



January 29, 2009

Analog Nightlight Service Requirements Released

On December 31, 2008, we notified you that the FCC was seeking comments on proposed rules to implement the Analog Nightlight Act (the “Act”) which permits full power television stations operating on channels 2 through 51 to continue broadcasting emergency and DTV transition information on their analog channel for up to 30 days after the currently scheduled February 17, 2009 DTV transition date. The FCC has released a Report and Order (the “Order”) implementing the Act.

The Order includes a list of 826 stations that have been pre-approved to provide analog nightlight service. The list of pre-approved stations can be found at http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC-09-2A2.pdf. Stations that were not pre-approved may seek nightlight service eligibility by electronically filing an Engineering STA request with the FCC no later than February 3, 2009 that demonstrates how they plan to provide the service and to minimize interference to affected DTV stations. The FCC suggests, however, that if there are already pre-approved stations in the market that will provide analog nightlight service, other stations whose nightlight operation would cause interference to a digital station should not elect to provide nightlight service, but instead should cooperate with the nightlight services provided by the other stations in the market.

The Order streamlines the process by which stations may elect to provide the nightlight service. Pre-approved stations must notify the FCC of their election to participate no later than February 10, 2009, either by electronically filing a Legal STA request or by sending an email to nightlight@fcc.gov. The notification email must include: (1) name, title, phone number, and, if available, the e-mail address and mobile telephone number of the sender; (2) licensee’s name; (3) FCC Registration Number; (4) Facility Identification Number; (5) call sign; (6) city and state; (7) analog and digital channel numbers; (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 program; and (9) the station’s planned analog nightlight service, including whether the station plans to participate at reduced analog power, and the time period during which it will provide the service (if the service will be discontinued prior to March 19, 2009).

This memorandum is intended only as a general discussion of these issues and should not be regarded as legal advice. We would be pleased to provide additional details or advice about specific situations if desired.

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While the information broadcast as part of the service is limited to emergency and DTV transition information, the FCC will permit limited sponsorship of the service to help stations defray its costs. Stations broadcasting sponsorship information must comply with normal sponsorship identification requirements.

Emergency and DTV transition information should be broadcast in both English and Spanish and should be accessible to persons with disabilities through open or closed captioning and open aural descriptions of the critical aspects of the information. In addition, the Emergency Alert System rules apply to the nightlight service if an emergency arises during the 30-day time frame.

Nightlight stations are not permitted to broadcast regular programming; however, the FCC stated that if circumstances arise requiring the transmission of other programming, such as a station's normal news and emergency programming, for a limited amount of time in order for the emergency information to be provided in a timely manner, it would "not be inclined to sanction the broadcaster" for violating the Act.

Stations are not required to provide the nightlight service, but are encouraged to do so, independently or jointly with other stations in the market. Stations that elect to participate are not required to broadcast during the entire 30 day window, but the FCC urges stations that volunteer to provide nightlight service to commit to airing the nightlight programming for at least two weeks.

Efforts are underway to delay the DTV transition by four months, until June 12, 2009. If the DTV transition is delayed, the analog nightlight program will likely also be delayed or otherwise modified. We will notify you in the event that there are changes to the analog nightlight program due to DTV transition delays.

If you would like further information about the Analog Nightlight Report and Order, or if you need assistance notifying the FCC of your intent to participate in the program, please contact an attorney in this office.

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