

Title: Commercial Advertisement Loudness Mitigation (“CALM”) Act; Financial Hardship and General Waiver Requests**SUPPORTING STATEMENT****A. Justification.**

1 On May 27, 2011, the FCC released a Notice of Proposed Rulemaking (“NPRM”), FCC 11-84,¹ proposing rules to implement the Commercial Advertisement Loudness Mitigation (“CALM”) Act.² Among other things, the CALM Act directs the Commission to incorporate into its rules by reference and make mandatory a technical standard developed by an industry standard-setting body that is designed to prevent television commercial advertisements from being transmitted at louder volumes than the program material they accompany. Specifically, the CALM Act requires the Commission to incorporate by reference the Advanced Television Systems Committee (“ATSC”)³ A/85 Recommended Practice (“ATSC A/85 RP”)⁴ and make it mandatory “insofar as such recommended practice concerns the transmission of commercial advertisements by a television broadcast station, cable operator, or other multichannel video programming distributor.” As mandated by the statute, the proposed rules will apply to TV broadcasters, cable operators and other multichannel video programming distributors (“MVPDs”).⁵

47 U.S.C. § 621(b)(2), Financial Hardship Waivers: Section 2(b)(2) of the CALM Act provides that the Commission may grant a one-year waiver of the effective date of the rules implementing the statute to any station/MVPD that shows it would be a “financial hardship” to obtain the necessary equipment to comply with the rules, and may renew such waiver for one additional year. The NPRM proposes a financial hardship waiver standard for evaluating requests for one-year extensions of the effective date. To request a financial hardship waiver pursuant to Section 2(b)(2), the NPRM proposes to require a station/MVPD to provide: (1) evidence of its financial condition, such as financial statements;⁶ (2) a cost estimate for obtaining the necessary equipment to comply with the required regulation;⁷ (3) a detailed statement explaining why its financial condition justifies postponing compliance; and (4) an estimate of how long it will take to comply, along with supporting information.

¹ See *Implementation of the Commercial Advertisement Loudness Mitigation (CALM) Act*; MB Docket No. 11-xx; Notice of Proposed Rulemaking, FCC 11-84 (rel. May 27, 2011).

² The Commercial Advertisement Loudness Mitigation (“CALM”) Act, Pub. L. No. 111-311, 124 Stat. 3294 (2010) (codified at 47 U.S.C. § 621). The CALM Act was enacted on December 15, 2010 (S. 2847, 111th Cong.).

³ ATSC is an international, non-profit organization developing voluntary standards for digital television. The ATSC member organizations represent the broadcast, broadcast equipment, motion picture, consumer electronics, computer, cable, satellite, and semiconductor industries. ATSC creates and fosters implementation of voluntary Standards and Recommended Practices to advance digital television broadcasting and to facilitate interoperability with other media. See <http://www.atsc.org/aboutatsc.html>.

⁴ See ATSC A/85: “ATSC Recommended Practice: Techniques for Establishing and Maintaining Audio Loudness for Digital Television,” (Nov. 4, 2009) (“ATSC A/85 RP”). To obtain a copy of the ATSC A/85 RP, visit the ATSC website: http://www.atsc.org/cms/standards/a_85-2009.pdf.

⁵ We refer herein to covered entities collectively as “stations/MVPDs” or “regulated entities.” A multichannel video program distributor is an entity such as, but not limited to, a cable operator, a multichannel multipoint distribution service, a direct broadcast satellite service, a television receive-only satellite program distributor, a satellite master antenna television system operator, that make available for purchase, by subscribers or customers, multiple channels of video programming.

⁶ The NPRM seeks comment on whether allow a station/MVPD may provide federal tax returns in lieu of financial statements.

⁷ As part of the showing set forth above, we propose to require a station/MVPD that requests a financial hardship waiver to describe the equipment it intends to obtain to comply with the CALM Act and the expense associated with that equipment.

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47 U.S.C. § 621(b)(3), General Waiver Authority: Section 2(b)(3) of the CALM Act provides that the Commission may waive any rule required by the CALM Act, or the application of any such rule, to any station/MVPD for good cause shown under Section 1.3 of the Commission’s rules.⁸ In addition to any requests for waiver necessitated by unforeseen circumstances, this provision preserves the FCC’s inherent authority to grant waivers to MVPDs that cannot implement the ATSC A/85 RP because of the technology they use. Grant of a waiver under such circumstances would be more likely to be in the public interest if the waiver recipient can demonstrate that it, by some other means, will be able to prevent the transmission of loud commercials, as intended by the CALM Act. The NPRM proposes to address general waiver requests on a case-by-case basis.

Filing Deadline. We propose that, absent extraordinary circumstances, the deadline for filing a waiver request pursuant to either Section 2(b)(2) or 2(b)(3) of the CALM Act will be 180 days before the effective date of our rules. Requests for waiver renewals must be filed at least 180 days before the waiver expires. Requests for waiver based on unforeseen circumstances, of course, can be filed at any time.

This information collection does not affect individuals or households; thus, there are no impacts under the Privacy Act.

Statutory authority for this collection of information is contained in the Commercial Advertisement Loudness Mitigation Act of 2010, Pub. L. No. 111-311, 124 Stat. 3294, and Sections 1, 2(a), 4(i), and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 152, 154(i) and (j), 303(r), and 621.

2. Financial hardship may be filed by a TV station or MVPD to request a one-year waiver of the effective date of the rules implementing the CALM Act or to request a one-year renewal of such waiver. The information will be used by FCC staff to evaluate whether grant of a waiver would be in the public interest.

General waiver requests may be filed by a TV station or MVPD to request waiver of the rules implementing the CALM Act for good cause. The information will be used by FCC staff to evaluate whether grant of a waiver would be in the public interest.

3. The Commission proposes to require a TV station or MVPD to file its financial hardship or general waiver request electronically into the docket through the Commission’s Electronic Comment Filing System (“ECFS”) using the Internet by accessing the ECFS: <http://www.fcc.gov/cgb/ecfs/>.

⁸ See 47 C.F.R. § 1.3 (the Commission’s rules “may be suspended, revoked, amended, or waived for good cause shown, in whole or in part, at any time by the Commission” and that “[a]ny provision of the rules may be waived by the Commission on its own motion or on petition if good cause therefor is shown”).

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4. This agency does not impose a similar information collection on the respondents. There are no similar data available.

5. This information collection will not have a significant economic impact on a substantial number of small entities/businesses.

6. The Commission is required by the CALM Act to permit the filing of a financial hardship or general waiver request. If the waiver process were not permitted, the Commission would not be in compliance with the statute. See 47 U.S.C. § 621(b). Furthermore, if these information collection requirements were not conducted, the Commission would be unable to fulfill its obligation to ensure that a waiver of the rule is in the public interest. (The frequency for this collection of information is determined by respondents, as necessary.)

7. This information collection is consistent with the guidelines in 5 CFR 1320.5(d)(2).

8. The Commission published a Federal Register Notice (76 FR 32116) on June 3, 2011 seeking comments on the information collection requirements contained in this supporting statement. To date, no comments have been received from the public.

9. The Commission does not propose to provide a payment or gift to any respondent.

10. There is no assurance of confidentiality provided to respondents, but, in accordance with the Commission’s rules, 47 C.F.R. § 0.459, a station/MVPD may request confidential treatment for financial information supplied with its waiver request.

11. This information collection does not address any private matters of a sensitive nature.

12. **We estimate about 4,500 respondents (stations/MVPDs) will file waiver requests.** We estimate that each respondent will take about 20 hours to complete a financial hardship or general waiver request. This estimate includes the time it will take the respondent to consult with an outside attorney.⁹ We estimate that the respondent would have an average salary of \$100,000/year (\$48.08/hour). All estimates are based on Commission staff's knowledge and familiarity with the availability of the data required.

| Type of Waiver Request | Total Annual Responses | Hourly Burden | Total Burden Hours | Hourly “In-House” Cost | Total Annual “In-House” Cost |
|---|------------------------------|---------------------------|---------------------|------------------------|------------------------------|
| Financial Hardship Waiver Requests | 4,000 waiver requests | 20 hours / request | 80,000 hours | \$48.08/hour | \$3,846,400 |

⁹ The estimated time for outside attorney review of a waiver request is provided in item 13’s cost to respondents.

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|--------------------------------|-----------------------|--------------------|--------------|--------------|-------------|
| | | | | | |
| General Waiver Requests | 500 waiver requests | 20 hours / request | 10,000 hours | \$48.08/hour | \$480,800 |
| Totals: | 4,500 waiver requests | | 90,000 hours | | \$4,327,200 |

- **Total Number of Respondents: 4,500**
- **Total Number of Responses: 4,500**
- **Total Annual Burden Hours: 90,000**
- **Total Annual In-House Cost: \$4,327,200**

13. **Cost to Respondents:** We assume that the respondents would consult with an attorney (\$300/hour) to complete a financial hardship or general waiver request and that the attorney would review the completed waiver request before it is filed with the Commission. We estimate that it will take the attorney two (2) hours per request to perform the consultation and review of each waiver request. (No fee is proposed for the filing of a financial hardship or general waiver request.)

Outside Attorney/Consultant: 4,500 x 2 hours/request = 9,000 hours
Cost to Respondents 9,000 hours x \$300/hour = **\$2,700,000**

14. **Cost to the Federal Government:** We estimate that the 4,500 waiver requests filed with the Commission annually (for the next two years – 2012 and 2013)¹⁰ with an average processing time of 50 hours per waiver request. Attorneys at the GS 15, Step 5 level (\$67.21/hour) and clerks at the GS 7, Step 5 level (\$22.92/hour) will process these filings at the Commission:

| | Total Petitions Filed | | Total hours per Filing | | Cost per hour | = | Cost per filing |
|---|------------------------------|---|-------------------------------|---|----------------------|---|------------------------|
| FCC Attorneys: | 4,500 | x | 48 hours | x | \$67.21 | = | \$14,517,360 |
| FCC Clerical: | 4,500 | x | 2 hours | x | \$22.92 | = | \$ 206,280 |
| Total Cost to the Federal Government | | | | | | | \$14,723,640 |

¹⁰ The CALM Act provides for a one-year financial hardship waiver of the effective date of the rules and renewal of such hardship waiver for one additional year. Therefore, we expect this burden will be significantly reduced, if not eliminated, after 2013.

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15. This is a new information collection. It will add program changes/increases of 4,500 respondents, 4,500 responses, 90,000 burden hours and \$2,700,000 in annual cost to OMB’s inventory once it is approved.

16. The data will not be published.

17. OMB approval of the expiration of the information collection will be displayed at 47 C.F.R. § 0.408.

18. There are no other exceptions to the Certification Statement.

B. Collections of Information Employing Statistical Methods:

The Commission does not anticipate that the collection of information will employ statistical methods.