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NORTH AMERICAN REGIONAL BROADCASTING AGREEMENT

BROADCASTING AGREEMENT WITH MEXICO

INTERIM REPORT

PREPARED BY THE

SUBCOMMITTEE ON
NORTH AMERICAN REGIONAL BROADCASTING
AGREEMENT AND THE BROADCASTING
AGREEMENT WITH MEXICO

OF THE

COMMITTEE ON FOREIGN RELATIONS
UNITED STATES SENATE

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NORTH AMERICAN REGIONAL BROADCASTING AGREEMENT
BROADCASTING AGREEMENT WITH MEXICO

I. Introduction

The subcommittee, to which the North American Regional Broadcasting Agreement (Ex. A, 82d Cong., 1st sess.) and the Broadcasting Agreement with Mexico (Ex. G, 85th Cong., 1st sess.) was referred, recommends that no action be taken on the pending agreements at this session of the Congress.

The subcommittee submits this interim report to the full committee for the purpose of making public and inviting the comments of the broadcasting industry and the executive branch on several alternative proposals that it had under its consideration at its executive meeting on August 3, 1959. At that meeting, the subcommittee further agreed to receive such comments as the industry and executive branch might wish to make at hearings to be held within 3 weeks after the convening of the 2d session of the 86th Congress. After these hearings, it is the intention of the subcommittee to reach a final decision on the disposal of the two broadcasting agreements.

II. Main Purpose of the Agreements

The North American Regional Broadcasting Agreement (NARBA) is a regional agreement concerning use of radio frequencies in the standard broadcast band between 535 and 1605 kilocycles by the participating countries. It provides a basic pattern for this use by prescribing engineering standards, procedures, classes of stations, radio frequency priorities, and similar regulations. The participating countries are Canada, Cuba, the Dominican Republic, the United Kingdom (for Jamaica and the Bahamas), and the United States. Provision is made for the adherence of Haiti.

The agreement with Mexico is compatible with and complementary to the NARBA in that it similarly provides for use of the standard broadcasting band as between the United States and Mexico.

III. Background

The need for these agreements arises from the basic fact that airwaves do not stop at an international boundary. With the growth of the broadcasting industry the need developed in the thirties for a regional arrangement to assure the least amount of interference by stations in one nation with stations in another nation.

The first NARBA (North American Regional Broadcasting Agreement), signed in 1937 and effective in 1941, provided a definite plan in the North American region for the use of broadcasting channels, so that each nation in the region could make the most effective use of

each channel with the minimum of interference between broadcasting stations. This agreement expired in 1946 and an interim agreement (a so-called modus vivendi) expired in 1949. There is still in effect between the United States and Mexico an exchange of notes, dated 1941, the so-called gentlemen's agreement, covering only, however, the use of certain clear channels.

In 1947 negotiations began for a new regional agreement, which was finally reached in December 1950.

Mexico, for reasons discussed in another section of this report, did not sign the new NARBA, although it was a party to both the 1937 agreement and the 1946 modus vivendi, and participated in the conferences leading up to the new NARBA, until it withdrew in October 1950. In 1952 the United States began negotiations with Mexico which 5 years later culminated in the bilateral agreement now under consideration.

A detailed history of the negotiations of both agreements is contained on page 52 of the hearings and a list of the members of the U.S. delegations to the various conferences on page 53.

During all stages of these negotiations, according to officials of the Department of State and the Federal Communications Commission and to other testimony obtained by the subcommittee, representatives of the broadcast industry were extensively consulted and given every opportunity to participate as advisers to the official delegation.

IV. Subcommittee Action

The NARBA was transmitted to the Senate for advice and consent to ratification on February 5, 1951. A subcommittee of which Senator Tobey was chairman held hearings in 1953 (out of print) and reported the treaty to the full committee without a recommendation. The lack of a recommendation stemmed from the fact that while the administration, the networks, and a large number of individual stations favored the agreement, the Clear Channel Broadcasting Service and several large farm organizations opposed it. Their main arguments at that time were that Mexico was not a party to the agreement and that not enough protection was afforded clear channel (class I) stations and farm broadcasts would be impaired. The committee took no further action on NARBA that year.

After the Mexican agreement was signed in 1957 hearings (not printed) were held again by a new subcommittee of which Senator Fulbright was chairman. The previous opposition to the NARBA from the clear channel stations and farm groups was withdrawn, contingent upon both agreements being ratified at the same time. The Daytime Broadcasters Association (DBA), however, testified in opposition to the Mexican agreement. The DBA had at that time a petition pending before the Federal Communications Commission (FCC) for extended broadcast hours (5 a.m. to 7 p.m.). This petition was denied by the FCC in September 1958 and a revised petition for 6 a.m. to 6 p.m. broadcast hours was denied on July 8, 1959.

On July 9, 1959, a subcommittee consisting of Senator Morse, chairman, Senator Lausche, Senator Church, Senator Aiken, and Senator Carlson, held another public hearing on the agreements. Again the hearing demonstrated widespread industry support for the agreements. The DBA continued to oppose the Mexican agreement.

The reasons for the DBA opposition are discussed in detail in a separate section of this report.

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V. Provisions of the Agreements

A. Allocation and definition of channels

Both agreements divide the standard broadcast band into 107 channels spaced 10 kilocycles apart. The 107 channels are in turn divided into three categories as follows: 60 clear channels, 41 regional channels, and 6 local channels.

Clear channels.—A clear channel is defined as a channel on which a dominant station or stations are assigned for the purpose of rendering service protected against interference over extensive areas by means of skywave as well as groundwave. The clear channels in turn are divided into class I–A, class I–B, and class II channels. A country having priority of use of a class I–A channel under the agreements enjoys almost exclusive use of that channel and other nations are severely restricted in the use that can be made of the class I–A channel. The United States under the NARBA is conferred priority on 25 class I–A channels, Canada 7, and the Bahamas 1. The Mexican agreement confers on Mexico priority with respect to seven channels, including one assigned to Canada, which in the opinion of the Federal Communications Commission does not involve a conflict. Of the 39 channels designated as class I–A clear channels, therefore, the United States is accorded priority on 25 and concedes priority on 14.

The remaining 21 clear channels are designated as class I–B and are utilized in varying degrees by all countries for wide area coverage by means of skywave signals on a shared basis. Under this shared usage of the 21 channels, both agreements recognize U.S. priorities for 34 class I–B stations, and grant other nations such priorities or 14 class I–B stations.

The power of a class I–A station is set at 50 kilowatts or more and that of a class I–B station at not less than 10 kilowatts nor more than 50 kilowatts.

The major difference between the two agreements concerns the use of clear channels. In general, the NARBA permits secondary nighttime operations on class I–A channels by nations other than the nation having the class I–A priority, provided that the nation having the priority is protected at the border from interference. For example, stations in the United States, operating nighttime on a Canadian class I–A channel, must be located at least 650 miles from the border and use a signal strength that cannot interfere with the Canadian priority at the border.

The Mexican agreement, on the other hand reciprocally prohibits with certain limited and specific exceptions any nighttime use of 6 Mexican class I–A channels by the United States and 25 United States class I–A channels by Mexico. This continues the principles contained in arrangement now prevailing under the gentlemen's agreement. The reason for this difference lies in Mexico's insistence in having its priorities protected not only in Mexico but also in the United States so that its class I–A channels can be used to beam broadcasts to the United States. Conversely, of course, the United States has the right to use its class I–A channels to beam broadcasts to Mexico.

Regional channels.—A regional channel (class III) is defined as a broadcasting channel to which several stations may be assigned and so protected as to serve a considerable area by groundwave, but no protection is accorded to service by skywave. Under the NARBA these stations may operate generally with power between 500 watts and 5 kilowatts. Under the Mexican agreement they may operate with power of 25 kilowatts except within 62 miles of the border, where the power may not exceed 5 kilowatts There are specified exceptions to these power limitations in both agreements.

Local channels.—A local channel (class IV stations) is defined as a channel to which many stations may be assigned so as to serve a local area by means of a groundwave and service by skywave is not protected. The NARBA sets the power of these stations at 250 watts. The Mexican agreement permits 1 kilowatt daytime and 500 watts nighttime for stations located 93 miles or more from the border, and 1 kilowatt daytime and 250 watts nighttime for stations located between 62 and 93 miles from the border.

B. OTHER PROVISIONS

Conferences.—The NARBA provides for two classes of conferences: (1) plenipotentiary, to meet 4 years after entry into force, unless postponed by a majority of the signatories, with powers to revise the agreement; and (2) administrative, to precede a plenipotentiary conference. The Mexican agreement does not provide for conferences but for consultations in the event that one party is deemed by the other to be acting in a manner considered inconsistent with the agreement.

Determination of objectionable interference.—Both agreements set forth technical standards for the measurement of objectionable interference.

Notification.—Both agreements recognize all existing station assignments, unless otherwise specified, and provide for a system of notification of future assignments and changes.

Ratification and entry into force.—The NARBA will enter into force when ratified by the United States, Canada, and Cuba. Since Canada and Cuba have already ratified the agreement, the agreement can enter into force 15 days after the United States deposits its instrument of ratification. The Mexican-United States agreement will enter into force upon ratification by both countries. Mexico has not yet acted upon the agreement but has indicated to the United States Ambassador that it would take such action in the fall if the agreement were ratified by the United States.

Term.—Both treaties run for a period of 5 years after entry into force. The NARBA will continue in force unless and until a new agreement is negotiated. The Mexican agreement can be terminated prior to 5 years by denunciation or by a new agreement being negotiated.

Denunciation.—Both agreements provide for denunciation to be effective 1 year after made. The Mexican agreement further provides that if consultations over violations are unsuccessful, the agreement shall be terminated 90 days after denunciation.

A more detailed explanation of the agreements is contained in the President's message of transmittal of each, which is printed together with the treaties.

VI. Matters Considered by the Subcommittee

A. USE OF MEXICAN CLEAR CHANNELS

With the opposition to the NARBA withdrawn, and the only opposition remaining being to paragraph 8 of article II–B of the Mexican treaty, the subcommittee devoted most of its discussion to the questions raised by this provision.

The paragraph referred to provides in part as follows:

> c. Daytime Class II assignments by either Contracting Party on clear channels upon which the other Contracting Party has the Class I–A priority will be subject to the following conditions:
>
> (1) *Permissible Hours of Operation:* Sunrise to Sunset at the location of the Class II station.

At the present time, by FCC rules, daytime stations are authorized to operate during daytime only. The effect of the treaty is that, should the FCC while the treaty is in force amend its rules to permit extended operations by daytime stations, those daytime stations operating on Mexican clear channels (about 150 stations) would be precluded from reaping the benefits of extended hours. To this possible future preclusion, the Daytime Broadcasters Association addresses its objections.

The subcommittee examined the basis for these objections most carefully and earnestly. The subcommittee has neither the knowledge of, nor the jurisdiction over, questions involving the merits of the daytime stations' request for extended hours. Such requests have been rejected by the Federal Communications Commission twice in less than 10 months. On September 19, 1958, the Commission unanimously denied the DBA petition for extended hours, from 5 a.m. or sunrise, whichever is earlier, until 7 p.m. or sunset, whichever is later. It concluded that—

> The population which would gain service during these hours is vastly exceeded by the population which would lose the service of existing stations because of the additional interference which would result on all but a few of the 107 standard broadcast frequencies from the operation of daytime stations during the non-daytime hours * * * contemplated by the proposal.

On July 8, 1959, the FCC denied a DBA request for an inquiry into the advisability of authorizing daytime stations to operate from 6 a.m. or sunrise, whichever is earlier, to 6 p.m. or sunset, whichever is later. It again concluded—

> that the losses of standard broadcast radio service, both groundwave and skywave in the various areas affected, which would result from an extension of the hours of operation of stations licensed for daytime operation must be determinative herein * * * This conclusion is strongly reinforced by a comparison of the 1,761,622 persons in 357 communities, now receiving only skywave service, who would gain in lieu thereof a local groundwave service, with the 25,631,000 persons in 1,727,000 square miles, now receiving skywave service, who would lose entirely the standard broadcast radio service now available to them.

Much of the DBA testimony before the subcommittee was concerned with whether the present FCC philosophy with respect to allocations in the standard radio band met the public need. This the subcommittee is in no position to judge. This is a matter for the appropriate committees of Congress having jurisdiction over communications. Nor, as already noted, is the subcommittee in a position to judge the merits of the Daytime Broadcasters Association demand for extended hours of operations.

The subcommittee is aware that two bills have been introduced in the House of Representatives and referred to the Committee on Interstate and Foreign Commerce, dealing with the question of extended hours of operations for daytime-only stations. The subcommittee received statements from the sponsors of these bills, Congressman George E. Shipley, of Illinois, and Congressman Morgan M. Moulder, of Missouri. The DBA has asked either that no action be taken on the agreement with Mexico until it has had time to seek its goals through judicial or congressional action or that the agreement be ratified with a reservation.

At its meeting on August 3, the subcommittee considered four alternative courses of action, as follows:

Alternative 1.—To recommend advice and consent to ratification without any reservations or understandings.

Alternative 2.—To recommend advice and consent to ratification subject to the following understanding:

Resolved (*two-thirds of the Senators present and voting concurring therein*), That the Senate advise and consent to the ratification of Executive G, 85th Congress, first session, the agreement between the United States of America and theUnited Mexican States concerning radio broadcasting in the standard broadcast band, which was signed in the English and Spanish languages at Mexico City on January 29, 1957, with the understanding that *if, at any time hereafter, the Federal Communications Commission permits the extension of the hours of operation of a Class II station assigned to a clear channel, beyond the hours from sunrise to sunset at the location of the station, the President shall cause consultations to be entered into with representatives of the United Mexican States for the purpose of negotiating such modifications of such agreement as may be necessary to give effect to such extension of hours to Class II stations in the United States operating on Mexican Clear Channels.*

Alternative 3.—To recommend advice and consent to ratification subject to the following understanding:

Resolved (*two-thirds of the Senators present and voting concurring therein*), That the Senate advise and consent to the ratification of Executive G, Eighty-fifth Congress, first session, the agreement between the United States of America and the United Mexican States concerning radio broadcasting in the standard broadcast band, which was signed in the English and Spanish languages at Mexico City on January 29, 1959, with the understanding, which shall be made a part of the agreement, that *if at any time hereafter the permissible hours of operation of any Class II station operating on a clear channel are authorized by governmental authority of either contracting party to be extended beyond the hours from sunrise to sunset at the location of such station, paragraph 8 of Article II–B shall be of no further force or effect.*

Alternative 4 (*submitted by the Daytime Broadcasters Association*).—To recommend advice and consent to ratification subject to the following reservation:

Resolved (*two-thirds of the Senators present and voting concurring therein*), That the Senate advise and consent to the ratification of Executive G, Eighty-fifth Congress, first session, the agreement between the United States of America and the United Mexican States concerning radio broadcasting in the standard broadcast band, which was signed in the English and Spanish languages at Mexico City on January 29, 1957, with the reservation, which shall be made a part of the agreement, that *notwithstanding the provisions in such agreement defining nighttime operation and precluding operation during nighttime hours by the stations in one country on the Class I–A channels of the other, the United States reserves the right to authorize its stations on any of these channels to operate between the hours of 6 a.m.* (*whenever it occurs earlier than local sunrise*) *to 6 p.m.* (*whenever it occurs later than local sunset*), *with reciprocal privileges to Mexico in regard to Mexican stations operating on United States Class I–A channels.*

It is to these four alternative courses of action that the subcommittee invites the attention of all interested persons.

The subcommittee appreciates the fact that daytime-only stations suffer from being required to go on and off the air at varying hours throughout the year. It is an inconvenience, however, that every daytime station accepted at the time its license was granted. The Federal Communications Commission testified that there are ways in which daytime-only stations can better their economic position other than by extended hours. The subcommittee expresses its hope that the Federal Communications Commission will extend to the daytime stations every opportunity allowed by law to improve their service and their economic position. In fact, the treaties themselves provide such a way by allowing for an increase in power for daytime stations enabling them, thereby, to increase their area coverage. Most of the daytime stations are small businesses and deserve the sympathetic consideration of the Government.

The subcommittee notes at this time that regardless of which of the alternatives mentioned above may be adopted, it believes that the hours of operation of the daytime stations should be based principally upon domestic considerations. Thus, should the FCC decide that the domestic situation were such as justify extended hours, the committee would anticipate that the administration should make every effort to obtain international agreement to such extension of hours.

B. CLEAR CHANNEL STATIONS GENERALLY

It has already been noted that the Clear Channel Broadcasting Service (CCBS) which originally opposed the NARBA, in part because of the absence of Mexico, has withdrawn its opposition, provided, however, that both agreements are ratified at the same time. It has also been noted that the NARBA could become effective 15 days after the President's deposit of the instrument while the Mexican agreement could not become effective until Mexico's ratification. The subcommittee, therefore, has under consideration an understanding to the resolution of ratification of the NARBA, to read as follows:

> *Resolved* (*two-thirds of the Senators present and voting concurring therein*), That the Senate advise and consent to the ratification of Executive A, Eighty-second Congress, first session, the North American Regional Broadcasting Agreement and Final Protocol Thereto, signed on November 15, 1950, with the understanding that the instrument of ratification thereof by the United States shall not be deposited as provided in Part III–H of such agreement until the agreement between the United States of America and the United Mexican States Concerning Radio Broadcasting in the Standard Broadcast Band, signed on January 29, 1957 (Executive G, Eighty-fifth Congress, first session), shall have entered into force.

The subcommittee also calls the attention of the Senate and the appropriate committees to the testimony of the CCBS. Mr. DeWitt, the witness of the CCBS, stated:

> It is strongly urged that in ratifying the two agreements, the U.S. Senate make known its wishes that all possible steps be taken to improve the admittedly inadequate broadcast service rendered to rural and smalltown America, and that these steps include the elimination of the provisions contained in the 1950 NARBA which prohibit certain U.S. class I–A clear channel stations from increasing night-

time power in the direction of certain foreign stations, thus preventing improvement of nighttime service in areas where it is badly needed.

* * * * * * *

CCBS defers, of course, to the judgment of the members of this committee as to how best to obtain the needed relief. One possibility would be to eliminate the restrictions on radiation through a formal exchange of diplomatic notes with Cuba, Jamaica, and the Dominican Republic.

Again the subcommittee repeats its view that such matters as increased power and radiation of class I–A stations do not lie within its jurisdiction. It can only express its hope, in this case, also, that the Federal Communications Commission give careful attention to the improvement of nighttime service in the rural areas of America.

C. THE CANADIAN AND CUBAN RESERVATIONS

Both Canada and Cuba ratified the NARBA with reservations. The Cuban reservation is to the 650-mile rule, and in effect states that in view of the engineering standards provided in the agreement for protection at the border of the country having the class I–A priority, Cuba will permit secondary use of these channels, notwithstanding the 650-mile rule. Inasmuch as the United States will be protected from any degree of interference at the border higher than that permissible by the treaty, the administration has no objection to this reservation. Nor did any of the industry representatives at the recent hearing voice any objection.

The Canadian reservation concerns the maximum and minimum power limits specified for regional and local channels. Canada reserves the right to exceed these limits "provided that in all cases the resulting interference to other stations on the same and adjacent channels will not exceed the values specified in the agreement at or below the specified limits." The Department of State and the Federal Communications Commission have no objection to the Canadian reservation.

The subcommittee concurs in the executive branch views on the two reservations. As long as the radiation toward the United States does not exceed that permitted by the NARBA, and our clear channels remain as free from interference as they would be in the absence of these reservations, it can see no reason to object.

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