

**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)

To: The Commission

**REPLY COMMENTS OF THE
OHIO ASSOCIATION OF BROADCASTERS,
VIRGINIA ASSOCIATION OF BROADCASTERS, AND
NORTH CAROLINA ASSOCIATION OF BROADCASTERS**

The Ohio Association of Broadcasters, Virginia Association of Broadcasters, and North Carolina Association of Broadcasters (collectively, the “Associations”), through their attorneys, hereby submit these reply comments in response to the Notice of Proposed Rulemaking (“*Notice*”), FCC 08-281 (Rel. Dec. 24, 2008), in the above-captioned proceeding relating to “Nightlight” operations.

A. State Association Call Center Plans

In Paragraph 29 of the *Notice*, the Commission “ask[s] state broadcaster associations to inform [the FCC] of their plans to have local numbers, or local call centers, available to provide assistance to viewers with questions about local signal reception.” In comments filed by a group of state broadcaster associations (the “Named State Broadcasters Associations”), some generalized observations are made about state association call centers, including an estimate that as many as 37 statewide call centers are in operation, in development, or under consideration. The National Association of Broadcasters and the Association for Maximum Service Television (“NAB/MSTV”) put the number at 45. The Associations agree with both of these commenters

that many state associations have been working tirelessly to facilitate the digital transition and assist viewers through the “minefield” of transition-related reception issues, and many associations plan to continue their efforts through the end of the transition and beyond.

With respect to call centers, the Associations wish to advise the Commission of the following information:

- * The Ohio Association of Broadcasters currently plans to establish a centralized call center in connection with its January 15 statewide “soft” test. The Association has worked with non-commercial stations in each market in Ohio to provide a local call center to supplement the centralized call center. Following the January soft test, the Association will evaluate the performance and utility of these call centers and, based on that evaluation, determine its call center strategy for February 17 and beyond. During the soft test, stations will publicize the call center phone numbers.
- * The North Carolina Association of Broadcasters has coordinated two statewide “soft” tests for January 15. The Association has partnered with Elon University in central North Carolina to host a centralized, statewide call center on January 15 for a three-hour period to take viewer calls relating to those two tests. The Association and Elon University are also partnered to host a centralized, statewide call center for twelve hours per day from Wednesday through Friday, February 18-20, to take viewer calls in the immediate aftermath of the DTV transition. Stations will publicize the call center phone numbers.
- * The Virginia Association of Broadcasters has coordinated several statewide “soft” tests. In connection with these tests, Association members expressed a preference to promote local phone numbers for individual stations to encourage viewers to contact their local stations rather than a centralized call center. The Association plans to further review and discuss whether to establish a centralized call center to take viewer calls in the immediate aftermath of the transition or whether to continue the individualized approach that has, so far, served Virginia viewers and stations well.

B. Commercial Sponsorship of Nightlight Programming Should Be Permitted

The Associations submit that limited commercial sponsorship of Nightlight programming should be permitted so that broadcasters may recoup some of the costs of providing Nightlight service. Comments filed by several parties in this proceeding observe that Nightlight operation may create a financial strain on participating stations.

For example, the Association of Public Television Stations (“APTS”) observes that “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.”¹ APTS suggests that the Commission “examine ways to provide funding for stations” who wish to participate in the Nightlight program. Similarly, the Named State Broadcasters Associations urge the Commission to permit “short-form commercial spots, including banners and crawls” and “underwriting announcements in the case of noncommercial educational stations.”²

The Associations specifically agree with the exhortation of NAB/MSTV that

the Commission should not interpret the [Nightlight] statute to prohibit stations that may wish to defray the cost of maintaining analog service for an additional 30 days with a “brought to you by” or “sponsored by” or “in partnership with” visual identification *during* the “Analog Nightlight” program.³

Indeed it is precisely this sort of brief, limited commercial sponsorship of transition-related messages that has served stations well throughout their transition-related education campaigns. Many stations have been appending to their 30-second DTV public service announcements a brief sponsorship tag to acknowledge partnerships with local and national electronics retailers, residential antenna vendors, and digital television manufacturers. In the Nightlight context, such brief sponsorships would not interfere with or interrupt the educational and informational messages provided by Nightlight stations and they have the potential to go a long way toward defraying the unbudgeted costs that will be incurred by stations who continue to provide analog service in the Nightlight program.

¹ Comments of the Association of Public Television Stations, pp. 3-4.

² Joint Comments of the Named State Broadcasters Associations, p. 4.

³ Comments of NAB/MSTV, p. 4 (emphasis in original).

To maintain harmony with the statute and to avoid the over-commercialization of Nightlight service, the Commission can and should limit commercial sponsorship opportunities to visual and/or audio tags that approximate the limitations imposed on underwriting announcements for non-commercial stations. Indeed, the Commission should allow non-commercial stations to use routine underwriting announcements to acknowledge donors who are sponsoring Nightlight service and extend similar restrictions to commercial stations. For Nightlight stations that plan to broadcast static slates of information, sponsorship mentions could be limited to hourly or half-hourly frequencies during those periods of static slates. For stations that provide a mix of Nightlight programming formats by airing program segments of various lengths, sponsorship mentions could be limited to five seconds per segment with a standardized “brought to you by,” “sponsored by,” “in partnership with,” or some other similarly descriptive tag.

C. Filing of Updated Form 387 Is Unnecessary

Finally, the Associations agree with the comments filed by NAB/MSTV⁴ and the comments filed by the Named State Broadcasters Associations⁵ that a requirement that stations further update their respective FCC Form 387 filings to notify the Commission of their participation in the Nightlight program is, in light of other required Nightlight filings, an unnecessary redundancy. Because the Commission will be releasing by Public Notice a list of participating stations compiled from required STA filings, a requirement that Nightlight stations also notify the Commission through an update of Form 387 is unnecessary.

⁴ Comments of NAB/MSTV, p. 8.

⁵ Joint Comments of the Named State Broadcasters Associations, pp. 3-4.

Conclusion

The Associations respectfully request that the Commission consider these Reply Comments in developing the rules and policies that will govern Nightlight service.

Respectfully submitted,

**OHIO ASSOCIATION OF BROADCASTERS
VIRGINIA ASSOCIATION OF
BROADCASTERS
NORTH CAROLINA ASSOCIATION OF
BROADCASTERS**

/s/
Wade H. Hargrove

/s/
Mark J. Prak

/s/
Marcus W. Trathen

/s/
Stephen Hartzell

BROOKS, PIERCE, McLENDON,
HUMPHREY & LEONARD, L.L.P.
Suite 1600
Wachovia Capitol Center
Post Office Box 1800
Raleigh, North Carolina 27602
Telephone: (919) 839-0300
Facsimile: (919) 839-0304

Their Attorneys

January 8, 2009