

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

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

COMMENTS OF THE ASSOCIATION OF PUBLIC TELEVISION STATIONS

The Association of Public Television Stations (“APTS”)¹ hereby submits these comments in response to the Commission’s *Notice of Proposed Rulemaking* in the above-referenced proceeding.² Though APTS recognizes that there is a short time frame for implementation of the Short-term Analog Flash and Emergency Readiness Act (hereinafter “Analog Nightlight Act” or “the Act”), we are concerned that this exceptionally brief comment period, falling as it has over the New Year’s Day holiday, will prevent the Commission from receiving useful comments, as well as indications from stations of their intention to participate. With regard to the proposed interference standards, APTS supports the Commission’s intention to use conservative standards and to decide on a case-by-case basis whether additional, non-“preapproved” stations may elect to participate by operating at full or low power. Finally, while APTS is not at this time able to estimate participation in the “Analog Nightlight” program by public television stations, we note that there are several factors inherent in the program that might make it difficult or impracticable

¹ APTS is a non-profit organization whose membership comprises the licensees of nearly all of the nation’s CPB-qualified noncommercial educational television stations. The APTS mission is to support the continued growth and development of a strong and financially sound noncommercial television service for the American public.

² *Implementation of Short-term Analog Flash and Emergency Readiness Act; Establishment of DTV Transition “Analog Nightlight” Program*, Notice of Proposed Rulemaking, FCC No. 08-281 (Rel. Dec. 24, 2008) (“NPRM”).

for stations to participate. The Commission should consider ways to provide funding to stations to make participation in this program more feasible.

I. BRIEF COMMENT PERIOD WILL LIKELY PREVENT COMMISSION FROM OBTAINING MEANINGFUL COMMENT AND INDICATION OF STATION INTENT TO PARTICIPATE.

The *NPRM* in this proceeding was released on December 24, 2008, and published in the Federal Register on December 31, 2008, establishing a five-day comment period that ends on January 5, 2009. This cycle would be exceptionally short even under normal circumstances, but because of the intervening Christmas and New Year's Day holidays, it has provided parties little time to evaluate the proposed rules and stations hardly any opportunity to evaluate whether they will be able to participate in the program. Numerous parties, no doubt, are seeing these proposed rules for the first time today. For example, the licensees of many public television stations are school systems and universities whose staffs were on winter breaks throughout this proceeding.

Though APTS understands that there is an extremely short time frame for implementation of the Analog Nightlight Act, we are concerned that the Commission may adopt rules without providing for any meaningful comment. APTS, for one, has received very little feedback from stations to pass on to the Commission; we are hopeful, but not certain, that we will have more to offer by the January 8, 2009 reply deadline. We respectfully request that the Commission consider extending the comment period even a few more days to ensure that potential participants and others have a reasonable opportunity to weigh in.

II. CONSERVATIVE INTERFERENCE STANDARDS STRIKE APPROPRIATE BALANCE BETWEEN ENCOURAGING USE OF ACT AND PROTECTING DIGITAL SIGNAL RECEPTION.

APTS cannot at this juncture comment on the specific technical parameters set forth in the *NPRM* for determining station eligibility in the program. However, we generally support the

Commission's use of conservative standards to ensure that Analog Nightlight stations do not interfere with digital signals. The Analog Nightlight program hopefully will help smooth the transition for those citizens that are not yet ready, but 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. Thus, it makes sense for the Commission to establish conservative standards to determine stations that are "preapproved" to participate, and to permit other stations that are interested in providing Nightlight service to show that they may be able to do so, at full power or low power, without causing more than de minimis interference.

Furthermore, in evaluating whether stations are the only ones in their areas that are eligible to provide Nightlight service, the Commission should note that a DMA analysis does not provide an accurate picture of the situation. For example, there may be one station—or more—in a DMA that is or are eligible to participate, but that station or stations may provide coverage of only a small portion of a large DMA. Thus, while the Commission has identified eligible stations in 136 of 210 DMAs, there are large portions of even those DMAs (not to mention the other 74 "uncovered" DMAs) that are not reached by any eligible station.

III. SEVERAL FACTORS MAKE IT DIFFICULT OR IMPRACTICABLE FOR STATIONS TO PARTICIPATE IN THE NIGHTLIGHT PROGRAM.

Given the extremely short comment period, APTS is not at this time able to estimate participation in the "Analog Nightlight" program by public television stations. However, we must note that while public television stations are intensely interested in making sure no viewers are left behind by the digital transition, there are several factors inherent in the program that might make it impossible or infeasible for stations to participate.

First and foremost, providing Nightlight service will cost stations a substantial amount of money in an extremely difficult fiscal environment, and at a time when stations have already set

their lean budgets for the upcoming year. The Public Broadcasting Service has estimated that public television stations spend \$3 million per month just in electricity costs to provide analog service, an expense that stations have planned to shed after the digital transition. In addition, many stations would have to spend a substantial amount of money to make an engineering showing to the FCC to determine eligibility, and to create permissible Nightlight programming (including translating the messaging into Spanish). In a time in which state funding and underwriting for public television stations have sharply declined, these are unanticipated expenses that stations cannot afford to assume. In addition, it is APTS' understanding that many stations lack the technology to differentiate programming on their analog and digital signals.

The "Analog Nightlight" program is an excellent strategy in theory, but in fact it places an immense financial burden on stations, particularly smaller stations in rural areas where over-the-air viewership is high and the Nightlight program would likely have its greatest impact. Thus, we urge the Commission to examine ways to provide funding for stations, including public television stations, who would like to participate but lack the financial means.

Respectfully submitted,

/s/

Lonna M. Thompson
Senior Vice President and General Counsel
Malena F. Barzilai
Senior Counsel
Association of Public Television Stations
2100 Crystal Drive
Suite 700
Arlington, VA 22202
Phone: 202-654-4200
Fax: 202-654-4236

January 5, 2009