

FEDERAL COMMUNICATIONS COMMISSION

Washington, D. C.

December 12, 1961

IN REPLY REFER TO

Honorable John D. Dingell
House of Representatives
Washington 25, D. C.

Dear ~~Congressman~~ ^{John} Dingell:

Thank you for your letter of December 10. I regret very much that this whole incident has caused so much difficulty, and will do whatever I can to be of help. I've read the copy of a letter you sent written by Mr. Wolfe of Station WJRN, Saginaw, Michigan concerning the clear channel proceeding.

As you know, since the time of Mr. Cox's appearance in Michigan the Commission has made clear that no action either to duplicate or to consider higher power for others would be taken prior to July 2, 1962 in order to "give Congress additional opportunity to enact legislation concerning this matter if it should desire to do so." (See paragraph 11 of enclosed Opinion and Order). In the event Congress does not act, it is our best judgment that we should go ahead with our prior decisions reached after many years of extended consideration--years long before I arrived here.

I have personally spoken to Ken Cox about the matter contained in the footnote of page 3 of the letter and he is most unhappy that words are being put in his mouth in this way. He tells me that he certainly castigated no one, but simply indicated that the arguments that they were advancing to him at that time had not been presented to the Commission in connection with consideration of the treatment to be given the clear channels, and that if they felt so strongly about the question they should certainly avail themselves of the opportunity to do so. He further says that he never referred to the effects of the clear channel stations as "aggressions" and has never indicated that they were doing other than very properly and legitimately advancing their point of view with respect to a very important matter.

As a result of my discussions with Ken I do not believe that he departed from the proper role of a responsible government official in discussing the clear channel proceeding before the Michigan Association of Broadcasters.

I would only add that I fully appreciate your interest and hope that this letter will help to alleviate your concern. If I can do something further, I hope you'll let me know.

Sincerely yours,

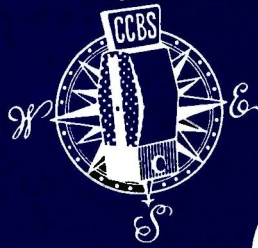
Newton M. Minow

Newton M. Minow

Chairman

Enclosures

*I'm really sorry about
the whole thing.*



CLEAR CHANNEL BROADCASTING SERVICE

Your Attention Please!

Bulletin #47

December 21, 1962

TO: CCBS GENERAL MANAGERS, CHIEF ENGINEERS, FARM DIRECTORS

Re: American Farm Bureau Federation
Radio and Television Policy - 1963.

The following is the 1963 Radio and Television policy statement adopted by the American Farm Bureau Federation at its recent Atlanta, Georgia, annual meeting. Any 1963 efforts of AFBF to influence radio and television policies during the coming year will be based upon the philosophy contained in this resolution.

"RADIO AND TELEVISION.

"Radio stations which are assigned clear channels have both a privilege and a responsibility. We defend the retention of clear channels by those stations which use them in the public interest and serve rural families adequately. We cannot support the retention of clear channels by stations which abuse them by drastically curtailing all but local interest programming or by permitting standards of broadcasting to deteriorate. In cases where broadcasting opportunities become available, we favor their allocation in rural areas not now receiving adequate radio service.

"In the case of television services we are aware of the many problems facing the broadcast industry and the Federal Communications Commission. We share a general concern over the congestion of channels available for allocation on the very high frequency spectrum. At the same time, we strongly urge that neither the Commission nor Congress take action, even on a temporary basis, which would impair existing television service to rural areas.

"We favor establishment of booster stations to extend and improve television service to rural areas where their use does not impair present service to such areas.

"We favor legislation to place community antenna services under direct regulation of the Federal Communications Commission. Under such legislation the Commission should act to protect the rights of rural television viewers. We are aware that such systems rarely wire their services to rural viewers, and we urge the Commission to protect the position of a local television station operating within a community on its own resources and endeavoring to compete with transmission lines that bring programs from stations many miles outside the community."

ROY BATTLES



CLEAR CHANNEL BROADCASTING SERVICE

Your Attention Please!

Bulletin #48

December 21, 1962

TO CCBS FARM DIRECTORS AND GENERAL MANAGERS:

A tape featuring Roy Battles interviewing the following people was air mailed to you today.

Cut #1 - James Patton, President National Farmers Union.

Time: 6:53.

This tape features Patton looking ahead at his organization's 1963 goals. Because it is hard to find Mr. Patton in town, this tape is longer than usual. It can be edited in several places, however, to shorten it. The tape is not dated and can be used at any time.

Cut #2 - James Moore, Executive Vice-Pres. National Apple

Time: 4:00

Institute. This tape features a brief story of NAI's work here in the Capital. The tape is not dated and can be used at any time.

Cut #3 - Homer Brinkley, Executive Vice-Pres. National Council

Time: 5:50

of Farmer Cooperatives. This tape features some of Brinkley's philosophy relative to farm buying and selling power. It is not dated and can be used at any time. Brinkley's office is close to the White House and the motorcycle roar heard midway through the tape is the Presidential motorcycle escort - escorting the Chief Executive up 17th Street.

Please return the tape to this office.

ROY BATTLES

Jack:
Rep. Pucinski is
answering to haul the
FCC before the House
Gov't. Operations Committee
to explain why it "thumbed
its nose" at the House -
re H Res. 914 on 11/21/62.

I'm against this for
several reasons I'll tell you
about - but the
makeup of the
Committee is
interesting

(S)

December 18, 1962

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

Dear Ward:

The makeup of the House Government Operations Committee for the past session of Congress is as follows:

		House Res. 714 Vote	Area
Dawson	D-Ill	Absent	Chicago
Holifield	D-Calif.	Yes	Los Angeles
Brooks	D-Texas	Yes	Near Galveston
Fountain	D-N.C.	Absent	Barboro
Hardy	(R-Va.	Yes	Cathlamet
Blatnik	D-Minn.	Yes	Chrisholm
Jones	D-Ala.	Yes	N.E. Alabama
Garmatz	D-Md.	Yes	Baltimore
Moss	D-Calif.	Yes	Sacramento
Kilgore	D-Texas	Yes	Southern Tip, Texas
Fascell	D-Fla.	Yes	Miami
Griffiths	D-Mich.	Absent	Detroit
Reuss	D-Wisc.	Absent	Milwaukee
Kee	D-W. Va.	Absent	S.W. Va.
Monagan	D-Conn.	Yes	Des Moines
Smith	D-Iowa	Absent	Did not run for re- election
Hoffman	R-Mich	Absent	Utica
Riehlman	R-N.Y.	Absent	W. Detroit
Meador	R-Mich.	Yes	Blanchester
Brown	R-Ohio	Yes	
Dwyer	R-N.J.	Yes	
Griffin	R-Mich.	Absent	Detroit
Wallhauser	R-N.J.	Yes	
Langer	R-Minn.	Yes	Kennedy
Anderson	R-Ill.	No	Rockford
Schweiker	R-Penna.	Yes	Lansdale
Morse	R-Mass.	No	Lowell

December 18, 1962

All of the above will be in the 88th Congress except
Hoffman of Michigan.

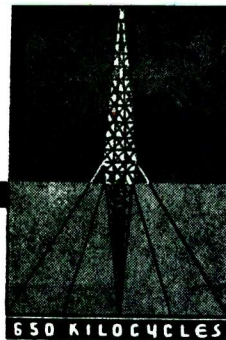
Best wishes.

Sincerely yours,

Roy Battles

RB/bh

cc: Mr. DeWitt
Mr. Quello
Mr. Rollo
Mr. Eagan



RADIO STATION

WSM
INCORPORATED50000
WATTS

650 KILOCYCLES

NASHVILLE 3, TENNESSEE

*** CLEAR CHANNEL ***

December 27, 1962

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

Dear Roy:

I have turned your letter about the Nielsen survey over to Bob Cooper who will answer it and will also furnish you some other information.

The scheme of our political friend from Chicago bothers me also for I think the best thing we can do at the moment is to try the Commission at its word - and fast.

Best wishes.

Sincerely yours,

John H. DeWitt, Jr.

JHD:am



CLEAR CHANNEL BROADCASTING SERVICE

Your Attention Please!

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December 21, 1962

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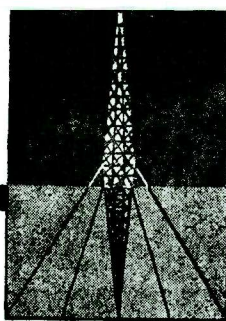
"Radio stations which are assigned clear channels have both a privilege and a responsibility. We defend the retention of clear channels by those stations which use them in the public interest and serve rural families adequately. We cannot support the retention of clear channels by stations which abuse them by drastically curtailing all but local interest programming or by permitting standards of broadcasting to deteriorate. In cases where broadcasting opportunities become available, we favor their allocation in rural areas not now receiving adequate radio service.

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ROY BATTLES



RADIO STATION

WSM
 INCORPORATED

 5000
 WATTS

650 KILOCYCLES

NASHVILLE 3, TENNESSEE

*** CLEAR CHANNEL ***

December 27, 1962

Mr. William S. Duttera
 National Broadcasting Company
 30 Rockefeller Plaza
 New York 20, New York

Dear Bill:

Thanks so much for sending me the Commission notice about the meeting on the AM Growth Problems on the 7th of January.

Last Thursday in talking with Roy Battles, I was assured that NAB would have a good presentation. Upon reflection it has occurred to me that there is a basic difference of interest between the broadcasters on the one hand and the consulting engineers and attorneys in Washington on the other. Somewhere along the line this must be brought to the foreground. I understand that the NAB study has shown that the standards, such as they are, have been adhered to fairly closely. The difficulty with our broadcast structure, mainly at night, has to do with the standards that were adopted in the first place. They were adopted, as you will remember, with the full consent of the consulting engineers even though they knew at the time that interference would be far worse than would appear on the surface. The best thing that could result from the Commission hearing would be that a study be ordered, to show in light of the work of Committee 1-A on directional antennas and more adequate propagation data, what new standards should be adopted to protect adequately present and future stations.

I plan to be in Washington on Monday, January 7th, and hope to see you at the meeting.

Best regards.

Sincerely yours,

John H. DeWitt, Jr.

JHD:am

Mr Reynolds

RADIO CORPORATION OF AMERICA
INDUSTRIAL ELECTRONIC PRODUCTS
GARDEN 2, NEW JERSEY



November 28, 1962

Mr. John H. De Witt, Jr.
WSM, Incorporated
WSM-TV
301 7th Avenue, N.
Nashville 3, Tennessee

Dear Jack:

Thank you very much for your letter of November 27. We agree that the question of high power transmitters is temporarily moot because of the recent FCC action, and we have in fact, called off the seminar for the time being.

We expect to reinstate our plans as soon as the time is right, and will be very happy to have you visit us at that time.

Thank you again for writing.

Very best regards.

Very truly yours,

Ed

E. C. Tracy, Manager
Broadcast Sales Department

ECT:bsw

December 7, 1962

Mr. Charles F. Banker
Philco Corporation
3825 Fabian Way
Palo Alto, California

Dear Mr. Banker:

Thank you for your prompt action on my request for the Utility Technical Manual. This is in connection with a project with the Air Force and we needed this information.

Sincerely yours,

John H. DeWitt, Jr.

JHD:am

PHILCO CORPORATION

A SUBSIDIARY OF *Ford Motor Company*

WESTERN DEVELOPMENT LABORATORIES • 3825 Fabian Way, Palo Alto, California

4 December 1962

W S M, Incorporated
Nashville 3, Tennessee

Attention: Mr. John H. DeWitt, Jr.
President

Dear Mr. DeWitt:

Please refer to your letter of November 1, 1962 concerning the Utility Technical Manual WDL-TM-AV-30002-3. We are enclosing this manual in accordance with your request.

Please note that Manual WDL-TM-AV-3002-3 is the Utility Technical Manual for the UHF Doppler, Telemetry, Angle-Traching Receiver, Model No. WDL-OA-69.

If we can be of any further assistance please feel free to contact us.

Very truly yours,

PHILCO CORPORATION


Charles F. Banker
TT & C Sales

CFB:mv
Encl.

Send you letter -

RADIO CORPORATION OF AMERICA

INDUSTRIAL ELECTRONIC PRODUCTS

CAMDEN 2, NEW JERSEY



November 30, 1962

SUBJECT: High Power Seminar Cancellation

Dear Jack:

On November 19, we announced and invited you to attend a 2-day seminar on High Power AM Transmitters which we had scheduled for December 11 and 12, 1962, at Camden and Princeton, New Jersey. Preparation for an informative program was well underway when we received notice of the November 21, "Memorandum Opinion and Order" by which the FCC denied waivers and returned the applications of four clear-channel stations who has applied for permission to operate at the 750 KW level.

In view of this development and in line with comments some of you have forwarded to us, we are of the opinion that the timing of our seminar is no longer appropriate and we are regretfully advising you, herewith, of its postponement until a later date.

Meanwhile, new techniques are constantly developing at RCA as a by-product of our involvement in many high-power RF projects in diversified fields of application. It had been our intention to bring you up-to-date with relation to such developments, especially as they might be reflected in new designs of super-power broadcast transmitting equipment, where superior economy, reliability and performance are particularly essential.

At the proper time, we will reinstate our plans for a seminar. We will continue to have available for your use, plans and specifications for our line of high-power transmitting equipment.

Very truly yours,

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

E. C. Tracy, Manager
Broadcast Sales Department

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

211 Savings & Loan Building
Birmingham, Michigan

3 Dec 62

Dear Jack:

my address has been changed to:

312 East Brown Street

Birmingham, Michigan

the bank is taking over about
half of the floor where it was located.

I hope the work I have been doing
for CCBS is not wasted in view
of recent developments. A tape
recorded summary is nearly
completed and will be mailed
in a few days.

Just before Thanksgiving I received
a letter from Haggerty notifying
me of election to follow. Thank
you for your efforts on my behalf.
Our time record and invoice for
the month of September are enclosed.
Best wishes to all.

Yours truly,

P.S. I will be at DECO, ^{Frutz} ^{Leahey} during
the next week or ten days. F

Cc and letter to Mr. Jack DeWitt

November 27, 1962

Mr. Roy Battles, Director
Clear Channel Broadcasting Service
Shoreham Building
Washington 5, D. C.

Dear Roy:

Let me thank you sincerely for your
confidential letter of November 26.

I am not at all surprised.

With best wishes and kindest personal
regards, I am

Sincerely,

Edwin W. Craig
Chairman of the Board

C
O
P
Y



Clear Channel Broadcasting Service

Roy Battles
Director

Shoreham Building
Washington 5, D. C.

November 26, 1962

CONFIDENTIAL

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

Dear Mr. Craig:

The attached is self-explanatory. It was placed in our hands by a CCBS member who received it from a friend who is a regional broadcaster.

For self-evident reasons, the salutation has been removed.

I will compare notes with you soon about how we may attempt to counteract this problem.

Sincerely,

Roy
Roy Battles

RB/bh
Encl.

Mr De Witt



WKNX-TV

WKNX - RADIO

Lake Huron Broadcasting Corporation
221 South Washington Avenue Saginaw, Michigan

November 14, 1962

Dear Mr. _____:

As you know, as a result of House Resolution 714, the FCC is now permitted to consider the authorization of superpower for clear channel stations. Applications for power of 750 kw have already been filed.

After securing preliminary information and recommendations from our respective Washington attorneys and consulting engineers, a group of Michigan broadcasters, representing the majority of the state's regionals, met Thursday (November 1) to consider the effect of superpower upon us and what position we should take regarding it. We concluded superpower would be materially injurious to our interests and concluded:

1. That we would oppose superpower as individuals and as a group.
2. That we would seek to enlist similar opposition in the remaining 49 states.

As a leading regional broadcaster in your state, we suggest that you consider the formation of a state group of your own to examine superpower and determine what action you should take. Naturally, we hope that your conclusions will parallel ours.

I know that you have read much of the trade paper commentary on this subject, but it might be well to summarize the arguments, pro and con, about superpower as follows:

Those who seek superpower contend:

1. That increased power will furnish one or more reliable nighttime services to approximately 25 million Americans who do not now enjoy such service.
2. That superpower will furnish simple, convenient blanket coverage for Defense Department communications in the event of a national emergency.
3. Superpower will be useful for Latin American propaganda purposes and will deny the use of these facilities by elements possibly unfriendly to the United States.
4. Superpower will not harm non-clear stations economically because:
 - (a) Non-clear stations in other than major markets get their principal advertising support from local sources, and,

- (b) Non-clear stations located in the same market as superpower clears will fall heir to local business forfeited by the clears as a result of higher rates (reflecting greater coverage).
5. Superpower won't injure audiences in secondary markets because of local loyalties and local program interests. It is further contended that superpower won't injure audience of non-clears in markets originatin superpower because of the increased obligation of superpower stations to program regionally.

Those who oppose superpower maintain:

1. Many non-clears (particularly regionals) don't depend principally on local revenues. To the contrary, a significant percentage, if not the majority, of regionals depend upon national spot as their principal revenue source.
2. Superpower will seriously reduce the volume of national spot to non-clears in all markets because -
 - (a) The total audience to superpower will increase day and night; advertisers buy circulation.
 - (b) The total audience to non-clears will shrink.
 - (c) Advertising agencies for national spot advertisers (as distinct from the national spot advertisers themselves) will prefer to buy a few superpowers rather than many regionals--they are easier to service; it is easier for the agency to make a profit.
3. The loss of important national spot revenue by regionals will reduce their ability to program strongly at the local level, notably in local news coverage. The resulting downward spiral will only further depress local interest in local broadcast service--no news or rip-and-read news and records, only programming will increase at the local level as local revenues shrink.
4. Favorable consideration of superpower by the FCC at this time would be inconsistent with the FCC AM freeze, imposed allegedly because of the poor economic health of AM radio, brought about by over-population.
5. No reasons of any kind have been presented by anyone for full time superpower. Increased and damaging competition to local daytime radio service by superpowered clears far outweighs any small benefits contributed in covering so-called white areas at night.
6. It seems to me that one of the most objectionable features of the superpowered proposal is that the concentration of power in the radio industry is vested in a small number of licensees. This small segment of the industry could very easily become the monopolistic hard core of the entire American radio industry, dwarfing the efforts, interests, and service of the rest of the industry.

We intend to contact Michigan Congressmen and Senators and present them with our side of the superpower argument. When comments will be accepted by the FCC we intend to make appropriate filings as individuals and as a state group.* We hope that you will conclude it is to your self-interest to do the same.

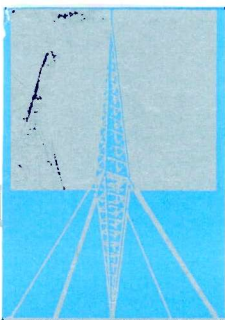
At a later date, if developments dictate, the establishment of some kind of national group to represent our common interests may be necessary. However, this letter is not a preliminary to a pitch for such an organization. It is merely a report of what we are doing in Michigan and a recommendation that you consider similar action in your state if you have not already taken it.

This letter has gone to basically the regional operators in your state. Because of the large number of broadcasters affected, it would be helpful if those receiving this letter fanned out its contents and purpose to those broadcasters who stand to suffer from clear channel superpower. This, of course, means every broadcaster who is not a clear channel operator in your state.

Cordially yours,

Howard H. Wolfe
Station Manager

* Ken Cox, speaking at our state association meeting in September on the subject of superpower, castigated us for our not voicing the case for the non-clears sooner. The gist of his remarks was: "Where were you when we needed your help to resist the aggressions of the clear channel people."



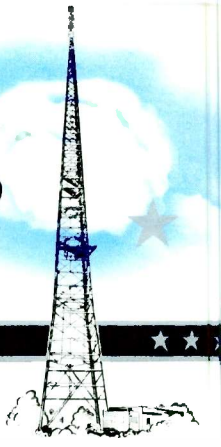
CLEAR CHANNEL

JOHN H. DEWITT, JR.
PRESIDENT

WSM
INCORPORATED

WSM-TV
CHANNEL 4

650 KILOCYCLES 50,000 WATTS ★★★ NASHVILLE 3, TENNESSEE ★★★



11/30/62

Mr. Craig called and asked that I give you the following message:

"Mr. John J. Hooker, Jr. is far less discouraged about the Memo Opinion and Order than we are and I feel that it is necessary for you to talk with John as early in the week as possible and before meeting has been planned for Washington. His views may influence your own views, not only about the interpretation of the order, but what decision should be made by the group in Washington."

Mr. Craig went on to say that in view of this message he thought it would be well that you contact Mr. Hooker before leaving for New York Sunday night.

Mr. Craig will not be able to be reached Sunday night or Monday due to Mrs. Craig being in Vanderbilt Hospital for surgery.

I am enclosing the FCC Opinion and Order concerning Docket 6741 (received from Washington lawyers today) re-iterating their stand on duplication taken September 13, 1961. Direct reference to WSM is made on page 8.

Also attached is the Opinion and Order concerning the 750 KW applications rejection. This is the same as the one we sent Mr. Hooker with copy of Mr. Eagan's letter.

WILLIAM F. BARRY
VICE PRESIDENT AND
GENERAL COUNSEL

WSM ★ **WSM-TV**
INCORPORATED CHANNEL 4

December 4, 1962

MEMORANDUM TO:

Mr. John H. DeWitt, Jr.
President
WSM, Incorporated

Dear Mr. DeWitt:


On Friday, November 30, 1962, Mr. John J. Hooker, Jr. telephoned me and talked at considerable length with reference to the action of the Federal Communications Commission on the application of WSM Radio for increased power. He apparently had just concluded reading the Memorandum Opinion and Order of the Commission.

I told Mr. Hooker that I was not current on the matter and that it was my understanding that you would be out of town for a week, but that upon your return I would talk with you and bring myself up to date and would be glad to talk with him further. We appreciate his interest in the matter and, of course, will keep him fully advised.

Your Secretary very kindly loaned me your copy of the Memorandum Opinion and Order which was furnished you on November 27, 1962 by our Washington attorneys. I have read and considered the same very carefully, and am returning it herewith. When you have the opportunity, I will be glad to talk with you further with the view of being of such assistance as possible.

I am sending a copy of this memorandum to Mr. E. W. Craig for his information.

Yours very truly,


William F. Barry
Vice President and
General Counsel

Enclosure

JOHN JAY HOOKER, JR.
HENRY W. HOOKER
WILLIAM R. WILLIS, JR.
ALFRED H. KNIGHT, III

LAW OFFICES
HOOKER, HOOKER & WILLIS
214 UNION STREET
NASHVILLE 3, TENNESSEE

December 8, 1962

Mr. Jack DeWitt
WSM, Radio
301 Seventh Avenue, North
Nashville, Tennessee

Dear Jack:

I have read with interest the recent memorandum opinion filed by the Commission in the clear channel matter. As you know, you sent me "Public Notice B" of the September 14, 1961, decision. If it is easily available, I would like to see the actual decision itself.

Warmest regards,

John Jay Hooker, Jr.

JJHjr:p

FEDERAL COMMUNICATIONS COMMISSION

Washington 25, D. C.
Report No. 3902

10095
PUBLIC NOTICE - B
September 14, 1961

BROADCAST ACTION

FCC CONCLUDES CLEAR CHANNEL PROCEEDING;
OPENS 13 CHANNELS TO SECONDARY STATIONS;
RESERVES JUDGMENT ON HIGHER POWER

The Commission concluded the long-standing proceeding on allocation of AM clear channels by opening 13 of them (hitherto used exclusively by one station at night) to shared operation by additional unlimited time stations on the basis of one new station on each of the 13 channels. It reserved for future consideration possible changes with respect to the other 12 clear channels, and left for further study the question of higher power for clear channel stations.

This action looks toward provision of nighttime primary AM service to designated, needful areas now lacking it.

As indicated in its preliminary announcement of June 13, the Commission will permit the assignment of one unlimited time Class II (secondary) station on each of 13 Class I-A (clear) channels, under controlled conditions, as follows:

<u>Channel</u>	<u>Existing Class I-A Station</u>		<u>Permissible Location of new Class II Station</u>
670 kc	WMAQ	Chicago	Idaho
720 kc	WGN	Chicago	Nevada or Idaho
750 kc	WSB	Atlanta	Anchorage, Alaska <u>1/</u>
760 kc	WJR	Detroit	San Diego, Calif. <u>1/</u>
780 kc	WBBM	Chicago	Nevada
880 kc	WCBS	New York	North Dakota, South Dakota or Nebraska
890 kc	WLS	Chicago	Utah
1020 kc	KDKA	Pittsburgh	New Mexico
1030 kc <u>2/</u>	WBZ	Boston	Wyoming
1100 kc	KYW	Cleveland	Colorado
1120 kc	KMOX	St. Louis	California or Oregon
1180 kc	WHAM	Rochester	Montana
1210 kc	WCAU	Philadelphia	Kansas, Nebraska or Oklahoma

1/ To accommodate stations required to shift from their present frequencies under the United States-Mexican Broadcasting Agreement.

2/ Reclassified as a Class I-A clear channel.

This arrangement will not jeopardize the primary objective of clear channel operation, namely, to bring nighttime service from distant stations to less densely populated parts of the country which are beyond the range of other stations. Clear channel long-range service is possible only at night when long-range skywave transmission is effective.

The Class I-A (dominant) stations which operate alone at night on the 13 clear channels now being opened will continue to use 50 kw power but each will share its channel with one Class II unlimited time station located in the designated area. These additional assignments will augment service to needful areas, or, in two cases, will provide facilities for stations required to change frequency in conformity with the U. S. - Mexican Agreement.

The designated states have been selected with a view to making the most fair, equitable and efficient use of the frequency, taking into account limitations imposed by the need to protect existing co-channel and adjacent channel stations, the areas in greatest need of nighttime primary service, and the avoidance of undue mutual interference among the new stations themselves.

In the case of the 11 new assignments in a specified state or states, the new stations will operate with directional antenna using at least 10 kw nighttime power. At least 25% of the area or 25% of the population to be served must not receive nighttime primary service from any other station.

The rule amendments opening the way to the submission of applications will go into effect on October 30, 1961.

The new rules provide safeguards against undue mutual interferences or prohibited overlap between the new unlimited time Class II stations and applications for facilities on adjacent frequencies (i. e., those 10, 20 or 30 kc removed). The 30 adjacent frequencies so concerned include 14 I-B channels, 4 regional channels, 10 foreign clear channels and 2 local channels.

Operations on the remaining 12 Class I-A clear channels is not affected. They are:

<u>Channel</u>	<u>Existing Class I-A Station</u>	
640 kc	KFI	Los Angeles
650 kc	WSM	Nashville
660 kc <u>3/</u>	WNBC	New York
700 kc	WLW	Cincinnati
770 kc <u>4/</u>	WABC	New York
820 kc	WBAB/ WFAA	Fort Worth/Dallas
830 kc	WCCO	Minneapolis
840 kc	WHAS	Louisville
870 kc	WWL	New Orleans
1040 kc	WHO	Des Moines
1160 kc	KSL	Salt Lake City
1200 kc	WOAI	San Antonio

Holding these 12 clear channels in status quo for consideration of future changes on them makes it necessary to place certain restrictions on frequencies adjacent to them for three years (until September 1, 1964), or until earlier action is taken. Processing of applications for new stations on the adjacent frequencies concerned will be deferred, and adjacent channel applications for power increases and change from daytime to unlimited time operation will be reviewed for possible effect on future use of the 12 clear channels.

These restrictions, in general, apply to 23 frequencies which are adjacent to the 12 channels -- 10 Class I-B, 5 Class III and 8 foreign clear channels.

Until further Commission action new daytime stations will not be assigned to Class I-A clear channels, and pending applications therefor will be returned.

3/ KFAR operates on this channel unlimited time at Fairbanks, Alaska.

4/ Available also for use by an additional Class I station (Albuquerque, N. Mex.).

The Report and Order also adopts, for use in connection with the 25 Class I-A clear channels, new skywave curves in place of those presently used, Figure 1 of Section 3.190 of the Rules. The new curves, contained in new Figure 1a of 3.190, are the same as the skywave curves contained in the North American Regional Broadcasting Agreement (NARBA). The Report and Order also makes applicable to these channels the angle of departure curves contained in Figure 6a of that section, now applicable to frequencies other than clear channels, in place of present Figure 6.

The Commission is making no determination at this time on whether the public interest would be served by permitting higher power to extend the nighttime range of Class I-A clear channel stations, or whether duplication of stations should also be permitted on the 12 clear channels now held in status quo. Study of these questions will continue.

"Upon careful consideration of the question," says the Commission, "we conclude that there is insufficient basis before us for a finding that the public interest would be served by authorizing higher power, but that at the same time the question warrants further consideration in the light of such improvements and changes in service as may result from the action we now take to authorize additional unlimited time stations on 13 of the Class I-A clear channels."

It adds:

"We thus leave open and unprejudiced the question of whether, and if so how, the public interest would be served by changing the rules, affecting the use of the 12 Class I-A channels now left in status quo. At such time as further developments, including progress under the changes we now adopt, provide needed additional light on the question we will give further consideration to how best to utilize the 12 clear channels not now disturbed."

This action concludes the clear channel proceeding in Docket 6741, which has been in process since 1945.

It was taken by Chairman Minow and Commissioners Hyde, Bartley, Lee, Craven, Ford and Cross on September 13; Commissioner Lee dissented in a statement, and Commissioner Cross concurred in part and dissented in part in a statement.

(Text to be printed by GPO in weekly pamphlet.)

CROSLY BROADCASTING CORPORATION
CROSLY SQUARE
CINCINNATI

JAMES D. SHOUSE
CHAIRMAN OF THE BOARD

November 28, 1962

Mr. Ward L. Quail
Executive Vice President
and General Manager
WGN, INC.
2501 Bradley Place
Chicago 18, Illinois

Dear Ward:

I have your note of November 27, and as I think it was quite apparent I never for one instant questioned the sincerity with which you and Jack DeWitt stated the position which you took. Some of our people I think perhaps felt that I had been unduly persuaded, but I felt that having supported the clear channel group for a long time, that whatever chance there was for high power did not rest at that time solely in the hands of our own selfish situation, and that WLW would be better off not to find itself opposed by a great many responsible broadcasters.

I am, of course, terribly disappointed. We are reviewing our situation and I am inclined to think that probably we will proceed to make an experimental application.

I deeply appreciate your letter, Ward, and assure you and Jack DeWitt that the facts being as they were, I would have made the same determination that I did.

As always my very best regards.

Sincerely

Photocopy also sent to Ed Craig



from JACK DEWITT

Mr Louis Buch

Do you
think you could indicate
to Mr Kenneth Roberts that
we hope he might ask
for the chairmanship of the
out committee on Communications
and Power?

J.D.D.

December 11, 1962

Congressman Kenneth A. Roberts
House Office Building
Washington, D. C.

Dear Kenneth:

I haven't heard from you in sometime, so I thought I would drop you a line concerning whether or not you wish to follow through on our invitation to speak on Sunday evenings along the lines we discussed.

We were surprised, and disappointed, with the recent rulings by the FCC on the matters pertaining to Clear Channels, naturally. But, we feel that there are still many avenues of discussion open on this subject.

And, speaking of communications matters; all of us here hope sincerely that you will seriously consider the Chairmanship of the Sub-committee on Communications and Power. We feel that even though you have contributed greatly as Chairman of Health and Safety, you could certainly bring a great deal of wisdom into an area of national resources important both in a financial and cultural sense to the nation.

Are you going home for Christmas? You know the welcome mat and the punch bowl are always out for you here.

Let me hear from you when you have an opportunity.

Sincerest best wishes,

Louie Buck
Local Sales Manager

LB:djj

cc - Mr. De Witt

December 3, 1962

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

Re: Makeup of New 1963-64 Congressional
Commerce Committees.

Dear Mr. Craig:

A. House of Representatives.

1. The House Interstate and Foreign Commerce Committee as it was made up in the 87th Congress now has three vacancies:

- (1) Cong. Peter Mack (D. Ill.) - defeated 11/6/62
- (2) Cong. Morgan Moulder (D. Mo.) - retired 11/6/62
- (3) Cong. Peter Dominick (R. Colo.) elected to Senate

The new 1963-64 full House Commerce Committee will be named as usual by the House Committee on Committees in cooperation with the House Majority Leadership next January. It is expected that the Committee makeup will be largely the same as the old Committee. There is no way of predicting accurately who will be named to replace the three retiring members listed above.

2. Sub-Committees of the House Interstate and Foreign Commerce Committee:

The Committee will probably continue to have five sub-committees, the one of particular interest to CCBS, of course, being the Sub-committee on Communications and Power. The members of the Sub-committee as you know during the 87th Congress were:

December 3, 1962

Morgan Moulder (D-Mo.)
Walter Rogers (D-Texas)
John E. Moss (D-Calif.)
Dan Rostenkowski (D-Ill.)
Horace Kornegay (D-N.C.)
J. Arthur Younger (R-Calif.)
Abner Sibal (R-Conn.)
Vernon W. Thomson (R-Wisc.)

The question arises, who will be Chairman of the 1963-64 Sub-committee on Communications and Power? This question, including the makeup of the Sub-committee itself, will be decided by Oren Harris, Chairman of the full Committee. As a matter of practice, however, the ranking members of the full Committee in terms of Committee seniority are permitted to indicate to Mr. Harris their choice of Sub-committee chairmanship. The order of Democratic seniority on the full Committee (1963-64) will probably be as follows:

- (1) Oren Harris (D-Ark.) Chairman, full Committee.
- (2) John Bell Williams (D-Miss.) Chairman, Sub-committee, Transportation and Aeronautics - 87th Congress.
- (3) Kenneth Roberts (D-Ala.) Chairman, Sub-committee on Health and Safety - 87th Congress.
- (4) Harley Stagers (D-W.Va.) 2nd majority member of Sub-committee on Transportation and Aeronautics - 87th Congress.
- (5) Walter Rogers (D-Texas) 2nd majority member of Sub-committee on Communications and Power - 87th Congress.
- (6) Samuel Fridel (D-Md.).

In short, it now appears that since Congressman Williams will probably desire to retain his present Sub-committee chairmanship, the new chairman of the Sub-committee on Communications and Power will be Congressmen Roberts, Stagers or Rogers. Roberts, of course, will have first choice and there is considerable indication he would like to switch his Sub-committee chairmanship from Health and Safety to Communications and Power. We have no way of knowing how Mr. Harris feels about this. If Roberts decides against this change, there is some indication that Stagers would like to retain his present spot and that Congressman Rogers will become the Chairman of the 1963-64 Sub-committee on Power and Communications.

Hence, the new Sub-committee Chairman will probably be Roberts or Rogers, although Stagers could possibly assume the post.

December 3, 1962

B. Senate.

All Senators on the Senate Commerce Committee of the 87th Congress will continue in the Senate for the 1963-64 session except Senator John Marshall Butler (R-Md.) who did not run for re-election. Mr. Butler however was not on the Communications Subcommittee. It is also too early to tell in view of the gains made in the Senate by the Democrats in November whether Mr. Butler will be replaced on the Committee by a Democrat or a Republican.

Sincerely,

Roy Battles

RB/bh
cc: Mr. DeWitt

Office of
Edwin W. Craig

in the state

Maryland

1911



from JACK DeWITT

Mr. E. W. Craig -

A very bad piece of news.

Our friends thought this would not happen.

This is the man who is Sen. Magnuson's pet
and is the one who stirred up the regionals
against us.

JHD

UPR110

BROADCAST NOW...

-0-

(SUB F-C-C)

(WASHINGTON)---PRESIDENT KENNEDY TODAY PICKED KENNETH A. COX, CHIEF OF THE BROADCAST BUREAU OF THE FEDERAL COMMUNICATIONS COMMISSION, TO SUCCEED T. A.M. CRAVEN AS A MEMBER OF THE FCC.

THE WHITE HOUSE ANNOUNCED CRAVEN'S PLANS TO RETIRE ALONG WITH THE PRESIDENT'S INTENTION TO NAME COX TO REPLACE HIM. COX WILL BE NOMINATED TO SERVE THE BALANCE OF CRAVEN'S UNEXPIRED TERM ENDING JUNE 30, 1963.

THE PRESIDENT ANNOUNCED "WITH REGRET" THE RETIREMENT OF COMMISSIONER CRAVEN, TO BE EFFECTIVE JAN. 31, WHEN HE WILL HAVE REACHED AGE 70, OR AT SUCH LATER DATE AS HIS SUCCESSOR SHALL HAVE QUALIFIED.

CRAVEN RETIRES AFTER MORE THAN 36 YEARS OF GOVERNMENT SERVICE. KENNEDY, IN A LETTER, PRAISED HIS LONG DEVOTION TO DUTY.

HE ALSO NOTED WITH PLEASURE THAT CRAVEN HAS AGREED TO CONTINUE TO SERVE THE COMMISSION AS ONE OF ITS REPRESENTATIVES AT AN INTERNATIONAL RADIO CONFERENCE ON SPACE COMMUNICATIONS IN GENEVA NEXT OCTOBER.

"AS YOU KNOW, ALL OF US IN THIS ADMINISTRATION PLACE THE HIGHEST PRIORITY ON THE PROGRAM, ALREADY WELL ADVANCED, TO BRING INTO BEING AT THE EARLIEST PRACTICABLE DATE AN OPERATIONAL GLOBAL SATELLITE COMMUNICATION SYSTEM," KENNEDY TOLD CRAVEN.

"IN THIS YOU HAVE ALREADY PLAYED A MOST IMPORTANT ROLE AND IT IS, THEREFORE, GRATIFYING TO KNOW THAT WE WILL CONTINUE TO HAVE THE BENEFIT OF YOUR YEARS OF EXPERIENCE AND WISE COUNSEL IN THIS HIGHLY COMPLEX FIELD."

COX LIVES IN NEARBY BETHESDA, MARYLAND WITH HIS WIFE AND THREE SONS. HE WAS BORN AT TOPEKA, KANSAS ON DECEMBER 7, 1916.

HE HOLDS DEGREES FROM THE UNIVERSITY OF WASHINGTON AND THE UNIVERSITY OF MICHIGAN. HE TAUGHT AT THE UNIVERSITY OF MICHIGAN LAW SCHOOL FROM 1946 TO 1948 AND SERVED AS A PART-TIME LECTURER AT THE UNIVERSITY OF WASHINGTON LAW SCHOOL IN 1954 AND 1960.

FROM 1948 TO 1961 HE PRACTICED LAW IN SEATTLE. HE IS A DEMOCRAT.

HIS NEW POST PAYS A SALARY OF \$20,000.

RR455P 12/10CST



Clear Channel Broadcasting Service

Shoreham Building
Washington 5, D. C.

December 12, 1962

Roy Battles
Director

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

Dear Jack:

The man at VOA that is in charge of domestic transmitters for the organization is Mr. Edward **B**urgeni, Chief, Domestic Transmitter Division, Broadcast Service, United States Information Agency, Voice of America, Washington 25, D. C.

His telephone number is WOrth 2-3503. Mr. Vurgeni is familiar with the BRECOM operation, is a clear channel enthusiast, and is solely responsible for the domestic transmitters operated by the Voice.

I thought you might like to have this name and address for your files.

Best wishes.

Sincerely yours,


Roy Battles

RB/bh
cc: Mr. Eagan



L. D. GIBSON
304 11TH STREET, N. W.
NORTON, VIRGINIA

11/16/62
12-16-62

Radio Station WS.M.
Nashville, Tenn.

Gentlemen:

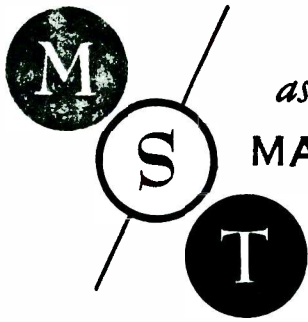
Some time ago, I wrote Federal Communication Commission concerning the increasing of your power to 750,000 watts, and sent you a copy for which I received an acknowledgment.

Later on I received some information from F.C.C. which I interpreted to mean that the application was held up, pending a ruling of the Post that no station would be higher than 50,000 watts power.

If it is your decision to appeal this ruling, I would be glad to write them when you feel the time is ripe for such action. kindly advise if or whenever you should desire this letter.

With best wishes for your continued success.

Sincerely
L. D. Gibson



association of
MAXIMUM SERVICE TELECASTERS / INC.

Mr. Laugh

November 26, 1962

1735 DeSales St., N.W.
Washington 6, D. C.
District 7-5412

Lester W. Lindow, *Executive Director*

TO: MST Membership

FROM: Lester W. Lindow
Executive Director

SUBJECT: Rules Adopted by the FCC for All-Channel
Receivers

Last week the Federal Communications Commission adopted rules for all-channel receivers. The new rules are the same as those which the Commission proposed last September. The new rules require that any receivers manufactured after April 30, 1964, be an all-channel receiver. In adopting the technical standards designed to assure that receivers have adequate capability of receiving all 82 channels the Commission stressed that the standards now being adopted are minimum standards, and that these standards will be reviewed to determine whether later circumstances require any changes. You will recall that MST's Comments and Reply Comments supported the rules which the Commission engineers proposed and which were adopted.

The Commission's decision leaves open two matters which MST opposed. One is an exception from the all-channel requirement for receivers to be used in schools, hospitals, hotels, etc., when the signal is supplied to the receiver through a central antenna and distribution system. The other is a proposal to continue the present 1,000 microvolt per meter radiation limit rather than to decrease this limit to 500 microvolts. The higher limitation creates the possibility of individual receivers causing interference to other receivers. The Commission announced that it intends to dispose of these questions in future orders.

Kindest personal regards.

Cordially,

Lester W. Lindow
Executive Director

November 23, 1962

Mr. James H. Quello
WJR
Detroit, Michigan

Dear Jim:

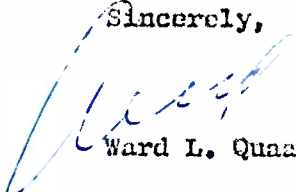
Thank you for your courtesy in sending me a copy of your letter of November 20 as addressed to Roy Battles and including therewith a photostat of the letter of November 14 as addressed to Mr. Stauffer by Howard Wolfe.

I agree with you, Jim, we have a real "fight" on our hands and the most effective thing for Roy and each of us to do now is to get the facts across to as many members of the House and Senate as possible, urging them to decide this matter on its merits rather than on political expediency based upon "contacts".

One thing gives us comfort, Jim - our case is a sound one. It will stand up under any analysis. The same cannot be said for the opposition.

Warmest wishes.

Sincerely,


Ward L. Quaal

WLQ/ck

cc: John H. DeWitt, Jr. -
Roy Battles
R. Russell Eagan, Esq.
Charlie Gates
Dan Calibraro

Handwritten note:
Action
7/2/62

Copy: Mr. Ward Quaid

From: J. R. Quello

November 20, 1962

Mr. Roy Battles
Clear Channel Broadcasting Service
Shoreham Building
Washington 5, D.C.

Dear Roy:

Enclosed is a letter that Oscar Stouffer was good enough to send on to North Kramer. The letter provides us all with an insight as to the scope of the opposition to higher power being generated nationally.

I believe I mentioned to you that Howard Volf is a station manager for a station that is financed and one-third owned by Alvin Bentley, former Congressman and unsuccessful candidate for Congressman-at-Large at the last election, so we can expect politically sophisticated opposition from this group and from other Michigan broadcasters.

We certainly have our work cut out for us, and we must sell our representatives and senators on the importance of judging the Clear Channel matter on merit, rather than political expediency. After the first of the year, I plan to write to the entire Michigan delegation and to several other people that may be of help and briefly outline the case for higher power. I plan to follow through the letters in each case with personal calls. I think it would be well if you would accompany me on many of these calls.

We can discuss this further when you are in Detroit.

Cordially,

JHQ/dp

enclosure

WKNX-TV-Ⓢ

WKNX-RADIO

LAKE HURON BROADCASTING CORPORATION
221 SOUTH WASHINGTON AVENUE SAGINAW, MICHIGAN

TELEPHONE PLEASANT 3-4471

November 14, 1962

Mr. Oscar S. Slaughter, President
Station WJAB
Toledo, Kansas

Dear Mr. Slaughter:

As you know, as a result of House Resolution 714, the FCC is now permitted to consider the authorization of superpower for clear channel stations. Applications for power of 750 kw have already been filed.

After securing preliminary information and recommendations from our respective Washington attorneys and consulting engineers, a group of Michigan broadcasters, representing the majority of the state's regionals, met Thursday (November 1) to consider the effect of superpower upon us and what position we should take regarding it. We concluded superpower would be materially injurious to our interests and concluded:

1. That we would oppose superpower as individuals and as a group.
2. That we would seek to enlist similar opposition in the remaining 49 states.

As a leading regional broadcaster in your state, we suggest that you consider the formation of a state group of your own to examine superpower and determine what action you should take. Naturally, we hope that your conclusions will parallel ours.

I know that you have read much of the trade paper commentary on this subject, but it might be well to summarize the arguments, pro and con, about superpower as follows:

Those who seek superpower contend:

1. That increased power will furnish one or more reliable nighttime services to approximately 25 million Americans who do not now enjoy such service.
2. That superpower will furnish simple, convenient blanket coverage for Defense Department communications in the event of a national emergency.
3. Superpower will be useful for Latin American propagandist purposes and will deny the use of these facilities by elements possibly unfriendly to the United States.
4. Superpower will not harm non-clear stations economically because:
 - (a) Non-clear stations in other than major markets get their principal advertising support from local sources, and,

- (b) Non-clear stations located in the same market as superpower clears will fall heir to local business forfeited by the clears as a result of higher rates (reflecting greater coverage).
5. Superpower won't injure audiences in secondary markets because of local loyalties and local program interests. It is further contended that superpower won't injure audience of non-clears in markets originating superpower because of the increased obligation of superpower stations to program regionally.

Those who oppose superpower maintain:

1. Many non-clears (particularly regionals) don't depend principally on local revenues. To the contrary, a significant percentage, if not the majority, of regionals depend upon national spot as their principal revenue source.
2. Superpower will seriously reduce the volume of national spot to non-clears in all markets because -
 - (a) The total audience to superpower will increase day and night; advertisers buy circulation.
 - (b) The total audience to non-clears will shrink.
 - (c) Advertising agencies for national spot advertisers (as distinct from the national spot advertisers themselves) will prefer to buy a few superpowers rather than many regionals--they are easier to service; it is easier for the agency to make a profit.
3. The loss of important national spot revenue by regionals will reduce their ability to program strongly at the local level, notably in local news coverage. The resulting downward spiral will only further depress local interest in local broadcast service--no news or rip-and-rod news and records, only programming will increase at the local level as local revenues shrink.
4. Favorable consideration of superpower by the FCC at this time would be inconsistent with the FCC AM freeze, imposed allegedly because of the poor economic health of AM radio, brought about by over-population.
5. No reasons of any kind have been presented by anyone for full time superpower. Increased and damaging competition to local daytime radio service by superpowered clears far outweighs any small benefits contributed in covering so-called white areas at night.

6. It seems to me that one of the most objectionable features of the super-powered proposal is that the concentration of power in the radio industry is vested in a small number of licensees. This small segment of the industry could very easily become the monopolistic hard core of the entire American radio industry, dwarfing the efforts, interests, and service of the rest of the industry.

We intend to contact Michigan Congressmen and Senators and present them with our side of the superpower argument. When comments will be accepted by the FCC we intend to make appropriate filings as individuals and as a state group.* We hope that you will conclude it is to your self-interest to do the same.

At a later date, if developments dictate, the establishment of some kind of national group to represent our common interests may be necessary. However, this letter is not a preliminary to a pitch for such an organization. It is merely a report of what we are doing in Michigan and a recommendation that you consider similar action in your state if you have not already taken it.

This letter has gone to basically the regional operators in your state. Because of the large number of broadcasters affected, it would be helpful if those receiving this letter fanned out its contents and purpose to those broadcasters who stand to suffer from clear channel superpower. This, of course, means every broadcaster who is not a clear channel operator in your state.

Cordially yours,

Howard H. Wolfe
Station Manager

HHW:njw

*Ken Cox, speaking at our state association meeting in September on the subject of superpower, castigated us for our not voicing the case for the non-clears sooner. The gist of his remarks was: "Where were you when we needed your help to resist the aggressions of the clear channel people."

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. M'CABE

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

November 27, 1962

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

Mr. John H. DeWitt, Jr.
President
WSM, Inc.
301 Seventh Avenue North
Nashville 3, Tennessee

Dear Jack:

Enclosed is a copy of the Memorandum Opinion and Order denying the requests of WSM, WJR, WLW and WGN to waive the 50 kw ceiling and other rules and to accept for filing the applications for 750 kw.

The only basis given seems to be the "orderly procedure" argument, namely that a rule making proceeding should be held on the question of higher power. To me, the Commission's rationale is preposterous in view of the fact that Docket 6741 included a specific issue relating to the question of higher power.

As soon as the text of the Memorandum Opinion and Order is released with respect to Docket 6741, we will send it and the enclosed Opinion to all members.

As I said over the telephone, Reed and I feel a meeting should be called as soon as possible to discuss the steps to be taken in the future. I think it should be a meeting of the Executive Committee with an invitation to each member to also send a representative. We shall await word from you following your expected discussion with

Mr. Craig.

Cordially,

A handwritten signature in cursive script, appearing to read "Russ".

R. Russell Eagan

RRE:bw
Encl.

cc: Mr. Roy Battles

P. S. One thing that especially concerns me is that the enclosed Opinion indicates that higher power is foreclosed with respect to the duplicated Clear Channels. As you know, this includes CCBS members WGN, WSB, WJR and WHAM.

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

B

FCC 62-1209
27631

In re Applications of

WSM, INCORPORATED (WSM)
Nashville, Tennessee

Has: 650kc, 50kw, U, Class I-A
Requests: 650kc, 750kw, U, Class I-A

THE GOODWILL STATIONS, INC. (WJR)
Detroit, Michigan

Has: 760kc, 50kw, U, Class I-A
Requests: 760kc, 750kw, U, DA-I, Class I-A

CROSLY BROADCASTING CORPORATION (WLW)
Cincinnati, Ohio

Has: 700kc, 50kw, U, Class I-A
Requests: 700kc, 750kw, U, Class I-A

WGN, INC. (WGN)
Chicago, Illinois

Has: 720kc, 50kw, U, Class I-A
Requests: 720kc, 750kw, U, Class I-A

For Construction Permits

WTR	1	FMR	
DCB	3	ABM	5
PHR	2	J DuC	8
KEG	6	AGL	
PSP		TM	9
PRE	4	RJW	
ORC	7	W.C. 10	

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 50kw 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

1/ 31 F.C.C. 565, 21 R.R. 1801

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 50kw 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 50kw 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 50kw. 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 50kw 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 50kw 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 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 750kw 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 50kw 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
O
P
Y

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 nighttime 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 be directionalized 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 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 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.

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

January 4, 1963

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

Dear Mr. Craig:

NAB will hold its 1963 annual meeting at the Conrad Hilton Hotel in Chicago starting on Sunday, March 31, 1963, and ending on Wednesday, April 3, 1963.

For the time being, this raises two questions. First, when do you want to schedule the annual meeting of the Clear Channel Broadcasting Service? Do you want to again schedule it from 4 to 6 p.m. on Sunday of the NAB meeting? This would be Sunday, March 31. We would of course want to check with NAB itself to make sure that we were not conflicting with some other important meeting that our people would want to attend. Usually, however, they hold this period for meetings such as the annual CCBS meeting.

Second, do you feel that we should again invite management representatives of the three clear channel stations who are not members of CCBS but who are eligible for membership, namely, WCCO, WWL and Westinghouse?

Best wishes.

Sincerely yours,

Roy Battles

RB/bh

cc: Mr. DeWitt
Mr. Rollo
Mr. Eagan

January 16, 1963

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

Dear Roy:

As you have learned from Mr. Craig's letter of January 10 he will be unable to attend the clear channel meeting at the NAB Convention. I think in view of this, it would be well for you to canvas the Executive Committee to find out what the concensus might be. I would rather not be put in the position of running this meeting for I think it would be much better for someone like Ward Quaal to do so.

On your last question, I believe we have given Westinghouse, WWL and WCCO every possible opportunity to come into our group with zero results and I really see no reason to invite them to the forthcoming meeting. The Executive Committee may differ on this subject and of course I will be guided by their decision.

Best regards.

Sincerely yours,

John H. DeWitt, Jr.

JHD:am

January 16, 1963

Mr. Dan Calibraro
WGN, Incorporated
2501 West Bradley Place
Chicago, Illinois

Dear Dan:

As you can see from the enclosed copy of a letter from Mr. Craig to Roy Battles our CCBS Chairman will be far from Chicago at the time of the NAB meeting. I know that he will be greatly distressed to learn that he will not be able to be present at the time that he will be made a member of the Radio Pioneers organization. Ward mentioned this to me some time ago and since it was to be a surprise I have not mentioned it to Mr. Craig. Would it be possible to go ahead with the award and have it sent to him here in Nashville or could it be given to him at some other point in the country at a later date.

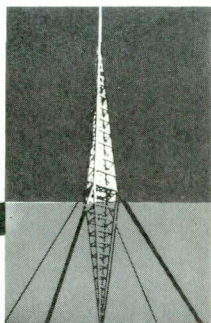
I feel sure that he will be deeply appreciative of Ward's interest in this matter. You can see that he is still quite active in our parent company and I know that his presence at these insurance meetings means much to him and to the Company itself.

Sincerely yours,

John H. DeWitt, Jr.

JHD:am

bcc: Mr. E. W. Craig

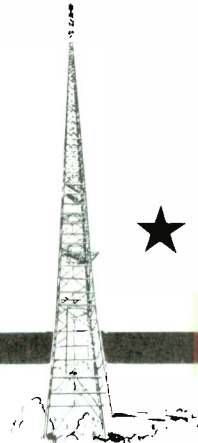


CLEAR CHANNEL

WSM ★ WSM-TV ★

650 KILOCYCLES 50,000 WATTS ★★ ★ NASHVILLE 3, TENNESSEE

January 18, 1963



Messrs. Hooker & Hooker
Attorneys at Law
214 Union Street
Nashville 3, Tennessee

Gentlemen:

In accordance with our conversation on yesterday, I am enclosing herewith two copies of an Employment Agreement which I have purposely left in exactly the language that has been presented to you, including the last paragraph which was dictated by you gentlemen on yesterday. I have approved the Agreement on behalf of WSM, Incorporated, and if you gentlemen will approve and return one copy to me, I will request WSM to immediately send you a check for \$3,000, as provided in the Agreement, and, in this manner, your employment will become effective before you leave for Washington next week to confer with our Washington attorneys.

Mr. DeWitt advises me that he will leave for Washington on January 24, and will be there to join in the conferences with our Washington attorneys.

I look forward to being associated with you gentlemen in this proceeding.

Sincerely,

William F. Barry
Vice President and
General Counsel

Enclosure
BY MESSENGER

M

WSM RADIO

THIS IS CCBS WASH DC
MESSAGE FOR MR DEWITT
FROM BERNICE HASE
FOR YOUR INFO JIM SHERIDAN WAS MADE CHIEF BROADCAST BUREAU THIS AM.
HE WAS TOP MAN TO MINOW.

REGARDS

BERNICE

END

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. M'CABE

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

LAW OFFICES OF
KIRKLAND, ELLIS, HODSON, CHAFFETZ & MASTERS
WORLD CENTER BUILDING - 1625 AND K STREETS, N. W.
WASHINGTON 6, D. C.

TELEPHONE STERLING 3-3200

CHICAGO OFFICE
PRUDENTIAL PLAZA
CHICAGO 1, ILLINOIS

January 21, 1963

Mr. John H. DeWitt, Jr.
President
WSM, Inc.
301 Seventh Avenue North
Nashville 3, Tennessee

Dear Jack:

Pursuant to the request set forth in your letter to me dated January 16, I am enclosing herewith two copies of the Commission's Memorandum Opinion and Order released November 28, 1962 in Docket 6741.

I, too, was shocked at David Steel's "recommendations" with respect to Clear Channels and higher power. In the first place, I do not feel that the Clear Channel issue was encompassed within the questions posed by the "overpopulation" conference. In the second place, I don't see how any competent engineer can deny the fact that skywave service needs to be improved and that the only feasible way of accomplishing this is through means of higher power.

On the other hand, there may be some merit in the suggestion that engineers submitting certain types of engineering studies to the Commission should possess minimum qualifications. The problem is the creation of a meaningful list of "qualifications".

I mentioned in my report on the "overpopulation" conference that Jules Cohen and George Davis told me over the telephone of their

disagreement with Steel's recommendations concerning Clear Channels.
Since then, I received a call to the same effect from Bill Beecher.

Cordially,

A handwritten signature in cursive script, appearing to read "R. Russell Eagan".

R. Russell Eagan

RRE:bw
Encls.

JOHN JAY HOOKER, JR.
HENRY W. HOOKER
WILLIAM S. WILLIS, JR.
ALFRED H. KNIGHT, III

LAW OFFICES
HOOKE, HOOKER & WILLIS
814 UNION STREET
NASHVILLE 3, TENNESSEE

January 18, 1963

General William F. Barry
Vice President and General Counsel
WSM, Incorporated
301 Seventh Avenue, North
Nashville, Tennessee

Dear General:

I received your covering letter and the agreement which I have signed for the firm and am enclosing. The agreement represents accurately and fairly our understanding.

I am looking forward to working for you in this matter and of course, hope that we will be successful.

Warmest personal regards,



John Jay Hooker, Jr.

JJHjr:p

Enclosure

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

January 18, 1963

C
O
P
Y
Mr. John Patt
Chairman of the Board
The Goodwill Stations, Inc.
Room 1243
Statler Hotel
Cleveland, Ohio

Dear John:

As you know, the Association of Federal Communications Consulting Engineers (AFCCE) is agitating for a "closed shop" operation -- a move which the NAB organization and others has successfully opposed to date.

If AFCCE is successful in this effort, many problems would arise including the fact that individual stations would be forced to use members of this group to bring engineering data, etc., before the FCC.

Jack DeWitt has suggested that all of us keep watch of this threat and do everything we can to oppose it. Is there any danger that the NAB Board will weaken in its determination on the matter? Do you have any suggestions as to what CCBS should do?

Commenting on the recommendations made by David L. Steele, President of AFCCE at the time of the FCC/NAB "overpopulation" hearing, Jack said this: "I am shocked at the long list of recommendations made by David L. Steel who purportedly represents the Association of Consulting Engineers there in Washington. It reads like a studied attempt on the part of an unscrupulous engineer to develop as much business as possible for his colleagues and himself without any regard whatsoever as to the public service aspect of the problem or the pocketbook of the station owners or applicants. I am convinced now that the proposal of the AFCCE engineers to "unionize" their profession in Washington should be fought on the grounds that their president is not representing the public interest."

January 18, 1963

A summary of what Steel said is contained on pages 9 and 10 of the summary of the hearing sent to you by Russell Eagan on January 8, 1963. As you will note he recommends, with approval of the majority of the Executive Committee of AFCCE, that all Clear Channels be duplicated and that the 50 kw power ceiling be maintained.

Best wishes.

Sincerely yours,

Roy Battles

RB/bh

cc: Messrs. DeWitt, Quaal, Eagan

January 24, 1963

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

Dear Estes:

I am personally grateful for your attention to the Jim Barr matter and I know that your efforts will be greatly appreciated, not only by him, but by others who espoused his candidacy. I understand that the Commission has just appointed Jim Sheridan to this post, a man who has been with the Commission for a long time, as has Barr.

For your information, WSM, Incorporated plans to petition the Commission for rule making procedure in the matter of higher power and if acted upon favorably, will then resubmit our application for a license for WSM at a power of 750 KW. This is consonant with the Commission's recent decision in the matter in which they pointed out that such petition should first be entered and acted upon favorably before high power applications were submitted.

Again, many thanks.

Sincerely yours,

John H. DeWitt, Jr.

JHD:am

JAMES O. EASTLAND, MISS., CHAIRMAN

ESTES KEFAUVER, TENN.
OLIN D. JOHNSTON, S.C.
JOHN L. MC CLELLAN, ARK.
SAM J. ERVIN, JR., N.C.
JOHN A. CARROLL, COLO.
THOMAS J. DODD, CONN.
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ROMAN L. HRUSKA, NEBR.
KENNETH B. KEATING, N.Y.
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JAMES C. KIRBY, JR., CHIEF COUNSEL

United States Senate

COMMITTEE ON THE JUDICIARY
SUBCOMMITTEE ON CONSTITUTIONAL AMENDMENTS
(PURSUANT TO S. RES. 59, 87TH CONGRESS)

January 21, 1963

Mr. Jack DeWitt
WSM-TV
301 Seventh Avenue, North
Nashville, Tennessee

Dear Jack:

Fred Graham mentioned to me your interest in Mr. James E. Barr in connection with the position of Chief of the Broadcast Bureau of the FCC. Enclosed is a letter which I have written to Chairman Newton N. Minow, and I will talk to Bill Henry about Mr. Barr later in the week. If we receive any advance information about this appointment, I will let you know immediately.

Charlie Caldwell talked briefly with Don Gregory during our trip to Nashville last week, and Don told him that there had been no recent developments in your application to increase WSM's power to 750,000 watts. Please let us know if there is anything else we can do to help you out.

Very sincerely,



Estes Kefauver
United States Senator

EK:Gg
Encl.

JAMES O. EASTLAND, MISS., CHAIRMAN

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COMMITTEE ON THE JUDICIARY
SUBCOMMITTEE ON CONSTITUTIONAL AMENDMENTS
(PURSUANT TO S. RES. 99, 87TH CONGRESS)

January 21, 1963

The Honorable Newton N. Minow
Chairman
Federal Communications Commission
Washington 25, D. C.

Dear Mr. Chairman:

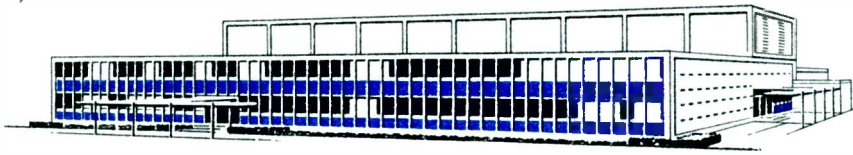
It has come to my attention that the position of Chief of the Broadcast Bureau of the Federal Communications Commission is now vacant, and that Mr. James E. Barr is under consideration to fill this important office. Mr. Barr enjoys a high reputation among persons in the communications industry in Tennessee, and he has been highly recommended to me by individuals in radio and television whose judgment I greatly respect.

I would appreciate any consideration that you might give to Mr. Barr in connection with this appointment.

Sincerely yours,

Estes Kefauver
United States Senator

✓ EK:Gg
bc-Mr. Jack DeWitt



Radio/720 Television/channel 9

wgn inc.

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

January 21, 1963

Mr De Witt

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

Thank to Jack

Dear Jack:

Thank you for your letter of January 16 regarding the CCBS meeting in Chicago on March 31 at the time of the annual NAB convention.

All of us in the clear channel group are aware of the many demands on Mr. Craig's time and fully understand why it will be impossible for him to be present at the CCBS meeting, which conflicts with the National Life Insurance conference in Colorado Springs during the week of April 1st.

Jack, I have already relayed the information to M. H. Shapiro, executive secretary of Broadcast Pioneers, that Mr. Craig began his career in broadcasting at approximately the same time that WSM went on the air back in 1924.

While I have not reviewed the procedure with Ward, I am sure that he will want to go ahead with the award to Mr. Craig, making him a member of Broadcast Pioneers, and then forwarding the certificate to Nashville if this is agreeable with you.

I do feel, however, that we should have a photograph of Ward making the presentation to Mr. Craig for dissemination to the trade press and Nashville papers because of their eminent roles in the broadcast industry as pioneers and also long-time champions of the clear channel cause.

Maybe the photograph idea is simply out of the question because of the physical demands made upon the time of Ward and Mr. Craig, Jack, but we did want you to know of our interest and assure you that we will work out the best possible arrangement.

Mr. John H. DeWitt, Jr.

-2-

January 21, 1963

kindest regards and many thanks for your guidance
and counsel.

Sincerely,



Dan Calibraro
Manager of
Public Relations

DC:ds

cc: Ward L. Quaal
M. H. Shapiro

Memorandum from

WM. S. DUTTERA

12/17/62

John H. DeWitt

Attached per our conversation.

Sill

Will attend 7th
Wash

FEDERAL COMMUNICATIONS COMMISSION



WASHINGTON 25, D. C.

29015
PUBLIC NOTICE - B
December 12, 1962

PUBLIC CONFERENCE ON AM GROWTH PROBLEMS

Any interested party who wishes to participate in the conference scheduled for January 7 and 8, 1963, on the problems presented by the Commission's policies as to the assignment of AM broadcasting stations is invited to write to the Chief, Broadcast Bureau, who will handle scheduling of oral presentations at the conference.

As stated in the Commission's Public Notice of November 20, 1962, the conference, which will be held in the Commission's meeting room, will be public.

The conference will open on January 7 with a presentation by the National Association of Broadcasters. Thereafter, on January 8, other interested parties will be given an opportunity to make oral presentations to the Commission and submit written statements and documentation to the Commission and its staff.

Participants will be free to address themselves to what they conceive to be the problems generated by the Commission's policies in this area insofar as they affect the public interest.

Although the length of oral presentation of necessity will be limited, there will be no limit on the length of written presentations. Participants should submit 15 copies of such written presentations when they appear before the Commission on January 8. Additional copies should be provided if participants desire to make their presentations immediately available to the press.

ASSOCIATION OF
FEDERAL COMMUNICATIONS CONSULTING ENGINEERS

Washington, D. C.
December 13, 1962

NOTICE

Regular Monthly Luncheon Meeting

DATE: Thursday, December 20, 1962

TIME: 12 o'clock, Noon

PLACE: Hotel Hamilton (Fairfax Room)
14th & K Streets, N. W.
Washington, D. C.

PLEASE RSVP to Mrs. Jedd at 337-5400 no later than 5 P. M.,
Tuesday, December 18, 1962


* * * * *

The principal item on the agenda will be on the problems presented by the Commission's policies as to the assignment of AM broadcasting stations. This is an opportunity for the full AFCCE membership to express their opinions and to make suggestions on what recommendations the Association should make to the Commission for the future growth and development of AM broadcasting, changes that should be made in the technical rules, application forms, new or changed engineering requirements needed for the processing of applications for new or changed facilities; and changes desirable in the engineering data filed with license applications.

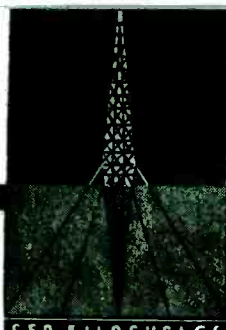
A public conference on this subject will be held on January 7 and 8, 1963, at the Commission, so it is desirable that as many of the members' comments as possible be in written form on Thursday, December 20, for Executive Committee consideration and for a more orderly discussion.

Jules Cohen and Julius Cohen, as the AFCCE representatives to the Engineering Sub-Committee of the NAB Radio Development Committee, will give a full report to the membership on their activities to date.

It is hoped that the full AFCCE membership will attend this important discussion meeting.


David L. Steel, Sr., President

Q-1436



RADIO STATION

WSM
INCORPORATED

50000
WATTS

650 KILOCYCLES NASHVILLE, TENNESSEE

CLEAR CHANNEL

ROBERT E. COOPER
GENERAL MANAGER

December 27, 1962

Mr. Roy Battles
Clear Channel Broadcasting Service
Shoreham Building
Washington 5, D. C.

Dear Roy:

We are happy to comply with your request for WSM's 1961 Nielsen coverage service.

Also enclosed is a map and a state-by-state breakdown of the 1961 orders for the Grand Ole Opry History-Picture Book, publicized only on WSM. You will note that approximately 20% of these orders came from west of the Mississippi River... approximately 33% from east of the Mississippi River but north of the Ohio River.

Additionally, I am enclosing a mail map based upon a 1962 spring promotion. In response to one announcement per night for six nights scheduled between 10:30 and 11:00 PM, we received 2,697 cards and letters from the locations indicated on the map... marked "A". The map marked "B" indicates program suggestions from listeners in a summer of 1962 two month promotion. The 3,609 letters originated in thirty-eight states, including Alaska, Washington, D. C. and Canada.

The above exhibits, as indicated, are current. I am, also, enclosing a mail map compiled some years ago by one of our Grand Ole Opry advertisers. We do not even know the legend of this map as it was compiled by the advertiser's sales department. It is based upon response to their promotion publicized only on their thirty minute Saturday night segment of our programming.

Feel free to use any of the enclosed material, as we employ it regularly in our sales and advertising.

Best regards.

Sincerely,

Robert E. Cooper

REC:dw

cc: Mr. John H. DeWitt, Jr. ✓



Clear Channel Broadcasting Service

Shoreham Building
Washington 5, D. C.

December 18, 1962

Roy Battles
Director

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

Dear Jack:

As you know, opposition to CCBS goals of providing improved radio service to white areas is showing up at the national farm meetings.

I need more information on nighttime listening in order to adequately defend the position of our member stations.

For my confidential information and with the understanding that I will share this information with no one, would you be willing to send me a copy of your 1961 Neilson coverage service for your station, provided, of course, that you subscribe to Neilson's service.

I need to get fixed in the back of my mind the present clear channel listening pattern so as to provide myself with an ample base to defend the preservation of the I-A channels and the use of adequate power thereon.

I will gladly return any of these materials if you will so specify.

Any appraisal that you might give me relative to the strong points and shortcomings of Neilson's techniques will also be appreciated.

Best wishes and thanks.

Sincerely yours,


Roy Battles

RB/bh



Sponsored by Independently Owned
Clear Channel Radio Stations

November 27, 1962

Dis. 11-26-62

Mr. James D. Shouse
Chairman of the Board
Crosley Broadcasting Corporation
Cincinnati 2, Ohio

My dear Jimmy:

The action taken by the Commission on Thanksgiving Eve is shocking to say the least, especially when one relates to the situation the steps that were taken in the respective applications that were filed by WLW, WSM, WJR and WGN.

Jimmy, in reviewing the visit which Jack DeWitt and I made to Cincinnati in September and our urging you at that time not to file for an experimental permit, I feel our position was eminently sound. I do feel impelled, however, to write at this time and to recommend respectfully that you consider an application at an early date in the future for this type of authority to transmit at 500 kw or more. In writing to you to this effect, I do so not because I feel the position taken initially was in error, but now that that has failed, temporarily at least, the other move should be made. I realize that this suggestion will require much consideration by you and "Pat" and by Rocky and Clyde, but I feel I would be remiss, indeed, if I didn't express myself in this manner, Jimmy.

Warmest personal regards.

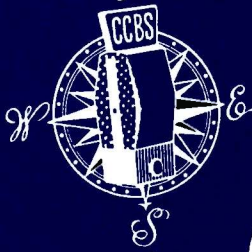
Sincerely,


Ward L. Quaak

WLQ/ck

cc: John H. DeWitt, Jr. -
Roy Battles
R. Russell Eagan, Esq.

Handwritten notes:
- to Don Craig,
- to Jack
- to [unclear]



CLEAR CHANNEL BROADCASTING SERVICE

Your Attention Please!

Bulletin #45

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

December 10, 1962

TO CCBS GENERAL MANAGERS, CHIEF ENGINEERS, FARM DIRECTORS:

Re: Opposition to CCBS Clear Channel/
Adequate Power Position.

Local, state and national farm organizational leaders are hearing more and more from the opponents to radio clear channels and the use of adequate power thereon. As you know, this is a part of a general over-all pattern taking place throughout the country. This opposition is harmfully effective. As usual it plays down or heavily discounts, and often completely overlooks the total national interest and capitalizes strongly on narrow local interests.

In Bulletin #44 dated November 30, 1962, I told you about the strong campaign of KRVN at Lexington, Nebraska (an applicant for a Class II station on 880 kc) at the National Grange convention.

KRVN's General Manager, Max Brown, was also at the annual meeting of the American Farm Bureau Federation at Atlanta, from which I have just returned. I will not know for a couple of days the final nature of the AFBF Clear Channel resolution as approved by the delegate body.

Charles Marshall, President of the Nebraska Farm Bureau (a stockholder in KRVN) was vigorously carrying the torch for AFBF support of the FCC Docket 6741 decision. There was also plenty of evidence that other delegates were under strong pressure from local and regional broadcasts.

Enclosed you will find a copy of the material that KRVN circulated at the Atlanta AFBF convention.

ROY BATTLES

Encls.

WHY THE FARM BUREAU SHOULD SUPPORT THE FEDERAL
COMMUNICATIONS COMMISSION'S ACTION ON THE CLEAR CHANNELS.

America is a nation that is rich in radio service during the daylight hours, but after sunset, vast portions of Rural America are without dependable service.

Since 1945, the Federal Communications Commission has sought a means of filling this void in nighttime radio service. Two methods were brought forth allow additional stations to operate on the Clear Channel frequencies during the nighttime hours, or allow the present 25 Clear Channel Stations to go to "super power", as high as 750,000 watts. As you know, a Clear Channel Station is one that operates with 50,000 watts, the highest power allowed under present rules, and has a radio frequency for its exclusive use from sunset to sunrise. Twenty-three of these Clear Channel Stations are located in the Eastern half of the United States.

On June 13, 1961, the FCC issued an "Order" which was a sensible first step toward improving rural radio service. This Order would permit new stations to be built in certain states in the Western part of the country, on 13 of the Clear Channels while the other 12 were reserved for further study.

An organization of Clear Channel Stations, called the Clear Channel Broadcasting Service, states that the ONLY possible solution to the problem of adequate nighttime radio signals is "Super Power". They have strived to gain support from farm organizations to back their stand. The CCBS, to the best of our knowledge, is the only group pushing for super power.

A delay was instigated by the CCBS -- on July 2, 1962, the House of Representatives passed a Resolution calling for a one year delay in permitting new stations to operate on the Clear Channels, and authorizing the FCC to grant higher power, if they feel it to be beneficial. Then, on November 23, 1962, the FCC stated they would honor the Resolution -- but will begin making grants on July 2, 1963, unless Congress passes prohibitive legislation.

By law, the FCC must license radio stations "in the public interest, convenience, and necessity". The problem is more than providing rural areas with a good radio signal. They also should have good programming -- information that would be of interest and benefit. It is quite evident the FCC felt that programming of specific interest is a prime consideration of adequate radio service. The FCC must feel strongly about their Order because we know of no organized group demanding this duplication of the Clear Channel Stations.

It certainly appears that the FCC's solution is a sound step toward providing better rural radio service. It would give much of the now-neglected rural areas, stations that could provide them with the information they need, and at the same time, reserve 12 Clear Channel Stations for further study as to whether duplication or high power would best serve the public interest. This action is the result of 17 years of study by the FCC. Responsible organizations and individuals that have the interests of America's rural population at heart should strongly support the FCC's action.

December 1, 1962

NEBRASKA RURAL RADIO ASSOCIATION
Lexington, Nebraska

WHY THE NEBRASKA RURAL RADIO ASSOCIATION IS APPLYING FOR 880 KC.

The Nebraska Rural Radio Association is a non-profit corporation that was formed to establish an agricultural radio association, organized and operated exclusively for educational purposes and for the promotion of social and economic welfare in rural areas. Members of all three of the farm organizations -- Farm Bureau, Farmers Union and Grange, were active in organizing the Association. It now operates KRVN, a daytime radio station with 25,000 watts of power, covering approximately the Western two-thirds of Nebraska.

Nearly 5,000 Nebraska ranchers and farmers formed the Nebraska Rural Radio Association to fill a need for agricultural radio service. The situation today is unchanged from 1948. It is claimed that many rural areas rely on Clear Channel Stations for their only nighttime service. However, a 1962 Nielson radio audience survey showed that only 10 homes in Nebraska listen at night to a Clear Channel Station.

In actual practice, a radio station cannot offer programming to all of rural America, except for general news releases. Farm crops and farming practices vary too much from area to area, even within the same state. How would a farmer in Indiana like to receive his farm service information from a station in Nebraska, Texas or Utah? At night a Nebraska farmer is offered the latest prices for fish in New Orleans, or market trends on cotton in Georgia. A Nebraska farmer can receive no warnings of sudden storms, but he can learn that traffic is heavy on Lakeshore Drive in Chicago, or that it's a wonderful evening in Dallas.

We are not against super power radio stations -- we just can't understand how a super powered radio station could be of real value to agriculture no matter where it was located. If such a station even attempted to serve the vast area it would reach, its primary area would lose valuable service with little gain to others. If it concentrated on local service there would be no point in having super power.

We do not deny that a super powered radio station may be of some value in the future, if its operators could discover a type of programming that could benefit the entire nation.

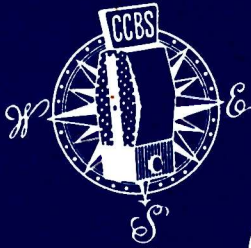
The FCC decided quite rightly that improved rural radio service was needed in Western United States and has designated 880 kc to be used in our area. KRVN has operated on a regional basis for 11 years and is owned by farmers and ranchers. It is the logical choice to receive this new station.

The principal opposition to KRVN's 880 kc application comes from WCBS in New York City, which now has exclusive nighttime use of 880 kc. Their chief objection, they claim, is that we might cause interference. THIS IS IMPOSSIBLE, both from the FCC's carefully drawn standards and our engineer's planned operation which would protect WCBS as far west as Iowa.

We ask you to support the FCC and their Order pertaining to Clear Channels. Also, we ask your support for KRVN's application for a 50,000 watt fulltime station on 880 kc.

November 7, 1962

NEBRASKA RURAL RADIO ASSOCIATION
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CLEAR CHANNEL BROADCASTING SERVICE

Your Attention Please!

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November 7, 1962

NEBRASKA RURAL RADIO ASSOCIATION
Lexington, Nebraska

Agenda for CCBS Meeting, Thursday, December 6, 1962

Washington, D. C.

1. Should an appeal be filed in Docket 6741? (Such an appeal would have to be filed on or before January 21.) *Only by duplicated station*
2. Should appeals be filed respecting the return of the 750 kw applications -- or should petitions for reconsideration be filed with the Commission? (Such appeals or petitions for reconsideration would have to be filed on or before December 27.)
3. Should requests for stays be made if the above-noted appeals are filed?
4. Should attempts be made to secure legislation from the Senate? From the House? Any legislation would have to be passed on or before July 1. (See paragraph 10 of Docket 6741 November 21, 1962 Memo Opinion and Order.)
5. Should a petition for rule making be filed with the Commission respecting the 50 kw power ceiling? (See paragraph 12 of the November 21, 1962 Docket 6741 Memo Opinion and Order.) *By CCBS*
6. Should applications for experimental 750 kw operation be filed?
7. What steps can be taken to:
 - a. Demonstrate the need for higher power with respect to BRECOM?
 - b. Prepare a composite map showing existing skywave service at 50 kw and proposed skywave service at 750 kw?
 - c. Demonstrate there will be no undue adverse economic impact if higher power is authorized? (Could this be demonstrated partially by an experimental higher power operation?)
 - d. Demonstrate that the people in the white areas do listen to nighttime skywave service?
 - e. Demonstrate the number of persons in white areas who would: (1) receive an initial nighttime primary service if the proposed Class II-A stations were granted and (2) would receive a significantly improved skywave service if higher power were granted?
 - f. Demonstrate that the Commission's Docket 6741 decision does not reserve a potential for providing for acceptable nighttime skywave services to "practically" all of the United States?
 - g. Demonstrate the invalidity of duplicating WGN, WSB, WJR and WHAM?

Ray will explore + recommend



Clear Channel Broadcasting Service

Roy Battles
Director

Shoreham Building
Washington 5, D. C.

November 26, 1962

CONFIDENTIAL

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

Dear Jack:

The attached is self-explanatory. It was placed in our hands by a CCES member who received it from a friend who is a regional broadcaster.

For self-evident reasons, the salutation has been removed.

I will compare notes with you soon about how we may attempt to counteract this problem.

Sincerely,

Roy Battles

RB/bh



Sponsored by Independently Owned
Clear Channel Radio Stations

WKNX-TV

WKNX - RADIO

Lake Huron Broadcasting Corporation
221 South Washington Avenue Saginaw, Michigan

November 14, 1962

Dear Mr. _____:

As you know, as a result of House Resolution 714, the FCC is now permitted to consider the authorization of superpower for clear channel stations. Applications for power of 750 kw have already been filed.

After securing preliminary information and recommendations from our respective Washington attorneys and consulting engineers, a group of Michigan broadcasters, representing the majority of the state's regionals, met Thursday (November 1) to consider the effect of superpower upon us and what position we should take regarding it. We concluded superpower would be materially injurious to our interests and concluded:

1. That we would oppose superpower as individuals and as a group.
2. That we would seek to enlist similar opposition in the remaining 49 states.

As a leading regional broadcaster in your state, we suggest that you consider the formation of a state group of your own to examine superpower and determine what action you should take. Naturally, we hope that your conclusions will parallel ours.

I know that you have read much of the trade paper commentary on this subject, but it might be well to summarize the arguments, pro and con, about superpower as follows:

Those who seek superpower contend:

1. That increased power will furnish one or more reliable nighttime services to approximately 25 million Americans who do not now enjoy such service.
2. That superpower will furnish simple, convenient blanket coverage for Defense Department communications in the event of a national emergency.
3. Superpower will be useful for Latin American propaganda purposes and will deny the use of these facilities by elements possibly unfriendly to the United States.
4. Superpower will not harm non-clear stations economically because:
 - (a) Non-clear stations in other than major markets get their principal advertising support from local sources, and,

- (b) Non-clear stations located in the same market as superpower clears will fall heir to local business forfeited by the clears as a result of higher rates (reflecting greater coverage).
5. Superpower won't injure audiences in secondary markets because of local loyalties and local program interests. It is further contended that superpower won't injure audience of non-clears in markets originatin superpower because of the increased obligation of superpower stations to program regionally.

Those who oppose superpower maintain:

1. Many non-clears (particularly regionals) don't depend principally on local revenues. To the contrary, a significant percentage, if not the majority, of regionals depend upon national spot as their principal revenue source.
2. Superpower will seriously reduce the volume of national spot to non-clears in all markets because -
 - (a) The total audience to superpower will increase day and night; advertisers buy circulation.
 - (b) The total audience to non-clears will shrink.
 - (c) Advertising agencies for national spot advertisers (as distinct from the national spot advertisers themselves) will prefer to buy a few superpowers rather than many regionals--they are easier to service; it is easier for the agency to make a profit.
3. The loss of important national spot revenue by regionals will reduce their ability to program strongly at the local level, notably in local news coverage. The resulting downward spiral will only further depress local interest in local broadcast service--no news or rip-and-read news and records, only programming will increase at the local level as local revenues shrink.
4. Favorable consideration of superpower by the FCC at this time would be inconsistent with the FCC AM freeze, imposed allegedly because of the poor economic health of AM radio, brought about by over-population.
5. No reasons of any kind have been presented by anyone for full-time superpower. Increased and damaging competition to local daytime radio service by superpowered clears far outweighs any small benefits contributed in covering so-called white areas at night.
6. It seems to me that one of the most objectionable features of the superpowered proposal is that the concentration of power in the radio industry is vested in a small number of licensees. This small segment of the industry could very easily become the monopolistic hard core of the entire American radio industry, dwarfing the efforts, interests, and service of the rest of the industry.

We intend to contact Michigan Congressmen and Senators and present them with our side of the superpower argument. When comments will be accepted by the FCC we intend to make appropriate filings as individuals and as a state group.* We hope that you will conclude it is to your self-interest to do the same.

At a later date, if developments dictate, the establishment of some kind of national group to represent our common interests may be necessary. However, this letter is not a preliminary to a pitch for such an organization. It is merely a report of what we are doing in Michigan and a recommendation that you consider similar action in your state if you have not already taken it.

This letter has gone to basically the regional operators in your state. Because of the large number of broadcasters affected, it would be helpful if those receiving this letter fanned out its contents and purpose to those broadcasters who stand to suffer from clear channel superpower. This, of course, means every broadcaster who is not a clear channel operator in your state.

Cordially yours,

Howard H. Wolfe
Station Manager

* Ken Cox, speaking at our state association meeting in September on the subject of superpower, castigated us for our not voicing the case for the non-clears sooner. The gist of his remarks was: "Where were you when we needed your help to resist the aggressions of the clear channel people."

From the desk of:

R. Russell Eagan

Dear Jack,

I see nothing wrong with furnishing these people with the basic facts, as suggested. Just don't urge them to speak on your behalf with any Commission.

Rue



Clear Channel Broadcasting Service

Shoreham Building
Washington 5, D. C.

November 5, 1962

Roy Battles
Director

Mr. John H. DeWitt, Jr.
President & Station Manager
WSM, Inc.
801 - 7th Avenue North
Nashville 3, Tennessee

Dear Jack:

Here are a few extra copies of CCBS Bulletin #36 showing the white area comparison for 1938 versus 1961 with the interim years of 1947 and 1957 also being shown.

Based on your own judgment of the situation, you may want to consider getting this information at the appropriate time and in the appropriate manner into the hands of some of your friends in the area of defense communications. I doubt if for many of the following people that I will list you will want to use Bulletin #36 but you may be able to pull some of the information out of it and include it in any letter or other vehicle that you might decide to use in this process.

Here are the names I thought of:

1. Colonel Adams.
2. Major General John B. Bestic.
3. Lt. Col. Gerald Brennan.
4. Lt. Commander John B. Butts.
5. Lt. Commander Gerry M. McCabe.
6. Dr. Jerome B. Wiesner.
7. Dr. Vincent McRae.
8. Dr. Irvin Stewart.

For your information I checked last week on the status of Lt. Commander McCabe and Dr. McRae. Lt. Commander McCabe is listed as Assistant to Captain Tazewell T. Shepard, Jr., Naval Aide to the President. Dr. McRae is listed as a staff member of the Office of Science and Technology, working directly under Dr. Jerome B. Wiesner who runs that office.

Best wishes.

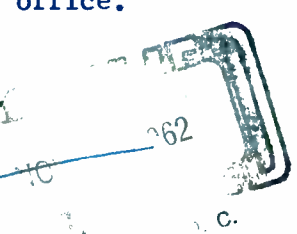
Sincerely,

Roy Battles

Sponsored by Independently Owned
Clear Channel Radio Stations

After thinking about this for 9 M not sure its a good idea. This is information they ought to have. Comfortable get it into their hands?

RB/bh
Encls.



3D BRECOM TEST

1. PURPOSE:

The purpose of this test is to operate the system with all relay stations in an unattended status.

2. DURATION:

The test will start at 1600Z, 26 Nov 62 and last until 1600Z, 10 Dec 62.

3. METHOD OF OPERATION:

a. JCA, Ft Ritchie, will transmit a test message in the normal East-to West path configuration. SAC will monitor the transmissions. KMOX, St Louis, Mo will re-transmit WHO, Des Moines, Ia., signals to WHAS, Louisville, Ky. WHAS will re-transmit to WLW, Cincinnati, Ohio. WLW will re-transmit to the JCA receiver site.

b. The circuit cited above permits JCA to compare the received copy with that which it has transmitted. SAC and JCA will forward their logs and teleprinted copy to Hq AFCS (TCRS).

c. JCA will operate a T-D into the circuit continuously, without a tape being fed into it. The T-D will transmit, under this condition, a continuing series of LTRS functions until disrupted by a test tape. The LTRS function will not print, but will allow relay station carriers to be keyed. Insertion of a test tape will immediately pre-empt the circuit causing each station to transmit what they receive. JCA will insert a DATE-TIME-GROUP prior to each message to facilitate identification. A typical message follows:

(FIGS) 26/1700 (LTRS) Z NOV (CR) (CR) (LF) (LTRS)

THE QUICK BROWN FOX JUMPED OVER THE LAZY DOGS BACK (FIGS) 1234567890

(LTRS) WAF (FIGS) 30 (LTRS) (CAR RET) (CAR RET) (LINE FEED) (LTRS).

area 1

There will be 80 character-operations per line at a 60 w-p-m speed for 10 minutes which equals 40 lines, or a total of 3200 character-operations for approximately a 10 minute period. JCA will transmit at least one such message in every 3 hour period.

d. SAC and JCA will forward logs and "hard copy" to this headquarters on Friday, 30 Nov 62 and Tuesday, 11 Dec 62. Each relay station involved will forward their logs and "hard copy" to Station WSM on the same dates.

4. RESULTS:

a. The results of this test will be analyzed as follows:

(1) Attended vs unattended operation.

(2) Error-rate.

b. Final results to be compiled and forwarded to the FCC-DOD Emergency Communications Committee.

Copy Mr. Jack DeWitt ✓

From: J. H. Quello

November 20, 1962

Mr. Roy Battles
Clear Channel Broadcasting Service
Shoreham Building
Washington 5, D.C.

Dear Roy:

Enclosed is a letter that Oscar Stouffer was good enough to send on to Worth Kramer. The letter provides us all with an insight as to the scope of the opposition to higher power being generated nationally.

I believe I mentioned to you that Howard Wolf is a station manager for a station that is financed and one-third owned by Alvin Bentley, former Congressman and unsuccessful candidate for Congressman-at-Large at the last election, so we can expect politically sophisticated opposition from this group and from other Michigan broadcasters.

We certainly have our work cut out for us, and we must sell our representatives and senators on the importance of judging the Clear Channel matter on merit, rather than political expediency. After the first of the year, I plan to write to the entire Michigan delegation and to several other people that may be of help and briefly outline the case for higher power. I plan to follow through the letters in each case with personal calls. I think it would be well if you would accompany me on many of these calls.

We can discuss this further when you are in Detroit.

Cordially,

JHQ/dp
enclosure

WKNX-TV-©

WKNX-RADIO

LAKE HURON BROADCASTING CORPORATION
221 SOUTH WASHINGTON AVENUE SAGINAW, MICHIGAN

TELEPHONE PLEASANT 3-4471

November 14, 1962

Mr. Oscar S. Stauffer, President
Station WISW
Topeka, Kansas

Dear Mr. Stauffer:

As you know, as a result of House Resolution 714, the FCC is now permitted to consider the authorization of superpower for clear channel stations. Applications for power of 750 kw have already been filed.

After securing preliminary information and recommendations from our respective Washington attorneys and consulting engineers, a group of Michigan broadcasters, representing the majority of the state's regionals, met Thursday (November 1) to consider the effect of superpower upon us and what position we should take regarding it. We concluded superpower would be materially injurious to our interests and concluded:

1. That we would oppose superpower as individuals and as a group.
2. That we would seek to enlist similar opposition in the remaining 49 states.

As a leading regional broadcaster in your state, we suggest that you consider the formation of a state group of your own to examine superpower and determine what action you should take. Naturally, we hope that your conclusions will parallel ours.

I know that you have read much of the trade paper commentary on this subject, but it might be well to summarize the arguments, pro and con, about superpower as follows:

Those who seek superpower contend:

1. That increased power will furnish one or more reliable nighttime services to approximately 25 million Americans who do not now enjoy such service.
2. That superpower will furnish simple, convenient blanket coverage for Defense Department communications in the event of a national emergency.
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4. Superpower will not harm non-clear stations economically because:
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Those who oppose superpower maintain:

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 - (c) Advertising agencies for national spot advertisers (as distinct from the national spot advertisers themselves) will prefer to buy a few superpowers rather than many regionals--they are easier to service; it is easier for the agency to make a profit.
3. The loss of important national spot revenue by regionals will reduce their ability to program strongly at the local level, notably in local news coverage. The resulting downward spiral will only further depress local interest in local broadcast service--no news or rip-and-read news and records, only programming will increase at the local level as local revenues shrink.
4. Favorable consideration of superpower by the FCC at this time would be inconsistent with the FCC AM freeze, imposed allegedly because of the poor economic health of AM radio, brought about by over-population.
5. No reasons of any kind have been presented by anyone for full time superpower. Increased and damaging competition to local daytime radio service by superpowered clears far outweighs any small benefits contributed in covering so-called white areas at night.

6. It seems to me that one of the most objectionable features of the super-powered proposal is that the concentration of power in the radio industry is vested in a small number of licensees. This small segment of the industry could very easily become the monopolistic hard core of the entire American radio industry, dwarfing the efforts, interests, and service of the rest of the industry.

We intend to contact Michigan Congressmen and Senators and present them with our side of the superpower argument. When comments will be accepted by the FCC we intend to make appropriate filings as individuals and as a state group.* We hope that you will conclude it is to your self-interest to do the same.

At a later date, if developments dictate, the establishment of some kind of national group to represent our common interests may be necessary. However, this letter is not a preliminary to a pitch for such an organization. It is merely a report of what we are doing in Michigan and a recommendation that you consider similar action in your state if you have not already taken it.

This letter has gone to basically the regional operators in your state. Because of the large number of broadcasters affected, it would be helpful if those receiving this letter fanned out its contents and purpose to those broadcasters who stand to suffer from clear channel superpower. This, of course, means every broadcaster who is not a clear channel operator in your state.

Cordially yours,

Howard H. Wolfe
Station Manager

HHW:njw

*Ken Cox, speaking at our state association meeting in September on the subject of superpower, castigated us for our not voicing the case for the non-clears sooner. The gist of his remarks was: "Where were you when we needed your help to resist the aggressions of the clear channel people."

C E B S

Memo from

ROY BATTLES

Dear Jack:

The attached will serve as a reminder to you about following through on Mr. Miller's request for certain information.

Talk with Johnnie Campbell & her

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

October 16, 1962

Mr. A. P. Miller
Acting Director
Warning and Communications - Civil Defense
Room 3B 289
The Pentagon
Washington 25, D. C.

Dear Mr. Miller:

Colonel John H. DeWitt and I are grateful for the opportunity that we had on October 11 to compare notes with you relative to the problem that we mutually share of providing warning and communications service to the nation.

Following our conference we have checked on the various maps that we talked about and find that we will have to do some work in order to provide you with the information that you currently need.

The man who does this work for us is currently tied up for another week in producing an application for more adequate power on one of our stations. He will be finished with this job about October 22, 1962, and at that time will start on the maps that you need and the population calculations that you need.

Therefore, before too long you will have in hand the information that you requested.

Please let us know when we can be of further help.

Incidentally, you will find enclosed a statement made on the floor of the Senate on October 11, 1962, by Senator Stuart Symington of Missouri having to do with the BRECOM project.

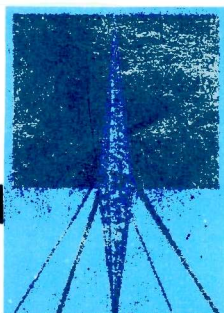
Sincerely yours,

Roy Battles

RB/bh
cc: Mr. DeWitt

Encl.

WILLIAM F. BARRY
VICE PRESIDENT AND
GENERAL COUNSEL



WSM ★
INCORPORATED

WSM-TV
CHANNEL 4



January 15, 1963

Mr. John H. DeWitt, Jr.
President
WSM, Incorporated

Dear Mr. DeWitt:

I am returning herewith your copy of the Memorandum Opinion and Order of the Federal Communications Commission in the matter of WSM Radio's application for increased power, which order was released on November 27, 1962.

This seems to be the only copy of this Order we have, and I would appreciate it if you will ask Mr. Rollo to furnish an additional copy for my use in our Department.

Yours very truly,

A handwritten signature in blue ink, appearing to read 'W. Barry'.

William F. Barry
Vice President and
General Counsel

Enclosure

C
O
P
Y

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 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 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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CHICAGO OFFICE
PRUDENTIAL PLAZA
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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PERRY H. RUSSELL
HELLEY E. GRIFFITH
PERRY S. PATTERSON
R. RUSSELL EASAN
CHARLES R. SUTLER
FREDERICK M. ROWE
ALOYSIUS S. MCABE

November 27, 1962

JOSEPH DUCHEUR
RAYMOND G. LARROCA
JOHN R. MANWELL
RONALD J. WILSON
JAMES M. JOHNSTONE
DONALD L. GUNNELS
MAX H. CROHN, JR.

Mr. John H. DeWitt, Jr.
President
WSM, Inc.
301 Seventh Avenue North
Nashville 3, Tennessee

Dear Jack:

Enclosed is a copy of the Memorandum Opinion and Order denying the requests of WSM, WJR, WLW and WGN to waive the 50 kw ceiling and other rules and to accept for filing the applications for 750 kw.

The only basis given seems to be the "orderly procedure" argument, namely that a rule making proceeding should be held on the question of higher power. To me, the Commission's rationale is preposterous in view of the fact that Docket 6741 included a specific issue relating to the question of higher power.

As soon as the text of the Memorandum Opinion and Order is released with respect to Docket 6741, we will send it and the enclosed Opinion to all members.

As I said over the telephone, Reed and I feel a meeting should be called as soon as possible to discuss the steps to be taken in the future. I think it should be a meeting of the Executive Committee with an invitation to each member to also send a representative. We shall await word from you following your expected discussion with

Mr. Craig.

Cordially,



R. Russell Eagan

RRE:bw
Encl.

cc: Mr. Roy Battles

P. S. One thing that especially concerns me is that the enclosed Opinion indicates that higher power is foreclosed with respect to the duplicated Clear Channels. As you know, this includes CCBS members WGN, WSB, WJR and WHAM.