mr. Edwin W. Craig

2

March 28, 1962

The Proposed Amendment is enclosed for your information.

This matter will be the subject of discussion at the annual meeting of CCBS in Chicago on Sunday afternoon, April 1, in the Bel-Air room of the Conrad Hilton Hotel beginning at 4:00 p. m. and it is hoped that it will have the unanimous support of CCBS members. Clearly, subsections (1), (2), and (3) are not controversial in nature inasmuch as they spell out the historic position of CCBS; namely, that the I-A frequencies should not be duplicated and higher power should be authorized. Subsection (4) authorizes the Commission, after a one-year period, to issue show cause orders against Class I-A stations that may have failed to apply for power increases. This subsection is designed to protect those stations that may not want to increase their power because of economic reasons or otherwise, by assuring them a hearing on a show cause order and if they should be unable to show good cause why they should not increase power, to obtain protection of their nighttime secondary service areas at higher power.

Sincerely,

Kirkland, Ellis, Hodson, Chaffetz
& Masters

By


Reed T. Rollo


R. Russell Eagan

cc: John H. DeWitt
Roy Battles
bc: Glen Wilkinson, Esq.
Robert Marmet, Esq.

LAW OFFICES OF
KIRKLAND, ELLIS, HODSON, CHAFFETZ & MASTERS
WORLD CENTER BUILDING - 1627 AND K STREETS, N. W.
WASHINGTON 6, D. C.

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CHICAGO OFFICE
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CHICAGO 1, ILLINOIS

November 29, 1962

MEMORANDUM TO CCBS GENERAL MANAGERS
AND CHIEF ENGINEERS

Enclosed for your information are copies of the separate Memorandum Opinions and Orders referred to in our memorandum of November 23, 1962.

The Opinion returning the 750 kw applications filed by WSM, WJR, WLW and WGN was released on November 27, 1962, but the Opinion denying the Petitions for Reconsideration in Docket 6741 was not released until yesterday.

Miss Hase is in the process of contacting all member stations as to the feasibility of holding a meeting in Washington on Thursday, December 6 to discuss the course of action which should be taken. The possibilities include court appeals, institution of rule making proceedings before the Commission and securing Congressional legislation.

Reed T. Rollo
Percy H. Russell
R. Russell Eagan

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington 25, D. C.

B
FCC 62-1209
27631

In re Applications of)
)
WSM, INCORPORATED (WSM))
Nashville, Tennessee)
)
Has: 650 kc, 50 kw, U. Class I-A)
Requests: 650 kc, 750 kw, U. Class I-A)
)
THE GOODWILL STATIONS, INC. (WJR))
Detroit, Michigan)
)
Has: 760 kc, 50 kw, U, Class I-A)
Requests: 760 kc, 750 kw, U, DA-I, Class I-A)
)
CROSLEY BROADCASTING CORPORATION (WLW))
Cincinnati, Ohio)
)
Has: 700 kc, 50 kw, U, Class I-A)
Requests: 700 kc, 750 kw, U, Class I-A)
)
WGN, INC. (WGN))
Chicago, Illinois)
)
Has: 720 kc, 50 kw, U, Class I-A)
Requests: 720 kc, 750 kw, U. Class I-A)
)
For Construction Permits)

MEMORANDUM OPINION AND ORDER

By the Commission: Commissioner Lee dissenting and voting to grant.

1. The Commission has before it the above-captioned applications accompanied by petitions and/or requests for waiver of various Commission's Rules to permit the acceptance for filing of the applications.

2. The listed applicants are Class I-A Clear Channel stations presently operating at 50 kw of power and seeking an increase

to 750kw of power. In the Commission's Report and Order in the Clear Channel Matter (Docket No. 6741), adopted September 13, 1961, ^{1/} the facilities of Stations WSM and WLW were not duplicated to permit the operation of a Class II-A station on the frequency, but were reserved for further study to determine what would be the optimum use of the frequency, i. e. should the frequency be duplicated or should the existing Clear Channel stations be authorized to operate with higher power. The frequency utilized by Station WJR was not reserved for future disposition, but was duplicated by providing that Station KFMB, San Diego, California would move to this frequency. The frequency utilized by Station WGN was to be duplicated in the States of Nevada, or Idaho.

3. By Memorandum Opinion and Order adopted this date, the Commission reaffirmed its Clear Channel Report and Order by denying the petitions for reconsideration directed against it, and also concluded that operation of the unduplicated Clear Channel stations with power in excess of 50 kw should not be authorized at this time,

4. Therefore, the controlling consideration with respect to the above-captioned applications is the disposition of the requests for waiver of Section 3.21(a)(1) of the Commission's Rules, the provisions of which limit operating power to 50 kw for Class I stations. The petitioners claim that House Resolution 714 of the 87th Congress authorizes the Commission to permit operations with power in excess of 50 kw. This House Resolution reflects a view contrary to the 1938 Senate Resolution, but we cannot say that the House Resolution requires the Commission to authorize power in excess of 50 kw for Clear Channel stations upon the basis of applications such as these. In our opinion, orderly procedure would seem to require that the merits of authorizing use of power in excess of 50 kw be evaluated in a rule-making procedure previous to firm commitment to that course of action, and that the rules be amended to spell out the conditions and circumstances under which such operation may be authorized in the public interest if it is determined that such a course will serve this interest.

5. The Commission has indicated the desirability of further study before reaching a definite decision regarding higher

^{1/} 31 F. C. C. 565, 21 R. R. 1801

power and a further rule making procedure is a proper vehicle for such a study. It is suggested that the advocates of higher power, including prospective licensees, may more appropriately present their case by a petition for rule-making in the matter rather than by attempting to obtain consideration of individual applications inconsistent with present rules.

6. Returning to consideration of the instant applications, it is noted that Stations WSM, WGN, and WJR allege, as a basis for their request for waiver, that operation with 750 kw would be consistent with the Department of Defense position favoring increased power communications operations; would aid civil defense and disaster operations; and would provide better understanding between the United States and the Latin-American countries. These purposes are of course laudable, but we do not think that a showing has been made of sufficient force to override the requirements of orderly procedure. In short, it is the Commission's view that there has not been a sufficient showing to warrant waiver of Section 3.21(a)(1) of the Rules, and accordingly, the applications will be returned to the applicants without prejudice.

7. The requests for waiver of Section 1.354 and Section 3.24(g) of the Rules are moot due to the Commission's decision not to authorize operation with power in excess of 50 kw at this time. Therefore, these questions will not be discussed because our action in denying a waiver of Section 3.21(a)(1) is dispositive of the applications.

ACCORDINGLY IT IS ORDERED, That the request for waiver of Section 3.21(a)(1) of the Commission's Rules and acceptance of the above-captioned applications tendered for filing ARE DENIED; the above-captioned applications ARE HEREBY RETURNED; and the requests for waiver of Sections 1.354 and 3.24(g) of the Commission's Rules ARE MOOT.

FEDERAL COMMUNICATIONS COMMISSION

Ben F. Waple
Acting Secretary

Adopted: November 21, 1962

Released: November 27, 1962

C
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P
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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington 25, D. C.

B
FCC 62-1214
27637

In the Matter of)
)
Clear Channel Broadcasting) Docket No. 6741
In the Standard Broadcast Band)

MEMORANDUM OPINION AND ORDER

By the Commission: Commissioner Lee dissenting and issuing a statement; Commissioner Henry not participating.

1. The Commission has before it for consideration various petitions for rehearing, reconsideration, partial reconsideration, and stay of the effective date of all or certain limited specific portions of its Report and Order adopted September 13, 1961 in the above-captioned proceeding. 1/

Requests for Stay or Partial Stay and Demands for Hearing

2. Turning first to the requests that we stay the effective date of all or portions of the rule changes, we find nothing therein, despite some assertions of irreparable harm, that would warrant such extraordinary relief. This has been a most extensive proceeding. The conclusions reached reflect more than sixteen years of rule making and hearing. No person can seriously contend that he was not given every opportunity fully and fairly to present his views for consideration. That the issues to be met were not easy of resolution and were not taken lightly can be inferred from the length of the proceeding itself.

3. While technically those pleadings which sought a stay of the effective date of the rule changes until petitions for reconsideration were disposed of are now moot, we do not rest our denial of such requests on that ground. The rule changes, which became effective October 30, 1961, basically provide for applications for new Class II-A stations in accordance with specified procedures. Irreparable injury may not logically be urged as likely to result from the mere acceptance of applications. None of these applications could be acted upon until after January 30, 1962, in accordance with the express terms of the rules adopted. The determination

1/ The Appendix hereto sets forth the names of those filing petitions.

of hearing rights must in each instance await concrete proposals for placement of new stations and the narrowing of issues on consideration of such applications. As to the concern which one party manifests for those who might apply for a Class II-A station "which might never be processed or granted", the risk to the applicant is no greater than in any other administrative decision which is subject to judicial challenge.

Congressional Action

4. It should be recognized at the outset of our reconsideration that much congressional interest has been manifested in this matter since public notice was given in June 1961 of instructions to the staff as to the decision to be prepared.

5. Bills have been introduced in both houses of Congress which would either prohibit us from "duplicating" any of the Class I-A clear channels or would require us, under certain conditions, to authorize power in excess of 50 kw, or both. Our Report and Order of September 1961 provided that no application for a Class II-A station would be granted prior to January 30, 1962, so that interested parties might have ample opportunity to prepare applications. We have further delayed such grants to provide Congress opportunity to act in the matter should it so desire. Hearings on the various bills have been held before the Communications and Power Subcommittee of the House Interstate and Foreign Commerce Committee at which the Commission expressed its opposition to the bills.

6. On July 2, 1962 the House of Representatives adopted a Resolution (H. Res. 714, 87th Cong., 2d Sess.) expressing the sense of the House that the Commission may, notwithstanding the 1938 Senate Resolution (S. Res. 294, 75th Cong., 3d Sess., adopted June 7, 1938), authorize the use of power in excess of 50 kilowatts on any of the 25 Class I-A clear channels should it find that such operation will serve the public interest, convenience, or necessity. The Resolution also expresses the sense of the House that we should not authorize nighttime duplication of the Class I-A clear channels for a period of one year.

7. The first question with respect to Congressional action concerns the 1938 Senate Resolution opposing power greater than 50 kilowatts. Clear Channel Broadcasting Service (CCBS) directs specific arguments regarding the effect of that Resolution on our decision. Those arguments were also presented at earlier stages of this proceeding and were considered by the Commission in reaching its decision. However, we believe it would be helpful to clarify our position.

8. The reference to Congressional policy in our Report and Order, rather than of decisional significance, was merely intended as a recitation of historical fact, and also as an indication that, if and when higher power is considered for any frequencies, whatever Congressional policy then exists on the matter will be accorded due recognition. We wish to make clear that a majority of the Commission determined, on grounds wholly independent of the 1938 Senate Resolution, that higher power should not be permitted at this time.

9. A majority of the Commission felt, and still feels, that further studies are needed to determine whether such authorization of higher power would be in the public interest. Thus, the Senate Resolution did not affect that part of our decision which reserves for future consideration the question of any additional use to be made of the twelve reserved Class I-A channels. Moreover, a majority of the Commission believes that the additional unlimited-time assignments provided for can be effectuated without substantial impairment of the wide-area service rendered by the I-A stations, and without impingement on the possibility of sufficient improvement of service through higher power -- if that is later concluded to be appropriate -- on the other 12 channels better suited for that approach, and perhaps also on some of the 13 now duplicated. This conclusion was the culmination of 16 years of hearings and study and detailed reasons for the result are set forth in our decision.

10. The House Resolution, therefore, has no impact on the Commission's Report and Order of September 1961, because, as noted, absence or elimination of the 1938 Senate Resolution would not have changed that decision, which is reaffirmed herein. However, in its testimony in February 1962, before the Communications and Power Subcommittee of the House Interstate and Foreign Commerce Committee, the Commission indicated it would welcome Congressional guidance on the question of higher power. It was indicated that this would be helpful because a majority of the Commission, while not yet convinced that power in excess of 50 kilowatts would be in the public interest, has carefully preserved the possibility of future utilization of this potential, should further studies convince the Commission that higher power should be authorized. The 1938 Senate Resolution and the 1962 House Resolution look in opposite directions. It would be helpful, therefore, if a current joint expression of the views of Congress could be obtained on this question for guidance in whatever further proceedings are undertaken to evaluate possible use of higher power.

11. The Commission recognizes, as many parties to this proceeding have argued, that a resolution of one House is not legally binding. However, we must, of course, give due consideration to the 1962 Resolution expressing the sense of the House that the Commission refrain from authorizing additional nighttime stations on the Class I-A clear channels until July 2, 1963. Therefore, while we are reluctant to postpone further the effectuation of this decision, we recognize that limited delay requested by the Resolution will give Congress additional opportunity to enact legislation concerning this matter if it should desire to do so. However, we are herein reaffirming the Commission's decision in this matter, and we do not contemplate any further administrative delay beyond July 2, 1963, in implementing that decision. Applications for Class II-A stations will continue to be accepted in the interim. They will be held in abeyance until July 2, 1963, and, absent controlling legislation, will at that time be duly evaluated and acted upon in accordance with the Commission's Rules.

12. There is one aspect of the Committee Report (H. Rept. 1954, 87th Cong., 2d Sess.) accompanying the 1962 House Resolution which goes further than anything stated in the Resolution and deserves comment. That Report envisioned a one-year moratorium as giving "all Class I-A clear channels an opportunity to file with the Commission an application to go to higher power." We feel constrained to point out, however, that such opportunity is not available. A longstanding Commission rule pertaining to standard broadcast stations provides for no power in excess of 50 kilowatts. One of the reasons this proceeding was initiated was to determine whether that rule should be changed. We have concluded that the present 50 kw limitation should remain unchanged at this time. Thus, an application by a standard broadcast station to use power in excess of 50 kw would not be in conformity with the Commission's rules. In the case of these frequencies herein reserved for future disposition, a petition for rulemaking looking toward authorization of higher power could be entertained. In light of the Commission's decision, however, an application merely seeking power in excess of 50 kw is not acceptable and will be returned without prejudice.

13. As evidenced in the House Report and in the comments on the floor, some concern was also expressed as to the effect of our decision on national defense communications. As we advised the House Committee, the one additional nighttime station proposed on each of 13 of the Class I-A clear channels will not cause interference within the normal secondary broadcast service area of the Class I-A stations involved. Additionally, the radio teletype information proposed to be superimposed on the subject station's normal program transmissions is less susceptible to interference because of the special techniques utilized.

14. It is not contemplated that the BRECOM system would depend entirely on the clear channels. In fact, the addition of 50 kw operations by Class II-A stations in the West may well prove to be of some value in such a system. The Commission has worked very closely with the Department of Defense in the BRECOM project, which is still in the experimental and developmental stage. It is, in fact, a joint project of the Federal Communications Commission and the Department of Defense. It is the Commission's informed judgment that the national defense preparedness is not impaired by the clear channel decision now outstanding.

Summary of Basic Problem

15. Our present task is to complete our examination of the petitions for reconsideration without further delay. In so doing, we have re-examined our basic decision. In oversimplified terms, we are faced with this situation. Much of the country receives no nighttime primary radio service. These areas we refer to as "white areas". They do, generally, receive skywave or secondary service but such service is of an intermittent nature and its availability depends upon a multitude of factors including weather, sunspot activity, atmospheric noise, etc. Present unduplicated use of I-A clear channels with a 50 kilowatt power ceiling is certainly an incomplete use of these channels which still leaves us far short of the attainable degree of service to underserved areas. Moreover, our right to I-A priority thereon might be open to serious challenge from our North American neighbors if we do not make fuller use of such channels.

16. To bring about badly needed improvement in nighttime service various alternatives have been suggested, which resolve generally into duplication, higher power, or some combination thereof. Higher power offers improvements in nighttime secondary service while duplication holds out the promise of limited added nighttime primary service. Moreover, questions of social and economic import arise in the higher power approach which complicate the simple engineering choice. Duplication of all I-A channels would not bring primary service to all white areas and would largely preclude the benefits of added secondary service which higher power could bring. Either alternative leaves much to be desired and we have attempted through a judicious combination of the possible advantages of the two approaches to reap some of the benefits of each. Thus, through duplication we extend to as many persons as possible the benefits of a first nighttime primary

service. This type of service is better and more to be desired than skywave service. We have at the same time, however, retained the status quo on a sufficient number of channels which, should economic, social, and other considerations indicate higher power is in the public interest, can bring a total of four skywave services to practically the entire United States.

Channel by Channel Reappraisal

17. A complete reappraisal, frequency by frequency, has been made of the use to which each of the Class I-A clear channels should be put. A few channels, whether because of technical or international considerations or for policy reasons, clearly fall within the duplicated or the reserved group as set forth in our basic decision. Some others, while the engineering considerations might not point unmistakably to a clear-cut decision that they fall within a particular one of the two categories, have a preponderance of reasons why one solution is to be preferred over the other. In the case of a few, while higher power might be technically feasible, the area they would serve with a secondary service at higher power is otherwise provided for either by present operations or by possible operations at higher power on the reserved frequencies. In a very few cases the choice appears rather difficult when considering the channel on an individual basis. However, applying the general guidelines mentioned at paragraph 26 of the Report and Order of September, 1961, and considering how the two basic objectives are met by the combination of frequencies contained within each group, we are convinced that the decisions, while not easy, are sound.

18. In this connection, before turning to a more detailed consideration of the individual channels, it might be well to emphasize a portion of the concluding observations appearing in paragraph 101 of the Report and Order:

" . . . merit attaches to very many of the proposals which have been urged upon us, including some of those which we herein reject. Our essential task in this proceeding has been to select among the myriad solutions offered those which, on net balance, taking into account the many pertinent considerations, would best serve the public interest. The opposing factors bearing upon our judgments in some instances are closely balanced. While

recognizing that much can be said for numerous alternative approaches, we now conclude that the course laid out herein both as reflected in the rule changes now adopted and in the preservation for the time being of the status quo on 12 Class I-A clear channels, represents the best solution available at this time."

640 kc

19. Since 1944, Station WOI, Ames, Iowa (which is regularly licensed to operate on this frequency daytime with 5 kw non-directionally), has operated with 1 kw power from 6:00 a. m. (C. S. T.) to sunrise at Ames, which is during nighttime hours when sunrise is later than 6:00. Such operation has been permitted under a series of Special Service Authorizations (and more recently under other temporary authority), a type of authorization employed in exceptional circumstances to permit uses of AM frequencies for which provision is not made in the general rules. There is currently pending an adjudicatory proceeding, Docket No. 11290, in which there is at issue the basic question of whether the public interest would be served by continuing to authorize WOI's pre-sunrise operation.

20. The Report and Order, together with Note 1 to Section 3.25(a)(5)(ii) paves the way procedurally for the acceptance of applications for a pre-sunrise operation on 640 kc at Ames, Iowa.

21. Earle C. Anthony, Inc., licensee of KFI, Los Angeles, the Class I-A station on 640 kc, complains that this issue was outside the record and that our action constitutes a pre-judgment of the adjudicatory issues. We find no merit in either contention. The rules expressly provide that such application will be acted upon only after and in light of the decisions reached in that docket. We fail to see how it can seriously be contended that merely permitting such application suggests pre-judgment. By our procedural action we have not modified KFI's license, nor have we made any substantive findings as to the adjudicatory matters. The issues in both proceedings are such that the inter-relation of the clear channel issues and the operation by WOI on such Class I-A frequency is apparent.

22. We reaffirm our decision that, as a matter of policy, no more than one station in addition to the Class I-A station should at this time be permitted to operate on such channel at night. In our Report and Order we said:

"As to the suggestion that more than one unlimited time Class II station be authorized on the same Class I-A channel, we deem it preferable at this time to permit only one unlimited time Class II station on the channels selected for such use. After we have the benefit of the manner in which the new unlimited time Class II stations are utilized, and details of actual performance, interference, etc. become available, we will be in a position to determine whether the public interest warrants assignments of additional unlimited time facilities on these channels, and, if so, to determine under what conditions they should be permitted. We are convinced, however, that such a decision should await further developments and that extension of the plan adopted herein to include such multiple use is not warranted at this time."

Additionally, there is excellent potential for skywave service to western states should KFI eventually utilize higher power. Therefore, 640 kc is included in the group reserved for future consideration,

650 kc

23. The frequency 650 kc, on which WSM, Nashville, Tennessee, is the Class I-A station, while susceptible of duplication, has been placed in the category as to which no present change is contemplated. WSM is strategically located for providing skywave service to the Southeast -- should we upon further study determine higher power should be authorized. Some 18,000,000 of the 25,000,000 people in white areas live east of the Mississippi River, with many of these persons residing in the Southeast where it is difficult to provide skywave service because of the high atmospheric noise levels.

24. If higher power is sometime provided for, the stations best located to provide skywave service to this region are WSM, WLW on 700 kc at Cincinnati, WHAS on 840 kc at Louisville, and WWL on 870 kc at New Orleans. But for the special disposition made of 750 kc, as discussed thereunder, WSB at Atlanta would also fall within this group.

25. Should these stations be permitted to operate with 750 kilowatts, it appears technically feasible for all to serve portions of the Southeast.

26. It should be noted also that this area is virtually unserved at present with type E skywave service from existing Class I-A operations. We feel that, until we complete our further studies on higher power, the potential of these services should be retained.

660 kc

27. KFAR, Fairbanks, Alaska, already operates unlimited time on this frequency in addition to the Class I-A station WNBC, New York. Although WNBC's potential for serving white areas through the use of higher power appears very limited, ^{2/} we have declined, at this time, to further duplicate I-A frequencies on which two nighttime operations now exist. This is discussed more fully above under 640 kc. Our Report and Order at paragraph 72 discusses additional reasons why no further duplication of 660 kc is deemed warranted.

670 kc

28. WMAQ, Chicago, is the Class I-A station on 670 kc. Because the same general considerations also apply to the other I-A stations in Chicago, we shall discuss them as a group. Those stations are WGN on 720 kc, WBBM on 780 kc, and WLS on 890 kc. Generally speaking, these stations could be used either for duplication or to offer potential skywave service at higher power. We have reiterated our purpose to bring additional nighttime primary service to white areas while reserving sufficient frequencies having a potential to provide four type E skywave services substantially to the entire country.

2/ To provide adjacent channel protection to I-A operations of WMAQ on 670 kc at Chicago and WSM on 650 kc at Nashville, WNBC with higher power would have to direct its radiation northward along the coastal states already well served with skywave signals.

29. On balance, our reconsideration has led us to believe that the original disposition made of these frequencies is the better choice. Class II-A stations are proposed thereon for Idaho, Nevada, and Utah. It is technically feasible and desirable that they be used to provide night-time primary service to underserved areas of the West.

30. As to their skywave service potential at higher power, protection requirements to foreign and domestic adjacent channel assignments would limit radiation eastward and to the south. While they could directionalize toward the West, their potential for improving skywave service to the West is not so great as that of some other Class I-A channels on which we are presently retaining the status quo, namely 640, 820, 830, 1040, 1160, and 1200 kc. As to those frequencies just named, the considerations pointed toward no present duplication. Thus, the Chicago stations can serve our basic objective and are not needed, nor as well suited as some others, for providing skywave service to the West should higher power someday be authorized.

31. Additionally, with specific reference to 670 kc, NBC attacks as incorrect our inclusion (para. 37) of WMAQ as a station whose useful skywave service is confined to the region of the Great Lakes. Whether or not this is the case is not of great significance because the rules adopted in the Clear Channel Report and Order define the 0.5 mv/m-50% skywave contour of the Class I-A stations -- wherever it may fall -- as the contour which the co-channel Class II-A station must protect. Further, in view of this protection requirement, Figure 6 of the Engineering Affidavit associated with NBC's Comments in response to the Third Notice, which shows a wide area of interference within WMAQ's 0.5 mv/m-50% skywave contour resulting from an assumed cochannel Class II-A operation in Idaho, is of little materiality. The showing is based upon an assumed directional transmitting antenna for the Class II-A station which does not meet the requirements of the rules adopted.

700 kc

32. WLW operates the Class I-A station on this frequency at Cincinnati, Ohio. As discussed more fully in connection with 650 kc, we are reluctant to take any action at this time which would limit its potential for providing improved skywave service in underserved areas of the Southeast.

33. The future course by which this frequency will best serve the public interest is thus left open. We note in passing that the only restriction to an additional assignment on 700 kc is the required adjacent channel protection to KIRO on 710 kc at Seattle. Perhaps, then, it might prove feasible, if otherwise found to be in the public interest, eventually to achieve some benefits of both approaches on this frequency.

720 kc

34. WGN, Chicago -- discussed under 670 kc.

750 kc

35. We have reserved 750 kc for use at Anchorage, Alaska, by KFQD, which must vacate 730 kc under the terms of the United States/Mexican Agreement which entered into effect in June, 1961.

36. The Report and Order explained in greater detail the reasons for such action. Our re-examination convinces us that a better replacement for KFQD's loss of 730 kc could not be found. The proximity in the spectrum of 750 kc to its present 730 kc should permit service to practically the same area and with little required in the way of expense or equipment modification.

37. Atlanta Newspapers, Inc., licensee of WSB, Atlanta, the Class I-A station on 750 kc, argues that duplication should not be provided for on its frequency. We find nothing presented in its contentions which would warrant changing this aspect of our decision. WSB points out the potential it has for providing service to "white areas" in the Southeast at higher power. Once again, we must note that we are fully cognizant that higher power potential exists with respect to some channels other than those on which no action has been taken at this time. We have decided that the duplication provided in the Report and Order is in the public interest. We reaffirm that conclusion and that 750 kc is included within the group duplicated. It should further be noted that, while the decision speaks in terms of future consideration of disposition of the 12 "reserved" channels, the Commission has a continuing duty to see to it that all channels are utilized in a manner which will best serve the public interest. Therefore, just as multiple use of a frequency is mentioned as a possibility for future consideration, so too are we free to consider in the future the use of higher power on the 13 duplicated Class I-A frequencies to the extent such use may be consistent with the duplication permitted herein and other public interest considerations.

760 kc

38. Our decision of September, 1961 went into considerable detail as to why this frequency was selected for use by KFMB, San Diego, California, which loses its present frequency (540 kc) under the terms of the agreement with Mexico. An exhaustive inquiry, taking into account the many factors detailed in our Report and Order, revealed that, of the I-A frequencies, only 760 kc and 830 kc were feasible for use at San Diego. The whole duplication plan adopted provides for nighttime operation on Class I-A frequencies by no more than one station in addition to the dominant I-A station. As discussed below, WNYC, New York City presently operates some nighttime hours on 830 kc and, under the policy adopted, further duplication thereon is precluded at this time. The obvious result is that 760 kc is the only I-A frequency available to solve this unique problem.

39. Further, a study made of all frequencies below 760 kc shows the only other frequency available for such use, because of domestic and international co-channel and adjacent channel restrictions, is 550 kc. Radiation by KFMB on 550 kc would be considerably restricted northward by co-channel operation of KAFY, Bakersfield, California and eastward by co-channel KOY, Phoenix, Arizona. KFMB could not, therefore, operate with its present 5 kw and afford these stations the required protection unless it were to directionalize southward and to the west -- in which case much of its signal would be wasted over the Pacific Ocean. (Studies presented by KFMB in this proceeding show such move would result in a reduction in daytime coverage from 18,342 square miles to 1,921 square miles and in nighttime coverage from 884 square miles to 516 square miles).

40. Our assignment of 760 kc to San Diego for use by KFMB is discussed by several interested parties including Marietta Broadcasting, Inc., licensee of KFMB, which defends the decision; The Goodwill Stations, Inc., licensee of WJR, Detroit, the Class I-A station operating on 760 kc, which opposes the assignment; and John Poole Broadcasting Co., Inc., licensee of adjacent channel KBIG, Avalon, California, which is involved in a problem of 2 mv/m and 25 mv/m overlap.

41. KBIG, in its Petition for Reconsideration, contends the Commission is in error in failing to consider assignment of 830 kc either for the use of KBIG or KFMB. It states that it had suggested in reply comments the alternative that "KBIG be given 830 kc thereby freeing 760 kc for assignment to KFMB". Petitioner's memory does not serve him well in this instance. Petitioner in his reply comments made no

mention of possible use by KBIG of 830 kc but continued to advocate use of that frequency by KFMB. It was only in supplemental comments offered more than a year late and, therefore, not considered by the Commission (see Report and Order, p. 16, fn. 5) that KBIG suggested possible use of 830 kc by it as a daytime only station with at least 10 kw power. This most untimely suggestion, offered only after public notice had been given of the Commission's tentative decision, was not evaluated. All timely filed comments were, however, considered by the Commission in reaching its decision. Moreover, with respect to use of 830 kc by KFMB, this possibility was specifically considered and rejected. It will be recalled that the Third Notice of Further Proposed Rule Making released September 22, 1959, which contemplated a full-time Class II operation on each of 23 Class I-A clear channels, proposed the use of 830 kc in California. The Commission decided that an unlimited time Class II operation should not be permitted on 830 kc at this time. We find no public interest considerations in any of the filings which would warrant upsetting our decision in this regard. The necessity of a waiver of Section 3.37 of our rules because of a 2 mv/m and 25 mv/m overlap with KBIG was expressly recognized in the Report and Order.

770 kc

42. Our decision presents in extensive detail the history of this frequency and the unique circumstances necessitating the decision as to its use. Its disposition was so clearly dictated that, even upon this further re-evaluation of the use of each channel, we feel no further comment is required.

43. American Broadcasting Company, licensee of WABC, New York, the Class I-A station on 770, in its Petition for Reconsideration, presents arguments concerned principally with the basic foundation of our decision and restates arguments previously considered by the Commission. Its request that it be permitted to show the advantages of using 660, 880, or 1180 kc rather than 770 kc at Albuquerque has been fully dealt with previously and again denied by our Report and Order (see para. 85(c)). Our earlier decision was specifically upheld by the United States Court of Appeals on that point (American Broadcasting Company v. FCC, 280 F. 2d 631, 20 R.R. 2001).

780 kc

44. WBBM, Chicago -- discussed under 670 kc.

820 kc

45. WBAP/WFAA, Fort Worth/Dallas, conduct a share time operation as the Class I-A station on 820 kc. Present foreign and domestic adjacent channel assignments would impose some nighttime radiation restrictions on the use of such frequency at higher power. However, even providing for such restrictions, this station is well located -- by directing radiation toward the northwest -- to provide a needed skywave service to all states west of the Mississippi River except for portions of Louisiana, Arkansas, and Washington. Its extensive potential in this regard should be retained pending a final determination on the merits of higher power.

830 kc

46. Since 1943, WNYC, a municipally owned and operated station at New York City, has been permitted under a series of temporary authorizations to operate on 830 kc during certain nighttime hours: 6:00 a.m. (E. S. T.) to local sunrise and from sunset at Minneapolis to 10:00 p.m. (E. S. T.), with power of 1 kw. (WNYC is regularly licensed to operate with 1 kw on 830 kc, with a different directional antenna than it uses nighttime). Notwithstanding the directional antenna employed, WNYC's operation during nighttime hours causes interference within the secondary service area of WCCO at Minneapolis. In a pending adjudicatory proceeding (Docket No. 11227) consideration is being given to the question of whether, balancing the interference caused to WCCO against the service WNYC renders during nighttime hours, the public interest would be served by continuing to permit WNYC's nighttime operation, for which no provision is made in the AM rules governing the use of Class I-A frequencies.

47. The Report and Order, together with Note 2 to Section 3.25(a)(5)(ii) paves the way procedurally for the acceptance of applications for certain nighttime hours of operation on 830 kc at New York City.

48. Midwest Radio-Television, Inc., licensee of WCCO, Minneapolis, the Class I-A station on 830 kc, in its Petition for Reconsideration, raises issues similar to those discussed above with respect to the operation on 640 kc of WOI, Ames, Iowa. The discussion there is equally applicable to WCCO's contentions.

49. Moreover, WCCO's argument in this regard that we are paving the way for regular operation and that Docket No. 11227 contemplates temporary authorization is premature in the light of the procedural nature of our action herein and our disavowal of entering into the hearing issues in this proceeding. WCCO's position, apparently, is that if it is decided in Docket No. 11227 that regular operation by WNYC of the sort described will be permitted, such decision would go beyond the hearing issues involved in that Docket. But resolution of this argument must await decision in Docket No. 11227. WCCO also points to the fact that, in Note 1 to Section 3.25(a)(5)(ii) relating to 640 kc and Ames, we specifically limited any pre-sunrise operation to one kilowatt, but did not impose the same limitation in Note 2 dealing with 830 kc and New York City. The reason for not imposing such a restriction in the case of New York City relates to the special circumstances involved in the WNYC operation. There appears to be the possibility that, if WNYC should operate nighttime in a manner somewhat different than at present -- e. g., with a different directional pattern and possibly a different transmitter site -- it might be possible to operate with power greater than 1 kilowatt and still afford WCCO as much or even greater protection than at present. We do not wish, at this time, to foreclose such possibility. We emphasize, however, that we are not now passing on the merits of the question of operation during certain nighttime hours by WNYC (a question to be decided in Docket 11227). We emphasize also that it is not our intention to permit any nighttime operation by WNYC, whatever the power, which would increase radiation toward WCCO beyond that currently permitted under the special authorization.

50. As in the case of 640 kc, we have refrained, as a matter of policy, from permitting additional duplication at night on the I-A frequency. Any further use of the frequency can, of course, take cognizance of its higher power potential.

840 kc

51. The Class I-A station on this frequency is WHAS at Louisville, Kentucky. This frequency has been reserved for further study. As developed more fully in the discussion of 650 kc, WHAS has a potential for skywave service to southern states which should, for the present, remain unimpaired. Should the stations reserved for their higher power potential eventually operate with 750 kilowatts, WHAS would provide one of the three type E skywave services to most of Florida and about half the land area of Georgia and South Carolina, as well as portions of Louisiana and Texas, and would provide one of four such services in the remainder of Georgia and South Carolina.

870 kc

52. WWL at New Orleans is the Class I-A station on 870 kc. This is one of a group of stations discussed under 650 kc on which no present nighttime duplication is permitted pending further study of higher power. It is well located for providing one of four type E services to extensive areas of the Southeast should the stations on "reserved" channels operate with 750 kilowatts.

880 kc

53. The Class I-A station on 880 kc is WCBS, New York. This frequency is one of a group of clear channel stations located in the Northeast which, by virtue of their location, are ideally situated for duplication by unlimited time stations in the West with negligible effect on present secondary services. Others in this group include KDKA on 1020 at Pittsburgh, WBZ on 1030 kc at Boston, WHAM on 1180 kc at Rochester and WCAU on 1210 kc at Philadelphia.

54. While most of these stations would be subject to certain restrictions on radiation with a power of 750 kilowatts, these general observations can be made: they are not well located for serving the West with skywave service; the public interest would not be served simply by utilizing them to add to the abundant skywave services available in the Northeast; and while some of them could serve some white area in the Southeast we are retaining a potential for service to that area on frequencies located in the South and Southeast -- as more fully discussed under 650 kc.

55. These stations, therefore, do not possess a higher power potential of service to white area such as would require that no action be taken with respect to them at this time. On the other hand, they possess greater flexibility for assignment to states in the West where new unlimited time Class II-A stations in New Mexico, Wyoming, and Montana, as well as one in North or South Dakota or Nebraska and another in either Kansas, Nebraska, or Oklahoma, can render much needed nighttime primary service as set forth in our basic decision.

890 kc

56. WLS, Chicago -- discussed under 670 kc.

1020 kc

57. KDKA, Pittsburgh -- discussed under 880 kc.

1030 kc

58. WBZ, Boston -- discussed under 880 kc.

1040 kc

59. The Class I-A station on 1040 kc is WHO at Des Moines, Iowa. Because its location is so near that of KMOX, St. Louis (1120 kc), these frequencies have been considered together. Both are somewhat centrally located and could be duplicated to bring primary service to the West. Their location is well suited, also, to providing skywave service at higher power. However, here the similarity ends. KMOX on 1120 kc is virtually surrounded by Class I adjacent channel stations which severely limit its higher power potential, whereas WHO would need to protect only one Class I adjacent channel -- and that is in the East -- so its higher power potential should be retained. Thus, these two frequencies readily lend themselves to different treatment with 1120 kc being used to bring nighttime primary service to the West and 1040 kc remaining unduplicated at this time.

60. Columbia Broadcasting System, licensee of KMOX, in a Petition for Reconsideration, contends KMOX should not have been duplicated and that, if a choice is to be made between 1120 and 1040 kc, the 1040 kc should be duplicated because 1120 kc has a greater potential for service to white areas with higher power. The Commission has examined

the corrected engineering study submitted by CBS, which purports to show that the potential for improved skywave service which would accrue to KMOX, operating with 750 kw on 1120 kc at St. Louis, Missouri, is substantially identical to that of WHO operating with 750 kw on 1040 kc at Des Moines, Iowa. We are not persuaded by this showing because we find that in order to achieve the wide area skywave service portrayed as resulting from the high power operation of KMOX, the Class I stations operating in Omaha, Nebraska, Charlotte, North Carolina, Shreveport, Louisiana, and New York, New York on channels adjacent to KMOX would be required to accept substantial reductions of their nighttime primary service. This is true whether the engineering standards set out in Exhibit 109 of the Clear Channel proceeding or the engineering standards of the Commission's Rules are used to evaluate service and interference.

61. More specifically, the Commission's Rules, including amendments adopted in the Clear Channel Report and Order, require that the 0.5 mv/m groundwave contour of Class I stations be protected from interference. The operation of KMOX as shown in the Petition for Reconsideration does not meet this requirement. In contrast, similar operation of WHO, which has only one Class I station (Boston) adjacent to it, does satisfy this requirement. It follows that KMOX, operating within the requirements of the Commission's Rules, does not afford the same potential for improved skywave service as does WHO, similarly operating within the requirements of the Commission's Rules. We find no reason, therefore, to alter our conclusions in this regard.

1100 kc

62. KYW, Cleveland, is the Class I-A station on this frequency. Radiation restrictions to prevent adjacent channel nighttime interference to Class I-B stations WBAL, Baltimore, and KTHS, Little Rock, on 1090 kc and to WBT, Charlotte, and KFAB, Omaha, on 1110 kc essentially preclude any nighttime high power operation on 1100 kc.

63. Conversely, duplication of 1100 kc will provide nighttime primary service to white area. It has been selected for an unlimited time assignment in Colorado.

1120 kc

64. KMOX, St. Louis -- discussed under 1040 kc.

1160 kc

65. The Class I-A operation on this channel is KSL, Salt Lake City. This station is uniquely suited to provide secondary service at night to substantial white areas in the western states by virtue of its location in the center of the extensive white area in the West. At this stage, therefore, we preserve its potential for improving skywave service.

1180 kc

66. WHAM, Rochester -- discussed under 880 kc.

1200 kc

67. WOAI, San Antonio, is well located to serve much of the central and western portions of the country with a skywave signal radiated northwesterly at a power of 750 kilowatts. We have, therefore, taken no action at this time with respect to this frequency.

1210 kc

68. WCAU, Philadelphia -- discussed under 880 kc.

Processing of Pending Applications on Channels Adjacent to the 12 Reserved I-A Channels.

69. Inter-Cities Broadcasting Company requests that Section 1.351(b) of the Rules be changed to permit handling on a case-by-case basis those applications on frequencies within 30 kc of one of the 12 Class I-A channels reserved for future disposition which were in a hearing status with the record closed as of the date of adoption of the Report and Order herein. It contends such parties should be given an opportunity to show that their proposals do not interfere with the future optimum use of the Class I-A clear channels. Lake Huron Broadcasting Corporation asks that applications on certain designated frequencies be processed in normal course where it can be shown that grants thereof will not risk prejudice to possible future plans for the use of the 12 reserved I-A channels. Several others want all such applications in hearing status to be processed. Another asks that all applications for new stations on 710 kc filed prior to October 30, 1961 be processed. The matters raised by these petitions were considered by the Commission and the details of how applications for frequencies adjacent to a Class I-A clear channel are to be handled are set forth in the Further Supplement to Report and Order adopted January 31, 1962, in this docket, and in Section 1.351 of the Commission's rules as amended that date.

Prohibition of New Daytime Assignments on Class I-A Channels

70. Harvey Radio Laboratories, Inc., William H. Buckley, tr/as TriCounties Broadcasting Company and John M. Norris, all applicants for new daytime facilities on I-A clear channels, complain of the prohibition of new daytime assignments on the I-A channels and contend the ban is unlawful for having allegedly been imposed without notice and rule making. That the issue in this proceeding encompassed the broad question of what use of the clear channels would best serve the public interest cannot be denied. Nor is it in any way beyond the Commission's power or duty to impose the ban on daytime applications on the I-A clear channels to preserve the gains contemplated as a result of this lengthy study and to protect and provide for a planned future orderly development of the use of such frequencies. The Commission recognizes that private interests and the public interest do not always coincide, but our task is to inquire into and uphold the public interest.

Failure to Provide a "Cut-off" Date for Class II-A Applications

71. Some contend that, while no Class II-A applications could be acted upon prior to January 30, 1962, we should also provide for a maximum period of time during which such applications can be filed. Failure to do so, it is argued, might mean the new Class II-A assignments could lie fallow for months or years. Other types of applications, it is said, could be delayed in the interim. And it is further urged that lack of a cut-off date encourages prospective applicants for the new assignments to delay filing in order to top the "white area" showing of earlier-filed applications on the same frequency. The Commission, while not precluding future consideration of such a course if it later appears desirable, does not deem it necessary at this time. It is to be hoped, of course, that applicants will file promptly. Should applications not be forthcoming within a reasonable period of time, the matter may be further re-examined. In any event, this is a matter better left, in our judgment, for determination in light of our experience with such applications in the coming months.

Denial of Educational Reservations

72. The National Association of Educational Broadcasters takes issue with our decision not to reserve any of the new Class II-A assignments for non-commercial educational use. The Commission recognizes that time lags occur before educators can receive proper authorization and funds to make application for broadcast facilities. We are not persuaded, however, that the public interest requires reservation of some of the Class II-A stations for educational use. The public interest will best be

served if new Class II-A stations can be established quickly and start rendering needed service to the public. If there is commercial demand for the frequencies, the public interest would not be served by refusing to meet such demand and by withholding use of certain frequencies for possibly extended periods of time to see if there is sufficient educational interest. ^{3/} On the other hand, should there not be commercial interest in some of the frequencies, the time lag would appear sufficient for interested educational groups to pursue the matter. Moreover, we have indicated that no such application could be acted upon for a period of 90 days (i. e., prior to January 30, 1962.) Thus, some time is afforded all interested parties in charting their future course of action.

Other arguments

73. The three networks, Clear Channel Broadcasting Service and Westinghouse Broadcasting Co., Inc. in substance either oppose the basic result reached or contend that a final decision should be made now as to all 25 Class I-A frequencies. These arguments attack the very foundation of our decision and present, for the most part, ideas that were previously expressed. They are adequately dealt with throughout the Report and Order itself which, we believe, makes clear the reasons we reached the conclusions expressed therein. Some suggestions, however, are worthy of brief note. Westinghouse would have us specify locations which can meet the 25% test and offer some reasonable likelihood of financial success. We have already rejected (para. 42) requests that we name specific communities for the new Class II-A stations. Further, we noted (para. 44) that the extent to which the facilities here made available are utilized depends upon the judgment of prospective applicants and licensees.

74. Westinghouse contends that the decision raises a problem under Section 307(b) of the Communications Act of 1934, as amended. This section requires the Commission to make "such distribution of licenses, frequencies, hours of operation, and of power among the several states and communities as to provide a fair, efficient and equitable distribution of radio service to each of the same." Westinghouse does not attack the present allocation of Class II-A stations per se as a violation of that Section, but contends that the present duplication will make it difficult if not impossible

^{3/} Of the 30 educational groups filing comments pursuant to the Third Notice, nine indicated some interest in obtaining a frequency. Of those in states to which Class II-A stations have been assigned, one party states it has funds available which, in that instance, obviates the need for a reservation.

to carry out the 307(b) mandate if and when we authorize higher power on some frequencies. The Commission is very much cognizant of 307(b) considerations and every effort has been made to secure a fair, efficient and equitable distribution of facilities consistent with the achievement of the goals sought. In point of fact, an underlying consideration of this whole proceeding has been to bring service to areas now lacking it -- which is simply another way of saying we are trying to make the distribution more fair, efficient and equitable than it has been. To preclude this on the basis of some possible future difficulty in another connection would be unjustified. Moreover, we cannot agree that the contention has substance because our studies show that the group of channels selected for future consideration, if higher power is authorized, would provide four skywave services throughout the nation. By any reasonable interpretation we feel the standards of Section 307(b) have here been fully complied with.

75. NBC contends that the 25% area-or-population test should be modified to establish a more meaningful minimum. The rule in question requires a showing that at least 25% of the area or 25% of the population to be served is without any other primary service. Satisfaction of either requirement is necessary to establish a basis for authorization of the new facility. This does not, however, preclude consideration of other pertinent features of the proposed operation. We should point out, nevertheless, that our basic concern is with the extensive land area that does not now have any primary service. The limitation in the extent to which a single station can render a groundwave service at standard broadcast frequencies, under a power limitation of 50 kilowatts, adverse conductivity and other terrain features, etc., is well-known and inherent in the standard broadcast band. The Commission has recognized these limitations and is aware of the limited extent to which individual stations can contribute to elimination of the deficiency. Nevertheless the overall problem continues to be basically one of obtaining area coverage. Obviously a service to an area with no population whatsoever would be pointless and as between two areas both without service, provision for service to the area with the greater population is ordinarily to be preferred. If we were to assume a case where an applicant meets the 25% test on the basis of area, rather than population, and meets the other requirements of the rules so that his application is acceptable for filing and if it is found upon examination that he proposes to serve a virtually uninhabited region, then the Commission, in the absence of other applications for the frequency, will be faced with the question of whether it is more in the public interest to grant such application, wait for other applicants to file for the frequency, or consider some alternate disposition of the frequency. The Commission's decision is, obviously, grounded upon an expectation that it

will work. Should demand not develop for the frequencies, it does not mean the Commission will be forced to sit idly by and let the present less efficient use of the I-A frequencies continue.

76. NBC contends the Commission should consider the alternative of authorizing FM stations rather than the proposed Class II-A stations. It suggests that when, in October 1947, the Commission ruled that the subject of FM was irrelevant in this proceeding the issues were directed substantially at the general question of establishing high power, wide service area Class I stations in the West, and that since the Class II-A stations would be limited in their coverage, this "change of viewpoint" requires re-evaluation of FM's potential usefulness in these area. Among other things, NBC's concept of the issues of the proceeding is too narrow. For example, the original order of February 20, 1945 initiating the proceeding included the following:

"WHEREAS, the Commission has received many applications requesting authorization for the operation of additional stations and for the use of higher power on the clear channel frequencies;"

Issue 7 read as follows:

"7. What new rules or regulations, if any, should be promulgated to govern the power or hours of operation of Class II stations operating on clear channels."

77. By Memorandum Opinion and Order of December 30, 1947, the Commission reviewed and reaffirmed its decision to exclude all information concerning FM broadcasting. It noted that the clear channel proceeding has always been considered as pertaining to and concerning the standard broadcast band. Its concern, at that time, that such information would merely serve to delay a conclusion of the proceeding is certainly more urgent today in view of the years which have intervened. Moreover, it is of interest that NBC, while filing comments at every stage of this proceeding, has not seen fit to raise the question until now.

78. NBC contends that neither the former rules nor the rules adopted in the Clear Channel Report and Order include a requirement to determine directional antenna performance in accordance with FCC's Report, TRR 1.2.7., or a substitute which would permit a realistic determination of

the actual extent of interference caused to the Class I-A stations. The Report referred to is principally a statistical analysis of data acquired from a series of tests and measurements made of certain selected directional antenna systems in actual use by broadcast stations. Empirical formulas are developed as a possible tool for improving in small degree the predictions required in assessing performance, including interference effects of a broadcast station utilizing a directional antenna.

79. Like many of the refined prediction and evaluation tools developed during the course of the Clear Channel proceeding, the merits of their use in the proceeding itself by no means implies that they should be incorporated in Commission rules or that the detailed and complicated processes involved should be adopted as a routine application processing procedure. The petitioner, in effect, is suggesting that this be done and that we modify the present approach to the use of directional antennas used to control interference between broadcast stations. Whatever considerations evolve from any further inquiry along these lines will apply to directional antennas used by any class of station. Based on the limited data available there is no assurance that any significant increase in accuracy would result from the use of these theories. The Commission does not feel that the data acquired and conclusions reached form a sufficient basis for changing the rules at this time.

80. Clear Channel Broadcasting Service (CCBS) sets forth a number of alleged inconsistencies in our Report and Order. Careful analysis of these charges, however, reveals that CCBS would simply have reached different conclusions. The attack, for the most part, is upon our recognition that the situation is not black or white and that some merit attaches to many of the proposals offered. We further recognized (see para. 101 of Report and Order, quoted in part in para. 17 hereof) that the opposing factors bearing on our judgments were often closely balanced. CCBS' recitation seizes upon our language and alleges it is "inconsistent" where it differs somewhat from a conclusion CCBS would draw or from a contention it has presented which may have some merit to it but was found outweighed by other factors. We believe the decision read in its entirety amply supports our findings.

81. CCBS contends we failed to resolve Issues 9 and 10 as originally designated in our Order of February 1945. They read as follows:

"9. Whether and to what extent the clear channel stations render a program service particularly suited to the needs of listeners in rural areas.

10. The extent to which the service areas of clear channel stations overlap and the extent to which this involves a duplication of program service."

We fail to understand CCBS' concern here because it points out that issue 9 should be resolved in accordance with its Comments of August 15, 1958 which indicated, among other things, that the fact the record is outdated "does not lead to the conclusion that the record is too outdated to provide a sound basis for resolving the basic issue posed in this proceeding--namely, how to improve service to the vast underserved areas and populations." Moreover, CCBS urges that we find Issue 10 is "irrelevant to the basic considerations involved in this proceeding." If in the one instance we are not precluded from deciding the basic questions and in the other the issue is contended to be irrelevant, CCBS would not be aided by their resolution.

82. We did not, and do not now, deem it essential to prolong our decision by a useless repetition of historical detail of this voluminous and protracted proceeding. As CCBS recognizes, the Further Notice of April 15, 1958 resolved many of these issues and, at least strongly implied that others--such as Issue 9--were not essential to a resolution of the basic questions involved in the proceeding (with which, as we have seen, CCBS expressly agrees). We have previously noted that this whole proceeding, once of extremely wide scope, has over the years been considerably narrowed. As a result, the original 11 issues have long since been modified by subsequent rule making notices directed at more specific solutions.

83. CCBS also contends we must consider the pressure from other nations to use frequencies on which the United States has Class I clear channel rights. Our efforts in this proceeding to better utilize these frequencies should be an advantage, rather than a detriment, to us in any future international negotiations.

Conclusion

84. We adhere to our belief that, on balance, the adopted solution represents the best result available at this time. The Report and Order read in its entirety and in the light of the above language makes unnecessary any more detailed rebuttal of many of the arguments now advanced that some different solution should have been adopted. In this connection, some petitioners simply restate the case for higher power.

Others ask that more than one Class II station be permitted on a frequency. Nothing new was found in these requests which had not been fully presented to the Commission for its consideration before the Report and Order was adopted.

85. A majority of the Commission sincerely believes that this decision serves the public interest. There is no easy or clear-cut solution to the many problems involved. For the reasons given in the September, 1961 Report and Order and as further stated herein, we adhere to our decision in all respects. We further reaffirm the conclusion that we are unable to determine that higher power is warranted at this time but that -- if it proves to be in the public interest at some future date -- we have retained freedom of action on a sufficient number of channels which, in the combination carefully selected, will enable the claimed benefits of higher power to be realized.

86. Upon our re-examination several minor typographical errors have been discovered. In view of the public notice of clarification released October 27, 1961, and reading the Report and Order in its entirety, we do not believe parties will be misled. For example, 890 kc was inadvertently omitted from paragraph 35. However, it correctly appears in paragraph 37 and in the Rules in Sections 3.22 and 3.25(a)(1). The one correction in this regard, to which we invite special attention is the reference in the Appendix (Instruction No. 8) to a paragraph 3.182(c). No such section appears in the rules and the reference thereto should be omitted.

87. We have carefully considered all petitions filed. We have, perhaps, included more detail than was necessary but deemed it desirable to discuss those new arguments raised by the parties. However, as noted, we have found nothing to warrant different disposition of the basic premises and conclusions of the proceeding and no reason to re-examine arguments which were before us and considered by us before reaching our decision in this docket.

88. Several parties filed Oppositions to various of the Petitions for Reconsideration. While we have not made specific reference to such oppositions we have considered the arguments presented which, in many instances, are the same as those reasons relied upon by the Commission.

89. In view of the foregoing, IT IS ORDERED, This 21st day of , 1962, That the Petitions for stay, partial stay, rehearing,

reconsideration and partial reconsideration, listed in the Appendix hereto, ARE DENIED except that those filed by Inter-Cities Broadcasting Company, Lake Huron Broadcasting Corp., S & W Enterprises, Inc. et al., Sands Broadcasting Corp. et al., and West Side Radio ARE DISMISSED AS MOOT to the extent that the relief requested therein has already been granted by the Commission on its own motion in the Supplement to Report and Order released herein on November 1, 1961 and the Further Supplement to Report and Order adopted January 31, 1962.

FEDERAL COMMUNICATIONS COMMISSION *

Attachment

Ben F. Waple
Acting Secretary

Released: November 23, 1962

* See attached dissenting statement of Commissioner Lee.

APPENDIX

A. Petitions for Reconsideration

1. American Broadcasting Company
2. Atlanta Newspapers, Inc. (WSB, Atlanta, Ga.)
- * 3. Columbia Broadcasting System, Inc.
4. Clear Channel Broadcasting Service (CCBS)
5. Creek County Broadcasting Company, et al. (Applicants for 1220 kc)
6. Earle C. Anthony, Inc. (KFI, Los Angeles, Calif.)
7. Genesee Broadcasting Corp. (WHAM, Rochester, N. Y.)
8. The Goodwill Stations, Inc. (WJR, Detroit, Mich.)
9. Harvey Radio Laboratories, Inc., et al. (Applicants for 670, 720 and 820 kc)
10. Inter-Cities Broadcasting Co. (Applicant for 1220 kc)
11. Lake Huron Broadcasting Corp. (Applicant for 1070 kc)
12. Meredith Broadcasting Co.
13. Midwest Radio-Television, Inc. (WCCO, Minneapolis, Minn.)
14. National Association of Educational Broadcasters
15. National Broadcasting Company, Inc.
- *16. John Poole Broadcasting Co., Inc. (KBIG, Avalon, Calif.)
17. Sands Broadcasting Corp., et al. (Applicants for 1150 kc)
18. Seattle, Portland & Spokane Radio (KXL, Portland, Oregon)
19. S & W Enterprises, Inc., et al. (Applicants for 900 kc)
20. Westinghouse Broadcasting Company, Inc.
21. West Side Radio (Applicant for 710 kc)
22. WGN, Inc. (WGN, Chicago, Ill.)

B. Petitions for Stay

1. Clear Channel Broadcasting Service (CCBS)
2. Midwest Radio-Television, Inc. (WCCO, Minneapolis, Minn.)

C. Oppositions to Petitions for Reconsideration or for Stay

1. All-Alaska Broadcasters, Inc. (KFAR, Fairbanks, Alaska)
2. Atlanta Newspapers, Inc. (WSB, Atlanta, Ga.)
3. City of New York Municipal Broadcasting System (WNYC, New York)
4. Clear Channel Broadcasting Service (CCBS)
5. Crowell-Collier Broadcasting Corporation (KFWB, Los Angeles, Calif.)

* Included request for a stay.

6. Iowa State University of Science and Technology (WOI)
7. Marietta Broadcasting, Inc. (KFMB, San Diego, Calif.)
8. Midwest Radio-Television, Inc. (WCCO, Minneapolis, Minn.)
9. National Broadcasting Company, Inc.
10. Seattle, Portland & Spokane Radio (KXL, Portland, Oregon)

DISSENTING STATEMENT
OF COMMISSIONER ROBERT E. LEE

I dissent to the action taken by the Commission in refusing to reconsider its action in this proceeding for substantially the same reasons that I gave in my dissent in the Report and Order adopted September 13, 1961, wherein I stated that no substantial improvement in service throughout the United States can be expected unless higher power is authorized to Class I stations. It is clear that the licensing of special Class II-A stations on roughly half of the clear channels will not make a significant contribution towards serving nighttime "white areas" and will serve to inhibit future efficient use of these channels by Class I stations.

The resolution passed by the House of Representatives in 1961 favored a year moratorium to permit Class I stations to file applications for increased power and after a year these channels could be duplicated. While I am pleased that the House of Representatives did not impose legislation in matters where the Commission is presumed to be expert, as I see it the form of action -- a resolution rather than a bill -- was an act of deference to Commission authority. It should be treated accordingly. By only passing reference is consideration shown to the very essence of the resolution, that being the matter of higher power for Class I stations and duplication by Class II stations on the same frequencies. There is no reason given in the Opinion or known to me why higher power and duplication on the same channels must be considered only in the alternative.

The Memorandum Opinion and Order adopted by the majority re-evaluates the 1961 Report and Order to the extent that it gives reasons why some channels are better suited for duplication than for future consideration for higher power. It is my position that no hairline decision need or should be made. Our international treaty obligations certainly must be given consideration and full effect. Adjacent channel stations must be afforded their rights. It is my view that the fair and orderly way to evaluate these matters is to afford Class I stations the opportunity to file applications for powers in excess of 50 kw and then on the basis of these applications to determine from these concrete proposals, which in many instances would require directional antennas, whether they would satisfy the traditional public interest criteria. I am not convinced that adjacent channel interference problems cited by the majority as an inhibition to higher power would be of significant import, particularly in view of the fact that adjacent channel interference constitutes a substitution of service. Where and how does the public lose service? I submit that we are sparring with windmills.

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington 25, D. C.

B
FCC 62-1209
27631

In re Applications of)
)
WSM, INCORPORATED (WSM))
Nashville, Tennessee)
)
Has: 650 kc, 50 kw, U. Class I-A)
Requests: 650 kc, 750 kw, U. Class I-A)
)
THE GOODWILL STATIONS, INC. (WJR))
Detroit, Michigan)
)
Has: 760 kc, 50 kw, U, Class I-A)
Requests: 760 kc, 750 kw, U, DA-I, Class I-A)
)
CROSLEY BROADCASTING CORPORATION (WLW))
Cincinnati, Ohio)
)
Has: 700 kc, 50 kw, U, Class I-A)
Requests: 700 kc, 750 kw, U, Class I-A)
)
WGN, INC. (WGN))
Chicago, Illinois)
)
Has: 720 kc, 50 kw, U, Class I-A)
Requests: 720 kc, 750 kw, U. Class I-A)
)
For Construction Permits)

MEMORANDUM OPINION AND ORDER

By the Commission: Commissioner Lee dissenting and voting to grant.

1. The Commission has before it the above-captioned applications accompanied by petitions and/or requests for waiver of various Commission's Rules to permit the acceptance for filing of the applications.

2. The listed applicants are Class I-A Clear Channel stations presently operating at 50 kw of power and seeking an increase

to 750kw of power. In the Commission's Report and Order in the Clear Channel Matter (Docket No. 6741), adopted September 13, 1961, ^{1/} the facilities of Stations WSM and WLW were not duplicated to permit the operation of a Class II-A station on the frequency, but were reserved for further study to determine what would be the optimum use of the frequency, i. e. should the frequency be duplicated or should the existing Clear Channel stations be authorized to operate with higher power. The frequency utilized by Station WJR was not reserved for future disposition, but was duplicated by providing that Station KFMB, San Diego, California would move to this frequency. The frequency utilized by Station WGN was to be duplicated in the States of Nevada, or Idaho.

3. By Memorandum Opinion and Order adopted this date, the Commission reaffirmed its Clear Channel Report and Order by denying the petitions for reconsideration directed against it, and also concluded that operation of the unduplicated Clear Channel stations with power in excess of 50 kw should not be authorized at this time.

4. Therefore, the controlling consideration with respect to the above-captioned applications is the disposition of the requests for waiver of Section 3.21(a)(1) of the Commission's Rules, the provisions of which limit operating power to 50 kw for Class I stations. The petitioners claim that House Resolution 714 of the 87th Congress authorizes the Commission to permit operations with power in excess of 50 kw. This House Resolution reflects a view contrary to the 1938 Senate Resolution, but we cannot say that the House Resolution requires the Commission to authorize power in excess of 50 kw for Clear Channel stations upon the basis of applications such as these. In our opinion, orderly procedure would seem to require that the merits of authorizing use of power in excess of 50 kw be evaluated in a rule-making procedure previous to firm commitment to that course of action, and that the rules be amended to spell out the conditions and circumstances under which such operation may be authorized in the public interest if it is determined that such a course will serve this interest.

5. The Commission has indicated the desirability of further study before reaching a definite decision regarding higher

^{1/} 31 F. C. C. 565, 21 R. R. 1801

power and a further rule making procedure is a proper vehicle for such a study. It is suggested that the advocates of higher power, including prospective licensees, may more appropriately present their case by a petition for rule-making in the matter rather than by attempting to obtain consideration of individual applications inconsistent with present rules.

6. Returning to consideration of the instant applications, it is noted that Stations WSM, WGN, and WJR allege, as a basis for their request for waiver, that operation with 750 kw would be consistent with the Department of Defense position favoring increased power communications operations; would aid civil defense and disaster operations; and would provide better understanding between the United States and the Latin-American countries. These purposes are of course laudable, but we do not think that a showing has been made of sufficient force to override the requirements of orderly procedure. In short, it is the Commission's view that there has not been a sufficient showing to warrant waiver of Section 3.21(a)(1) of the Rules, and accordingly, the applications will be returned to the applicants without prejudice.

7. The requests for waiver of Section 1.354 and Section 3.24(g) of the Rules are moot due to the Commission's decision not to authorize operation with power in excess of 50 kw at this time. Therefore, these questions will not be discussed because our action in denying a waiver of Section 3.21(a)(1) is dispositive of the applications.

ACCORDINGLY IT IS ORDERED, That the request for waiver of Section 3.21(a)(1) of the Commission's Rules and acceptance of the above-captioned applications tendered for filing ARE DENIED; the above-captioned applications ARE HEREBY RETURNED; and the requests for waiver of Sections 1.354 and 3.24(g) of the Commission's Rules ARE MOOT.

FEDERAL COMMUNICATIONS COMMISSION

Ben F. Waple
Acting Secretary

Adopted: November 21, 1962

Released: November 27, 1962

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington 25, D. C.

B
FCC 62-1214
27637

In the Matter of)
)
Clear Channel Broadcasting) Docket No. 6741
In the Standard Broadcast Band)

MEMORANDUM OPINION AND ORDER

By the Commission: Commissioner Lee dissenting and issuing a statement; Commissioner Henry not participating.

1. The Commission has before it for consideration various petitions for rehearing, reconsideration, partial reconsideration, and stay of the effective date of all or certain limited specific portions of its Report and Order adopted September 13, 1961 in the above-captioned proceeding. 1/

Requests for Stay or Partial Stay and Demands for Hearing

2. Turning first to the requests that we stay the effective date of all or portions of the rule changes, we find nothing therein, despite some assertions of irreparable harm, that would warrant such extraordinary relief. This has been a most extensive proceeding. The conclusions reached reflect more than sixteen years of rule making and hearing. No person can seriously contend that he was not given every opportunity fully and fairly to present his views for consideration. That the issues to be met were not easy of resolution and were not taken lightly can be inferred from the length of the proceeding itself.

3. While technically those pleadings which sought a stay of the effective date of the rule changes until petitions for reconsideration were disposed of are now moot, we do not rest our denial of such requests on that ground. The rule changes, which became effective October 30, 1961, basically provide for applications for new Class II-A stations in accordance with specified procedures. Irreparable injury may not logically be urged as likely to result from the mere acceptance of applications. None of these applications could be acted upon until after January 30, 1962, in accordance with the express terms of the rules adopted. The determination

1/ The Appendix hereto sets forth the names of those filing petitions.

of hearing rights must in each instance await concrete proposals for placement of new stations and the narrowing of issues on consideration of such applications. As to the concern which one party manifests for those who might apply for a Class II-A station "which might never be processed or granted", the risk to the applicant is no greater than in any other administrative decision which is subject to judicial challenge.

Congressional Action

4. It should be recognized at the outset of our reconsideration that much congressional interest has been manifested in this matter since public notice was given in June 1961 of instructions to the staff as to the decision to be prepared.

5. Bills have been introduced in both houses of Congress which would either prohibit us from "duplicating" any of the Class I-A clear channels or would require us, under certain conditions, to authorize power in excess of 50 kw, or both. Our Report and Order of September 1961 provided that no application for a Class II-A station would be granted prior to January 30, 1962, so that interested parties might have ample opportunity to prepare applications. We have further delayed such grants to provide Congress opportunity to act in the matter should it so desire. Hearings on the various bills have been held before the Communications and Power Subcommittee of the House Interstate and Foreign Commerce Committee at which the Commission expressed its opposition to the bills.

6. On July 2, 1962 the House of Representatives adopted a Resolution (H. Res. 714, 87th Cong., 2d Sess.) expressing the sense of the House that the Commission may, notwithstanding the 1938 Senate Resolution (S. Res. 294, 75th Cong., 3d Sess., adopted June 7, 1938), authorize the use of power in excess of 50 kilowatts on any of the 25 Class I-A clear channels should it find that such operation will serve the public interest, convenience, or necessity. The Resolution also expresses the sense of the House that we should not authorize nighttime duplication of the Class I-A clear channels for a period of one year.

7. The first question with respect to Congressional action concerns the 1938 Senate Resolution opposing power greater than 50 kilowatts. Clear Channel Broadcasting Service (CCBS) directs specific arguments regarding the effect of that Resolution on our decision. Those arguments were also presented at earlier stages of this proceeding and were considered by the Commission in reaching its decision. However, we believe it would be helpful to clarify our position.

8. The reference to Congressional policy in our Report and Order, rather than of decisional significance, was merely intended as a recitation of historical fact, and also as an indication that, if and when higher power is considered for any frequencies, whatever Congressional policy then exists on the matter will be accorded due recognition. We wish to make clear that a majority of the Commission determined, on grounds wholly independent of the 1938 Senate Resolution, that higher power should not be permitted at this time.

9. A majority of the Commission felt, and still feels, that further studies are needed to determine whether such authorization of higher power would be in the public interest. Thus, the Senate Resolution did not affect that part of our decision which reserves for future consideration the question of any additional use to be made of the twelve reserved Class I-A channels. Moreover, a majority of the Commission believes that the additional unlimited-time assignments provided for can be effectuated without substantial impairment of the wide-area service rendered by the I-A stations, and without impingement on the possibility of sufficient improvement of service through higher power -- if that is later concluded to be appropriate -- on the other 12 channels better suited for that approach, and perhaps also on some of the 13 now duplicated. This conclusion was the culmination of 16 years of hearings and study and detailed reasons for the result are set forth in our decision.

10. The House Resolution, therefore, has no impact on the Commission's Report and Order of September 1961, because, as noted, absence or elimination of the 1938 Senate Resolution would not have changed that decision, which is reaffirmed herein. However, in its testimony in February 1962, before the Communications and Power Subcommittee of the House Interstate and Foreign Commerce Committee, the Commission indicated it would welcome Congressional guidance on the question of higher power. It was indicated that this would be helpful because a majority of the Commission, while not yet convinced that power in excess of 50 kilowatts would be in the public interest, has carefully preserved the possibility of future utilization of this potential, should further studies convince the Commission that higher power should be authorized. The 1938 Senate Resolution and the 1962 House Resolution look in opposite directions. It would be helpful, therefore, if a current joint expression of the views of Congress could be obtained on this question for guidance in whatever further proceedings are undertaken to evaluate possible use of higher power.

11. The Commission recognizes, as many parties to this proceeding have argued, that a resolution of one House is not legally binding. However, we must, of course, give due consideration to the 1962 Resolution expressing the sense of the House that the Commission refrain from authorizing additional nighttime stations on the Class I-A clear channels until July 2, 1963. Therefore, while we are reluctant to postpone further the effectuation of this decision, we recognize that limited delay requested by the Resolution will give Congress additional opportunity to enact legislation concerning this matter if it should desire to do so. However, we are herein reaffirming the Commission's decision in this matter, and we do not contemplate any further administrative delay beyond July 2, 1963, in implementing that decision. Applications for Class II-A stations will continue to be accepted in the interim. They will be held in abeyance until July 2, 1963, and, absent controlling legislation, will at that time be duly evaluated and acted upon in accordance with the Commission's Rules.

12. There is one aspect of the Committee Report (H. Rept. 1954, 87th Cong., 2d Sess.) accompanying the 1962 House Resolution which goes further than anything stated in the Resolution and deserves comment. That Report envisioned a one-year moratorium as giving "all Class I-A clear channels an opportunity to file with the Commission an application to go to higher power." We feel constrained to point out, however, that such opportunity is not available. A longstanding Commission rule pertaining to standard broadcast stations provides for no power in excess of 50 kilowatts. One of the reasons this proceeding was initiated was to determine whether that rule should be changed. We have concluded that the present 50 kw limitation should remain unchanged at this time. Thus, an application by a standard broadcast station to use power in excess of 50 kw would not be in conformity with the Commission's rules. In the case of these frequencies herein reserved for future disposition, a petition for rulemaking looking toward authorization of higher power could be entertained. In light of the Commission's decision, however, an application merely seeking power in excess of 50 kw is not acceptable and will be returned without prejudice.

13. As evidenced in the House Report and in the comments on the floor, some concern was also expressed as to the effect of our decision on national defense communications. As we advised the House Committee, the one additional nighttime station proposed on each of 13 of the Class I-A clear channels will not cause interference within the normal secondary broadcast service area of the Class I-A stations involved. Additionally, the radio teletype information proposed to be superimposed on the subject station's normal program transmissions is less susceptible to interference because of the special techniques utilized.

14. It is not contemplated that the BRECOM system would depend entirely on the clear channels. In fact, the addition of 50 kw operations by Class II-A stations in the West may well prove to be of some value in such a system. The Commission has worked very closely with the Department of Defense in the BRECOM project, which is still in the experimental and developmental stage. It is, in fact, a joint project of the Federal Communications Commission and the Department of Defense. It is the Commission's informed judgment that the national defense preparedness is not impaired by the clear channel decision now outstanding.

Summary of Basic Problem

15. Our present task is to complete our examination of the petitions for reconsideration without further delay. In so doing, we have re-examined our basic decision. In oversimplified terms, we are faced with this situation. Much of the country receives no nighttime primary radio service. These areas we refer to as "white areas". They do, generally, receive skywave or secondary service but such service is of an intermittent nature and its availability depends upon a multitude of factors including weather, sunspot activity, atmospheric noise, etc. Present unduplicated use of I-A clear channels with a 50 kilowatt power ceiling is certainly an incomplete use of these channels which still leaves us far short of the attainable degree of service to underserved areas. Moreover, our right to I-A priority thereon might be open to serious challenge from our North American neighbors if we do not make fuller use of such channels.

16. To bring about badly needed improvement in nighttime service various alternatives have been suggested, which resolve generally into duplication, higher power, or some combination thereof. Higher power offers improvements in nighttime secondary service while duplication holds out the promise of limited added nighttime primary service. Moreover, questions of social and economic import arise in the higher power approach which complicate the simple engineering choice. Duplication of all I-A channels would not bring primary service to all white areas and would largely preclude the benefits of added secondary service which higher power could bring. Either alternative leaves much to be desired and we have attempted through a judicious combination of the possible advantages of the two approaches to reap some of the benefits of each. Thus, through duplication we extend to as many persons as possible the benefits of a first nighttime primary

service. This type of service is better and more to be desired than skywave service. We have at the same time, however, retained the status quo on a sufficient number of channels which, should economic, social, and other considerations indicate higher power is in the public interest, can bring a total of four skywave services to practically the entire United States.

Channel by Channel Reappraisal

17. A complete reappraisal, frequency by frequency, has been made of the use to which each of the Class I-A clear channels should be put. A few channels, whether because of technical or international considerations or for policy reasons, clearly fall within the duplicated or the reserved group as set forth in our basic decision. Some others, while the engineering considerations might not point unmistakably to a clear-cut decision that they fall within a particular one of the two categories, have a preponderance of reasons why one solution is to be preferred over the other. In the case of a few, while higher power might be technically feasible, the area they would serve with a secondary service at higher power is otherwise provided for either by present operations or by possible operations at higher power on the reserved frequencies. In a very few cases the choice appears rather difficult when considering the channel on an individual basis. However, applying the general guidelines mentioned at paragraph 26 of the Report and Order of September, 1961, and considering how the two basic objectives are met by the combination of frequencies contained within each group, we are convinced that the decisions, while not easy, are sound.

18. In this connection, before turning to a more detailed consideration of the individual channels, it might be well to emphasize a portion of the concluding observations appearing in paragraph 101 of the Report and Order:

". . . merit attaches to very many of the proposals which have been urged upon us, including some of those which we herein reject. Our essential task in this proceeding has been to select among the myriad solutions offered those which, on net balance, taking into account the many pertinent considerations, would best serve the public interest. The opposing factors bearing upon our judgments in some instances are closely balanced. While

recognizing that much can be said for numerous alternative approaches, we now conclude that the course laid out herein both as reflected in the rule changes now adopted and in the preservation for the time being of the status quo on 12 Class I-A clear channels, represents the best solution available at this time."

640 kc

19. Since 1944, Station WOI, Ames, Iowa (which is regularly licensed to operate on this frequency daytime with 5 kw non-directionally), has operated with 1 kw power from 6:00 a. m. (C. S. T.) to sunrise at Ames, which is during nighttime hours when sunrise is later than 6:00. Such operation has been permitted under a series of Special Service Authorizations (and more recently under other temporary authority), a type of authorization employed in exceptional circumstances to permit uses of AM frequencies for which provision is not made in the general rules. There is currently pending an adjudicatory proceeding, Docket No. 11290, in which there is at issue the basic question of whether the public interest would be served by continuing to authorize WOI's pre-sunrise operation.

20. The Report and Order, together with Note 1 to Section 3.25(a)(5)(ii) paves the way procedurally for the acceptance of applications for a pre-sunrise operation on 640 kc at Ames, Iowa.

21. Earle C. Anthony, Inc., licensee of KFI, Los Angeles, the Class I-A station on 640 kc, complains that this issue was outside the record and that our action constitutes a pre-judgment of the adjudicatory issues. We find no merit in either contention. The rules expressly provide that such application will be acted upon only after and in light of the decisions reached in that docket. We fail to see how it can seriously be contended that merely permitting such application suggests pre-judgment. By our procedural action we have not modified KFI's license, nor have we made any substantive findings as to the adjudicatory matters. The issues in both proceedings are such that the inter-relation of the clear channel issues and the operation by WOI on such Class I-A frequency is apparent.

22. We reaffirm our decision that, as a matter of policy, no more than one station in addition to the Class I-A station should at this time be permitted to operate on such channel at night. In our Report and Order we said:

"As to the suggestion that more than one unlimited time Class II station be authorized on the same Class I-A channel, we deem it preferable at this time to permit only one unlimited time Class II station on the channels selected for such use. After we have the benefit of the manner in which the new unlimited time Class II stations are utilized, and details of actual performance, interference, etc. become available, we will be in a position to determine whether the public interest warrants assignments of additional unlimited time facilities on these channels, and, if so, to determine under what conditions they should be permitted. We are convinced, however, that such a decision should await further developments and that extension of the plan adopted herein to include such multiple use is not warranted at this time."

Additionally, there is excellent potential for skywave service to western states should KFI eventually utilize higher power. Therefore, 640 kc is included in the group reserved for future consideration.

650 kc

23. The frequency 650 kc, on which WSM, Nashville, Tennessee, is the Class I-A station, while susceptible of duplication, has been placed in the category as to which no present change is contemplated. WSM is strategically located for providing skywave service to the Southeast -- should we upon further study determine higher power should be authorized. Some 18,000,000 of the 25,000,000 people in white areas live east of the Mississippi River, with many of these persons residing in the Southeast where it is difficult to provide skywave service because of the high atmospheric noise levels.

24. If higher power is sometime provided for, the stations best located to provide skywave service to this region are WSM, WLW on 700 kc at Cincinnati, WHAS on 840 kc at Louisville, and WWL on 870 kc at New Orleans. But for the special disposition made of 750 kc, as discussed thereunder, WSB at Atlanta would also fall within this group.

25. Should these stations be permitted to operate with 750 kilowatts, it appears technically feasible for all to serve portions of the Southeast.

26. It should be noted also that this area is virtually unserved at present with type E skywave service from existing Class I-A operations. We feel that, until we complete our further studies on higher power, the potential of these services should be retained.

660 kc

27. KFAR, Fairbanks, Alaska, already operates unlimited time on this frequency in addition to the Class I-A station WNBC, New York. Although WNBC's potential for serving white areas through the use of higher power appears very limited, ^{2/} we have declined, at this time, to further duplicate I-A frequencies on which two nighttime operations now exist. This is discussed more fully above under 640 kc. Our Report and Order at paragraph 72 discusses additional reasons why no further duplication of 660 kc is deemed warranted.

670 kc

28. WMAQ, Chicago, is the Class I-A station on 670 kc. Because the same general considerations also apply to the other I-A stations in Chicago, we shall discuss them as a group. Those stations are WGN on 720 kc, WBBM on 780 kc, and WLS on 890 kc. Generally speaking, these stations could be used either for duplication or to offer potential skywave service at higher power. We have reiterated our purpose to bring additional nighttime primary service to white areas while reserving sufficient frequencies having a potential to provide four type E skywave services substantially to the entire country.

2/ To provide adjacent channel protection to I-A operations of WMAQ on 670 kc at Chicago and WSM on 650 kc at Nashville, WNBC with higher power would have to direct its radiation northward along the coastal states already well served with skywave signals.

29. On balance, our reconsideration has led us to believe that the original disposition made of these frequencies is the better choice. Class II-A stations are proposed thereon for Idaho, Nevada, and Utah. It is technically feasible and desirable that they be used to provide night-time primary service to underserved areas of the West.

30. As to their skywave service potential at higher power, protection requirements to foreign and domestic adjacent channel assignments would limit radiation eastward and to the south. While they could directionalize toward the West, their potential for improving skywave service to the West is not so great as that of some other Class I-A channels on which we are presently retaining the status quo, namely 640, 820, 830, 1040, 1160, and 1200 kc. As to those frequencies just named, the considerations pointed toward no present duplication. Thus, the Chicago stations can serve our basic objective and are not needed, nor as well suited as some others, for providing skywave service to the West should higher power someday be authorized.

31. Additionally, with specific reference to 670 kc, NBC attacks as incorrect our inclusion (para. 37) of WMAQ as a station whose useful skywave service is confined to the region of the Great Lakes. Whether or not this is the case is not of great significance because the rules adopted in the Clear Channel Report and Order define the 0.5 mv/m-50% skywave contour of the Class I-A stations -- wherever it may fall -- as the contour which the co-channel Class II-A station must protect. Further, in view of this protection requirement, Figure 6 of the Engineering Affidavit associated with NBC's Comments in response to the Third Notice, which shows a wide area of interference within WMAQ's 0.5 mv/m-50% skywave contour resulting from an assumed cochannel Class II-A operation in Idaho, is of little materiality. The showing is based upon an assumed directional transmitting antenna for the Class II-A station which does not meet the requirements of the rules adopted.

700 kc

32. WLW operates the Class I-A station on this frequency at Cincinnati, Ohio. As discussed more fully in connection with 650 kc, we are reluctant to take any action at this time which would limit its potential for providing improved skywave service in underserved areas of the Southeast.

33. The future course by which this frequency will best serve the public interest is thus left open. We note in passing that the only restriction to an additional assignment on 700 kc is the required adjacent channel protection to KIRO on 710 kc at Seattle. Perhaps, then, it might prove feasible, if otherwise found to be in the public interest, eventually to achieve some benefits of both approaches on this frequency.

720 kc

34. WGN, Chicago -- discussed under 670 kc.

750 kc

35. We have reserved 750 kc for use at Anchorage, Alaska, by KFQD, which must vacate 730 kc under the terms of the United States/Mexican Agreement which entered into effect in June, 1961.

36. The Report and Order explained in greater detail the reasons for such action. Our re-examination convinces us that a better replacement for KFQD's loss of 730 kc could not be found. The proximity in the spectrum of 750 kc to its present 730 kc should permit service to practically the same area and with little required in the way of expense or equipment modification.

37. Atlanta Newspapers, Inc., licensee of WSB, Atlanta, the Class I-A station on 750 kc, argues that duplication should not be provided for on its frequency. We find nothing presented in its contentions which would warrant changing this aspect of our decision. WSB points out the potential it has for providing service to "white areas" in the Southeast at higher power. Once again, we must note that we are fully cognizant that higher power potential exists with respect to some channels other than those on which no action has been taken at this time. We have decided that the duplication provided in the Report and Order is in the public interest. We reaffirm that conclusion and that 750 kc is included within the group duplicated. It should further be noted that, while the decision speaks in terms of future consideration of disposition of the 12 "reserved" channels, the Commission has a continuing duty to see to it that all channels are utilized in a manner which will best serve the public interest. Therefore, just as multiple use of a frequency is mentioned as a possibility for future consideration, so too are we free to consider in the future the use of higher power on the 13 duplicated Class I-A frequencies to the extent such use may be consistent with the duplication permitted herein and other public interest considerations.

760 kc

38. Our decision of September, 1961 went into considerable detail as to why this frequency was selected for use by KFMB, San Diego, California, which loses its present frequency (540 kc) under the terms of the agreement with Mexico. An exhaustive inquiry, taking into account the many factors detailed in our Report and Order, revealed that, of the I-A frequencies, only 760 kc and 830 kc were feasible for use at San Diego. The whole duplication plan adopted provides for nighttime operation on Class I-A frequencies by no more than one station in addition to the dominant I-A station. As discussed below, WNYC, New York City presently operates some nighttime hours on 830 kc and, under the policy adopted, further duplication thereon is precluded at this time. The obvious result is that 760 kc is the only I-A frequency available to solve this unique problem.

39. Further, a study made of all frequencies below 760 kc shows the only other frequency available for such use, because of domestic and international co-channel and adjacent channel restrictions, is 550 kc. Radiation by KFMB on 550 kc would be considerably restricted northward by co-channel operation of KAFY, Bakersfield, California and eastward by co-channel KOY, Phoenix, Arizona. KFMB could not, therefore, operate with its present 5 kw and afford these stations the required protection unless it were to directionalize southward and to the west -- in which case much of its signal would be wasted over the Pacific Ocean. (Studies presented by KFMB in this proceeding show such move would result in a reduction in daytime coverage from 18,342 square miles to 1,921 square miles and in nighttime coverage from 884 square miles to 516 square miles).

40. Our assignment of 760 kc to San Diego for use by KFMB is discussed by several interested parties including Marietta Broadcasting, Inc., licensee of KFMB, which defends the decision; The Goodwill Stations, Inc., licensee of WJR, Detroit, the Class I-A station operating on 760 kc, which opposes the assignment; and John Poole Broadcasting Co., Inc., licensee of adjacent channel KBIG, Avalon, California, which is involved in a problem of 2 mv/m and 25 mv/m overlap.

41. KBIG, in its Petition for Reconsideration, contends the Commission is in error in failing to consider assignment of 830 kc either for the use of KBIG or KFMB. It states that it had suggested in reply comments the alternative that "KBIG be given 830 kc thereby freeing 760 kc for assignment to KFMB". Petitioner's memory does not serve him well in this instance. Petitioner in his reply comments made no

mention of possible use by KBIG of 830 kc but continued to advocate use of that frequency by KFMB. It was only in supplemental comments offered more than a year late and, therefore, not considered by the Commission (see Report and Order, p. 16, fn. 5) that KBIG suggested possible use of 830 kc by it as a daytime only station with at least 10 kw power. This most untimely suggestion, offered only after public notice had been given of the Commission's tentative decision, was not evaluated. All timely filed comments were, however, considered by the Commission in reaching its decision. Moreover, with respect to use of 830 kc by KFMB, this possibility was specifically considered and rejected. It will be recalled that the Third Notice of Further Proposed Rule Making released September 22, 1959, which contemplated a full-time Class II operation on each of 23 Class I-A clear channels, proposed the use of 830 kc in California. The Commission decided that an unlimited time Class II operation should not be permitted on 830 kc at this time. We find no public interest considerations in any of the filings which would warrant upsetting our decision in this regard. The necessity of a waiver of Section 3.37 of our rules because of a 2 mv/m and 25 mv/m overlap with KBIG was expressly recognized in the Report and Order.

770 kc

42. Our decision presents in extensive detail the history of this frequency and the unique circumstances necessitating the decision as to its use. Its disposition was so clearly dictated that, even upon this further re-evaluation of the use of each channel, we feel no further comment is required.

43. American Broadcasting Company, licensee of WABC, New York, the Class I-A station on 770, in its Petition for Reconsideration, presents arguments concerned principally with the basic foundation of our decision and restates arguments previously considered by the Commission. Its request that it be permitted to show the advantages of using 660, 880, or 1180 kc rather than 770 kc at Albuquerque has been fully dealt with previously and again denied by our Report and Order (see para. 85(c)). Our earlier decision was specifically upheld by the United States Court of Appeals on that point (American Broadcasting Company v. FCC, 280 F. 2d 631, 20 R.R. 2001).

780 kc

44. WBBM, Chicago -- discussed under 670 kc.

820 kc

45. WBAP/WFAA, Fort Worth/Dallas, conduct a share time operation as the Class I-A station on 820 kc. Present foreign and domestic adjacent channel assignments would impose some nighttime radiation restrictions on the use of such frequency at higher power. However, even providing for such restrictions, this station is well located -- by directing radiation toward the northwest -- to provide a needed skywave service to all states west of the Mississippi River except for portions of Louisiana, Arkansas, and Washington. Its extensive potential in this regard should be retained pending a final determination on the merits of higher power.

830 kc

46. Since 1943, WNYC, a municipally owned and operated station at New York City, has been permitted under a series of temporary authorizations to operate on 830 kc during certain nighttime hours: 6:00 a.m. (E. S. T.) to local sunrise and from sunset at Minneapolis to 10:00 p.m. (E. S. T.), with power of 1 kw. (WNYC is regularly licensed to operate with 1 kw on 830 kc, with a different directional antenna than it uses nighttime). Notwithstanding the directional antenna employed, WNYC's operation during nighttime hours causes interference within the secondary service area of WCCO at Minneapolis. In a pending adjudicatory proceeding (Docket No. 11227) consideration is being given to the question of whether, balancing the interference caused to WCCO against the service WNYC renders during nighttime hours, the public interest would be served by continuing to permit WNYC's nighttime operation, for which no provision is made in the AM rules governing the use of Class I-A frequencies.

47. The Report and Order, together with Note 2 to Section 3.25(a)(5)(ii) paves the way procedurally for the acceptance of applications for certain nighttime hours of operation on 830 kc at New York City.

48. Midwest Radio-Television, Inc., licensee of WCCO, Minneapolis, the Class I-A station on 830 kc, in its Petition for Reconsideration, raises issues similar to those discussed above with respect to the operation on 640 kc of WOI, Ames, Iowa. The discussion there is equally applicable to WCCO's contentions.

49. Moreover, WCCO's argument in this regard that we are paving the way for regular operation and that Docket No. 11227 contemplates temporary authorization is premature in the light of the procedural nature of our action herein and our disavowal of entering into the hearing issues in this proceeding. WCCO's position, apparently, is that if it is decided in Docket No. 11227 that regular operation by WNYC of the sort described will be permitted, such decision would go beyond the hearing issues involved in that Docket. But resolution of this argument must await decision in Docket No. 11227. WCCO also points to the fact that, in Note 1 to Section 3.25(a)(5)(ii) relating to 640 kc and Ames, we specifically limited any pre-sunrise operation to one kilowatt, but did not impose the same limitation in Note 2 dealing with 830 kc and New York City. The reason for not imposing such a restriction in the case of New York City relates to the special circumstances involved in the WNYC operation. There appears to be the possibility that, if WNYC should operate nighttime in a manner somewhat different than at present -- e. g., with a different directional pattern and possibly a different transmitter site -- it might be possible to operate with power greater than 1 kilowatt and still afford WCCO as much or even greater protection than at present. We do not wish, at this time, to foreclose such possibility. We emphasize, however, that we are not now passing on the merits of the question of operation during certain nighttime hours by WNYC (a question to be decided in Docket 11227). We emphasize also that it is not our intention to permit any nighttime operation by WNYC, whatever the power, which would increase radiation toward WCCO beyond that currently permitted under the special authorization.

50. As in the case of 640 kc, we have refrained, as a matter of policy, from permitting additional duplication at night on the I-A frequency. Any further use of the frequency can, of course, take cognizance of its higher power potential.

840 kc

51. The Class I-A station on this frequency is WHAS at Louisville, Kentucky. This frequency has been reserved for further study. As developed more fully in the discussion of 650 kc, WHAS has a potential for skywave service to southern states which should, for the present, remain unimpaired. Should the stations reserved for their higher power potential eventually operate with 750 kilowatts, WHAS would provide one of the three type E skywave services to most of Florida and about half the land area of Georgia and South Carolina, as well as portions of Louisiana and Texas, and would provide one of four such services in the remainder of Georgia and South Carolina.

870 kc

52. WWL at New Orleans is the Class I-A station on 870 kc. This is one of a group of stations discussed under 650 kc on which no present nighttime duplication is permitted pending further study of higher power. It is well located for providing one of four type E services to extensive areas of the Southeast should the stations on "reserved" channels operate with 750 kilowatts.

880 kc

53. The Class I-A station on 880 kc is WCBS, New York. This frequency is one of a group of clear channel stations located in the Northeast which, by virtue of their location, are ideally situated for duplication by unlimited time stations in the West with negligible effect on present secondary services. Others in this group include KDKA on 1020 at Pittsburgh, WBZ on 1030 kc at Boston, WHAM on 1180 kc at Rochester and WCAU on 1210 kc at Philadelphia.

54. While most of these stations would be subject to certain restrictions on radiation with a power of 750 kilowatts, these general observations can be made: they are not well located for serving the West with skywave service; the public interest would not be served simply by utilizing them to add to the abundant skywave services available in the Northeast; and while some of them could serve some white area in the Southeast we are retaining a potential for service to that area on frequencies located in the South and Southeast -- as more fully discussed under 650 kc.

55. These stations, therefore, do not possess a higher power potential of service to white area such as would require that no action be taken with respect to them at this time. On the other hand, they possess greater flexibility for assignment to states in the West where new unlimited time Class II-A stations in New Mexico, Wyoming, and Montana, as well as one in North or South Dakota or Nebraska and another in either Kansas, Nebraska, or Oklahoma, can render much needed nighttime primary service as set forth in our basic decision.

890 kc

56. WLS, Chicago -- discussed under 670 kc.

1020 kc

57. KDKA, Pittsburgh -- discussed under 880 kc.

1030 kc

58. WBZ, Boston -- discussed under 880 kc.

1040 kc

59. The Class I-A station on 1040 kc is WHO at Des Moines, Iowa. Because its location is so near that of KMOX, St. Louis (1120 kc), these frequencies have been considered together. Both are somewhat centrally located and could be duplicated to bring primary service to the West. Their location is well suited, also, to providing skywave service at higher power. However, here the similarity ends. KMOX on 1120 kc is virtually surrounded by Class I adjacent channel stations which severely limit its higher power potential, whereas WHO would need to protect only one Class I adjacent channel -- and that is in the East -- so its higher power potential should be retained. Thus, these two frequencies readily lend themselves to different treatment with 1120 kc being used to bring nighttime primary service to the West and 1040 kc remaining unduplicated at this time.

60. Columbia Broadcasting System, licensee of KMOX, in a Petition for Reconsideration, contends KMOX should not have been duplicated and that, if a choice is to be made between 1120 and 1040 kc, the 1040 kc should be duplicated because 1120 kc has a greater potential for service to white areas with higher power. The Commission has examined

the corrected engineering study submitted by CBS, which purports to show that the potential for improved skywave service which would accrue to KMOX, operating with 750 kw on 1120 kc at St. Louis, Missouri, is substantially identical to that of WHO operating with 750 kw on 1040 kc at Des Moines, Iowa. We are not persuaded by this showing because we find that in order to achieve the wide area skywave service portrayed as resulting from the high power operation of KMOX, the Class I stations operating in Omaha, Nebraska, Charlotte, North Carolina, Shreveport, Louisiana, and New York, New York on channels adjacent to KMOX would be required to accept substantial reductions of their nighttime primary service. This is true whether the engineering standards set out in Exhibit 109 of the Clear Channel proceeding or the engineering standards of the Commission's Rules are used to evaluate service and interference.

61. More specifically, the Commission's Rules, including amendments adopted in the Clear Channel Report and Order, require that the 0.5 mv/m groundwave contour of Class I stations be protected from interference. The operation of KMOX as shown in the Petition for Reconsideration does not meet this requirement. In contrast, similar operation of WHO, which has only one Class I station (Boston) adjacent to it, does satisfy this requirement. It follows that KMOX, operating within the requirements of the Commission's Rules, does not afford the same potential for improved skywave service as does WHO, similarly operating within the requirements of the Commission's Rules. We find no reason, therefore, to alter our conclusions in this regard.

1100 kc

62. KYW, Cleveland, is the Class I-A station on this frequency. Radiation restrictions to prevent adjacent channel nighttime interference to Class I-B stations WBAL, Baltimore, and KTHS, Little Rock, on 1090 kc and to WBT, Charlotte, and KFAB, Omaha, on 1110 kc essentially preclude any nighttime high power operation on 1100 kc.

63. Conversely, duplication of 1100 kc will provide nighttime primary service to white area. It has been selected for an unlimited time assignment in Colorado.

1120 kc

64. KMOX, St. Louis -- discussed under 1040 kc.

1160 kc

65. The Class I-A operation on this channel is KSL, Salt Lake City. This station is uniquely suited to provide secondary service at night to substantial white areas in the western states by virtue of its location in the center of the extensive white area in the West. At this stage, therefore, we preserve its potential for improving skywave service.

1180 kc

66. WHAM, Rochester -- discussed under 880 kc.

1200 kc

67. WOA1, San Antonio, is well located to serve much of the central and western portions of the country with a skywave signal radiated northwesterly at a power of 750 kilowatts. We have, therefore, taken no action at this time with respect to this frequency.

1210 kc

68. WCAU, Philadelphia -- discussed under 880 kc.

Processing of Pending Applications on Channels Adjacent to the 12 Reserved I-A Channels.

69. Inter-Cities Broadcasting Company requests that Section 1.351(b) of the Rules be changed to permit handling on a case-by-case basis those applications on frequencies within 30 kc of one of the 12 Class I-A channels reserved for future disposition which were in a hearing status with the record closed as of the date of adoption of the Report and Order herein. It contends such parties should be given an opportunity to show that their proposals do not interfere with the future optimum use of the Class I-A clear channels. Lake Huron Broadcasting Corporation asks that applications on certain designated frequencies be processed in normal course where it can be shown that grants thereof will not risk prejudice to possible future plans for the use of the 12 reserved I-A channels. Several others want all such applications in hearing status to be processed. Another asks that all applications for new stations on 710 kc filed prior to October 30, 1961 be processed. The matters raised by these petitions were considered by the Commission and the details of how applications for frequencies adjacent to a Class I-A clear channel are to be handled are set forth in the Further Supplement to Report and Order adopted January 31, 1962, in this docket, and in Section 1.351 of the Commission's rules as amended that date.

Prohibition of New Daytime Assignments on Class I-A Channels

70. Harvey Radio Laboratories, Inc., William H. Buckley, tr/as TriCounties Broadcasting Company and John M. Norris, all applicants for new daytime facilities on I-A clear channels, complain of the prohibition of new daytime assignments on the I-A channels and contend the ban is unlawful for having allegedly been imposed without notice and rule making. That the issue in this proceeding encompassed the broad question of what use of the clear channels would best serve the public interest cannot be denied. Nor is it in any way beyond the Commission's power or duty to impose the ban on daytime applications on the I-A clear channels to preserve the gains contemplated as a result of this lengthy study and to protect and provide for a planned future orderly development of the use of such frequencies. The Commission recognizes that private interests and the public interest do not always coincide, but our task is to inquire into and uphold the public interest.

Failure to Provide a "Cut-off" Date for Class II-A Applications

71. Some contend that, while no Class II-A applications could be acted upon prior to January 30, 1962, we should also provide for a maximum period of time during which such applications can be filed. Failure to do so, it is argued, might mean the new Class II-A assignments could lie fallow for months or years. Other types of applications, it is said, could be delayed in the interim. And it is further urged that lack of a cut-off date encourages prospective applicants for the new assignments to delay filing in order to top the "white area" showing of earlier-filed applications on the same frequency. The Commission, while not precluding future consideration of such a course if it later appears desirable, does not deem it necessary at this time. It is to be hoped, of course, that applicants will file promptly. Should applications not be forthcoming within a reasonable period of time, the matter may be further re-examined. In any event, this is a matter better left, in our judgment, for determination in light of our experience with such applications in the coming months.

Denial of Educational Reservations

72. The National Association of Educational Broadcasters takes issue with our decision not to reserve any of the new Class II-A assignments for non-commercial educational use. The Commission recognizes that time lags occur before educators can receive proper authorization and funds to make application for broadcast facilities. We are not persuaded, however, that the public interest requires reservation of some of the Class II-A stations for educational use. The public interest will best be

served if new Class II-A stations can be established quickly and start rendering needed service to the public. If there is commercial demand for the frequencies, the public interest would not be served by refusing to meet such demand and by withholding use of certain frequencies for possibly extended periods of time to see if there is sufficient educational interest. ^{3/} On the other hand, should there not be commercial interest in some of the frequencies, the time lag would appear sufficient for interested educational groups to pursue the matter. Moreover, we have indicated that no such application could be acted upon for a period of 90 days (i. e., prior to January 30, 1962.) Thus, some time is afforded all interested parties in charting their future course of action.

Other arguments

73. The three networks, Clear Channel Broadcasting Service and Westinghouse Broadcasting Co., Inc. in substance either oppose the basic result reached or contend that a final decision should be made now as to all 25 Class I-A frequencies. These arguments attack the very foundation of our decision and present, for the most part, ideas that were previously expressed. They are adequately dealt with throughout the Report and Order itself which, we believe, makes clear the reasons we reached the conclusions expressed therein. Some suggestions, however, are worthy of brief note. Westinghouse would have us specify locations which can meet the 25% test and offer some reasonable likelihood of financial success. We have already rejected (para. 42) requests that we name specific communities for the new Class II-A stations. Further, we noted (para. 44) that the extent to which the facilities here made available are utilized depends upon the judgment of prospective applicants and licensees.

74. Westinghouse contends that the decision raises a problem under Section 307(b) of the Communications Act of 1934, as amended. This section requires the Commission to make "such distribution of licenses, frequencies, hours of operation, and of power among the several states and communities as to provide a fair, efficient and equitable distribution of radio service to each of the same." Westinghouse does not attack the present allocation of Class II-A stations per se as a violation of that Section, but contends that the present duplication will make it difficult if not impossible

^{3/} Of the 30 educational groups filing comments pursuant to the Third Notice, nine indicated some interest in obtaining a frequency. Of those in states to which Class II-A stations have been assigned, one party states it has funds available which, in that instance, obviates the need for a reservation.

to carry out the 307(b) mandate if and when we authorize higher power on some frequencies. The Commission is very much cognizant of 307(b) considerations and every effort has been made to secure a fair, efficient and equitable distribution of facilities consistent with the achievement of the goals sought. In point of fact, an underlying consideration of this whole proceeding has been to bring service to areas now lacking it -- which is simply another way of saying we are trying to make the distribution more fair, efficient and equitable than it has been. To preclude this on the basis of some possible future difficulty in another connection would be unjustified. Moreover, we cannot agree that the contention has substance because our studies show that the group of channels selected for future consideration, if higher power is authorized, would provide four skywave services throughout the nation. By any reasonable interpretation we feel the standards of Section 307(b) have here been fully complied with.

75. NBC contends that the 25% area-or-population test should be modified to establish a more meaningful minimum. The rule in question requires a showing that at least 25% of the area or 25% of the population to be served is without any other primary service. Satisfaction of either requirement is necessary to establish a basis for authorization of the new facility. This does not, however, preclude consideration of other pertinent features of the proposed operation. We should point out, nevertheless, that our basic concern is with the extensive land area that does not now have any primary service. The limitation in the extent to which a single station can render a groundwave service at standard broadcast frequencies, under a power limitation of 50 kilowatts, adverse conductivity and other terrain features, etc., is well-known and inherent in the standard broadcast band. The Commission has recognized these limitations and is aware of the limited extent to which individual stations can contribute to elimination of the deficiency. Nevertheless the overall problem continues to be basically one of obtaining area coverage. Obviously a service to an area with no population whatsoever would be pointless and as between two areas both without service, provision for service to the area with the greater population is ordinarily to be preferred. If we were to assume a case where an applicant meets the 25% test on the basis of area, rather than population, and meets the other requirements of the rules so that his application is acceptable for filing and if it is found upon examination that he proposes to serve a virtually uninhabited region, then the Commission, in the absence of other applications for the frequency, will be faced with the question of whether it is more in the public interest to grant such application, wait for other applicants to file for the frequency, or consider some alternate disposition of the frequency. The Commission's decision is, obviously, grounded upon an expectation that it

will work. Should demand not develop for the frequencies, it does not mean the Commission will be forced to sit idly by and let the present less efficient use of the I-A frequencies continue.

76. NBC contends the Commission should consider the alternative of authorizing FM stations rather than the proposed Class II-A stations. It suggests that when, in October 1947, the Commission ruled that the subject of FM was irrelevant in this proceeding the issues were directed substantially at the general question of establishing high power, wide service area Class I stations in the West, and that since the Class II-A stations would be limited in their coverage, this "change of viewpoint" requires re-evaluation of FM's potential usefulness in these area. Among other things, NBC's concept of the issues of the proceeding is too narrow. For example, the original order of February 20, 1945 initiating the proceeding included the following:

"WHEREAS, the Commission has received many applications requesting authorization for the operation of additional stations and for the use of higher power on the clear channel frequencies;"

Issue 7 read as follows:

"7. What new rules or regulations, if any, should be promulgated to govern the power or hours of operation of Class II stations operating on clear channels."

77. By Memorandum Opinion and Order of December 30, 1947, the Commission reviewed and reaffirmed its decision to exclude all information concerning FM broadcasting. It noted that the clear channel proceeding has always been considered as pertaining to and concerning the standard broadcast band. Its concern, at that time, that such information would merely serve to delay a conclusion of the proceeding is certainly more urgent today in view of the years which have intervened. Moreover, it is of interest that NBC, while filing comments at every stage of this proceeding, has not seen fit to raise the question until now.

78. NBC contends that neither the former rules nor the rules adopted in the Clear Channel Report and Order include a requirement to determine directional antenna performance in accordance with FCC's Report, TRR 1.2.7., or a substitute which would permit a realistic determination of

the actual extent of interference caused to the Class I-A stations. The Report referred to is principally a statistical analysis of data acquired from a series of tests and measurements made of certain selected directional antenna systems in actual use by broadcast stations. Empirical formulas are developed as a possible tool for improving in small degree the predictions required in assessing performance, including interference effects of a broadcast station utilizing a directional antenna.

79. Like many of the refined prediction and evaluation tools developed during the course of the Clear Channel proceeding, the merits of their use in the proceeding itself by no means implies that they should be incorporated in Commission rules or that the detailed and complicated processes involved should be adopted as a routine application processing procedure. The petitioner, in effect, is suggesting that this be done and that we modify the present approach to the use of directional antennas used to control interference between broadcast stations. Whatever considerations evolve from any further inquiry along these lines will apply to directional antennas used by any class of station. Based on the limited data available there is no assurance that any significant increase in accuracy would result from the use of these theories. The Commission does not feel that the data acquired and conclusions reached form a sufficient basis for changing the rules at this time.

80. Clear Channel Broadcasting Service (CCBS) sets forth a number of alleged inconsistencies in our Report and Order. Careful analysis of these charges, however, reveals that CCBS would simply have reached different conclusions. The attack, for the most part, is upon our recognition that the situation is not black or white and that some merit attaches to many of the proposals offered. We further recognized (see para. 101 of Report and Order, quoted in part in para. 17 hereof) that the opposing factors bearing on our judgments were often closely balanced. CCBS' recitation seizes upon our language and alleges it is "inconsistent" where it differs somewhat from a conclusion CCBS would draw or from a contention it has presented which may have some merit to it but was found outweighed by other factors. We believe the decision read in its entirety amply supports our findings.

81. CCBS contends we failed to resolve Issues 9 and 10 as originally designated in our Order of February 1945. They read as follows:

"9. Whether and to what extent the clear channel stations render a program service particularly suited to the needs of listeners in rural areas.

10. The extent to which the service areas of clear channel stations overlap and the extent to which this involves a duplication of program service."

We fail to understand CCBS' concern here because it points out that issue 9 should be resolved in accordance with its Comments of August 15, 1958 which indicated, among other things, that the fact the record is outdated "does not lead to the conclusion that the record is too outdated to provide a sound basis for resolving the basic issue posed in this proceeding--namely, how to improve service to the vast underserved areas and populations." Moreover, CCBS urges that we find Issue 10 is "irrelevant to the basic considerations involved in this proceeding." If in the one instance we are not precluded from deciding the basic questions and in the other the issue is contended to be irrelevant, CCBS would not be aided by their resolution.

82. We did not, and do not now, deem it essential to prolong our decision by a useless repetition of historical detail of this voluminous and protracted proceeding. As CCBS recognizes, the Further Notice of April 15, 1958 resolved many of these issues and, at least strongly implied that others--such as Issue 9--were not essential to a resolution of the basic questions involved in the proceeding (with which, as we have seen, CCBS expressly agrees). We have previously noted that this whole proceeding, once of extremely wide scope, has over the years been considerably narrowed. As a result, the original 11 issues have long since been modified by subsequent rule making notices directed at more specific solutions.

83. CCBS also contends we must consider the pressure from other nations to use frequencies on which the United States has Class I clear channel rights. Our efforts in this proceeding to better utilize these frequencies should be an advantage, rather than a detriment, to us in any future international negotiations.

Conclusion

84. We adhere to our belief that, on balance, the adopted solution represents the best result available at this time. The Report and Order read in its entirety and in the light of the above language makes unnecessary any more detailed rebuttal of many of the arguments now advanced that some different solution should have been adopted. In this connection, some petitioners simply restate the case for higher power.

Others ask that more than one Class II station be permitted on a frequency. Nothing new was found in these requests which had not been fully presented to the Commission for its consideration before the Report and Order was adopted.

85. A majority of the Commission sincerely believes that this decision serves the public interest. There is no easy or clear-cut solution to the many problems involved. For the reasons given in the September, 1961 Report and Order and as further stated herein, we adhere to our decision in all respects. We further reaffirm the conclusion that we are unable to determine that higher power is warranted at this time but that -- if it proves to be in the public interest at some future date -- we have retained freedom of action on a sufficient number of channels which, in the combination carefully selected, will enable the claimed benefits of higher power to be realized.

86. Upon our re-examination several minor typographical errors have been discovered. In view of the public notice of clarification released October 27, 1961, and reading the Report and Order in its entirety, we do not believe parties will be misled. For example, 890 kc was inadvertently omitted from paragraph 35. However, it correctly appears in paragraph 37 and in the Rules in Sections 3.22 and 3.25(a)(1). The one correction in this regard, to which we invite special attention is the reference in the Appendix (Instruction No. 8) to a paragraph 3.182(c). No such section appears in the rules and the reference thereto should be omitted.

87. We have carefully considered all petitions filed. We have, perhaps, included more detail than was necessary but deemed it desirable to discuss those new arguments raised by the parties. However, as noted, we have found nothing to warrant different disposition of the basic premises and conclusions of the proceeding and no reason to re-examine arguments which were before us and considered by us before reaching our decision in this docket.

88. Several parties filed Oppositions to various of the Petitions for Reconsideration. While we have not made specific reference to such oppositions we have considered the arguments presented which, in many instances, are the same as those reasons relied upon by the Commission.

89. In view of the foregoing, IT IS ORDERED, This 21st day of , 1962, That the Petitions for stay, partial stay, rehearing,

reconsideration and partial reconsideration, listed in the Appendix hereto, ARE DENIED except that those filed by Inter-Cities Broadcasting Company, Lake Huron Broadcasting Corp., S & W Enterprises, Inc. et al., Sands Broadcasting Corp. et al., and West Side Radio ARE DISMISSED AS MOOT to the extent that the relief requested therein has already been granted by the Commission on its own motion in the Supplement to Report and Order released herein on November 1, 1961 and the Further Supplement to Report and Order adopted January 31, 1962.

FEDERAL COMMUNICATIONS COMMISSION *

Attachment

Ben F. Waple
Acting Secretary

Released: November 28, 1962

* See attached dissenting statement of Commissioner Lee.

APPENDIX

A. Petitions for Reconsideration

1. American Broadcasting Company
2. Atlanta Newspapers, Inc. (WSB, Atlanta, Ga.)
- * 3. Columbia Broadcasting System, Inc.
4. Clear Channel Broadcasting Service (CCBS)
5. Creek County Broadcasting Company, et al. (Applicants for 1220 kc)
6. Earle C. Anthony, Inc. (KFI, Los Angeles, Calif.)
7. Genesee Broadcasting Corp. (WHAM, Rochester, N. Y.)
8. The Goodwill Stations, Inc. (WJR, Detroit, Mich.)
9. Harvey Radio Laboratories, Inc., et al. (Applicants for 670, 720 and 820 kc)
10. Inter-Cities Broadcasting Co. (Applicant for 1220 kc)
11. Lake Huron Broadcasting Corp. (Applicant for 1070 kc)
12. Meredith Broadcasting Co.
13. Midwest Radio-Television, Inc. (WCCO, Minneapolis, Minn.)
14. National Association of Educational Broadcasters
15. National Broadcasting Company, Inc.
- *16. John Foole Broadcasting Co., Inc. (KBIG, Avalon, Calif.)
17. Sands Broadcasting Corp., et al. (Applicants for 1150 kc)
18. Seattle, Portland & Spokane Radio (KXL, Portland, Oregon)
19. S & W Enterprises, Inc., et al. (Applicants for 900 kc)
20. Westinghouse Broadcasting Company, Inc.
21. West Side Radio (Applicant for 710 kc)
22. WGN, Inc. (WGN, Chicago, Ill.)

B. Petitions for Stay

1. Clear Channel Broadcasting Service (CCBS)
2. Midwest Radio-Television, Inc. (WCCO, Minneapolis, Minn.)

C. Oppositions to Petitions for Reconsideration or for Stay

1. All-Alaska Broadcasters, Inc. (KFAR, Fairbanks, Alaska)
2. Atlanta Newspapers, Inc. (WSB, Atlanta, Ga.)
3. City of New York Municipal Broadcasting System (WNYC, New York)
4. Clear Channel Broadcasting Service (CCBS)
5. Crowell-Collier Broadcasting Corporation (KFWB, Los Angeles, Calif.)

* Included request for a stay.

6. Iowa State University of Science and Technology (WOI)
7. Marietta Broadcasting, Inc. (KFMB, San Diego, Calif.)
8. Midwest Radio-Television, Inc. (WCCO, Minneapolis, Minn.)
9. National Broadcasting Company, Inc.
10. Seattle, Portland & Spokane Radio (KXL, Portland, Oregon)

DISSENTING STATEMENT
OF COMMISSIONER ROBERT E. LEE

I dissent to the action taken by the Commission in refusing to reconsider its action in this proceeding for substantially the same reasons that I gave in my dissent in the Report and Order adopted September 13, 1961, wherein I stated that no substantial improvement in service throughout the United States can be expected unless higher power is authorized to Class I stations. It is clear that the licensing of special Class II-A stations on roughly half of the clear channels will not make a significant contribution towards serving nighttime "white areas" and will serve to inhibit future efficient use of these channels by Class I stations.

The resolution passed by the House of Representatives in 1961 favored a year moratorium to permit Class I stations to file applications for increased power and after a year these channels could be duplicated. While I am pleased that the House of Representatives did not impose legislation in matters where the Commission is presumed to be expert, as I see it the form of action -- a resolution rather than a bill -- was an act of deference to Commission authority. It should be treated accordingly. By only passing reference is consideration shown to the very essence of the resolution, that being the matter of higher power for Class I stations and duplication by Class II stations on the same frequencies. There is no reason given in the Opinion or known to me why higher power and duplication on the same channels must be considered only in the alternative.

The Memorandum Opinion and Order adopted by the majority re-evaluates the 1961 Report and Order to the extent that it gives reasons why some channels are better suited for duplication than for future consideration for higher power. It is my position that no hairline decision need or should be made. Our international treaty obligations certainly must be given consideration and full effect. Adjacent channel stations must be afforded their rights. It is my view that the fair and orderly way to evaluate these matters is to afford Class I stations the opportunity to file applications for powers in excess of 50 kw and then on the basis of these applications to determine from these concrete proposals, which in many instances would require directional antennas, whether they would satisfy the traditional public interest criteria. I am not convinced that adjacent channel interference problems cited by the majority as an inhibition to higher power would be of significant import, particularly in view of the fact that adjacent channel interference constitutes a substitution of service. Where and how does the public lose service? I submit that we are sparring with windmills.