

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

In the Matter of	)	
	)	
Implementation of Short-term Analog Flash and	)	MB Docket No. 08-255
Emergency Readiness Act; Establishment of DTV	)	
Transition “Analog Nightlight” Program	)	

**NOTICE OF PROPOSED RULE MAKING**

**Adopted: December 24, 2008**

**Released: December 24, 2008**

**Comment Date: [5 days after publication in the Federal Register]**

**Reply Comment Date: [8 days after publication in the Federal Register]**

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

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## I. INTRODUCTION

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 after the February 17, 2009 DTV transition date, where 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 after the transition date. In this way, the continued analog service would serve like a “nightlight” to unprepared viewers, assuring that these viewers continue to have access to emergency information and guiding them with information to help them make a belated transition. This Notice describes the procedures the Commission intends to follow to implement the Act; the nature of the programming permitted by the Act; and the stations that are eligible to participate in the Analog Nightlight program. Stations that are eligible under the Act to provide nightlight service may choose to provide their own service on their analog channels, or may choose to work with other stations in their community to provide a comprehensive nightlight service on one or more analog channels in that community. Stations that cannot broadcast their own nightlight service can participate in a joint nightlight effort together with other stations in their community by providing financial, technical, or other resources.

2. Congress previously 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> On December 10, 2008, Congress adopted legislation providing for a short-term extension of the analog television broadcasting authority so that essential public safety announcements and digital television transition information may be provided for a short time during the digital transition.<sup>3</sup> The Analog Nightlight Act requires that, no later than January 15, 2009, the Commission develop and implement a program to “encourage and permit” the broadcasting of public safety and digital transition information for a period of 30 days after the digital transition deadline of February 17, 2009.<sup>4</sup> Given the “urgent necessity for rapid administrative action under the circumstances,”<sup>5</sup> we believe that there is good cause to dispense with notice and comment requirements under the Administrative Procedure Act.<sup>6</sup> As stated above, the Analog Nightlight Act imposes a statutory deadline of January 15, 2009, less than one month away, and the Commission has an extraordinarily short time period to meet this deadline: the bill was sent to the President for his signature on December 12, 2008, and it was enacted into law on December 23, 2008. Nonetheless, we are affording interested parties an opportunity to participate in the proceeding in order to assist in our development of the Analog Nightlight program, and we find that a very abbreviated comment period of eight (8) days is justified by the exigent circumstances.<sup>7</sup> This Notice lays out the procedures we

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<sup>1</sup> See Short-term Analog Flash and Emergency Readiness Act (“Analog Nightlight Act” or “Act”), S. 3663, 110th Cong., as enacted December 23, 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 Analog Nightlight Act, Section 2.

<sup>4</sup> *Id.*

<sup>5</sup> *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).

<sup>6</sup> 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>7</sup> As noted above, the Analog Nightlight Act directs the Commission to implement its provisions by January 15, 2009, “[n]otwithstanding any other provision of law.” We find that a longer comment period would make timely (continued....)

plan to follow, as well as a preliminary list of the stations that we believe will be eligible to participate in the Analog Nightlight program. We encourage all stations that qualify to notify us promptly, during the comment period, as described below, of their intention to participate.

3. 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. We also urge stations that are not on the preliminary list of eligible stations to determine whether they can participate and to seek Commission approval by demonstrating that they will not, in fact, cause harmful interference to any other digital station, or to coordinate with another broadcaster in their service area to share the costs of Analog Nightlight operation on a qualifying station that serves their viewers. While some stations may not be able to broadcast transition and public safety information on their analog channels after February 17, 2009 because of interference to digital signals or other technical constraints, 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. The station whose channel is being used to provide the nightlight service will remain responsible for the content of the programming.

4. The Commission, in conjunction with industry stakeholders,<sup>8</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 been fruitful.<sup>9</sup> All of our efforts 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 these consumers, the Analog Nightlight program adopted by Congress and implemented as we propose herein will 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. BACKGROUND AND INITIAL CONCLUSIONS

5. 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>10</sup> The Act is also intended to help consumers understand the steps they need to take in order to restore their television signals.<sup>11</sup> The analog nightlight 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 a month, displaying a “slate” describing the transition and where people could obtain information about it.<sup>12</sup>

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implementation impracticable and, therefore, would be inconsistent with the Act’s provisions. Comments must be filed no later than five days after this Notice is published in the Federal Register, and replies must be filed no later than eight days after publication. Notwithstanding the holiday season, these dates will not be extended.

<sup>8</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>9</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 – But Finds That 7.4 % of Households Still ‘Completely Unready’ for Feb. 17 Deadline,” <http://www.multichannel.com/article/CA6617639.html>.

<sup>10</sup> See Senate floor statement – Short-Term Analog Flash and Emergency Readiness Act (S. 3663), November 20, 2008 (“Senate floor statement”).

<sup>11</sup> *Id.*

<sup>12</sup> 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. The text aired by the Wilmington stations 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 (continued....)”

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>13</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>14</sup> The concern about readiness is especially acute with regard to the nation’s more vulnerable citizens – 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>15</sup>

6. 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>16</sup>

7. Thus, as required by this Act, the Analog Nightlight program will permit eligible full-power television stations, as defined below, to continue their analog broadcasting for a period of 30 days beginning on February 18, 2009, for the limited purpose of providing public safety and digital transition information, as further described below. The 30 day period ends at 11:59:59 pm on March 19, 2009. As discussed below, we will extend the license term for stations participating in the Analog Nightlight program.<sup>17</sup>

8. 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:

- (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>18</sup>
- (2) information, in both English and Spanish, and accessible to persons with disabilities, concerning-

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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>13</sup> See House floor statement – Short-Term analog Flash and Emergency Readiness Act (S. 3663), December 10, 2008.

<sup>14</sup> See Senate floor statement.

<sup>15</sup> *Id.*

<sup>16</sup> Analog Nightlight Act, Section 2(a).

<sup>17</sup> See *infra*, § III.C.

<sup>18</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.

- (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>19</sup>

9. Based on these statutory provisions, continued analog broadcasting after February 17, 2009, is limited to emergency information and information concerning the digital television transition. The Act does not contemplate other programming, including advertisements, which does not fall into either of these two categories. We seek comment on this tentative conclusion.

10. 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>20</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>21</sup> Section 3 also mandates that the Commission “not require” that analog nightlight signals be subject to mandatory cable carriage and retransmission requirements.<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> Based on this section of the Act, we tentatively conclude that only stations operating on channels 2 through 51 are eligible to broadcast in analog pursuant to the Act, and that such channels cannot be used for analog broadcasting if they cause harmful interference to digital television signals. Therefore, a station that is “flashcutting” to its pre-transition analog channel for post-transition digital operation will not generally be eligible to use its analog channel for the Analog Nightlight because to do so would by definition interfere with its digital service.<sup>25</sup> We seek comment on these tentative conclusions.

### III. DISCUSSION

#### A. Stations Eligible to Provide Analog Nightlight Service

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

11. In light of the short period of time provided by the Act to implement a nightlight program, we attach as Appendix A hereto an initial list of stations that we believe can continue to broadcast an analog signal after February 17, 2009 within the technical and interference constraints set forth in the statute. The stations listed in Appendix A are located in 46 states, plus Washington, D.C.,

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<sup>19</sup> Analog Nightlight Act, Section 2(b).

<sup>20</sup> Analog Nightlight Act, Section 3(1).

<sup>21</sup> Analog Nightlight Act, Section 3(2).

<sup>22</sup> Analog Nightlight Act, Section 3(3).

<sup>23</sup> Analog Nightlight Act, Section 3(5).

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

<sup>25</sup> As discussed below, 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.

Puerto Rico, and the Virgin Islands and are in 136 of the 210 Designated Market Areas (“DMAS”).<sup>26</sup> Appendix A is not an exhaustive list of the stations that may be eligible to participate in the Analog Nightlight program, and it most likely underestimates the stations that could qualify. Rather, Appendix A represents a conservative list that the Commission was able to assemble in the limited timeframe contemplated by the legislation based on readily accessible information and valid engineering assumptions. As discussed above, Section 3(2) of the Act requires the Commission to ensure that broadcasting of nightlight signals on analog channels does not cause harmful interference to digital television signals. In addition, Section 3(5) prohibits the broadcast of nightlight service on spectrum that “is approved or pending approval” by the Commission for public safety services, and Section 3(6) prohibits nightlight service on channels 52–69. We tentatively conclude that the stations listed in Appendix A meet these criteria and invite comment on this tentative conclusion. As described below, we also recognize that additional stations may be able to meet the statutory criteria and we provide a mechanism for their participation, consistent with the goal of having the Analog Nightlight available to as many over-the-air viewers as possible. To that end, the Commission will identify those areas in which Analog Nightlight service is not available and, within the limited timeframes available, seek reasonable solutions —e.g., whether there is a station that can and would stay on to provide Analog Nightlight service without causing undue interference, or whether there is a low power station that has not transitioned to digital that would be willing to transmit the relevant messages. We seek comment on what the Commission’s appropriate role should be in this regard.

12. The stations listed in Appendix A operate on analog channels 2-51 and therefore comply with Section 3(6) of the Act. With respect to Section 3(2) of the Act, in considering interference protection for digital TV stations, we used the +2 dB desired-to-undesired (D/U) co-channel and -48 dB adjacent channel signal ratios in 47 C.F.R. § 73.623 and developed minimum co-channel and adjacent channel spacing measures that would ensure that an analog station would not cause interference to a DTV station. Meeting these measures, which vary by channel band and Zone,<sup>27</sup> would establish a presumption 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. The minimum spacing measures used in developing this list are:

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<sup>26</sup> Appendix A includes stations that have terminated or plan to terminate analog service before February 17, 2009, including the stations in Hawaii that are transitioning statewide on January 15, 2009, and the stations in the Wilmington, North Carolina DMA that transitioned on September 8, 2008. These stations could continue or resume analog broadcasting as part of the Analog Nightlight program without causing harmful interference. This Appendix also lists stations that are going to remain on their pre-transition digital channel for a period of time after February 17, 2009 while they are completing construction of their final post-transition channel. In the listed instances, these stations could use their analog channel for the Analog Nightlight program. Appendix A does not include stations licensed to communities in Delaware, New Jersey, New Hampshire, or Rhode Island. *See also* Appendix B, which lists all 210 DMAs and indicates which DMAs do or do not include a station that is listed in Appendix A.

<sup>27</sup> For the purposes of allotment and assignment, the United States is divided into three zones as defined in Section 73.609. Roughly, Zone I includes areas in the northeastern and some midwestern states, Zone III includes the area along the Gulf of Mexico, and Zone II includes all areas that are not in Zone I or Zone III. 47 C.F.R. § 73.609.

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)

13. In developing these spacing criteria, 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>28</sup> 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).<sup>29</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), and we 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. We propose to use these separation distances to protect digital TV signals from analog signals during the 30-day Analog Nightlight period. We request comment on these parameters for protecting digital signals from harmful interference for this limited time and for this limited purpose. We note that it is our intention to use conservative factors, which are more likely to over-protect a digital signal, for this purpose rather than to risk interference that will hinder viewer reception of DTV signals. In developing these criteria based on the statutory mandate, we are attempting to balance the goal of encouraging use of the Analog Nightlight to benefit viewers who have not obtained the necessary digital equipment to receive digital signals, with the public interest in promoting good digital signal reception for viewers who have.

<sup>28</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 hi-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 would 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.

<sup>29</sup> 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).

14. 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.<sup>30</sup> To protect these operations from interference, new and modified analog TV stations are required to protect land mobile operations on channels 14-20 by maintaining a co-channel separation of 341 km (212 miles) or more and an adjacent channel separation of 225 km (140 miles) or more from the geographic coordinates of the center of the metropolitan area.<sup>31</sup> These standards have served well over the years to ensure that new and modified analog stations do not cause interference to land mobile operations in the TV bands. In developing the Appendix A list of analog stations that are eligible to operate after the transition ends, we used these same separation standards to protect land mobile operations on channels 14-20 from interference from analog TV operations.<sup>32</sup> We note that the analog stations that will operate under this authority have been operating without causing interference to public safety or other land mobile operations in those channels prior to the transition, and we expect that these stations will continue to operate in that manner during the 30-day Analog Nightlight Act period. We request comment on use of these standards and assumptions to protect public safety operations on channels 14-20 from interference from analog signals used for the Analog Nightlight program.

## 2. Other Stations That May Meet Eligibility Requirements

15. Broadcasters whose stations are not listed in Appendix A and who are interested in providing nightlight service may submit engineering and other information to demonstrate why they believe they meet the criteria identified in the Act. 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. We propose to allow stations to notify the Commission of their interest in participating in the Analog Nightlight program even if their spacing is less than the distances proposed above from one or more co-channel or adjacent channel digital stations. Such stations should notify us in their comments to this Notice and through the Engineering STA process described below, and explain how they could operate without causing harmful interference to nearby digital station(s). Such explanations may consist of analyses using the methods in OET-69 or other recognized methodologies for evaluating TV station interference. It is important that licensees be aware that interference that an analog station may be causing to digital stations prior to February 18, 2009, will not be allowed to continue after that date unless authorized pursuant to paragraph 16.<sup>33</sup> 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. We delegate to the Media Bureau authority to address expeditiously issues that may arise associated with this process.

16. We tentatively conclude that we will 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

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<sup>30</sup> 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.

<sup>31</sup> *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>32</sup> *See* 47 C.F.R. § 73.623(e) for the list of land mobile communities and channels.

<sup>33</sup> After February 17, 2009, any interference from a full power analog station to a post-transition digital signal will be treated as new interference.

in addition to that reflected in the DTV Table Appendix B.<sup>34</sup> This stringent interference standard, which was used in the channel election process, will minimize as much as possible the chance of harmful interference from analog nightlight service to DTV service. We seek comment on this standard. We also propose to 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 in areas where there is no station listed as eligible in Appendix A or that would meet the 0.1 percent interference standard.<sup>35</sup> We believe that this more-relaxed 0.5 percent interference standard is warranted where necessary to ensure that at least one station will provide the Analog Nightlight service, consistent with the Act's purpose of enabling broadcasters to provide essential public safety announcements and digital television transition information for a short time during the transition. We note that Section 3(1) of the Act requires the Commission to "take into account market-by-market needs, based upon factors such as channel and transmitter availability."<sup>36</sup> We invite comment on whether this provision supports use of a more relaxed 0.5 percent interference standard to determine eligibility in situations where no station can meet our more stringent interference eligibility criteria.

17. The Commission reserves the right to rescind any station's authority to provide analog nightlight service if it interferes with post-transition digital service in a manner that is more harmful than expected and that outweighs the benefit of the time-limited analog nightlight service.

## **B. Notifications to the Commission of Program Participation**

### **1. Notifications by Pre-Approved Eligible Stations**

18. A station listed in Appendix A can be considered pre-approved to participate in the Analog Nightlight program but must notify the Commission of its intent to participate by filing a Legal STA electronically through the Commission's Consolidated Database System ("CDBS") using the Informal Application filing form.<sup>37</sup> These notifications are necessary so that we can determine where the Analog Nightlight service will be available and also to establish the source of any unanticipated interference to a digital station in the area. Notifications should be filed as soon as possible and must be filed no later than February 10, 2009. A filing fee is normally required for Legal STAs; however, to encourage and hasten participation in the Analog Nightlight program, we will waive the filing fee for timely filed notifications. Because these stations are already determined to be eligible to participate in the program, we will not require an engineering or other showing. We also remind stations choosing to participate in the program to file an update to their Transition Status Report (FCC Form 387).<sup>38</sup> We seek comment on this proposal.

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<sup>34</sup> 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>35</sup> In this circumstance, 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.

<sup>36</sup> Analog Nightlight Act, Section 3(1).

<sup>37</sup> For more information on Informal Filings in CDBS, please refer to this web page: [http://fjallfoss.fcc.gov/prod/cdbs/forms/prod/faq\\_informal.htm](http://fjallfoss.fcc.gov/prod/cdbs/forms/prod/faq_informal.htm).

<sup>38</sup> See *Third Periodic Review of the Commission's Rules and Policies Affecting the Conversion to Digital Television*, MB Docket No. 07-91, Report and Order, 23 FCC Rcd 2994, 3013, ¶ 35 (2007). Stations are responsible for the continuing accuracy and completeness of the information furnished in their Form 387. Whenever the information furnished in their form is no longer substantially accurate and complete in all significant respects, the (continued...)

19. In light of the extremely short period of time before the transition, we encourage stations to review Appendix A and to notify the Commission during the comment cycle if they intend to participate in the Analog Nightlight program. To ensure that these notifications are properly recorded, stations filing comments should also file a notification through the Legal STA process described above. As noted above, participation is voluntary, but we encourage stations to make these determinations and commitments as quickly as possible. These early indications of participation will facilitate Commission determination of the need to permit additional stations that are not included on the initial list to participate.

## 2. Requests for Program Participation with Eligibility Showings

20. Stations that are not listed in the final Appendix A to the Report and Order in this proceeding, may nevertheless request to participate in the Analog Nightlight Program by filing an Engineering STA notification electronically through CDBS using the Informal Application filing form.<sup>39</sup> A filing fee is normally required for an Engineering STA; however, to encourage participation in the Analog Nightlight program, we will waive the filing fee for timely filed requests. In addition, to hasten the process and expand the pool of eligible participants, broadcasters whose stations are not listed in Appendix A to this Notice that believe they are nevertheless eligible to participate may file comments in this proceeding demonstrating their eligibility to participate in the program. To ensure that these requests are properly recorded, stations filing comments should also file a notification through the Engineering STA process. If there are objections to these notifications, they can be filed as reply comments in this docket.<sup>40</sup> We will revise Appendix A as warranted in the Report and Order.

21. To demonstrate eligibility, a station must include an engineering showing demonstrating that the station will cause no more than 0.1% interference, which is the standard the Commission used for the channel election process.<sup>41</sup> This conservative measure of interference will ensure that stations continuing to broadcast an analog signal will not cause harmful interference to digital service. A station may propose to reduce its current analog power in order to remain within this interference level. Alternatively, a station may demonstrate that there is no other station in the area that is eligible to or planning to remain on the air to participate in the Analog Nightlight program and thus justify up to 0.5% interference to digital stations.

22. In order to afford an opportunity for public consideration of these Engineering STA notifications, stations must file no later than February 3, 2009. This timing will allow the Commission, the public and other 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>42</sup> Before February 17, 2009, stations with requests that are not subject to any pending objection will be considered eligible to participate in the program. Nevertheless, participating stations must

(Continued from previous page) \_\_\_\_\_

station must file an updated form as promptly as possible and in any event within 30 days to furnish such additional or corrected information as is appropriate. *Id.*

<sup>39</sup> For more information on Informal Filings in CDBS, please refer to 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>40</sup> Interested parties wishing to object to or otherwise comment on a station's notification regarding participation in the Analog Nightlight program should do so by filing comments in this proceeding, including the caption and docket number for this proceeding, and which should be titled "Objection," and should also be served on the station whose participation is the subject of the objection. See Section IV. D., *infra*, for instructions on filing comments in this proceeding.

<sup>41</sup> See *Second Periodic Review of the Commission's Rules and Policies Affecting the Conversion to Digital Television*, MB Docket No. 03-15, Report and Order, 19 FCC Rcd 18279, 18302-3, ¶ 56 (2004).

<sup>42</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.

immediately stop broadcasting Analog Nightlight operations upon any valid complaints of interference to DTV stations or other statutorily protected operations. We also remind stations choosing to participate in the program to file an update to their Transition Status Report (FCC Form 387).<sup>43</sup> We seek comment on this proposed process and the criteria set forth above.

**C. Analog License Extension for Participating Stations**

23. 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>44</sup>

24. The Report and Order in this proceeding will grant a blanket extension of license to broadcasters who participate in the Analog Nightlight program to operate for a period of 30 days after February 17, 2009, *i.e.*, until and including March 19, 2009. We delegate authority to the Media Bureau to issue a Public Notice just before the transition date announcing those stations that are participating in the Analog Nightlight program. 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 the Report and Order.

**D. Permissible Analog Nightlight Programming**

25. Consistent with the explicit language of the Act, we tentatively conclude that nightlight programming may convey only emergency information, as that term is defined in 47 C.F.R. § 79.2, and information regarding the digital transition. All such information should be available in both English and Spanish and accessible to persons with disabilities. We also encourage participating stations to provide the information in additional languages where appropriate and beneficial for their viewers. No other programming or advertisements will be permitted. As stated below, we seek comment on these tentative conclusions.

**1. Emergency Information**

26. Under Part 79 of our rules, emergency information is defined 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.<sup>45</sup>

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<sup>43</sup> *See, supra*, note 30.

<sup>44</sup> FCC Form 352-B (Television Broadcast Station License), Oct. 21, 1985.

<sup>45</sup> 47 C.F.R. § 79.2(a)(2). The note to paragraph (a)(2) in the rules reads as follows: "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."

27. Thus, in the event of an emergency situation during the 30 day nightlight period, stations may broadcast video and audio concerning such emergencies, including but not limited to a crawl or text describing the emergency, live or taped action regarding the emergency, programming concerning the emergency, and the like. Licensees providing emergency information must make that information accessible to persons with disabilities under 47 C.F.R. Section 79.2. We also note that the Emergency Alert System (“EAS”) would apply to the Analog Nightlight service to the extent 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>46</sup>

## 2. Transition Information

28. With respect to the digital television transition, we tentatively 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. 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 or install a converter box); where viewers can obtain more information about the transition in their local community, including a telephone number and website address for the station providing the nightlight service and other 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 FCC, National Association of Broadcasters (NAB) and National Telecommunications and Information Administration (NTIA) websites.<sup>47</sup> Based on the limitations in the statute, we tentatively conclude that advertisements are not permitted to be included in the Analog Nightlight program.<sup>48</sup> We seek comment on this tentative conclusion.

29. 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>49</sup> We tentatively conclude that such information may be made available in either open or closed captioning. In addition, as the Act provides, the Analog 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>50</sup> We seek comment on the specific contact information that stations should provide to consumers. We ask state broadcaster associations to inform us of their plans to have local numbers, or local call centers, available to provide assistance to viewers with questions about local signal reception.

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<sup>46</sup> 47 C.F.R. § 11.1. Part 11 of the Commission’s rules “describe the required technical standards and operational procedures of the EAS for AM, FM, and TV broadcast stations, digital broadcast stations, analog cable systems, digital cable systems, wireline video systems, wireless cable systems, Direct Broadcast Satellite (DBS) services, Satellite Digital Audio Radio Service (SDARS), and other participating entities.” *Id.* As noted, the Commission also requires TV broadcast stations that provide emergency information beyond compliance with EAS standards to make the critical details of that information accessible to people with hearing and visual disabilities. 47 C.F.R. § 79.2(b).

<sup>47</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>48</sup> See Analog Nightlight Act, Section 2(a) (limiting the program to “only” the public safety and DTV transition information specified in the Act).

<sup>49</sup> Analog Nightlight Act, Section 2(b)(2). As noted above, stations are encouraged also to provide information in additional languages that are common among their viewing audiences.

<sup>50</sup> *Id.*

In the interim, we encourage broadcasters to make local phone numbers available to the public and, where feasible, establish local call centers.

30. We seek comment on the types of information that may be provided and additional sources for consumers to contact. With regard to the kind of emergency information noted in Section 2(b)(1) of the Act, we note that, pursuant to Section 79.2 of our rules, such information must be provided in an accessible visual format, but does not require that it be open or closed captioned. 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. Pursuant to Section 79.2 (b)(ii) and (iii), this is achieved through open aural description (in the case of (ii)) or by the use of an aural tone in (iii) to alert those with vision disabilities that they should turn to a radio or some other source of information. We seek comment on whether these methods are sufficient for purposes of Section 2(b)(2) of the Act. We also invite comment about other ways we can ensure that information is conveyed to people with disabilities.

31. We tentatively conclude that 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>51</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>52</sup> We note that during the early transition in Wilmington, NC, stations used a slate to provide nightlight service.<sup>53</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>54</sup>

32. In general we seek comment on these tentative conclusions and proposals regarding nightlight programming and invite commenters to suggest other kinds of information that stations could provide to assist viewers.

#### IV. PROCEDURAL MATTERS

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

33. We find that no Initial Regulatory Flexibility Analysis (IRFA) is required for this *Notice of Proposed Rule Making*. As stated above, because of the “urgent necessity for rapid administrative action under the circumstances,”<sup>55</sup> we find that there is good cause to dispense with notice and comment requirements under the Administrative Procedure Act.<sup>56</sup> The Analog Nightlight Act imposes a statutory deadline of January 15, 2009, less than one month away, and the Commission has an extraordinarily short time period to meet this deadline: the bill was sent to the President for his signature on December 12, 2008, and it was enacted into law on December 23, 2008. For this reason, we find that an IRFA is not

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<sup>51</sup> See Analog Nightlight Act, Section 2(b)(2)(B).

<sup>52</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.

<sup>53</sup> See, *supra*, ¶ 5 and note 10.

<sup>54</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>55</sup> *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).

<sup>56</sup> 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. . .”).

required. Nonetheless, we invited comment from interested parties in order to assist in our development of the Analog Nightlight program.

### **B. Initial Paperwork Reduction Act of 1995 Analysis**

34. This Notice of Proposed Rulemaking was analyzed with respect to the Paperwork Reduction Act of 1995 (“PRA”)<sup>57</sup> and contains a modified information collection requirement.<sup>58</sup> The Commission will seek approval under the PRA under OMB’s emergency processing rules<sup>59</sup> for these information collections 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>60</sup> We believe there is good cause for requesting emergency PRA approval from OMB because of the January 15, 2009 statutory deadline for implementing the Nightlight Act, which was enacted by Congress only this month,<sup>61</sup> as well as the brief 30-day period during which the Act’s provisions will be in force, circumstances which make the use of normal OMB clearance procedures reasonably likely to cause the Act’s statutory deadlines to be missed. In addition, any delay in implementing this Congressional mandate can result in harm to TV stations, and, in turn, to their viewers. For additional information concerning the PRA proposed information collection requirements contained in this *Notice*, contact Cathy Williams at 202-418-2918, or via the Internet to Cathy.Williams@fcc.gov.

### **C. Ex Parte Rules**

35. Permit-But-Disclose. This proceeding will be treated as a “permit-but-disclose” proceeding subject to the “permit-but-disclose” requirements under section 1.1206(b) of the Commission’s rules.<sup>62</sup> *Ex parte* presentations are permissible if disclosed in accordance with Commission rules, except during the Sunshine Agenda period when presentations, *ex parte* or otherwise, are generally prohibited. Persons making oral *ex parte* presentations are reminded that a memorandum summarizing a presentation must contain a summary of the substance of the presentation and not merely a listing of the subjects discussed. More than a one- or two-sentence description of the views and arguments presented is generally required.<sup>63</sup> Additional rules pertaining to oral and written presentations are set forth in section 1.1206(b).

### **D. Filing Requirements**

36. Comments and Replies. Pursuant to Sections 1.415 and 1.419 of the Commission’s rules,<sup>64</sup> interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using: (1) the Commission’s Electronic Comment Filing System (“ECFS”), (2) the Federal Government’s eRulemaking Portal, or (3) by filing paper

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<sup>57</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>58</sup> See OMB Control Number 3060-0386 (relating to filing notifications to FCC via CDBS).

<sup>59</sup> See 5 C.F.R. § 1320.13.

<sup>60</sup> Due to the short time frame provided for us to act in the Analog Nightlight Act, we will ask OMB to waive Federal Register notice for this emergency request under the PRA. See 5 C.F.R. § 1320.13(d).

<sup>61</sup> See *supra*, ¶ 2.

<sup>62</sup> See 47 C.F.R. § 1.1206(b); see also 47 C.F.R. §§ 1.1202, 1.1203.

<sup>63</sup> See *id.* § 1.1206(b)(2).

<sup>64</sup> See *id.* §§ 1.415, 1.419.

copies.<sup>65</sup>

37. Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: <http://www.fcc.gov/cgb/ecfs/> or the Federal eRulemaking Portal: <http://www.regulations.gov>. Filers should follow the instructions provided on the website for submitting comments. For ECFS filers, in completing the transmittal screen, filers should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions, filers should send an e-mail to [ecfs@fcc.gov](mailto:ecfs@fcc.gov), and include the following words in the body of the message, "get form." A sample form and directions will be sent in response.

38. Paper Filers: Parties who choose to file by paper must file an original and four copies of each filing. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

- The Commission's contractor will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.
- U.S. Postal Service first-class, Express, and Priority mail should be addressed to 445 12th Street, SW, Washington DC 20554.

39. Availability of Documents. Comments, reply comments, and *ex parte* submissions will be available for public inspection during regular business hours in the FCC Reference Center, Federal Communications Commission, 445 12<sup>th</sup> Street, S.W., CY-A257, Washington, D.C., 20554. These documents will also be available via ECFS. Documents will be available electronically in ASCII, Word 97, and/or Adobe Acrobat.

40. People with Disabilities: To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to [fcc504@fcc.gov](mailto:fcc504@fcc.gov) or call the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (tty).

41. Additional Information. For additional information on this proceeding, contact Kim Matthews, [Kim.Matthews@fcc.gov](mailto:Kim.Matthews@fcc.gov), or Evan Baranoff, [Evan.Baranoff@fcc.gov](mailto:Evan.Baranoff@fcc.gov), or Eloise Gore, [Eloise.Gore@fcc.gov](mailto:Eloise.Gore@fcc.gov), of the Media Bureau, Policy Division, (202) 418-2120; Gordon Godfrey, [Gordon.Godfrey@fcc.gov](mailto:Gordon.Godfrey@fcc.gov), of the Media Bureau, Engineering Division, (202) 418-7000; Nazifa Sawez, [Nazifa.Sawez@fcc.gov](mailto:Nazifa.Sawez@fcc.gov), of the Media Bureau, Video Division, (202) 418-1600; or Alan Stillwell, [Alan.Stillwell@fcc.gov](mailto:Alan.Stillwell@fcc.gov), of the Office of Engineering and Technology, (202) 418-2470.

## V. ORDERING CLAUSES

42. 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, NOTICE IS HEREBY GIVEN of the proposals and tentative conclusions described in this *Notice of Proposed Rulemaking*.

43. IT IS FURTHER ORDERED that the Reference Information Center, Consumer

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<sup>65</sup> See *Electronic Filing of Documents in Rulemaking Proceedings*, GC Docket No. 97-113, Report and Order, 13 FCC Rcd 11322 (1998).

Information Bureau, shall send a copy of this Notice of Proposed Rulemaking, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch  
Secretary

**APPENDIX A**

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

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

**APPENDIX B**

**List of DMAs Indicating Presence of Stations Initially Eligible for Nightlight Participation**

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

**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 No. 08-255

A key lesson coming out of the DTV transition in Wilmington, NC on September 8 was the importance of broadcasting an analog message to the many consumers who were unprepared for the switch. Within days of the Wilmington test, I asked the Commission to develop market-by-market plans across the country, based upon factors such as analog channel and transmitter availability and industry willingness to participate. Then Senator Rockefeller and Representative Capps introduced their very forward-looking “analog nightlight” legislation, which passed the Senate on November 23 and the House on December 11. This legislation appropriately gives the FCC a short turnaround time—January 15, 2009—to fully implement a program in time for the upcoming transition. I commend Senator Rockefeller and Representative Capps for their tremendous work in seeing this important legislation through in such a compressed timeframe. It is now up to us to implement it just as effectively.

Unfortunately, today’s item lacks the thoroughness that I think Congress expects of us. I am particularly disappointed that little engineering work seems to have been done to maximize the number of stations that can participate in the program. Instead, the Notice applies a distance separation standard that protects against interference by requiring that Analog Nightlight stations be 164 miles or more from DTV stations operating on the same channel. The item acknowledges that this approach is “conservative” and likely over-protects digital signals from interference. In other words, it is a blunt instrument that contains fewer Analog Nightlight stations than can and should be accommodated. As a result, the Notice fails to identify a single potential Analog Nightlight station in 74 of 210 DMAs nationwide.

The item does propose to permit individual stations that do not meet the mileage separation requirements to submit their own engineering studies to demonstrate that they will not cause actual interference. I hope they do that, but we should not be placing the entire burden on individual stations to go to the trouble and expense of hiring engineering consultants and filing proposals with the FCC at this late date. The stakes are too high and time is too short. I do welcome my colleagues’ willingness to commit the FCC to identifying those areas where Analog Nightlight service will not be available and trying to find possible solutions. But it’s late in the day and this is not the way that a coordinated and proactive public-private partnership should work.

**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

Today, the Commission takes the first step toward developing a systematized approach to deal with the post-DTV transition period. An analog nightlight program for full-power stations to transmit DTV-related or emergency information after the transition date of February 17, 2009, is absolutely essential to help inform many over-the-air reliant households if they fail to transition before the deadline. I commend Senator Rockefeller, Congresswoman Capps, the leadership of the House and Senate committees that oversee us, and Congress as a whole for their quick action on this time-sensitive legislation. I am pleased that the Commission and Media Bureau staff acted without delay to implement the Short-term Analog Flash and Emergency Readiness Act.

I have visited many American television markets and been impressed with the level of commitment and cooperation exhibited by broadcasters, cable and satellite operators, and business and community groups. Throughout the country, broadcasters understand the stakes and are taking steps to provide assistance to their viewers. I have talked about the analog nightlight program with broadcasters and many have expressed interest. In certain markets, broadcasters have even talked about pooling resources to finance the costs of preserving the analog signal on one station post-transition. This quick action by Congress, the President and the Commission provides them the opportunity.

The stations that have been initially determined in this item to be eligible to implement this nightlight program are in only 136 of the 210 television markets throughout the nation. I strongly encourage stations in markets without such pre-approved stations to seriously consider participating in this program as a public service to your viewing community. Each station participating in this “analog nightlight” program will effectively serve as “lifeline” to households that have delayed in transitioning. This will ensure that we leave no household uninformed after the transition.

**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 effort to quickly implement the Short-term Analog Flash and Emergency Readiness (“SAFER”) Act, which will permit certain full-power television stations to continue limited analog broadcasts after the February 17, 2009, deadline for the nation’s transition to digital television (“DTV”). Congress has directed the Commission to swiftly provide a program to help those American TV households caught unprepared by the digital transition by allowing television stations technically capable of continuing to broadcast an analog signal after February 17 (that does not interfere with all the new DTV signals) to air analog messages limited to DTV education and public safety information until March 19, 2008. We all hope that these messages 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.

“Analog nightlight” programming can – and, to my way of thinking, should – provide more than just general information about the transition. Rather, I hope to see the “nightlight” stations provide their local audiences with specific information about such matters as obtaining converter boxes, re-positioning antennas, and how they can obtain further one-on-one assistance. I 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.

I also note that our initial engineering analysis indicates that many local communities may have no station eligible to provide “nightlight” service. Our analysis is a conservative one, however, which means that at least some stations in those markets may be able to find a technical way around potential interference issues. For this reason, I strongly support the Notice’s call for stations in such communities to seriously consider whether they can, in fact, address the need and submit engineering showings to make their service possible.

Finally, as I have said before, although we are striving to smooth the way for the DTV transition, it is likely to be messy for those who, by choice or circumstance, must depend on converter boxes to keep TV service in their homes. 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 infirm, low-income individuals, and non-English speakers. People should not wait until February 17 to help themselves and their neighbors, friends, and family get ready for DTV. I particularly urge those who don’t need the government subsidy not to wait on that process before purchasing a converter box for themselves or as a gift for someone else. During the weeks it takes for the government to process coupon requests, you will lose precious time to hook up the box, check antenna connections, and start enjoying free digital broadcast TV right away.