

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

In the Matter of
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

Adopted: January 15, 2009

Released: January 15, 2009

By the Commission: Chairman Martin and Commissioners Copps, Adelstein and McDowell issuing
separate statements.

TABLE OF CONTENTS

Heading Paragraph #
I. INTRODUCTION AND BACKGROUND ..... 1
II. DISCUSSION..... 6
A. Duration of the Analog Nightlight Program ..... 6
B. Eligibility for the Analog Nightlight Program..... 9
1. Stations Initially Determined to Be Eligible..... 11
2. Other Stations That May Meet Eligibility Requirements..... 18
C. Notifications to the Commission of Program Participation ..... 20
1. Notifications by Pre-Approved Eligible Stations ..... 22
2. Requests for Program Participation with Eligibility Showings..... 25
D. Analog License Extension for Participating Stations..... 26
E. Permissible Analog Nightlight Programming..... 28
1. Emergency Information..... 31
2. Transition Information..... 35
3. Sponsorship Information ..... 38
III. PROCEDURAL MATTERS ..... 42
A. Regulatory Flexibility Act Analysis Not Required ..... 42
B. Final Paperwork Reduction Act of 1995 Analysis..... 43
C. Congressional Review Act..... 44
D. Additional Information ..... 45
IV. ORDERING CLAUSES..... 46
APPENDIX A –Stations Eligible for Analog Nightlight Program
APPENDIX B – List of Commenters

## I. INTRODUCTION AND BACKGROUND

1. The Short-term Analog Flash and Emergency Readiness Act (“Analog Nightlight Act” or “Act”)<sup>1</sup> requires the Commission to develop and implement a program by January 15, 2009, to “encourage and permit” continued analog TV service for a period of 30 days after the February 17, 2009 DTV transition date, to the extent technically feasible, for the purpose of providing “public safety information” and “DTV transition information” to viewers who may not obtain the necessary equipment to receive digital broadcasts by the transition deadline. This *Report and Order* (“*Order*”) adopts the requirements to implement the Act.

2. Congress has mandated that after February 17, 2009, full-power television broadcast stations must transmit only digital signals, and may no longer transmit analog signals.<sup>2</sup> The Analog Nightlight Act is designed to ensure that those consumers who are not able to receive digital signals after the DTV transition on February 17, 2009, will not be left without access to emergency information.<sup>3</sup> The Act is also intended to help consumers understand the steps they need to take in order to restore their television service.<sup>4</sup> In enacting the Analog Nightlight Act, Congress acknowledged that the FCC and others “have been working furiously” to inform viewers about the transition, but also recognized that there will inevitably be some consumers left behind.<sup>5</sup> Congress also recognized that when viewers are cut off from their televisions, it is not just a matter of convenience but also one of public safety.<sup>6</sup> The concern about readiness is especially acute with regard to the nation’s more vulnerable citizens – such as the poor, the elderly, the disabled, and those with language barriers – who may be less prepared to ensure they will have continued access to television service.<sup>7</sup>

3. The Analog Nightlight Act was signed into law on December 23, 2008.<sup>8</sup> On December 24, 2008, the Commission adopted and released a *Notice of Proposed Rule Making* (“*Notice*”) in this proceeding.<sup>9</sup> Based on consideration of the comments and replies we received,<sup>10</sup> this *Report and Order*

---

<sup>1</sup> Short-term Analog Flash and Emergency Readiness Act, Pub. L. No.110-459, 122 Stat. 5121 (2008).

<sup>2</sup> See Digital Television and Public Safety Act of 2005 (“DTV Act”), which is Title III of the Deficit Reduction Act of 2005, Pub. L. No. 109-171, 120 Stat. 4 (2006) (*codified at* 47 U.S.C. §§ 309(j)(14) and 337(e)).

<sup>3</sup> See Senate floor statement – Short-Term Analog Flash and Emergency Readiness Act (S. 3663), November 20, 2008 (“Senate floor statement”).

<sup>4</sup> *Id.* The analog nightlight concept was first used by the broadcasters in Wilmington, North Carolina, who volunteered to transition their market on September 8, 2008. They ceased analog broadcasting on that date but continued to broadcast their analog signals for roughly one month, displaying a “slate” describing the transition and where people could obtain information about it. See News Release, “Wilmington Broadcasters Will Provide Emergency Announcements and Informational Messages about the DTV Transition after September 8 on Traditional Analog Channels,” FCC, August 18, 2008.

<sup>5</sup> See House floor statement – Short-Term analog Flash and Emergency Readiness Act (S. 3663), December 10, 2008.

<sup>6</sup> See Senate floor statement.

<sup>7</sup> *Id.*

<sup>8</sup> The Analog Nightlight legislation (S. 3663) was adopted by Congress on December 10, 2008 and sent to the President for signature on December 12, 2008.

<sup>9</sup> See *Implementation of Short-term Analog Flash and Emergency Readiness Act; Establishment of DTV Transition “Analog Nightlight” Program*, MB Docket No. 08-255, Notice of Proposed Rule Making, FCC 08-281 (rel. Dec. 24, 2008). In light of the extremely short period of time in which the Commission was directed to implement the Act (*i.e.*, the January 15, 2009 statutory deadline), the Commission acted quickly to adopt and release the *Notice* in order to give interested parties a short period of time in which participate. Although the Commission found that there was good cause to dispense with notice and comment requirements under the Administrative Procedure Act (continued....)

adopts an analog nightlight program with practical procedures and maximum flexibility for participating broadcasters, consistent with the intent of the statute to permit and encourage participation. Specifically, we expand herein the list of stations pre-approved to provide nightlight service, adopt streamlined procedures for stations to follow to notify the Commission of participation in the nightlight program, and permit the provision of limited sponsorship information as part of nightlight programming to help stations defray the cost of providing critical nightlight service. The decisions made in this Order are guided solely by the goal of the Analog Nightlight Act to provide short term assistance to viewers as we transition from analog to digital television service. Accordingly, we emphasize that these decisions are not intended to stand as precedent for future proceedings involving different circumstances. Nevertheless, we find these decisions are appropriate for the unique circumstances involved here.

4. We strongly encourage all eligible stations to participate in the provision of a nightlight service to assist consumers during the 30-day period following the digital transition. The revised, expanded list of eligible nightlight stations is attached as Appendix A hereto. In addition, we urge any station not listed on the attached Appendix A to consider and determine whether it can participate in providing analog nightlight service by demonstrating that it will not cause harmful interference to any digital station.<sup>11</sup> We also urge stations that are unable to provide nightlight service on their own analog channel to coordinate with other broadcasters in their service area to share the costs of analog nightlight operation to reach their viewers. We strongly encourage all stations to work together to ensure that at least one station serving each community provides a nightlight service to assist that community. As proposed in the *Notice*, the station whose channel is being used to provide the nightlight service will remain responsible for the content of the programming.<sup>12</sup>

5. The Commission, in conjunction with industry stakeholders,<sup>13</sup> state and local officials, community grassroots organizations, and consumer groups, has worked hard to increase consumer awareness of the digital transition, and these efforts have made a significant impact.<sup>14</sup> All of our efforts

(Continued from previous page) \_\_\_\_\_  
("APA") because of this time frame, the Commission nonetheless sought comment from interested parties in order to assist in the development of the analog nightlight program. The Commission noted the "urgent necessity for rapid administrative action under the circumstances." *Omnipoint Corp. v. FCC*, 78 F.3d 620, 629 (D.C. Cir. 1996) (upholding seven-day comment period for rules in twice-delayed C Block auction given urgent necessity for rapid administrative action) (internal quotes and cites omitted). *See Notice*, ¶ 33. *See* 5 U.S.C. § 553(b); *Petry v. Block*, 737 F.2d 1193, 1200-01 (D.C. Cir. 1984) (holding that the limited time Congress gave the Department of Agriculture was a "crucial factor in establishing 'good cause'"). *See also* Analog Nightlight Act, Section 2(a) ("Notwithstanding any other provision of law, the Federal Communications Commission shall, not later than January 15, 2009, develop and implement a program...").

<sup>10</sup> A list of the comments and reply comments filed in response to the *Notice* is attached hereto at Appendix B.

<sup>11</sup> We note that the Community Broadcasters Association ("CBA"), which is concerned that continued occupancy of analog channels will delay the initiation of digital service by some Class A and Low Power Television ("LPTV") stations, prefers that the Commission not pressure full power stations that prefer not to participate in the nightlight program to change their mind and participate, as long as there is at least one full power station in each Designated Market Area ("DMA") that is willing and able to participate. *See* Comments of CBA, filed January 2, 2009, at 2. While we recognize that some Class A and LPTV stations are waiting for analog spectrum to become available so they can commence digital service, we believe that our primary goal in implementing the Analog Nightlight Act is to ensure widespread participation to assist viewers that are unprepared for the transition. The nightlight period is short – limited to 30 days - so any delay caused to a Class A or LPTV station would be brief.

<sup>12</sup> *See Notice*, ¶ 3.

<sup>13</sup> Many industry members have been working hard to educate consumers about the upcoming transition including broadcasters, multichannel video programming distributors, telecommunications companies, satellite providers, manufacturers, and retailers.

<sup>14</sup> According to the latest Nielsen DTV report, more than 92 percent of U.S. households are aware of and prepared, at least to some extent, for the transition. *See* "Nielsen Says Fewer Households Are Unprepared for DTV Transition (continued...)"

will continue and intensify up to and beyond the transition deadline. However, it is inevitable that on February 17, 2009, some consumers will be unaware of the transition, some will be unprepared to receive digital signals, and others will experience unexpected technical difficulties. For those consumers, the analog nightlight program adopted by Congress and implemented herein will help to ensure that there is no interruption in the provision of critical emergency information and will provide useful information regarding the transition to help consumers establish digital service.

## II. DISCUSSION

### A. Duration of the Analog Nightlight Program

6. We find that the Act authorizes full-power television stations to provide analog nightlight service for up to 30 days after the February 17, 2009 transition date. Section 2(a) of the Analog Nightlight Act states:

Notwithstanding any other provision of law, the Federal Communications Commission shall, not later than January 15, 2009, develop and implement a program to encourage and permit, to the extent technically feasible and subject to such limitations as the Commission finds to be consistent with the public interest and requirements of this Act, the broadcasting in the analog television service of only the public safety information and digital transition information specified in subsection (b) during the 30-day period beginning on the day after the date established by law under section 3002(b) of the [DTV Act] for termination of all licenses for full-power television stations in the analog television service and cessation of broadcasting by full-power stations in the analog television service.<sup>15</sup>

7. Thus, as required by this Act, our analog nightlight program will permit eligible full-power television stations, as defined below, to continue their analog broadcasting for a period of up to 30 days beginning on February 18, 2009, for the limited purpose of providing public safety and digital transition information, as further described below.<sup>16</sup> The 30-day period ends at 11:59:59 pm local time on March 19, 2009. Cohen, Dippell and Everist, P.C. (“CDE”) request in their comments that the Commission permit continuation of analog service for more than 30 days following the transition deadline in special cases.<sup>17</sup> We decline CDE’s request as it is contrary to the explicit language of the Act.

8. Although we encourage stations that elect to participate in the analog nightlight program to provide nightlight service for the entire 30-day period provided by the Act, they are not required to do so. The Analog Nightlight Act limits the duration of the nightlight service but does not specify that the

(Continued from previous page) \_\_\_\_\_  
– But Finds That 7.4 % of Households Still ‘Completely Unready’ for Feb. 17 Deadline,”  
<http://www.multichannel.com/article/CA6617639.html>.

<sup>15</sup> Analog Nightlight Act, Section 2(a).

<sup>16</sup> One commenter proposed that we authorize Class A, LPTV, TV translator, and other secondary television stations to participate in making public service announcements regarding the DTV transition, and make an exception where necessary to any rules that might prohibit these stations from making such announcements (e.g., some secondary television stations are either prohibited from originating programming or restricted in the amount of programming they may originate). See Comments of James Edwin Whedbee, filed December 29 and December 31, 2008. Class A and LPTV stations are not prohibited from making such public service announcements and we encourage these stations to consider doing so, particularly if they serve rural areas that are served by few full-power stations. See also *DTV Consumer Education Initiative*, MB Docket No. 07-148, Report and Order, 23 FCC Rcd 4134, ¶¶ 36-37 (2008) (urging low power television broadcasters, particularly those that will continue analog-only broadcasting, to educate their viewers about the DTV transition). We decline to address in this proceeding whether to expand the authority of other secondary television stations to permit the airing of announcements regarding the transition.

<sup>17</sup> See Comments of CDE at 2.

service must be provided for the entire 30-day period. Consistent with the Act, we find that participating stations have the flexibility to provide nightlight service for a shorter period of time and terminate service before March 19, 2009.<sup>18</sup> However, we urge stations that volunteer to provide nightlight service to commit to airing the nightlight programming for at least two weeks, as we believe that a minimum period of two weeks is necessary to ensure that the information provided by the nightlight service reaches viewers who were unprepared for the transition. In addition, we believe that it is important for emergency information to remain available to all viewers during the 30-day nightlight period wherever possible. We require stations that elect to participate in the nightlight program to inform us in their notification, as described below, if they are planning to cease nightlight service before March 19, 2009.<sup>19</sup>

## **B. Eligibility for the Analog Nightlight Program**

9. Based on Section 3 of the Act, we conclude, as we proposed in the *Notice*, that only stations operating on channels 2 through 51 are eligible to broadcast in analog pursuant to the Act.<sup>20</sup> Section 3 of the Act requires, among other things, that the Commission consider “market-by-market needs, based on factors such as channel and transmitter availability”<sup>21</sup> in developing the nightlight program, and requires the Commission to ensure that the broadcasting of analog nightlight information will not cause “harmful interference” to digital television signals.<sup>22</sup> 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”<sup>23</sup> and on channels 52-69.<sup>24</sup>

10. We also conclude, as we proposed in the *Notice*, that channels cannot be used for analog nightlight service if they cause harmful interference to digital television signals.<sup>25</sup> Therefore, a station that is “flashcutting” on its analog channel to post-transition digital operation will not be eligible to use its analog channel for the analog nightlight service because to do so would unavoidably interfere with its digital service.<sup>26</sup>

### **1. Stations Initially Determined to Be Eligible**

11. After reviewing the comments received on this issue, we have decided that we can increase the number of stations initially determined to be eligible for the analog nightlight program. We will expand the list of eligible stations, attached as Appendix A, to include 826 stations that cover 47

---

<sup>18</sup> Analog Nightlight Act, Section 2(a).

<sup>19</sup> *See, infra*, ¶ 23.

<sup>20</sup> *See Notice*, ¶ 10.

<sup>21</sup> Analog Nightlight Act, Section 3(1).

<sup>22</sup> Analog Nightlight Act, Section 3(2). Section 3 also mandates that the Commission “not require” that analog nightlight signals be subject to mandatory cable carriage and retransmission requirements. Analog Nightlight Act, Section 3(3).

<sup>23</sup> Analog Nightlight Act, Section 3(5). *See* Comments of the Association of Public-Safety Communications Officials-International, Inc. (“APCO”), filed December 30, 2008, at 2; Comments of James Edwin Whedbee, filed December 31, 2008, at 1.

<sup>24</sup> Analog Nightlight Act, Section 3(6).

<sup>25</sup> *See Notice*, ¶ 10.

<sup>26</sup> As discussed below, *see, infra*, ¶ 14, a station that is approved for a phased transition to remain on its pre-transition digital channel may be permitted to use its analog channel for the analog nightlight program if doing so does not delay its transition to digital service. These circumstances will be evaluated on a case-by case basis.

states, the District of Columbia and Puerto Rico, and 202 designated market areas (“DMAs”).<sup>27</sup> We agree with those commenters, including the National Association of Broadcasters (“NAB”) and the Association of Maximum Service Television (“MSTV”), who advocate that we expand as much as possible the list of stations that are pre-approved for nightlight service and thus can participate in the nightlight program through a simple notification procedure.<sup>28</sup> In developing the list of pre-approved eligible stations that we proposed in the *Notice* (“*Notice Appendix A*”), our intention was to be conservative in order to fully protect digital signals rather than risk interference.<sup>29</sup> We find that adopting a less conservative approach will make it easier for stations to participate and thereby further the goal of encouraging widespread nightlight service.<sup>30</sup> We also find that the approach set forth below, which relies on stations to address interference issues in the first instance based on market-by-market needs, is consistent with the Commission’s discretion under the Act to provide for nightlight service that furthers the public interest. The list in *Notice Appendix A* was not intended to be an exhaustive list of the stations that may be eligible to participate in the analog nightlight program, and we noted that it underestimated the stations that could qualify.<sup>31</sup>

12. Accordingly, we will use the alternative list of pre-approved stations provided by NAB/MSTV in their comments, which contains more stations than our list in *Notice Appendix A*, with some changes as discussed below.<sup>32</sup> The NAB/MSTV list was developed by assuming that most analog

---

<sup>27</sup> The eight DMAs without a station pre-approved for nightlight service are: Harrisburg-Lancaster-Lebanon-York, PA; Hattiesburg-Laurel, MS; Lafayette, IN; Palm Springs, CA; Presque Isle, ME; Providence, RI-New Bedford, MA; Springfield-Holyoke, MA; and Toledo OH. In six of these eight DMAs, we have identified at least one station that might be able to provide analog nightlight service at reduced power (four stations in the Harrisburg-Lancaster-Lebanon-York DMA; one in the Hattiesburg-Laurel DMA, the Lafayette, IN DMA, and the Palm Springs DMA; two stations in the Providence (RI)-New Bedford (MA) DMA and three in the Toledo DMA. There are no eligible stations in the Springfield-Holyoke DMA because all of them either have an out-of-core analog channel, are using their analog channel for digital service, or would interfere with a co-channel station, but we believe portions of this market may be served by nightlight stations in adjacent markets. In the Presque Isle DMA, both stations in the market are using their analog channel for digital service, preventing them from providing nightlight service. We will continue to explore potential solutions for these markets.

<sup>28</sup> See NAB/MSTV Comments at 5-8. See also Comments of Thomas C. Smith, filed January 5, 2009, at 2-3 (arguing that the Commission’s list of eligible stations is too conservative) and Bill Sandford, filed January 6, 2009 (expressing concern regarding rural areas that do not have a station on the pre-approved nightlight eligible list in the *Notice Appendix A*). In contrast, the Association of Public Television Stations (“APTS”) supports the Commission’s intention as expressed in the *Notice* to use conservative standards to ensure that nightlight stations do not interfere with digital signals. See APTS Comments at 3. According to APTS, the transition “stands its greatest chance of success if the Commission ensures that it is doing nothing to threaten the ability of stations to reach their viewers with their digital signals.” *Id.*

<sup>29</sup> See *Notice*, ¶ 13. With respect to Section 3(2), in considering interference protection for digital TV stations, we developed minimum co-channel and adjacent channel spacing measures and presumed that analog stations that are located the specified distance or greater from any operating DTV stations would not cause interference to signals in the digital television service.

<sup>30</sup> See NAB/MSTV Comments at 7 (noting that, although stations not on the pre-approved eligible list may still participate, they would be required to submit engineering documentation, which, given the limited amount of time before the February 17, 2009 transition deadline and the cost of generating engineering studies, will discourage participation).

<sup>31</sup> See *Notice*, ¶ 11.

<sup>32</sup> See NAB/MSTV Comments at 13-30. Sunbelt Multimedia Co. (“Sunbelt”) filed comments noting that KTLN, Rio Grande City, Texas, does not appear on the *Notice Appendix A* list of pre-approved nightlight stations. See Sunbelt Comments, filed January 5, 2009, at 2. Sunbelt also states that all three of the stations in its DMA that appear on the *Notice Appendix A* are English-language stations. *Id.* According to Sunbelt, the Rio Grande Valley is (continued....)

stations now operating on low VHF channels 2-6 should be eligible for nightlight operations as there will be relatively few digital stations occupying these channels and therefore few chances for either co-channel or adjacent channel interference.<sup>33</sup> Like the *Notice* Appendix A list, the NAB/MSTV list relies on spacing criteria rather than individual interference analyses, an approach necessitated by the short time available to develop the list. In developing the spacing criteria used by the Commission, we assumed that both the analog station being studied and DTV stations in the same vicinity are operating at maximum power and antenna height allowed under the rules.<sup>34</sup> One difference between the lists is NAB/MSTV's application of a uniform 170 kilometer (km) co-channel spacing standard to expand the list of pre-approved stations, which is a shorter distance than we used for the *Notice* Appendix A list.<sup>35</sup> We further assumed that an analog station would not cause interference to a co-located adjacent channel digital station, *i.e.*, a digital station within 5 km (3 miles),<sup>36</sup> while NAB/MSTV allows for co-location within 20

(Continued from previous page) \_\_\_\_\_  
a predominately Hispanic area which is very poor and relies heavily on over-the-air broadcast signals. *Id.* We note that KTLM is listed as pre-approved for nightlight service on the revised Appendix A attached hereto.

<sup>33</sup> See NAB/MSTV Comments at 6.

<sup>34</sup> The maximum transmit antenna height above average terrain (antenna HAAT) and power limits for low-VHF (channels 2-6), high-VHF (channels 7-13), and UHF (channels 14-51) stations are set forth in Section 73.622(f) of the rules, 47 C.F.R. § 73.622(f). The maximum antenna HAAT allowed for DTV stations on channels 2-13 is 305 meters and on channels 14-51 is 365 meters (power reductions are required if higher antennas are used), the maximum power limits are 1) for low-VHF, 10 kW in Zone I and 45 kW in Zones II and III 2) for high-VHF, 30 kW in Zone I and 160 kW in Zone II and 3) for UHF, 1000 kW. Certain stations were allowed to use somewhat higher power on their DTV channels in order to replicate their analog stations; however, for purposes of this brief 30-day extension of analog operation we assume that all stations are operating at power levels no higher than the maximum levels in the rules. The minimum technical criteria (D/U ratios) for protection of digital television signals from interference from analog signals are set forth in Section 73.623(c)(2) of the rules, 47 C.F.R. § 73.623(c)(2). In developing these spacing measures we also used 1) the F(50,90) curves as derived from the F(50,50) and F(50,10) curves in Section 73.699 of the rules, 47 C.F.R. § 73.699, and the DTV service thresholds in Section 73.622(e) of the rules, 47 C.F.R. § 73.622(e), to calculate DTV service areas and 2) the analog maximum power and antenna height standards in Section 73.614 of the rules, 47 C.F.R. § 73.614, and the F(50,10) curves in Section 73.699 to calculate analog interference potential. *Id.* at § 73.699.

<sup>35</sup> The minimum spacing measures used in developing the *Notice* Appendix A list were:

Channel Band	Zone (see 47 C.F.R. § 73.609)	Co-Channel Minimum Spacing	Adjacent Channel Minimum Spacing
2-6 (Low-VHF)	1	302 km (188 miles)	131 km (81 miles)
2-6 (Low-VHF)	2 and 3	344 km (214 miles)	156 km (97 miles)
7-13 (High-VHF)	1	264 km (164 miles)	118 km (73 miles)
7-13 (High-VHF)	2 and 3	308 km (191 miles)	149 km (93 miles)
14-51 (UHF)	1, 2 and 3	283 km (176 miles)	134 km (83 miles)

We presumed that meeting geographic spacing measures, which vary by channel band and Zone, would ensure that analog stations that are located the specified distance or greater from any operating DTV stations would not cause interference to signals in the digital television service. We also assumed that viewers would orient their antennas toward the desired DTV station and away from an analog station in a neighboring or distant market so that the front-to-back reception ratio of a user's antenna would be 10 dB at low-VHF, 12 dB at high VHF and 14 dB at UHF as indicated in the DTV planning factors set forth in our OET Bulletin No. 69 (OET-69). 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, at p. 10, Table 6. This bulletin is available on the internet at: [http://www.fcc.gov/Bureaus/Engineering\\_Technology/Documents/bulletins/oet69/oet69.pdf](http://www.fcc.gov/Bureaus/Engineering_Technology/Documents/bulletins/oet69/oet69.pdf).

<sup>36</sup> We also did not apply adjacent channel protection between channels 4 and 5, channels 6 and 7 and channels 13 and 14 as those channels are not adjacent in the frequency spectrum.

km.<sup>37</sup> With respect to the Act's requirement regarding the protection of public safety land mobile operations on channels 14-20, both our list and that of NAB/MSTV used the Commission's existing geographic spacing criteria to ensure that pre-approved eligible analog nightlight stations will not cause interference to land mobile operations in the TV bands.<sup>38</sup>

13. While NAB/MSTV acknowledges that its list may be more likely to result in interference at the outer edges of a DTV station's service area during the temporary 30-day nightlight period, it argues this result should be balanced against the need for DTV and emergency information throughout a station's market. NAB/MSTV notes that, while its priority generally is to protect digital stations from interference, in this proceeding, ensuring that as many stations as possible have the opportunity to provide nightlight service is vitally important.<sup>39</sup> As stated above, we agree that a less conservative, more balanced approach than that proposed in the *Notice* is warranted and would be consistent with the requirements of the Act, and we conclude that use of NAB/MSTV's list of pre-approved stations, with the modifications described below, will serve the public interest.

14. The revised list of stations pre-approved for nightlight service in Appendix A includes most of the stations listed on Appendix A to the *Notice*, plus most of the stations on the NAB/MSTV list.<sup>40</sup> We are excluding four stations that are not presently broadcasting.<sup>41</sup> NAB/MSTV did not include in their list stations that have requested and received permission from the Commission to remain on their pre-transition DTV channel after the February 17, 2009 transition date pursuant to the "phased-transition" relief provisions adopted in the *Third DTV Periodic Report and Order*<sup>42</sup> and that were listed on the *Notice* Appendix A. These stations' analog channels will be available for nightlight service and, accordingly, we have retained them in Appendix A, as adopted here. In addition, we have added to the NAB/MSTV list 12 stations (indicated in Appendix A in column I with an asterisk (\*)) that our analysis indicates may operate with contour protection equivalent to that described in the *Notice*.<sup>43</sup> Appendix A identifies those

---

<sup>37</sup> NAB/MSTV also used a minimum spacing of 90 km to stations not located within 20 km.

<sup>38</sup> Public safety services operate in the TV bands in 13 metropolitan areas on channels in the range of 14-20 (470-412 MHz) that have previously been identified in each area. See 47 C.F.R. § 73.623(e) for the list of land mobile communities and channels. Public safety services operate on specified channels in the TV bands as part of the Private Land Mobile Radio Service (PLMRS), see 47 C.F.R. § 90.303(a). PLMRS base stations on these channels must be located within 80 kilometers (50 miles) of the center of the cities where they are permitted to operate on channels 14-20 (470-512 MHz), and mobile units may be operated within 48 kilometers (30 miles) of their associated base station or stations. Thus, mobile stations may be operated at up to 128 kilometers (80 miles) from the city center, see 47 C.F.R. § 90.305. See Amendment of Parts 2, 89, 91, and 93; Geographic Reallocation of UHF-TV Channels 14 Through 20 to the Land Mobile Radio Services for Use Within the 25 Largest Urbanized Areas of the United States; Petition Filed by the Telecommunications Committee of the National Association Of Manufacturers to Permit Use of TV Channels 14 and 15 by Land Mobile Stations in the Los Angeles Area, Docket No. 18261, RM-566, *First Report and Order*, 23 FCC 2d 325 (1970).

<sup>39</sup> See NAB/MSTV Comments at 6. *But see* APTS Comments at 3 (supporting the use of conservative standards to determine stations that are pre-approved to provide nightlight service).

<sup>40</sup> Consistent with the statute, the *Notice* Appendix A and Appendix A adopted herein include only those stations that operate on analog channels 2-51. See Analog Nightlight Act at 3(6). The NAB/MSTV list also includes only these stations.

<sup>41</sup> The four stations are KYUK-TV, Bethel AK; 960703KK, Price UT; New34, Senatobia MS; and 960920LX, Tupelo MS. Bethel Broadcasting, Inc. filed comments on behalf of KYUK noting that the station was erroneously listed in the *Notice* Attachment A. See Comments of Bethel Broadcasting, Inc., filed January 2, 2009, at 1.

<sup>42</sup> See *Third Periodic Review of the Commission's Rules and Policies Affecting the Conversion to Digital Television*, Report and Order, 23 FCC Rcd 2994, 3038-39 ¶¶ 92-93 (2007) ("*Third DTV Periodic Report and Order*").

<sup>43</sup> In order to improve the accuracy of the initial analysis upon which the Appendix A list in the *Notice* was based, we generated a revised list of eligible stations that were determined using spacing criteria for the individual station (continued....)

stations that have already indicated to the Commission that they are interested in providing nightlight service (*see* column K).

15. We have also identified in Appendix A hereto the stations that, while they are pre-approved to provide nightlight service, may pose a greater risk of interference to digital stations under the less-conservative spacing methodology used to derive the *Notice* Appendix A. These stations are identified by an asterisk in the column J headed “short spaced.” We note that NAB/MSTV state that, if interference were to occur, it can be easily identified and corrected by having the nightlight stations reduce power.<sup>44</sup> In this regard, we are continuing to perform analyses to identify any potential significant interference problems and will work with broadcasters to mitigate any such interference. In the meantime, we urge these stations to consider providing nightlight service, but we also ask that they consider whether reducing their analog signal strength to mitigate possible interference to DTV stations can be done without significantly affecting the population receiving nightlight service. For example, if there are already several stations in the market providing nightlight service, it may be preferable for a station whose nightlight operation is short-spaced to support the service provided by other stations in the market rather than itself broadcasting an analog signal. If, however, a station listed in Appendix A that is short-spaced is the sole station that can provide nightlight service in a community, we urge that station to consider providing the service with reduced power so as to avoid harmful interference to digital stations.

16. Consistent with the Act and the public interest, we encourage stations to make these initial determinations on their own after considering circumstances in their local market area and in consultation with other stations.<sup>45</sup> Stations that decide to participate in the analog nightlight program using reduced analog power should so indicate in their notification to us.<sup>46</sup> Stations that decide to reduce power after commencing provision of the nightlight service, likewise, must notify us of their power reduction via the notification process described below.<sup>47</sup>

17. The Commission ultimately reserves the right to rescind any station’s authority to provide analog nightlight service, including the authority of any station listed on Appendix A. Among other things, we will weigh the benefits of the 30-day nightlight service against the interference caused to post-transition digital service in making any such determination. We will rescind the authority of any station’s analog nightlight transmission that results in a valid complaint of harmful interference.<sup>48</sup>

(Continued from previous page)

power levels and heights above average terrain using the appropriate propagation curves. As with the initial list, the spacing distances were calculated such that the interfering contour of the candidate analog station did not overlap the protected noise-limited contour of any potentially-affected DTV station. This improved analysis removed some stations that were on the Appendix A list in the *Notice*, namely stations having facilities in excess of the maximum power and height specified in our rules for either the candidate analog station or the protected DTV station. This improved analysis also added to the list some stations that have facilities less than the maximum power and height specified in our rules. The resulting revised list contained about 360 stations, but did not significantly increase the number of DMAs that would have access to nightlight service. This revised list was compared with the list of stations submitted by NAB/MSTV, and all but 12 of the stations on our revised list also appeared on the NAB/MSTV list. Those 12 stations were added to the NAB/MSTV list to produce the list shown in Appendix A herein; those stations are indicated on that list by an asterisk in column I.

<sup>44</sup> *See* NAB/MSTV Comments at 7.

<sup>45</sup> This approach is consistent with the Act’s directive that the Commission take into account market-by-market needs in developing the nightlight program. *See* Analog Nightlight Act, Section 3(1).

<sup>46</sup> *See, infra*, discussion of notification procedure, ¶ 23.

<sup>47</sup> *Id.*

<sup>48</sup> Although we urge stations to work together to resolve any concerns regarding interference, complaints that cannot be resolved may be sent by e-mail to [nightlight@fcc.gov](mailto:nightlight@fcc.gov).

## 2. Other Stations That May Meet Eligibility Requirements

18. As we proposed in the *Notice*, we will permit broadcasters whose stations are not listed in Appendix A and who are interested in providing nightlight service to submit engineering and other information to demonstrate why they believe they meet the criteria identified in the Act and the requirements we adopt here.<sup>49</sup> We recognize that there are many analog stations that are currently operating close to digital stations without causing interference. In such cases, interference is avoided by stations operating at less than the maximum allowed technical facilities, terrain features, or other conditions affecting propagation. These stations may notify us through the Engineering STA process described below and explain how they could operate without causing harmful interference to nearby digital station(s).<sup>50</sup> Such explanations may consist of analyses using the methods in OET-69 or other recognized methodologies for evaluating TV station interference. We anticipate that we will be able to rely on the submissions we receive and public review to identify stations that may pose a problem. As we stated in the *Notice*, we delegate to the Media Bureau authority to address expeditiously issues that may arise associated with this process and to authorize additional stations to participate.<sup>51</sup>

19. In the *Notice* we proposed to permit a station not listed in Appendix A to provide nightlight service if the station would cause no more than 0.1 percent new interference to a digital station in addition to that reflected in the DTV Table Appendix B.<sup>52</sup> We also proposed that, in areas where there is no station listed as eligible in Appendix A or that would meet the 0.1 percent interference standard, we will permit a station to cause up to, but no more than, 0.5 percent new interference to a digital station in addition to the interference included in DTV Table Appendix B.<sup>53</sup> Because we have adopted a more-expansive list of pre-approved nightlight eligible stations herein, we find that it is appropriate to also be more flexible with respect to stations that are not listed in Appendix A but that wish to provide nightlight service. Accordingly, we will not require stations that wish to provide nightlight service but are not listed in Appendix A to demonstrate that they meet the proposed 0.1% new interference standard. Instead, these stations should demonstrate in their Engineering STA how they plan to provide nightlight service and how they plan to minimize interference to affected stations by, among other things, reducing analog power. We urge broadcasters not listed in Appendix A who desire to participate in the nightlight program to contact affected stations to try to reach an agreement on how nightlight service can be provided without causing harmful interference to digital stations. If there are already several stations in the market providing nightlight service, it may be prudent that a station not listed in Appendix A, and whose nightlight operation would cause interference to a digital station, to elect not to provide nightlight service but instead cooperate with the service provided by other stations in the market. If, however, a station not in Appendix A that desires to provide nightlight service would be the sole participant in its service area,

---

<sup>49</sup> See *Notice*, ¶¶ 15-17.

<sup>50</sup> See, *infra*, discussion at ¶ 25.

<sup>51</sup> See *Notice*, ¶ 15.

<sup>52</sup> See *Notice*, ¶ 16. After February 17, 2009, any interference from a full power analog station to a post-transition digital signal will be treated as new interference. The details of each station's DTV (post-transition) channel assignment, including technical facilities and predicted service and interference information, are set forth in the Appendix B to the final order in the DTV Table proceeding, MB Docket No. 87-268 ("DTV Table Appendix B"). See *Advanced Television Systems and their Impact Upon the Existing Television Broadcast Service*, MB Docket No. 87-268, Seventh Report and Order and Eighth Further Notice of Proposed Rule Making, 22 FCC Rcd 15581, 15672, app. B (2007); *revised on recon.*, Memorandum Opinion and Order on Reconsideration of the Seventh Report and Order and Eighth Report and Order, 23 FCC Rcd 4220, 4311, app. B (2008).

<sup>53</sup> See *Notice*, ¶ 16. For purposes of this discussion, an "area" means a viewing area, which may be a city, county, community, market, DMA, or other geographic area in which people receive over-the-air television service. Stations seeking to participate under this standard should make their argument and basis for inclusion clear in their STA submission.

we urge that station to try to come to an agreement with stations that could be affected by nightlight service on how the nightlight service can be provided without causing harmful interference. We ask stations to make these initial efforts to reach an agreement on their own after considering circumstances in their local market area and in consultation with other stations. As noted above,<sup>54</sup> we reserve the right to rescind, at any time, any station's authority to provide analog nightlight service.

### C. Notifications to the Commission of Program Participation

20. We adopt a streamlined process for stations to notify us of their intent to participate in the analog nightlight program. In addition, we take the other steps discussed below to facilitate participation in the analog nightlight program. Notification by stations of participation is critical for three reasons. First, the Commission and the public need to know which stations are participating to help ensure the widest possible coverage of the nightlight service. By identifying the areas that will be covered, we can determine which areas will rely more heavily on other sources of continuing transition information, including radio broadcasts and local newspapers. Second, in the event of interference, the list of participants will help the Commission and local stations to determine whether a nightlight participant is the source of the interfering signal. Third, as described below, stations participating in the analog nightlight program will be granted an extension of their analog broadcast license for the limited purpose of providing this service. Stations must notify us of their participation in order to be included on the list and be eligible for this blanket extension.<sup>55</sup>

21. In response to the concerns expressed by a number of commenters regarding the notification procedures we proposed in the *Notice*,<sup>56</sup> we adopt revised procedures to make participation easier and to reduce the time and costs potentially associated with notification. First, we note that, by expanding the list of stations pre-approved as eligible to participate in the analog nightlight program, we have increased the number of stations that may simply notify the Commission of their intent to participate without providing any additional engineering information. This will simplify program participation for many stations. Second, as described below, we will permit pre-approved eligible stations identified in Appendix A to notify us of their participation in the analog nightlight program by either filing a Legal STA or by simply sending us an e-mail. The option of using an e-mail will make notification easier for stations that choose to use this method to announce their intention to participate. Stations that are not listed in Appendix A must file an Engineering STA if they wish to participate. Third, we will not require stations that elect to participate in the nightlight program to file an update to their Transition Status Report (FCC Form 387). Several commenters advocated eliminating this proposed requirement,<sup>57</sup> and we agree.

---

<sup>54</sup> See, *supra*, ¶ 17.

<sup>55</sup> See, *infra*, discussion ¶¶ 26-27.

<sup>56</sup> NAB/MSTV supported expanding the list of pre-approved nightlight eligible stations in part to reduce the number of stations that would be required to submit additional engineering documentation in order to provide nightlight service. See NAB/MSTV Comments at 6. Other commenters also expressed concern about the cost to stations of participating in the nightlight program and urged the Commission to simplify the procedures as much as possible in order to reduce these costs. See Joint Comments of the Named State Broadcaster Associations, filed January 5, 2009, at 3-4. See also Comments of Bill Sanford at 1, Thomas C. Smith at 3.

<sup>57</sup> See Comments of NAB/MSTV at 8; Named State Broadcaster Associations at 3. See also Reply Comments of the Ohio Association of Broadcasters, Virginia Association of Broadcasters, and North Carolina Association of Broadcasters, filed January 8, 2009, at 4 (“Ohio, Virginia, and North Carolina State Association Reply Comments”).

## 1. Notifications by Pre-Approved Eligible Stations

22. We will permit pre-approved eligible stations identified on Appendix A to notify us of their participation in the analog nightlight program by either filing a Legal STA electronically through the Commission's Consolidated Database System ("CDBS") using the Informal Application filing form<sup>58</sup> or by sending an e-mail to [nightlight@fcc.gov](mailto:nightlight@fcc.gov). Stations must inform us about their decision to participate in the program no later than February 10, 2009. This deadline will allow us to determine where the analog nightlight service will be available, which may influence our determination of whether to make additional stations eligible. We will not require an engineering or other showing from these stations and, as indicated in the *Notice*, we will waive the fee for these notifications.<sup>59</sup>

23. While we encourage stations to file a Legal STA through CDBS so that information about their participation in the analog nightlight program is readily available both to the Commission and the public, we realize that this filing procedure may be burdensome to some stations, especially small broadcasters,<sup>60</sup> and could deter these stations from participating in the analog nightlight program. Accordingly, stations may simply provide notification by sending an e-mail message to the Commission at [nightlight@fcc.gov](mailto:nightlight@fcc.gov). The e-mail should include the following information: (1) name, title, phone number, and, if available, e-mail 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, e-mail 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 analog nightlight 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 March 19, 2009). Stations that reduce power during their period of nightlight service should also notify the Commission of this change, either by filing another Legal STA or by sending an email to [nightlight@fcc.gov](mailto:nightlight@fcc.gov). The information provided in the emails will be entered into CDBS so that it will be available to the public.

24. The Media Bureau will announce publicly (by issuing a Public Notice and/or by posting a list on the Commission's website) those stations that have indicated their participation in the analog nightlight program via an e-mail notification.<sup>61</sup> We note that NAB/MSTV has offered to coordinate with the Commission to assemble a complete list of the participating stations in Microsoft Excel or other searchable format, and we will post the list on the [DTV.gov](http://DTV.gov) website.<sup>62</sup>

## 2. Requests for Program Participation with Eligibility Showings

25. As proposed in the *Notice* and discussed above, we will permit stations that are not listed in Appendix A to request participation in the analog nightlight program by filing an Engineering STA

---

<sup>58</sup> More information about Informal Filings in CDBS can be found at this web page: [http://fjallfoss.fcc.gov/prod/cdb/forms/prod/faq\\_informal.htm](http://fjallfoss.fcc.gov/prod/cdb/forms/prod/faq_informal.htm).

<sup>59</sup> See *Notice*, ¶ 18. For stations filing Legal STAs, we will waive the filing fee usually required for this form.

<sup>60</sup> See APTS Comments at 4 (noting that the nightlight program "places an immense financial burden on stations, particularly smaller stations in rural areas where over-the-air viewership is high" and the program would have a great impact).

<sup>61</sup> We note that filings via CDBS are available to the public and interested parties, but e-mail notifications are not otherwise publicly available.

<sup>62</sup> See NAB/MSTV Reply at 4.

notification electronically through CDBS using the Informal Application filing form.<sup>63</sup> Stations must file these Engineering STA notifications no later than February 3, 2009. This deadline will allow the Commission, the public, and interested parties an opportunity to review and evaluate these requests. The Media Bureau will announce by Public Notice those stations that have filed a request to participate in the program.<sup>64</sup> In their Engineering STAs, stations should demonstrate how they plan to provide nightlight service while avoiding harmful interference to affected stations (*e.g.*, due to intervening terrain or by reducing analog power). Stations with requests 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 discussed below. As noted, above,<sup>65</sup> 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.

#### **D. Analog License Extension for Participating Stations**

26. As we proposed in the *Notice*, we hereby grant a blanket extension of license to broadcasters who are eligible to participate in the analog nightlight program and notify the Commission as required of their intent to operate analog nightlight service for a period of up to 30 days after February 17, 2009, *i.e.*, until and including March 19, 2009. Television broadcast licenses currently contain the following language concerning analog service:

This is to notify you that your application for license is subject to the condition that on February 17, 2009, or by such other date as the Commission may establish in the future under Section 309(j)(14)(a) and (b) of the Communications Act, the licensee shall surrender either its analog or digital television channel for reallocation or reassignment pursuant to Commission regulations. The Channel retained by the licensee will be used to broadcast digital television only after this date.<sup>66</sup>

27. After stations have notified the Commission of their intention to provide nightlight service, and after stations and the public have had an opportunity to object to any notifications filed by stations not listed in Appendix A, the Media Bureau will issue a Public Notice prior to the transition date announcing those stations that are participating in the analog nightlight program. The Media Bureau will update that Public Notice later, if necessary. The Media Bureau's Public Notice will establish the right of those licensees whose stations are identified in the Public Notice to continue to operate their stations in analog on their analog channels solely for the purpose of providing the analog nightlight service as described in this Report and Order. Notification of participation pursuant to the requirements adopted in this Report and Order is necessary for a participating station to qualify for the blanket license extension.

#### **E. Permissible Analog Nightlight Programming**

28. We find that the Analog Nightlight Act authorizes the broadcast of only emergency information, information regarding the digital television transition, and the related sponsorship information set forth below. Section 2(b) of the Act describes the programming that stations will be permitted to broadcast during the nightlight period. That section states that the nightlight program shall provide for the broadcast of:

---

<sup>63</sup> See *Notice*, ¶ 20. For more information on Informal Filings in CDBS, please refer to this web page: [http://fjallfoss.fcc.gov/prod/cdbforms/prod/faq\\_informal.htm](http://fjallfoss.fcc.gov/prod/cdbforms/prod/faq_informal.htm). We will not accept this type of notification via e-mail. See also, discussion, *supra*, at ¶ 19-20.

<sup>64</sup> The Public Notice will set forth a brief period of time within which an objection based on interference may be filed and will describe the expedited process for filing such objections.

<sup>65</sup> See, *supra*, ¶ 17.

<sup>66</sup> FCC Form 352-B (Television Broadcast Station License), Oct. 21, 1985.

- (1) emergency information, including critical details regarding the emergency, as broadcast or required to be broadcast by full-power stations in the digital television service;<sup>67</sup>
- (2) information, in both English and Spanish, and accessible to persons with disabilities, concerning-
  - (A) the digital television transition, including the fact that a transition has taken place and that additional action is required to continue receiving television service, including emergency notifications; and
  - (B) the steps required to enable viewers to receive such emergency information via the digital television service and to convert to receiving digital television service, including a phone number and Internet address by which help with such transition may be obtained in both English and Spanish; and
- (3) such other information related to consumer education about the digital television transition or public health and safety or emergencies as the Commission may find to be consistent with the public interest.<sup>68</sup>

29. Consistent with the explicit language of the Act, with the exception of the limited sponsorship information that we will permit (as set forth below) we conclude that nightlight programming may convey only emergency information and information regarding the digital transition. As we stated in the *Notice*, the Act does not contemplate the provision of other programming that is unrelated to these two categories.<sup>69</sup> Thus, we deny the request made by CDE that the Commission permit, under unique circumstances, analog service to continue after the transition with regular programming aired during the majority of the broadcast period in addition to public safety and DTV transition information.<sup>70</sup> DTV transition information should be available in both English and Spanish, and all nightlight information should be accessible to persons with disabilities. We encourage participating stations to provide the information in additional languages where appropriate and beneficial for their viewers. One commenter asked whether station identification will be required for nightlight stations.<sup>71</sup> We conclude that nightlight stations should comply with station identification requirements to ensure that the source of the programming is readily identifiable.<sup>72</sup> In addition, we expect stations that provide nightlight service to maintain the same hours of operation that were in effect on their analog channel prior to the transition deadline.

30. We also tentatively concluded in the *Notice* that the Act does not contemplate the provision of advertisements as part of nightlight programming.<sup>73</sup> After further consideration of this issue, we conclude that the provision of limited sponsorship information as part of nightlight programming is

---

<sup>67</sup> Section 4 of the Act states that the term “emergency information” has the same meaning as that term has under Part 79 of the FCC’s rules. See Analog Nightlight Act, Section 4.

<sup>68</sup> Analog Nightlight Act, Section 2(b).

<sup>69</sup> See *Notice*, ¶ 9.

<sup>70</sup> See Comments of CDE at 1-2. Other commenters that addressed this issue agreed that nightlight programming should be limited to transition-related and emergency programming. See, e.g., Comment of James Bellaire, filed January 5, 2009, at 1.

<sup>71</sup> See Comments of Fox Television Stations, Inc., WJBK License, Inc., and KDFW License, Inc., filed January 5, 2009, at 1.

<sup>72</sup> See 47 C.F.R. § 73.1201.

<sup>73</sup> See *Notice*, ¶¶ 9, 28.

consistent with the Act and will be permitted to help stations defray the cost of providing nightlight service.<sup>74</sup>

### 1. Emergency Information

31. In the event of an emergency situation during the 30-day analog nightlight service period, stations may broadcast video and audio programming with emergency information, including but not limited to a crawl or text describing the emergency and live or taped action regarding the emergency. Licensees providing emergency information must make that information accessible to persons with disabilities under Section 79.2.<sup>75</sup> We also conclude that the Emergency Alert System (“EAS”) applies to the analog nightlight service if an emergency arises during the 30-day time frame. EAS “provides the President with the capability to provide immediate communications and information to the general public at the National, State and Local Area levels during periods of national emergency,” and, in addition, “may be used to provide the heads of State and local government, or their designated representatives, with a means of emergency communication with the public in their State or Local Area.”<sup>76</sup>

32. For implementation of the analog nightlight, “emergency information” is as defined in Part 79 of our rules.<sup>77</sup> In addition, we include Amber Alerts as emergency events pursuant to the Commission’s EAS rules.<sup>78</sup>

33. In its reply comments, NAB/MSTV state that, while they are in full agreement that nightlight stations should provide emergency information, stations may face some practical implementation problems, particularly with respect to communicating late-breaking emergency information.<sup>79</sup> NAB/MSTV note that, if there is late-breaking emergency information, the only effective means of communicating the emergency information from the studio to the nightlight station may necessitate using the station’s digital transmission, which could result in broadcasting the station’s standard news and emergency programming over the nightlight station, including traditional programming and commercials.<sup>80</sup>

<sup>74</sup> See, *infra*, Section II, E, 3.

<sup>75</sup> 47 C.F.R. § 79.2.

<sup>76</sup> 47 C.F.R. § 11.1. Part 11 of the Commission’s rules describes the required technical standards and operational procedures of the EAS for TV broadcast and other stations. As noted, in addition to compliance with EAS standards the Commission requires TV broadcast stations that provide emergency information to make the critical details of that information accessible to people with hearing and visual disabilities. 47 C.F.R. § 79.2(b).

<sup>77</sup> 47 C.F.R. § 79.2(a)(2) defines emergency information as follows:

Information about a current emergency, that is intended to further the protection of life, health, safety, and property, *i.e.*, critical details regarding the emergency and how to respond to the emergency.

Examples of the types of emergencies covered include tornadoes, hurricanes, floods, tidal waves, earth quakes, icing conditions, heavy snows, widespread fires, discharge of toxic gases, widespread power failures, industrial explosions, civil disorders, school closings and changes in school bus schedules resulting from such conditions, and warning and watches of impending changes in weather.

The note to paragraph (a)(2) reads: “Critical details include, but are not limited to, specific details regarding the areas that will be affected by the emergency, evacuation orders, detailed descriptions of areas to be evacuated, specific evacuation routes, approved shelters or the way to take shelter in one’s home, instructions on how to secure personal property, road closures, and how to obtain relief assistance.”

<sup>78</sup> See 47 C.F.R. §§ 11.31(e), 11.44(a). See also, *Amendment of Part 11 of the Commission’s Rules Regarding the Emergency Alert System*, EB Docket No. 01-66, *Report and Order*, 17 FCC Rcd 4055, 4065-66, ¶¶ 19, 20 (2002).

<sup>79</sup> See NAB/MSTV Reply Comments at 2-3.

<sup>80</sup> *Id.*

34. In establishing rules providing for the analog nightlight emergency service, we seek to support broadcasters' efforts to provide EAS and other emergency information to their viewers during the limited 30-day nightlight service window. While the Act permits nightlight stations to broadcast only emergency and DTV transition-related information, and does not permit the broadcast of standard programming and commercials,<sup>81</sup> we recognize that flexibility may be required during this limited 30-day window to ensure that nightlight stations provide critical emergency information. Thus, while nightlight stations must provide only DTV transition-related and emergency information pursuant to the Act, if a circumstance arises that requires other programming to be transmitted for a limited period of time in order that the emergency information can be provided in a timely manner, we will not be inclined to sanction the broadcaster for violation of the Act.<sup>82</sup> We limit this flexibility to those circumstances where, for technical reasons, other programming must be transmitted in order to transmit emergency information, and only for the period of time necessary to adequately convey the emergency information to viewers.<sup>83</sup>

## 2. Transition Information

35. With respect to the digital television transition, as proposed in the *Notice* we conclude that stations airing a nightlight signal may broadcast any information that is relevant to informing viewers about the transition and how they can continue to obtain television service.<sup>84</sup> Examples of the kind of information a station may want to air include, but are not limited to: general information about the transition; information about how viewers can receive digital signals; information about the circumstances related to the DTV transition in the station's market; answers to commonly asked questions and other useful information (*e.g.*, how to re-position an antenna, install a converter box, or rescan for new channels); where viewers can obtain more information about the transition, including national or local call centers, converter box manufacturer help lines, a telephone number and website address for local stations in the community, and any other local sources of transition information and assistance; information about the DTV converter box coupon program; and information or links to other websites containing DTV information, including the Federal Communications Commission ("FCC"), National Association of Broadcasters ("NAB") and National Telecommunications and Information Administration ("NTIA").<sup>85</sup>

36. Section 2(b)(2) of the Act provides for the broadcast of information, "in English and Spanish and accessible to persons with disabilities," concerning the digital transition and certain other information.<sup>86</sup> We conclude that such information must be captioned to assist persons with hearing disabilities, and may be made available in either open or closed captioning. In addition, such information must not only be accessible to individuals who are deaf and hard of hearing, but also to individuals who are blind or have low vision. This may be achieved through open aural description of the critical aspects of the transition information that is appearing on the screen.<sup>87</sup> In addition, as the Act provides, the analog

---

<sup>81</sup> As discussed below, we conclude that limited sponsorship announcements are permitted as part of nightlight programming. *See, infra*, Section II, E, 3.

<sup>82</sup> "The Commission is a regulatory agency with broad prosecutorial discretion in enforcement proceedings." *Radio One Licenses, LLC, et al., Forfeiture Order*, 19 FCC Rcd. 23,922, 23932 ¶ 24 (2004).

<sup>83</sup> Our flexibility in this regard only applies to those programming segments containing the emergency information. For instance, if emergency information were being provided solely during a specific portion of a newscast, other portions of the newscast should not be transmitted.

<sup>84</sup> Commenters that addressed this issue generally supported giving stations flexibility regarding the DTV transition-related information they can display. *See* Thomas C. Smith Comments at 2.

<sup>85</sup> *See* [www.dtv.gov](http://www.dtv.gov) (FCC); [www.dtvanswers.com](http://www.dtvanswers.com) (NAB); [www.dtv2009.gov](http://www.dtv2009.gov) and [www.ntia.doc.gov](http://www.ntia.doc.gov) (both NTIA).

<sup>86</sup> Analog Nightlight Act, Section 2(b)(2).

<sup>87</sup> *Cf.* 47 C.F.R. § 79.2(b)(ii).

nightlight information should include a telephone number and Internet address by which help with the transition may be obtained in both English and Spanish.<sup>88</sup> This information must also be made accessible. We urge stations to consider broadcasting information in additional languages, consistent with the needs of their particular viewing audience.

37. The analog nightlight information may be aired using a “slate” with text and audio of the text or other DTV information, as well as information, if necessary describing the steps viewers must take to obtain emergency information.<sup>89</sup> Participants in the analog nightlight program may also air a video loop with audio, or broadcast live action with audio format, or any combination thereof.<sup>90</sup> NAB has also recently announced that it will produce and distribute a brief DTV educational video that stations can air as part of the analog nightlight program.<sup>91</sup>

### 3. Sponsorship Information

38. In the *Notice* we tentatively concluded that advertisements would not be permitted to be included in the analog nightlight program.<sup>92</sup> However, after further consideration, we conclude that permitting limited mention of sponsors to encourage stations to provide nightlight service and to defray the cost is appropriate and consistent with the Analog Nightlight Act. Accordingly, we will permit stations providing nightlight service to include brief announcements identifying sponsors that have made financial or other contributions to the nightlight service, including commercial entities such as retailers and manufacturers. According to NAB/MSTV, these contributors might include other stations in the market that are not themselves providing nightlight service, multichannel video programming distributors (“MVPDs”), local municipalities, retailers, or other entities.<sup>93</sup> Consistent with the Analog Nightlight Act provisions discussed below, the sponsorship announcements should be very brief and should not interfere with or obscure the DTV or emergency-related information being provided. For example, a brief statement at the bottom of the screen that: “this programming is paid for, sponsored, or furnished by X” would be appropriate under the Analog Nightlight Act and would fulfill any applicable sponsorship identification requirements.<sup>94</sup> The sponsorship information may be visual or aural. If stations use a visual identification, however, the visual identification should only remain on the screen for as long as necessary to provide a reasonable identification. Keeping a visual identification, such as a corporate logo or “bug,” on the screen throughout the sponsored programming might violate the Act’s limitation of programming

---

<sup>88</sup> Analog Nightlight Act, Section 2(b)(2)(B).

<sup>89</sup> *Id.*

<sup>90</sup> Stations choosing a video loop format may use the FCC’s educational video showing how to install a converter box. See [http://www.dtv.gov/video\\_audio.html](http://www.dtv.gov/video_audio.html). Additional formats of the video are available upon request. We note that during the early transition in Wilmington, NC, stations used a slate to provide nightlight service. See, *supra*, ¶ 2 and note 4. The text of the “slate” consisted of the following: “At 12 noon on September 8, 2008, commercial television stations in Wilmington, North Carolina began to broadcast programming exclusively in a digital format. If you are viewing this message, this television set has not yet been upgraded to digital. To receive your television signals, upgrade to digital now with a converter box, a new TV set with a digital (ATSC) tuner or by subscribing to a pay service like cable or satellite. For more information call: 1-877-DTV-0908 or TTY: 1-866-644-0908 or visit [www.DTVWilmington.com](http://www.DTVWilmington.com).”

<sup>91</sup> See “DTV Answers.com Press Release” (December 16, 2008) (announcing that the video program will address common questions based on those received from viewers in the Wilmington test market and in response to other DTV readiness testing, on such topics as converter box installation, rescanning, antenna positioning and general DTV transition questions) [www.dtvanswers.com/presskit](http://www.dtvanswers.com/presskit).

<sup>92</sup> See *Notice*, ¶¶ 25, 28.

<sup>93</sup> See NAB/MSTV Comments at 4.

<sup>94</sup> See, *infra*, ¶ 41.

to only public safety, digital transition and information related to consumer education about the digital transition that is consistent with the public interest.

39. We agree with those commenters who argued that the Analog Nightlight Act can be interpreted to permit stations to provide sponsorship information in order to help defray the cost of providing nightlight service.<sup>95</sup> Section 2(a) of the Act directs the Commission to implement a nightlight program “subject to such limitations as the Commission finds to be consistent with the public interest and the requirements of this Act....”<sup>96</sup> Section 3 of the Act lists the explicit “limitations” of the nightlight program, none of which addresses programming.<sup>97</sup> Section 2(a) of the Act permits “the broadcasting in the analog television service of *only* the public safety information and digital transition information specified in subsection (b)...”<sup>98</sup> Sections 2(b)(1) and (2) require the Commission to provide for the broadcast of specified information (*i.e.*, emergency information and information relating to the digital television transition) and Section 2(b)(3) allows the broadcast of “such other information related to the digital transition ... as the Commission may find to be consistent with the public interest.”<sup>99</sup>

40. We find that the mention of the sponsor or source of the information related to consumer education about the digital transition is “related” information within the meaning of Section 2(b)(3). We also believe that permitting the broadcast of limited sponsorship information will increase the number of stations that volunteer to provide critical nightlight service and thus would further the public interest in facilitating the transition to digital television. In this regard, NAB/MSTV states that maintaining analog service during the nightlight period could cost stations between \$3,500 to over \$15,000 per station,<sup>100</sup> while the state broadcasters associations estimate the cost, including electricity, production and other costs, will range from \$10,000 to \$20,000 per station for the 30-day nightlight period.<sup>101</sup> APTS states that the Public Broadcasting Service has estimated that public television stations spend \$3 million per month just in electricity costs to provide analog service, a cost they had planned to shed after the transition deadline.<sup>102</sup> For many stations, the issue of the cost associated with nightlight service could be determinative of their ability to participate in the nightlight program. For these reasons, we interpret the Analog Nightlight Act to allow licensees to include in their nightlight programming a brief aural or visual announcement identifying the sponsor of the program.

41. Finally, we note that, if a station broadcasts programming during the nightlight period for which it receives or is promised money, service, or other valuable consideration from any third party, it must comply with the sponsorship identification requirements in Section 317 of the Act and our rules.<sup>103</sup>

---

<sup>95</sup> See Comments of NAB/MSTV at 4-5; Named State Broadcasters Associations at 4-5.

<sup>96</sup> Analog Nightlight Act, Section 2(a).

<sup>97</sup> Analog Nightlight Act, Section 3.

<sup>98</sup> Analog Nightlight Act, Section 2(a) (emphasis added).

<sup>99</sup> Analog Nightlight Act, Section 2(b).

<sup>100</sup> See NAB/MSTV Comments at 4.

<sup>101</sup> See Comments of Named State Broadcasters Associations at 4.

<sup>102</sup> See APTS Comments at 4. In addition, APTS urges the Commission to examine ways to provide funding for stations, including public television stations, who would like to participate in the nightlight program but lack the financial means to do so. See APTS Comments at 4.

<sup>103</sup> See 47 U.S.C. § 317 (“all matter broadcast by any radio station for which money, service or other valuable consideration is directly or indirectly paid, or promised to or charged or accepted by, the station so broadcasting from any person, shall, at the time the same is so broadcast, be announced as paid for or furnished, as the case may be, by such person.”); 47 C.F.R. § 73.1212.

In addition to the restrictions discussed above, non-commercial educational broadcast stations must also comply with Section 399B of the Communications Act.<sup>104</sup>

### III. PROCEDURAL MATTERS

#### A. Regulatory Flexibility Act Analysis Not Required

42. We find that no Final Regulatory Flexibility Analysis (FRFA) is required for this Report and Order. In the *Notice*, the Commission determined that no Regulatory Flexibility Analysis was required.<sup>105</sup> The Commission found that, in light of the extraordinarily short time period for it to meet Analog Nightlight statutory deadline of January 15, 2009, there was good cause to dispense with notice and comment requirements under the Administrative Procedure Act (“APA”).<sup>106</sup> For this reason, we find that a FRFA is not required.

#### B. Final Paperwork Reduction Act of 1995 Analysis

43. This Report and Order was analyzed with respect to the Paperwork Reduction Act of 1995 (“PRA”)<sup>107</sup> and contains a modified information collection requirement. On December 29, 2008, after release of the Notice in this proceeding, the Commission received OMB approval for the modified information collection requirement contained in this Report and Order.<sup>108</sup> For additional information concerning the information collection requirement contained in this Report and Order, contact Cathy Williams at 202-418-2918, or via the Internet to Cathy.Williams@fcc.gov.

#### C. Congressional Review Act

44. The Commission will send a copy of this Report and Order in a report to be sent to Congress and the Government Accountability Office, pursuant to the Congressional Review Act.<sup>109</sup>

#### D. Additional Information

45. For more information on this Report and Order, please contact Kim Matthews, Kim.Matthews@fcc.gov, or Evan Baranoff, Evan.Baranoff@fcc.gov, in the Policy Division, Media Bureau at (202) 418-2120.

---

<sup>104</sup> See 47 U.S.C. § 399B; 47 C.F.R. § 73.503(d).

<sup>105</sup> See *Notice*, ¶ 33.

<sup>106</sup> *Id.* The Commission noted the “urgent necessity for rapid administrative action under the circumstances.” *Omnipoint Corp. v. FCC*, 78 F.3d 620, 629 (D.C. Cir. 1996) (upholding seven-day comment period for rules in twice-delayed C Block auction given urgent necessity for rapid administrative action) (internal quotes and cites omitted). See *Notice*, ¶ 33. See 5 U.S.C. § 553(b); *Petry v. Block*, 737 F.2d 1193, 1200-01 (D.C. Cir. 1984) (holding that the limited time Congress gave the Department of Agriculture was a “crucial factor in establishing ‘good cause’”). See also Analog Nightlight Act, Section 2(a) (“Notwithstanding any other provision of law, the Federal Communications Commission shall, not later than January 15, 2009, develop and implement a program...”).

<sup>107</sup> The Paperwork Reduction Act of 1995 (“PRA”), Pub. L. No. 104-13, 109 Stat 163 (1995) (*codified in* Chapter 35 of Title 44 U.S.C.).

<sup>108</sup> See Notice of Office of Management and Budget Action, OMB Control No. 3060-0386, (approved Dec. 29, 2008). The Commission sought and obtained approval under OMB’s emergency processing rules (*see* 5 C.F.R. § 1320.13) for this modified collection in order to implement the Congressional mandate for the FCC to develop and implement a program by January 15, 2009, to encourage and permit TV broadcast stations to use this opportunity to provide public safety information and DTV transition information.

<sup>109</sup> See 5 U.S.C. § 801(a)(1)(A). The Congressional Review Act is contained in Title II, § 251, of the CWAAA; *see* Pub. L. No. 104-121, Title II, § 251, 110 Stat. 868.

**IV. ORDERING CLAUSES**

46. Accordingly, IT IS ORDERED that, pursuant to Sections 1, 4(i), 303(r), 316, and 336 of the Communications Act of 1934, 47 U.S.C. §§ 151, 154(i), 303(r), 316, and 336, and the Short-term Analog Flash and Emergency Readiness Act of 2008, Pub. L. No. 110-459, this Report and Order IS ADOPTED and SHALL BE EFFECTIVE upon the date of publication of the summary of the Report and Order in the Federal Register. We find good cause under the APA<sup>110</sup> for the analog nightlight program adopted in this Report and Order to be effective upon publication of the summary of the Report and Order in the Federal Register because of the January 15, 2009 statutory deadline for implementing the Analog Nightlight Act, which was enacted by Congress only last month, as well as the brief 30-day period during which the Act's provisions will be in force. In addition, any delay in implementing this program, which was mandated by Congress, can result in harm to TV stations, and, in turn, to their viewers.

47. IT IS FURTHER ORDERED that, pursuant to Section 5(c) of the Communications Act of 1934, 47 U.S.C. § 155(c), the Chief, Media Bureau, is GRANTED DELEGATED AUTHORITY to implement the analog nightlight program described in this document.

48. IT IS FURTHER ORDERED that, pursuant to the Congressional Review Act, 5 U.S.C. § 801(a)(1)(A), the Commission SHALL SEND a copy of this Report and Order in a report to Congress and the General Accounting Office.

49. IT IS FURTHER ORDERED that the Reference Information Center, Consumer Information Bureau, shall send a copy of this Report and Order to the Chief Counsel for Advocacy of the Small Business Administration.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch  
Secretary

---

<sup>110</sup> See 5 U.S.C. § 553(d)(3) (“The required publication or service of a substantive rule shall be made not less than 30 days before its effective date, except...as otherwise provided by the agency for good cause found and published with the rule.”). See also 47 C.F.R. §§ 1.103(a), 1.427(b).

**APPENDIX A**

**List of Stations Eligible for Analog Nightlight Program**

**[Note: This appendix will be attached as a separate MS Excel file.]**

**APPENDIX B****List of Commenters****Comments**

1. Association of Public Safety Communications Officials International, Inc. (“APCO”) (filed 12/29/08)
2. Association of Public Television Stations (filed 1/5/09)
3. Bethel Broadcasting, Inc. (filed 1/2/09)
4. Coalition of Organizations for Accessible Technology (filed 1/8/09)
5. Cohen, Dippell, Everist, P.C. (“CDE”) (filed 1/5/09)
6. Community Broadcasters Association (“CBA”) (filed 1/2/09)
7. Fox Television Stations, Inc, WJBK License Inc., KDFW License, Inc. (filed 1/5/09)
8. Free State Communications, LLC (filed 1/5/09)
9. Hearst-Argyle Television Incorporated (filed 1/8/09)
10. James Bellaire (filed 1/5/09)
11. James Edwin Whedbee (filed 12/31/08)
12. KSPS-TV / Robert J. Wyatt (filed 1/5/09)
13. Mark J. Colombo (filed 1/7/09)
14. Named State Broadcasters Associations<sup>111</sup> (filed 1/5/09)
15. National Association of Broadcasters (“NAB”) and Association for Maximum Service Television, Inc. (“MSTV”) (Joint Comments filed 1/5/09)
16. Rocky Mountain Public Broadcasting Network, Inc. (filed 1/5/09)
17. Sunbelt Multimedia Co. (filed 1/5/09)
18. Telecinco, Inc. (filed 1/5/09)
19. The University of North Carolina (filed 1/5/09)
20. Thomas C. Smith (filed 1/5/09)
21. William M. Sanford (1/6/09)
22. WJXT-TV (filed 1/12/09)
23. WSIL-TV, Inc. (filed 1/5/09)

**Reply Comments**

1. Bonneville International Corporation (filed 1/8/09)
2. CDE (filed 1/8/09)
3. Hank Bovis (filed 1/9/09)
4. KTBS, Inc (filed 1/8/09)

---

<sup>111</sup> The following entities filed comments jointly under this name: Alabama Broadcasters Association, Alaska Broadcasters Association, Arizona Broadcasters Association, Arkansas Broadcasters Association, California Broadcasters Association, Colorado Broadcasters Association, Connecticut Broadcasters Association, Florida Association of Broadcasters, Idaho State Broadcasters Association, Illinois Broadcasters Association, Indiana Broadcasters Association, Kansas Association of Broadcasters, Kentucky Broadcasters Association, Louisiana Association of Broadcasters, Maine Association of Broadcasters, MD/DC/DE Broadcasters Association, Massachusetts Broadcasters Association, Minnesota Broadcasters Association, Mississippi Association of Broadcasters, Missouri Broadcasters Association, Nebraska Broadcasters Association, Nevada Broadcasters Association, New Hampshire Association of Broadcasters, New Jersey Broadcasters Association, New Mexico Broadcasters Association, The New York State Broadcasters’ Association, Inc., North Dakota Broadcasters Association, Oklahoma Association of Broadcasters, Oregon Association of Broadcasters, Pennsylvania Association of Broadcasters, Rhode Island Broadcasters Association, South Carolina Broadcasters Association, Tennessee Association of Broadcasters, Texas Association of Broadcasters, Utah Broadcasters Association, Vermont Association of Broadcasters, Washington State Association of Broadcasters, West Virginia Broadcasters Association, Wisconsin Broadcasters Association, and Wyoming Association of Broadcasters.

5. NAB and MSTV (Joint Reply filed 1/8/09)
6. National Cable and Telecommunications Association (“NCTA”) (filed 1/8/09)
7. Ohio Association of Broadcasters, Virginia Association of Broadcasters and North Carolina Association of Broadcasters (Joint Reply filed 1/8/09)
8. University of South Florida (filed 1/8/09)
9. WXXI Public Broadcasting Council (filed 1/8/09)

**STATEMENT OF  
CHAIRMAN KEVIN J. MARTIN**

*Re: Implementation of Short-term Analog Flash and Emergency Readiness Act; Establishment of DTV Transition “Analog Nightlight” Program, MB Docket No. 08-255*

The Commission has been doing everything it can to minimize the potential burden the digital transition could impose on consumers and maximize their opportunity to benefit from it. Through all of our activities -- policy, enforcement, and consumer outreach -- the Commission is dedicated to minimizing the negative impact of the digital television (DTV) transition. The Analog Nightlight Act helps to minimize the burden on viewers by ensuring that those who are not able to receive digital signals after the transition are not left without access to emergency and DTV transition information.

The Commission has been working to ensure that as many Americans as possible -- and, in particular, those segments of the population that are predominantly over-the-air viewers including the elderly, people with disabilities, non-English speakers, and minorities -- are aware of the upcoming transition. And, based on recent numbers from NAB, it appears that awareness about the transition is growing. NAB reports that the national awareness level is at 92 percent. This is up from 79 percent in January 2008. Awareness is also increasing among Hispanics and African American consumers.

The Order that we adopt today should help mitigate any consumer confusion regarding the transition. I am pleased that we have pre-approved 826 television stations that cover 47 states, the District of Columbia and Puerto Rico, and 202 designated market areas. Although this is a voluntary program, we have tried to create a simple program that will make it easy for eligible stations to participate and one that will give them sufficient flexibility.

The Commission has worked to ensure that no Americans are left in the dark after the digital transition. I hope that with the help of the rules we adopt in this Order, every viewer will get the information they need to make the transition.

Finally, I want to commend the Media Bureau staff that worked on this item. The President signed the Analog Nightlight Act into law less than a month ago -- on December 23, 2008 -- and staff worked around the clock, during the holiday season, to prepare both a Notice of Proposed Rulemaking and Order with record speed. And, this is only just one example of the extraordinary efforts that Commission staff has taken to facilitate a smooth transition. I am proud of the work the Commission has done to promote consumer awareness of the digital transition. All of us, including our government and industry partners need to work together to make sure that no American is left behind in this part of the digital revolution.

**STATEMENT OF  
COMMISSIONER MICHAEL J. COPPS**

*Re: Implementation of Short-Term Analog Flash and Emergency Readiness Act, Establishment of DTV Transition “Analog Nightlight” Program, MB Docket 08-255.*

Having just returned from Town Hall meetings in Detroit, Michigan and Bristol Virginia, I continue to be deeply concerned about the state of our preparations for the DTV transition. We are nowhere near as ready as we could have been—and should have been—at this late date. At this point, the question is not *whether* there will be disruption, but how widespread the disruption will be and how quickly we can restore service to those who may lose it.

In that context, this Order is a welcome piece of good news. It will provide crucial information to consumers who are unprepared for the transition and would otherwise wake up on February 18 to a blank screen. I particularly commend Senator Jay Rockefeller and Representative Lois Capps for introducing the legislation and Congress for enacting it so quickly. I also commend NAB/MSTV for submitting a list of eligible stations that permits us to cover far more markets with Nightlight service than our original proposal would have covered. Finally, I commend our own FCC staff for their impressive and thoughtful work under extremely tight deadlines. I would add that many, many members of our FCC team are spending countless hours in trying to shepherd the DTV Transition to a successful outcome, and we are very, very much in their debt for both the good work they are doing and for the dedication they bring to a hugely difficult challenge.

**STATEMENT OF  
COMMISSIONER JONATHAN S. ADELSTEIN**

RE: Implementation of Short-term Analog Flash and Emergency Readiness Act; Establishment of DTV Transition “Analog Nightlight” Program, MB Docket No. 08-255

With less than 35 days left before the digital television transition deadline, time is not on our side and the outlook could not be more troubling. So today, we approve this *Order* establishing a post-transition, analog nightlight service with a grave sense of urgency *and* necessity.

Based on the shortcomings of the converter box coupon program, we know millions of viewers and households will simply not be prepared on February 17th. The analog nightlight service we authorize today is an effort to minimize the detrimental impact on analog TV-reliant viewers, ensuring that they will have access to public safety and emergency services information. Nightlight stations also will serve as a guiding beacon toward the new world of DTV and will help people find their way.

I fully support the creation of a streamlined mechanism to encourage the more than 820 pre-approved television stations in over 200 designated television markets and Puerto Rico to continue providing analog service after the DTV transition. I am also pleased we are encouraging other stations to apply for authorization by making the nightlight service flexible and minimally burdensome. And while we are requiring DTV transition information to be in Spanish and English, I am particularly pleased we also are encouraging participating stations to provide on-air information in additional languages that may serve local viewers.

While I continue to believe the DTV transition is not ready for primetime – since Congress established the hard deadline there has been a lack of federal leadership, organization and coordination, I nevertheless would like to highlight that there are scores of talented and committed FCC employees here at headquarters and in the field working every day to ensure that the transition is smooth for all Americans. These dedicated public servants understand that at the end of the day, the success of this transition should be measured by the experience of each individual person or household. From personal experience, I know that FCC staff are doing their best to make sure that everyone with whom they interact and every project to which they are assigned is met with the highest quality of service and integrity.

**STATEMENT OF  
COMMISSIONER ROBERT M. McDOWELL**

RE: Implementation of Short-term Analog Flash and Emergency Readiness Act; Establishment of DTV Transition “Analog Nightlight” Program, MB Docket No. 08-255

I am pleased to support this order implementing the Short-term Analog Flash and Emergency Readiness (“SAFER”) Act. We all hope that the content of the limited analog “nightlight” broadcasts authorized in this item will significantly assist those TV viewers who rely solely on rabbit-ear or rooftop antennas with soon-to-be-outmoded analog sets to obtain television service after the digital transition. I want to commend commenters who submitted very helpful suggestions in response to the *Notice* under an extremely tight time frame.

I hope to see the nightlight stations provide their local audiences with specific and detailed “how to” information on obtaining converter boxes, re-positioning antennas, scanning (or rescanning) for channels, and how they can obtain further one-on-one assistance. I also look forward to working with the industry to rapidly finalize plans for phone banks that will provide viewers with helpful information in the most direct and accessible manner possible. As I have said before, I grow increasingly concerned about the Commission’s ability to handle what will be a crush of phone calls in the coming days and weeks regarding the transition.

As I have said before, although we are striving to smooth the way for the DTV transition, it is likely to be messy – whenever it occurs – for those who, by choice or circumstance, must depend on converter boxes to keep TV service in their homes. For example, even consumers who already have installed converter boxes will need to ensure that their devices rescan (or “auto-tune”) to ensure that they receive all stations broadcasting digitally in the area. This rescanning will need to be done the day after the digital transition, and again at the end of the nightlight period, to account for stations that may change channel numbers.

I continue to encourage everyone to join government and industry to help those most at risk of being left behind when the change comes: the elderly, the disabled, low-income individuals, and non-English speakers. People should not wait until the last second to help themselves and their neighbors, friends, and family get ready for DTV. Delay only deprives viewers of the better pictures and sound – as well as additional, free over-the-air program channels – that DTV already is making available today.