

SUPPORTING STATEMENT

A. Justification.

1. The Commission is seeking an extension of this currently approved collection for the full three-year period.

The following information collection requirement contained in this collection has changed since last approved by OMB. This requirement has expired.

**47 U.S.C. § 621(b)(2), Financial Hardship Waiver Requests:** Section 2(b)(2) of the CALM Act provided that the Commission could grant a one-year waiver of the effective date of the rules implementing the statute to any television station or multichannel video programming distributor (MVPD) that showed it would be a “financial hardship” to obtain the necessary equipment to comply with the rules.<sup>1</sup> The CALM Act also permitted the Commission to renew such waivers for one additional year.<sup>2</sup> By its terms, the statute expressly limits the waiver relief afforded by this provision to cover only two years after the effective date of the CALM Act rules, which was December 13, 2012.<sup>3</sup> Therefore, stations and MVPDs may not seek further waiver relief pursuant to Section 2(b)(2) of the CALM Act because such relief would be for a period beyond the two years authorized by the statute.

The following information collection requirements are contained in this collection and have not changed since last approved by OMB.

**47 U.S.C. § 621(b)(3), General Waiver Requests:** Section 2(b)(3) of the CALM Act provided that the Commission could 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.<sup>4</sup> Stations and MVPDs may file requests for waiver for good cause shown at any time.

Filing Requirements. A station or MVPD must file a General Waiver Request electronically into MB Docket No. 11-93 through the Commission’s Electronic Comment Filing System (“ECFS”) at: <http://www.fcc.gov/cgb/ecfs/>. There is no filing fee.

**HISTORY:** On December 13, 2011, the FCC released a Report & Order (“R&O”), FCC 11-182,<sup>5</sup> adopting rules to implement the Commercial Advertisement Loudness Mitigation

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<sup>1</sup> 47 U.S.C. § 621(b)(2).

<sup>2</sup> *Id.* Stations and MVPDs that obtained an initial financial hardship waiver were afforded until December 13, 2013, to comply with the CALM Act rules, and those that renewed their financial hardship waiver had until December 13, 2014, to comply with the CALM Act rules. As of December 13, 2014, all CALM Act financial hardship waivers have expired.

<sup>3</sup> See 47 C.F.R. §§ 73.682(e)(1), 76.607(a)(1).

<sup>4</sup> 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”).

**Title: Commercial Advertisement Loudness Mitigation (“CALM”) Act; Waiver Requests**

(“CALM”) Act.<sup>6</sup> Among other things, the CALM Act directed 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 required the Commission to incorporate by reference the Advanced Television Systems Committee (“ATSC”)<sup>7</sup> A/85 Recommended Practice (“ATSC A/85 RP”)<sup>8</sup> 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 apply to TV broadcasters, cable operators and other multichannel video programming distributors (“MVPDs”).<sup>9</sup> The rules took effect on December 13, 2012.

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), 303(r), and 621.

2. General waiver requests may be filed by a television station or MVPD to request waiver of the rules implementing the CALM Act “for good cause shown.” 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 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.

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<sup>5</sup> 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”).

<sup>6</sup> 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.).

<sup>7</sup> 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>.

<sup>8</sup> See ATSC A/85:2013 “ATSC Recommended Practice: Techniques for Establishing and Maintaining Audio Loudness for Digital Television,” (March 12, 2013). This document is available on the ATSC website at: [http://www.atsc.org/cms/standards/A\\_85-2013.pdf](http://www.atsc.org/cms/standards/A_85-2013.pdf).

<sup>9</sup> 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.

**Title: Commercial Advertisement Loudness Mitigation (“CALM”) Act; Waiver Requests**

- 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 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 (80 FR 10092) on February 25, 2015 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 20 respondents (stations/MVPDs) will file waiver requests.<sup>10</sup> We estimate that each respondent will take about 20 hours to prepare a general waiver request. This estimate includes the time it will take the respondent to consult with an outside attorney.<sup>11</sup> 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.

<b>Type of Waiver Request</b>	<b>Total Annual Responses</b>	<b>Hourly Burden</b>	<b>Total Burden</b>	<b>Hourly “In-House”</b>	<b>Total Annual</b>
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<sup>10</sup> We have reduced this estimate from 300 requests to 20 requests. This is because financial hardship requests may no longer be filed and, therefore, the burden associated with such requests has been eliminated. In addition, this is based on staff experience with receiving general waiver requests.

<sup>11</sup> The estimated time for outside attorney review of a waiver request is provided in item 13’s cost to respondents.

			Hours	Cost	“In-House” Cost
<b>General Waiver Requests</b>	20 waiver requests	20 hours / request	400 hours	\$48.08/hour	\$19,232.00

- **Total Number of Respondents: 20 station/MVPDs**
- **Total Number of Responses: 20 responses**
- **Total Annual Burden Hours: 400 hours**
- **Total Annual In-House Cost: \$19,232.00**

13. **Cost to Respondents:** We assume that the respondents would consult with an attorney (\$300/hour) to complete a 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 general waiver request.)

Outside Attorney/Consultant: 20 waiver requests x 2 hours/request = 40 hours  
**Cost to Respondents** 40 hours x \$300/hour = **\$12,000.00**

14. **Cost to the Federal Government:** We estimate that the 20 waiver requests filed with the Commission annually with an average processing time of 40 hours per waiver request. Attorneys at the GS 15, Step 5 level (\$68.56/hour) and clerks at the GS 7, Step 5 level (\$23.38/hour) will process these filings at the Commission:

	<u>Total Petitions Filed</u>		<u>Total hours per Filing</u>		<u>Cost per hour</u>	=	<u>Cost per filing</u>
FCC Attorneys:	20	x	38 hours (20x38=760 hours)	x	\$68.56	=	\$52,105.60
FCC Clerical:	20	x	2 hours (20x2=40 hours)	x	\$23.38	=	\$ 935.20

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**Total Cost to the Federal Government** **\$53,040.80**

15. There are program changes to this collection. This is because financial hardship requests may no longer be filed and, therefore, the burden associated with such requests has been eliminated. In addition, this is based on staff experience with receiving general waiver requests. Therefore, the annual number of respondents has decreased by 200, the number of annual responses has decreased by 200, the annual burden hours have decreased by 1,150 and the annual cost has decreased by \$78,000.

There are adjustments to this collection which are due to the Commission recalculating the burden for this collection. The number of respondents has decreased by 80, the number of annual responses has decreased by 80 and the annual burden hours have decreased by 1,600.

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 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.