

FCC Proposes New Rules to Limit Loudness of TV Advertisements

May 31, 2011

On Friday, May 27, 2011, the Federal Communications Commission (FCC) released a Notice of Proposed Rule Making (NPRM) proposing rules to implement the Commercial Advertisement Loudness Mitigation Act (CALM Act). The CALM Act, which was enacted on December 15, 2010, requires the FCC to incorporate into its rules the Advanced Television Systems Committee's (ATSC) "Techniques for Establishing and Maintaining Audio Loudness for Digital Television" (A/85) Recommended Practice, but only to the extent that the recommended practice concerns the loudness levels of commercial advertisements transmitted by television broadcasters and multichannel video programming distributors (MVPDs). The CALM Act requires that the Commission adopt its implementing rules by December 15, 2011, after which, broadcasters and MVPDs will have one year to comply with the new rules.

In the NPRM, the FCC tentatively concludes that the CALM Act does not grant it the authority to propose technical modifications to the A/85 Recommended Practice. The agency, however, notes that public input is needed on certain aspects of its proposed implementation of the CALM Act. Specifically, the NPRM seeks comment on the following issues:

The Commission seeks comment on how it should define "commercial advertisement" for purposes of the CALM Act.

The CALM Act mandates that the Commission require broadcasters and MVPDs to adhere to the A/85 Recommended Practice "only insofar as [it] concerns the transmission of commercial advertisements." The Commission therefore seeks public comment on how it can determine which portions of the A/85 Recommended

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Practice Areas

Media
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Practice pertain to commercial advertisements.

The Commission seeks comment on its tentative conclusion that the CALM Act applies to all commercial advertisements, not just those that are locally inserted by television broadcasters or MVPDs.

Noncommercial educational (NCE) stations are statutorily barred from broadcasting advertisements, and the FCC seeks comment on whether the CALM Act should apply to advertisements that NCEs might transmit on nonbroadcast streams (for example, subscription services). The agency also seeks input on the extent to which promotions of programming might be subject to the CALM Act's requirements.

The A/85 Recommended Practice contemplates the use of the AC-3 audio standard, but as the Commission notes, not all MVPDs use the AC-3 standard for all content that would be subject to the new rules. The Commission nevertheless tentatively concludes that the CALM Act defines the scope and application of the new technical loudness standard as mandatory for all television broadcasters and MVPDs and not only those using AC-3 audio systems. The FCC seeks comment both on its tentative conclusion and on whether and how MVPDs that do not use AC-3 audio systems can comply with the CALM Act.

To monitor compliance with the CALM Act, the NPRM includes proposals for a consumer complaint process and methods through which broadcasters and MVPDs can demonstrate that they are complying with the A/85 Recommended Practice. The FCC seeks comment on these proposals.

Comments are due 30 days from the NPRM's publication in the Federal Register. Reply comments are due 45 days from Federal Register publication.