

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

1 On December 13, 2011, the FCC released a Report & Order (“R&O”), FCC 11-182,¹ adopting 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 rules will apply to TV broadcasters, cable operators and other multichannel video programming distributors (“MVPDs”).⁵ The rules will take effect December 13, 2012.

47 U.S.C. § 621(b)(2), Financial Hardship Waiver Requests: 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 R&O adopts a financial hardship waiver standard for evaluating requests for one-year extensions of the effective date. The R&O requires a four-part showing, but offers a streamlined process to smaller entities.

To request a financial hardship waiver pursuant to Section 2(b)(2), the R&O requires a station/MVPD to provide: (1) evidence of its financial condition, such as financial statements; (2) a cost estimate for obtaining the necessary equipment to comply with the required regulation; (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. 11-93; Report and Order, FCC 11-182 (rel. Dec. 13, 2011) (“Order”).

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 The Advanced Television Systems Committee (“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,” (July 25, 2011). To obtain a copy of the RP, visit the ATSC website: http://www.atsc.org/cms/standards/a_85-2011a.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.

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For small TV stations and MVPDs that face a financial challenge in obtaining the equipment needed to comply with the rules, the R&O adopts a more streamlined financial hardship waiver approach. Specifically, a small station or MVPD that seeks a waiver must file with the Commission a certification that it: (1) meets our definition of small for this purpose, and (2) needs a delay of one year to obtain specified equipment in order to avoid the financial hardship that would be imposed if it were required to obtain the equipment sooner. The station or MVPD is not required to submit any proof of financial condition. Small broadcast stations and small MVPDs may consider the waiver granted when they file this information online and receive an automatic “acknowledgement of request,” unless the Media Bureau notifies them of a problem or question concerning the adequacy of the certification. For purposes of the streamlined waiver, the R&O defines a “small broadcast station” as either a station with no more than \$14.0 million in annual receipts or that is located in television markets 150 to 210. For purposes of the streamlined waiver, the R&O defines a “small MVPD system” eligible for the streamlined waiver process as one with fewer than 15,000 subscribers (as of December 31, 2011) that is not affiliated with a larger operator serving more than 10 percent of all MVPD subscribers. Notably, the R&O also adopts rules that do not require small MVPDs to audit programming and relieves them of the need to negotiate with programmers for contractual certifications. As a result, we believe most small MVPD systems will not need to obtain any new equipment to comply with the rules and, thus, will not need to request a financial hardship waiver.

47 U.S.C. § 621(b)(3), General Waiver Requests: 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.⁶ 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. Several commenters noted that some entities might face particular difficulty complying with the RP because of the outdated or alternative technology they employ. 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.

Filing Deadline. Absent extraordinary circumstances, the deadline for filing a Financial Hardship or General waiver request (pursuant to either Section 2(b)(2) or 2(b)(3) of the CALM Act) will be October 14, 2011 (60 days before the effective date of the rules). Requests for waiver renewals must be filed at least 60 days before the waiver expires. Requests for waiver based on unforeseen circumstances can be filed at any time.

Filing Requirements. A station or MVPD must file a Financial Hardship or General waiver request electronically into MB Docket No. 11-93 through the Commission’s Electronic

⁶ 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 therefore is shown”).

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Comment Filing System (“ECFS”) using the Internet by accessing the ECFS: <http://www.fcc.gov/cgb/ecfs/>. There is no filing fee.

NOTE: This collection was preapproved by OMB on July 15, 2011. The Order, however, makes some changes to the proposed modified collection that was preapproved. The changes allow for a streamlined filing process for smaller entities to reduce their burden for filing financial hardship waiver requests. The Order also adopts final rules that should eliminate the need for most small MVPD systems to obtain any new equipment to comply with the rules, thereby also reducing the number of financial hardship waiver requests. The Order also adopts a “safe harbor” to its rules, based on an industry proposal, for stations and MVPDs to demonstrate compliance with the rules through certifications and periodic testing.⁷ As a result, we expect a reduced need for filing general waiver requests.

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 waiver or streamlined certification 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 will 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/>.

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

⁷ See Order at para. 22.

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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 (77 FR 14519) on **March 12, 2012** seeking comments on the information collection requirements contained in this supporting statement. No comments have been received from the public.
9. The Commission will not 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 300 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.⁸ We estimate that each respondent will take about 1 hour to complete a streamlined certification of financial hardship. A respondent will not need to consult with an outside attorney to complete a streamlined certification of financial hardship. 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	50 waiver requests	20 hours / request	1,000 hours	\$48.08/hour	\$48,080.00
Streamlined certification	150 streamlined certifications	1 hours / request	150 hours	\$48.08/hour	\$7,212.00
GENERAL					
Waiver Requests	100 waiver requests	20 hours / request	2,000 hours	\$48.08/hour	\$96,160.00

⁸ The estimated time for outside attorney review of a waiver request is provided in item 13’s cost to respondents.

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Totals:	300 waiver requests		3,150 hours		\$151,452.00
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- **Total Number of Respondents: 300 station/MVPDs**
- **Total Number of Responses: 300 responses**
- **Total Annual Burden Hours: 3,150 hours**
- **Total Annual In-House Cost: \$151,452.00**

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: 150 waiver requests x 2 hours/request = 300 hours
Cost to Respondents 300 hours x \$300/hour = **\$90,000.00**

14. **Cost to the Federal Government:** We estimate that the 150 waiver requests filed with the Commission annually (for the next two years – 2012 and 2013)⁹ with an average processing time of 50 hours per waiver request. We estimate that the 150 streamlined certifications of financial hardship filed with the Commission annually (for the next two years – 2012 and 2013)¹⁰ with an average processing time of 3 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:	150	x	48 hours	x	\$67.21	= \$483,912.00
	150	x	2 hours	x	\$67.21	= \$20,163.00
FCC Clerical:	150	x	2 hours	x	\$22.92	= \$ 6,876.00
	150	x	1 hours	x	\$22.92	= \$ 3,438.00

⁹ 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.

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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Total Cost to the Federal Government

\$514,389.00

15. There are program changes to this collection which are due to the information collection requirements adopted in FCC 11-182. Therefore, there are increases/program changes to the annual number of respondents of 300, to the annual number of responses of 300, to the annual burden hours of collection 3,150 hours and to the annual cost burden of \$90,000.00.

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.