



PUBLIC NOTICE

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FCC Announces Eligible Stations for Statutory Analog Nightlight Program and First Group of Program Participants

Participant Notices and Eligibility Showings Due Tuesday, May 26, 2009

MB Docket No. 08-255

By this Public Notice, the Commission issues the revised list of stations that are pre-approved as eligible to participate in the statutory analog nightlight program¹ and indicates the stations that have previously notified the Commission of their intention to participate in the program.²

The Short-term Analog Flash and Emergency Readiness Act (“Analog Nightlight Act”)³ required the Commission to develop and implement a program to “encourage and permit” continued analog television service during the 30-day period after the DTV transition for the purpose of providing emergency and DTV transition information to viewers who had not obtained the necessary equipment to receive digital broadcasts by the transition deadline. The Analog Nightlight Act was enacted on December 23, 2008, prior to the enactment of the DTV Delay Act, which changed the nationwide transition deadline from February 17 to June 12, 2009.⁴

On January 15, 2009, the Commission adopted and released the *Analog Nightlight Order* to implement the Analog Nightlight Act by listing those stations pre-approved as eligible to participate in the analog nightlight program and establishing the procedures for stations to participate in the program.⁵ The statutory analog nightlight program permits stations to provide emergency and DTV transition information on their analog channel to viewers for up to 30 days

¹ See Appendix – Stations Pre-Approved as Eligible for Statutory Analog Nightlight Program.

² See Column J on the Appendix (titled “Indicated Interest In Participating”), based on the analog termination notification forms filed by the stations on March 17, 2009.

³ Short-term Analog Flash and Emergency Readiness Act, Pub. L. No. 110-459, 122 Stat. 5121 (2008) (“*Analog Nightlight Act*”).

⁴ See DTV Delay Act, Pub. L. No. 111-4, 123 Stat. 112 (2009) (“*DTV Delay Act*”).

⁵ *Implementation of Short-term Analog Flash and Emergency Readiness Act; Establishment of DTV Transition “Analog Nightlight” Program*, MB Docket No. 08-255, Report and Order, FCC 09-2 (rel. Jan. 15, 2009) (“*Analog Nightlight Order*”).

after the transition deadline.⁶ The Analog Nightlight service after the transition deadline is important for those viewers who have televisions that are not ready to receive digital signals. It ensures that these viewers will still be able to receive emergency information as well as instructions regarding how to resume receiving television service. Stations operating on channels 2 through 51 are eligible to participate in the program, provided they do not cause harmful interference to digital television signals.⁷

On February 20, 2009, the Commission adopted and released the Second Report and Order to implement the DTV Delay Act and concluded that the 30-day period applicable to the analog nightlight program will begin following the new June 12, 2009 transition deadline and, therefore, will run from and including June 13 through July 12, 2009.⁸ The Commission determined that it was not necessary to revise the statutory analog nightlight program as implemented in the *Analog Nightlight Order* and retained the parameters of the program without change, except for the delay in timing.⁹ The Commission, however, delegated to the Media Bureau or Office of Engineering and Technology (OET), as appropriate, the authority to revise and adopt amended lists of pre-approved stations, as may be necessary.¹⁰ The Commission encourages all stations that are eligible to participate in the Analog Nightlight program either by broadcasting the nightlight program or coordinating with other stations in the market to try to reach as many viewers as possible with this important local service.

OET has completed an engineering analysis to determine which stations meet the eligibility criteria for the analog nightlight program.¹¹ This engineering analysis was performed

⁶ See Analog Nightlight Act, Sections 2(a) and 2(b).

⁷ Analog Nightlight Act, Section 3(2). Section 3 of the Act also mandates that the Commission “not require” that analog nightlight signals be subject to mandatory cable carriage and retransmission requirements; see Analog Nightlight Act, Section 3(3). In addition, Section 3 prohibits the broadcasting of analog nightlight signals on spectrum “approved or pending approval by the Commission to be used for public safety radio services” and on channels 52-69; see Analog Nightlight Act, Sections 3(5) and 3(6), respectively.

⁸ *Implementation of the DTV Delay Act*, MB Docket No. 09-17, Second Report and Order and Notice of Proposed Rulemaking, FCC 09-11, ¶ 41 (rel. Feb. 20, 2009) (“*Second Delay Act Order*”). The Commission noted that the Analog Nightlight Act specified that the analog nightlight program is to occur “during the 30-day period beginning on the day after the date established by law under section 3002(b) of the Digital Television Transition and Public Safety Act of 2005 for termination of all licenses for full-power television stations in the analog television service and the cessation of broadcasting by full-power stations in the analog television service.” The Commission further found that allowing analog nightlight operation pursuant to the Analog Nightlight Act during the 30-day period after June 12 is consistent with section 4(c) of the DTV Delay Act, which authorizes the Commission to take such actions as it deems necessary or appropriate to carry out the purposes of the DTV Delay Act and ensure a smooth transition. *Id.* at ¶ 42.

⁹ *Id.* at ¶ 43. The previously established filing deadlines to participate in the program were rendered moot in light of the change in the transition deadline.

¹⁰ *Id.* at ¶ 45.

¹¹ The Analog Nightlight Act was enacted on December 23, 2008, and required Commission implementation to be completed by January 15, 2009. The Commission adopted and released the *Notice of Proposed Rulemaking* on December 24, 2008, listing 310 eligible stations, and adopted and released the *Report and Order* on January 15, 2009, with the list of 826 stations. See *Implementation of Short-term Analog Flash and Emergency Readiness Act*;

using the methodology set forth in OET Bulletin 69 to assess the potential interference from analog stations to digital television stations.¹² This analysis takes account of any changes in channels or facilities that will be in operation for the 30-day period following June 12, 2009.

Based on this supplemental engineering analysis, we have determined that 825 stations, representing 202 markets, can be included on the list of stations pre-approved as eligible to participate in the analog nightlight program.¹³ This list includes 354 stations¹⁴ and 11 markets that have already transitioned or will transition prior to June 12. Stations that are eligible are permitted to turn their analog signal on for the purpose of providing Nightlight service to their viewers. The attached Appendix replaces the *Analog Nightlight Order's* list of pre-approved eligible stations. We urge all of the stations that are eligible to participate.¹⁵

A. Program Participants

The Appendix also indicates the stations that have reported on their analog termination forms that they will participate in the statutory analog nightlight program.¹⁶ These stations hereby qualify for the blanket license extension to provide statutory analog nightlight service (as

Establishment of DTV Transition "Analog Nightlight" Program, MB Docket No. 08-255, Notice of Proposed Rule Making, FCC 08-281 (rel. Dec. 24, 2008). To be eligible for participation in the Analog Nightlight program, stations must not cause harmful interference to digital television signals. See *Analog Nightlight Act* section 3(2); *Analog Nightlight Order* at ¶ 10. The *Analog Nightlight Order's* Appendix A list relied on spacing criteria rather than individual interference analyses, an approach necessitated by the short time available to develop the list for the Order. On April 15, 2009, the Commission issued an Erratum correcting certain errors in Appendix A to the *Analog Nightlight Order*. Appendix A to the *Analog Nightlight Order* as initially released contained 826 stations. The Erratum deleted three stations from the list, reducing the number to 823. See http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-290083A1.doc.

¹² See Federal Communications Commission, Office of Engineering and Technology, OET Bulletin No. 69 "Longley-Rice Methodology for Evaluating TV Coverage and Interference," February 6, 2004. This bulletin is available on the internet at: http://www.fcc.gov/Bureaus/Engineering_Technology/Documents/bulletins/oet69/oet69.pdf.

¹³ There is at least one station eligible in all 49 of the targeted markets identified by the Commission as having "at-risk communities." See http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-289629A1.pdf. Thus far, at least one station from 27 of these markets, including Puerto Rico, has indicated its intention to provide analog nightlight service after June 12, 2009.

¹⁴ Stations that have previously terminated analog service or plan to terminate before June 12 are indicated by an asterisk ("*") in column K on the Appendix, titled "Analog Termination Prior to 6/12."

¹⁵ We recognize that it is unlikely that stations that have previously terminated their analog service would want to participate, and for those in fully transitioned markets, it may not be necessary. However, we include all eligible stations on the Appendix so that they can make their determinations based upon their own circumstances and the needs of their viewers.

¹⁶ Stations were asked to indicate whether they intended to provide statutory analog nightlight service after the June 12, 2009 transition deadline on their analog termination notification forms. See *Implementation of the DTV Delay Act*, MB Docket No. 09-17, Third Report and Order and Order on Reconsideration, FCC 09-19, at app B (rel. March 13, 2009) ("Third R&O"). An "S" in column J of the Appendix denotes that the station has previously indicated its interest in participating in the Analog Nightlight program.

discussed in the *Analog Nightlight Order*) and do not need to take any additional action to participate in the program.¹⁷ Stations listed on the Appendix that wish to revoke their participation must notify the Commission by following the Filing Procedures, as explained below.

B. Pre-Approved Eligible Stations

Stations listed on the Appendix are eligible to participate, but if they are not listed as indicating their intention to participate, they must notify the Commission no later than Tuesday, May 26, 2009, if they want to participate in the statutory analog nightlight program. These stations must follow the Filing Procedures, detailed below.¹⁸ Eligible stations that follow these procedures will qualify for the blanket license extension to provide statutory analog nightlight service (as discussed in the *Analog Nightlight Order*).¹⁹

C. Eligibility Showings

Consistent with the *Analog Nightlight Order*,²⁰ we will permit stations that are not included on the attached Appendix to demonstrate eligibility for the statutory analog nightlight program by filing a showing with the Commission no later than Tuesday, May 26, 2009. We will announce soon thereafter by public notice those stations that have filed such showings. This deadline for eligibility showings will allow us, the public, and/or interested parties an opportunity to review and evaluate these showings. In their eligibility showings, stations must show how they plan to provide statutory analog nightlight service while avoiding harmful interference to affected stations (*e.g.*, by reducing analog power or taking other appropriate actions). Stations with showings that are not subject to any pending objection will be considered eligible to participate in the program and will qualify for the blanket license extension (as discussed in the *Analog Nightlight Order*).²¹ As noted in the *Analog Nightlight Order*, the Commission reserves the right to require stations to cease or reduce analog nightlight service in the event there are valid complaints of interference to DTV stations or other statutorily protected operations.²²

¹⁷ *Analog Nightlight Order* at ¶¶ 26-27.

¹⁸ Pre-approved eligible stations that have already notified the Commission of their intent to participate and which are, therefore, listed in the attached Appendix B do not need to file another notification.

¹⁹ *Analog Nightlight Order* at ¶¶ 26-27.

²⁰ *Id.* at ¶ 25.

²¹ *Id.* at ¶¶ 26-27.

²² *Id.*

D. Filing Procedures

The *Analog Nightlight Order* established filing procedures for stations to notify the Commission about program participation.²³ In that *Order*, the Commission encouraged stations to make these filings electronically through the Commission's Consolidated Database System ("CDBS") using the Informal Application filing forms, but also permitted pre-approved eligible stations to notify us via e-mail to nightlight@fcc.gov to reduce burdens on stations, particularly small broadcasters.²⁴ We are slightly modifying these procedures in this public notice to enable us to better track and monitor these filings. Specifically, rather than using STA filings, we have created the following specific informal CDBS forms: (1) Participation Notice of Pre-Approved Eligible Station (Analog Nightlight Program); (2) Eligibility Showing (Analog Nightlight Program); (3) Objection to Eligibility Showing (Analog Nightlight Program); and (4) Revocation of Participation (Analog Nightlight Program). There will be no fees for using these forms.

We strongly encourage stations to use these simple forms. However, to encourage maximum participation in the program, we will continue to permit pre-approved eligible stations to notify us via e-mail to nightlight@fcc.gov, following the procedures outlined in the *Analog Nightlight Order*.²⁵ We intend to publish a final list of all stations that are participating in the Analog Nightlight program before June 12, 2009. All stations listed will be granted a blanket license extension to provide the statutory analog nightlight service.

Electronic Filing Instructions. The four CDBS forms are now available for filing and must be filed electronically via the Internet from the Media Bureau's Web site at: <http://www.fcc.gov/mb/cdbs.html> or http://fjallfoss.fcc.gov/prod/cdbs/forms/prod/cdbs_ef.htm. After logging into your CDBS Electronic Filing account, select the last option from Main Menu "Additional non-form Filings" to go to the Informal Menu. From the next menu select "Silent STA / Notification of Suspension / Resumption of Operations / Extension of STA Request / DTV Transition Notification." On the Pre-form select the desired form to be filed: (1) Participation Notice of Pre-Approved Eligible Station (Analog Nightlight Program); (2)

²³ *Id.* at ¶¶ 20-25. The Commission has OMB approval for this collection and will obtain approval for any non-substantive changes to this collection; see OMB Control No. 3060-0386. For additional information concerning this information collection requirement, contact the Office of Managing Director (OMD), Performance Evaluation & Records Management (PERM): Cathy Williams, Cathy.Williams@fcc.gov, at 202-418-2918.

²⁴ *Id.* at ¶ 23.

²⁵ *Id.* at ¶¶ 23-24. As provided in the Order, the email should include the following information: (1) name, title, phone number, and, if available, email address and mobile telephone number of sender; (2) licensee name; (3) FCC Registration Number (FRN); (4) Facility Identification Number; (5) call sign; (6) city and state; (7) analog and digital channel numbers; and (8) name, title, phone number and, if available, email address and mobile telephone number of a contact person (if different from sender) who can provide more information about the station's participation in the program. The email should also provide information about the station's planned analog nightlight service, including whether the station plans to participate at reduced analog power, as well as the period of time analog nightlight service will be provided (if service will be discontinued before July 12, 2009). Stations that reduce power during their period of nightlight service should also notify the Commission of this change. The information provided in the emails will be entered into CDBS so that it will be available to the public. We ask that a courtesy copy of the email be sent to Hossein Hashemzadeh, Hossein.Hashemzadeh@fcc.gov, of the Media Bureau, Video Division.

Eligibility Showing (Analog Nightlight Program); (3) Objection to Eligibility Showing (Analog Nightlight Program); or (4) Revocation of Participation (Analog Nightlight Program). No fee is required.

E. Additional Information

For more information, contact Hossein Hashemzadeh, Hossein.Hashemzadeh@fcc.gov, of the Media Bureau, Video Division, at (202) 418-1658; or Evan Baranoff, Evan.Baranoff@fcc.gov, of the Media Bureau, Policy Division, at (202) 418-2120.

By the Chief, Media Bureau

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