



Federal Communications Commission
Washington, D.C. 20554

May 7, 2013

DA 13-1002

Small Entity Compliance Guide

Implementation of the Commercial Advertisement Loudness Mitigation (CALM) Act

MB Docket No. 11-93

This Guide is prepared in accordance with the requirements of Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996. It is intended to help small entities—small businesses, small organizations (non-profits), and small governmental jurisdictions—comply with the new rules adopted in the above-referenced FCC rulemaking docket(s). This Guide is not intended to replace the rules and, therefore, final authority rests solely with the rules. Although we have attempted to cover all parts of the rules that might be especially important to small entities, the coverage may not be exhaustive. This Guide may, perhaps, not apply in a particular situation based upon the circumstances, and the FCC retains the discretion to adopt approaches on a case-by-case basis that may differ from this Guide, where appropriate. Any decisions regarding a particular small entity will be based on the statute and regulations.

In any civil or administrative action against a small entity for a violation of rules, the content of the Small Entity Compliance Guide may be considered as evidence of the reasonableness or appropriateness of proposed fines, penalties or damages. Interested parties are free to file comments regarding this Guide and the appropriateness of its application to a particular situation; the FCC will consider whether the recommendations or interpretations in the Guide are appropriate in that situation. The FCC may decide to revise this Guide without public notice to reflect changes in the FCC's approach to implementing a rule, or to clarify or update the text of the Guide. Direct your comments and recommendations, or calls for further assistance, to the FCC's Consumer Center:

1-888-CALL-FCC (1-888-225-5322)
TTY: 1-888-TELL-FCC (1-888-835-5322)
Fax: 1-866-418-0232
fccinfo@fcc.gov

I. Web Links to Key Documents

- **Decision Document:** The Report and Order,¹ FCC 11-182, is available on the Commission’s website at http://transition.fcc.gov/Daily_Releases/Daily_Business/2012/db0217/FCC-11-182A1.doc.
- **Technical Document:** A/85: “ATSC Recommended Practice: Techniques for Establishing and Maintaining Audio Loudness for Digital Television,” (July 25, 2011) is available on the Advanced Television Systems Committee’s (ATSC) website at http://www.atsc.org/cms/standards/a_85-2011a.pdf.²

II. Objective of Proceeding

- Implement the Commercial Advertisement Loudness Mitigation (CALM) Act, Pub. L. No. 111-311, 124 Stat. 3294 (2010) (codified at 47 U.S.C. § 621).³
 - In general, to prevent digital television commercial advertisements from being transmitted at louder volumes than the program material they accompany.
 - More specifically, to require TV stations, cable operators, satellite TV providers or other multichannel video program distributors (MVPDs) to apply the Advanced Television Systems Committee’s (ATSC) A/85 Recommended Practice (“ATSC A/85 RP”) to the commercial advertisements they transmit to viewers.
 - To recognize the differences between the compliance methods appropriate for large and small entities and design ways for smaller entities to comply and demonstrate compliance consistent with the statutory requirements.

III. Background

- On December 13, 2011, the Commission released a Report and Order (“R&O”) adopting rules to implement the CALM Act. 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 standards development body, that is designed to prevent digital television commercial advertisements from being transmitted at louder volumes than the program material they accompany.
- Rules codified at 47 C.F.R. §§ 73.682(e) and 76.607.

¹ See *Implementation of the Commercial Advertisement Loudness Mitigation (CALM) Act*, MB Docket No. 11-93, Report and Order, 26 FCC Rcd 17222 (2011) (*CALM Act Report and Order*).

² The 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>.

³ The CALM Act was enacted on December 15, 2010 (S. 2847, 111th Cong.). See http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=111_cong_public_laws&docid=f:publ311.111.pdf.

IV. Definitions

- **“Certified programming”** means programming for which a programmer has certified in writing that all commercials embedded in the programming delivered to distributors complies with the ATSC A/85 RP and that the programmer has made this certification widely available to all distributors.
- **“Dialnorm”** (short for “Dialog Normalization”) is a numerical value that indicates the perceived loudness of the content measured in units of “LKFS” by averaging the loudness of audio signals in all channels over the duration of the content. The dialnorm value is encoded as metadata into the audio stream required for digital broadcast television. Stations/MVPDs transmit the dialnorm to the consumer’s reception equipment. See also ATSC A/85 RP § 3.4.
- **“Embedded” commercials** are commercials already placed into the programming stream by a third party, such as a broadcast network or cable programmer, and passed through by the station or MVPD to viewers.
- **“LKFS”** or loudness, K-weighted, relative to full scale, is the loudness standard used in the ATSC A/85 RP. A unit of LKFS is equivalent to a decibel. See also ATSC A/85 RP § 3.3.
- **“Locally inserted” commercials** are commercials added to a programming stream by a TV station or MVPD, itself, prior to, or at the time of, transmission to viewers.
- **“Programmer” (or “program provider”)** is a broadcast or cable TV network (*e.g.*, “ABC” or “CNN”), or any other provider of television content.
- **“Real-time processor”** is a device that limits the dynamic range of audio signals, rather than by setting the dialnorm or mixing to a specific Target Loudness. Real-time processing modifies the dynamic range of the decoded content by reducing the level of very loud portions of the content to avoid annoying the viewer and, in some cases, by raising the level of very quiet portions of the content so that they are better adapted to the listening environment. With real-time processing, some combination of automatic gain control (AGC), compressors, and limiters are commonly used for loudness control.
- **“RP”** means Recommended Practice. In the context of compliance with the CALM Act, RP means the ATSC A/85 Recommended Practice that is mandatory for stations and MVPDs with respect to television commercials.
- **“Spot check”** means monitoring 24 uninterrupted hours of programming with an audio loudness meter using the measurement techniques specified in the ATSC A/85 RP and reviewing the records from that monitoring to detect any commercials transmitted in violation of the RP. (The Report and Order contains an alternative method if a single 24-hour period would not capture all program suppliers for the channel.⁴)
 - A spot-check does not require a person to monitor a channel in real-time.
 - For a spot check to be considered valid, a station or MVPD must be able to demonstrate appropriate maintenance records for the audio loudness meter, and to demonstrate, at the time of an FCC inquiry, that appropriate spot checks had been ongoing. (The station/MVPD must not provide prior notice to the programmer of the timing of the spot check.)

⁴ In such case, a spot check could consist of a series of loudness measurements over the course of a 7-day period, totaling no fewer than 24 hours, that measure at least one program, in its entirety, provided by each non-certified programmer that supplies programming for that channel or stream of programming. See *CALM Act Report and Order*, 26 FCC Red at 17246, ¶38.

- **Example:** A possible spot check procedure could be: (1) connect a loudness meter conforming to the RP to the output of a set-top box, measure the long-term integrated or average loudness of all the elements of the soundtrack and log the loudness of content in 1 second intervals over a 24-hour period; (2) review the logs (which could be done with an automated process) to identify any potential violations of the RP (i.e., the average measured loudness exceeds the target loudness by more than 2 dB for the duration of a commercial); and (3) ascertain whether those potential violations occurred during a commercial (for example, by reviewing a recording of the monitored content or obtaining from the programmer a log of the commercials for the day that was monitored).
- **“Target Loudness”** is a specified value in LKFS established by the station/MVPD for its content provider to ensure that the content provider delivers the content at the appropriate loudness level. During final mixing of the content, all elements are balanced around this loudness reference point. See also ATSC A/85 RP § 3.4.

V. **Key Compliance Requirements**

- **Mandatory Compliance with the ATSC A/85 RP.** TV stations and MVPDs must apply the Advanced Television Systems Committee (ATSC) A/85: “ATSC Recommended Practice: Techniques for Establishing and Maintaining Audio Loudness for Digital Television,” (July 25, 2011) (“ATSC A/85 RP” or “RP”) to the commercials they transmit to viewers.
 - The ATSC A/85 RP describes how the TV industry can monitor and control the audio of digital TV programming. As a result of the CALM Act and the Commission’s rules, the industry’s “Recommended Practice” has become a required standard with which commercial TV stations and MVPDs must comply.
- **Effective Date:** December 13, 2012.⁵
- **Covered Entities:** The rules apply to:
 - Digital TV broadcasters;
 - Digital cable operators;
 - Satellite carriers; and
 - Other digital multichannel video programming distributors (“MVPDs”).
 - These entities are responsible for compliance under the statute, regardless of the audio system used or whether the commercials are “locally inserted” by the station/MVPD or “embedded” in the programming stream.
 - Non-commercial broadcast stations are excluded from the statute, except to the extent they transmit commercial advertisements as part of an ancillary or supplementary service.
 - The rules apply to all types of commercials, including political advertisements and promotional announcements.

⁵ In accordance with the new rules, several small TV stations and MVPDs have certified to the Commission that they qualify for a one-year waiver of the effective date of the rules. These “streamlined financial hardship waiver requests” are publicly available for viewing in the CALM Act proceeding’s docket, MB Docket No. 11-93, through the Commission’s Electronic Comment Filing System (“ECFS”) using the Internet by accessing the ECFS: <http://www.fcc.gov/cgb/ecfs/>.

- Different rules apply depending on whether the station/MVPD is directly inserting a commercial (**Locally Inserted Commercials**), or if it is passing through commercials embedded in programming (**Embedded Commercials**).⁶

VI. Enforcement and Demonstrating Compliance

- Under the rules, the Enforcement Bureau will initiate an FCC investigation or inquiry (“FCC inquiry”) when it detects a pattern or trend of consumer complaints that indicates potential noncompliance.
- The Enforcement Bureau will notify a station/MVPD in such an event and will require the station/MVPD to demonstrate compliance with the rules.
- If the station/MVPD does not demonstrate actual or ongoing compliance in response to an FCC inquiry, the station/MVPD may be liable for forfeiture.
- Stations/MVPDs have two choices for demonstrating compliance:

A. Actual Compliance: Stations/MVPDs may choose to demonstrate actual compliance with the RP in response to an FCC inquiry (that is, show that the specific commercial that is the subject of the complaints actually complies with the RP).

B. Ongoing Compliance: Alternatively, because it may be difficult for a station/MVPD to retroactively demonstrate that a given commercial it transmitted complies with the RP, a station/MVPD may choose to demonstrate ongoing compliance with the RP by following certain rules and procedures through which the Commission can presume compliance with the RP.

- Stations/MVPDs demonstrating ongoing compliance (as described below) need not show, in response to an FCC inquiry, that they complied with the RP with regard to the specific, complained-of commercial or commercials, and they will not be held liable for noncompliant commercials that they previously transmitted.
- When notified of an FCC inquiry (due to pattern or trend of complaints), a station/MVPD must, within 30 days, perform a 24-hour spot check of the programming being transmitted on the channel or program stream at issue, to verify ongoing compliance. This requirement applies to all stations and MVPDs, regardless of size, and applies to certified and noncertified programming.
 - If complaints implicate both large and small stations/MVPDs, the Commission would generally focus enforcement inquiries first on the larger entities to ascertain compliance, thus relieving smaller entities of the post-complaint spot check. If complaints pertain largely to a small station or MVPD, however, it will be appropriate to focus on the entity named, regardless of size.

C. Requirements for Demonstrating Ongoing Compliance:

- The rules offer a means for a station/MVPD to:
 - (1) be “deemed in compliance” with respect to **Locally Inserted Commercials**;

⁶ See 47 C.F.R. §§ 73.682(e)(2) and 76.607(a)(2) (Locally Inserted Commercials) and 47 C.F.R. §§ 73.682(e)(3) and 76.607(a)(3) (Embedded Commercials).

- (2) be afforded a “safe harbor” with respect to **Embedded Commercials** they pass through as part of programming provided from a programmer (such as a network).
- (3) ensure compliance with the RP through the use of a **Real-Time Processor**.

1. Locally Inserted Commercials (“deemed in compliance”): To be “deemed in compliance” with respect to locally inserted commercials, stations and MVPDs must show that they have installed, and are utilizing and maintaining, equipment and software in a commercially reasonable manner to implement the RP.

- This means the station/MVPD must:
 - (i) install, maintain and utilize equipment to properly measure the loudness of the content and to ensure that the dialnorm metadata value correctly matches the loudness of the content when encoding the audio into AC-3 for transmitting the content to the consumer;⁷
 - (ii) maintain records showing the consistent and ongoing use of this equipment in the regular course of business and demonstrating that the equipment has undergone commercially reasonable periodic maintenance and testing to ensure its continued proper operation and make such records available if requested;
 - (iii) certify that it either has no actual knowledge of a violation of the ATSC A/85 RP, or that any violation of which it has become aware has been corrected promptly upon becoming aware of such a violation; and
 - (iv) certify that its own transmission equipment is not at fault for any pattern or trend of complaints.
- **Third Party Local Insertions:** If a station/MVPD contracts with a third party (agent) to do its local commercial inserts, then the station/MVPD must ensure the third party is complying with the ATSC A/85 RP by obtaining a certification of compliance with the RP from the third party.⁸ The station/MVPD must also perform a spot check on the programming at issue in response to an FCC inquiry concerning a pattern or trend of complaints regarding commercials inserted by that third party.

2. Embedded Commercials (“safe harbor”): To satisfy the “safe harbor” requirements with respect to embedded commercials, stations and MVPDs must certify that their own transmission equipment is not at fault for any pattern or trend of complaints, and must (i) rely on widely-available certifications of compliance from programmers;⁹ and (ii) conduct annual spot checks of non-certified programming to ensure compliance with the RP. “Small TV stations” and “small MVPDs,” however, are exempt from performing annual spot checks. All stations/MVPDs, regardless of size, must conduct spot checks of specific channels in the event of an FCC inquiry.

- **Certified Programming:** Stations and MVPDs can meet the safe harbor requirements if the programmer certifies that the commercials in its programming comply with the

⁷ For non-AC-3 audio streams, it is vital to ensure that the measured loudness of the content matches the delivery channel’s loudness target value within +/-2 dB. For technical guidance, refer to the RP, in general, and, in particular, to Annex J (for AC-3 audio systems) or Annex K (for non-AC-3 systems).

⁸ The station/MVPD must have no reason to believe that the certification is false.

⁹ The station/MVPD must have no reason to believe that the certification is false.

RP. A certifying programmer must make its certifications available to all distributors. Notwithstanding a certification, however, any station or MVPD that is notified of a pattern or trend of complaints must perform spot checks in response to an FCC inquiry.

- Noncertified Programming/Annual Spot Checks: To meet the safe harbor requirements with regard to commercials that are not certified by the programmer, “larger” stations and MVPDs (as defined below for safe harbor purposes) must perform 24-hour spot checks annually and correct any violations of the RP they uncover.
 - Large TV Stations and Very Large MVPDs must annually spot check 100 percent of noncertified programming carried by the station, or by any system operated by the MVPD.
 - Large (but not “Very Large”) MVPDs must annually spot check 50 percent (chosen at random) of the noncertified channels carried by any system operated by the MVPD.
 - Small TV Stations and Small MVPDs are excused from annual spot checks because national and regional programming networks deliver the same program streams to stations and MVPDs of all sizes. Therefore, the programming is checked by the larger entities and there is no need for small entities to duplicate the effort.
 - MVPDs are not required to spot check the programming on the broadcast TV stations they carry.
 - Annual Spot Checks for 2 Years Only: Once a station or MVPD has performed two consecutive annual spot checks on its non-certified programming and found no evidence of noncompliance, it may stop performing annual spot checks and remains in the safe harbor. If a spot check undertaken in response to an FCC inquiry reveals noncompliance, the two-year requirement for annual spot checks will be reset for that channel or programming, even if it had been previously phased out.
 - Outcome of Spot Checks: Stations/MVPDs must notify the FCC regarding the outcome of a spot check in response to an FCC inquiry or if an annual spot check reveals noncompliance.¹⁰ If a spot check indicates noncompliance, the station or MVPD must notify the FCC and the programmer within 7 days, and conduct a follow-up spot check within 30 days. If that follow-up spot check reveals noncompliance, the station or MVPD will not be in the safe harbor for that programming, and will be liable for future violations.

Definitions (for safe harbor purposes):

- A “Large TV Station” is defined as one with more than \$14.0 million in annual receipts.
- A “Very Large MVPD” is defined as one with 10 million subscribers or more nationwide (*i.e.*, the four largest MVPDs) and a “Large

¹⁰ In order to facilitate demonstrating compliance with the requirements of the safe harbor, stations/MVPDs should keep records of any spot checks performed.

MVPD” is defined as one serving more than 400,000 subscribers nationwide but fewer than 10 million (*i.e.*, the 5th through 15th largest MVPDs).¹¹

- A “Small TV Station” is defined as one with \$14.0 million or less in annual receipts.
- A “Small MVPD” is defined as one with fewer than 400,000 subscribers.

3. Real-Time Processor: Stations/MVPDs may use a real-time processor to be “deemed in compliance” with respect to locally inserted commercials or to satisfy the “safe harbor” with respect to embedded commercials.¹²

- To demonstrate compliance when using a real-time processor, stations and MVPDs must show that they have installed, and are utilizing and maintaining the real-time processor equipment in a commercially reasonable manner to implement the RP. This means the station/MVPD must:
 - maintain and provide records showing the consistent and ongoing use of this equipment in the regular course of business and demonstrating that the equipment has undergone commercially reasonable periodic maintenance and testing to ensure its continued proper operation;
 - certify that it either has no actual knowledge of a violation of the ATSC A/85 RP, or that any violation of which it has become aware has been corrected promptly upon becoming aware of such a violation; and
 - certify that its own transmission equipment is not at fault for any pattern or trend of complaints.

VII. Waivers

- The rules allow a TV station or MVPD to seek a waiver of the December 13, 2012 effective date for up to two years based on financial hardship. The Commission may also issue waivers based on “good cause.”
- Filing Deadline: October 15, 2012 was the deadline for filing initial waiver requests, absent extraordinary circumstances, but the deadline for filing streamlined requests was extended until December 13, 2012. October 14, 2013 is the deadline for seeking waiver renewals.
- Filing Requirements: A station/MVPD that seeks a financial hardship waiver or general waiver must file its waiver request electronically into MB Docket No. 11-93 through the Commission’s Electronic Comment Filing System (ECFS) using the Internet by accessing the ECFS: <http://www.fcc.gov/cgb/ecfs/>.

¹¹ See <http://www.ncta.com/Stats/TopMSOs.aspx> (visited November 16, 2011) showing the numbers of subscribers for the top 25 MVPDs based on 2010 data. The Commission will rely on the version of this list that is based on data available as of December, 31 2011 for purposes of the rules implementing the CALM Act.

¹² Note that, using real-time processing techniques can be a less desirable solution for industry and consumers in some cases because it reduces the dynamic range of the audio content. See also RP § 8.1.1 (c), § 8.1.2 (c), and § 9.1.

- A filing seeking a financial hardship waiver must be clearly designated as a “financial hardship” request, and a filing seeking a general waiver must be clearly designated as a “general” waiver request. All waiver request filings must clearly reference the CALM Act proceeding and docket number (MB Docket No. 11-93). Requests for “general” waiver must comply with 47 C.F.R. § 1.3.
- Filers will receive a confirmation online after their waiver has been successfully submitted through ECFS. It is recommended that applicants for a streamlined waiver retain this confirmation for their records.
- There is no filing fee for waiver requests filed pursuant to the CALM Act.
- Financial Hardship. The CALM Act provides that the Commission may grant a one-year waiver of the effective date of the rules 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.
 - “Four-Part” Showing Required: When seeking a financial hardship waiver, the station or MVPD must 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.
 - Streamlined Showing For Small Broadcast Stations and Small MVPD Systems: Small Broadcast Stations and Small MVPD Systems may use a streamlined process to request this waiver. Under the streamlined process, a Small Broadcast Station or Small MVPD System must certify that it (1) meets the definition of “Small TV Station” or “Small MVPD System” and (2) to avoid financial hardship, it needs a delay of one year to obtain the necessary equipment, which it must identify or describe. The station or MVPD may consider the waiver granted when it files this information online and receives an automatic “acknowledgement of request,” unless the Media Bureau notifies the station/MVPD of a problem or question concerning the adequacy of the certification.

Definitions (for waiver purposes):

- A “Small Broadcast Station” is defined as a TV station with \$14.0 million or less in annual receipts or that is located in television markets 150 to 210.
- A “Small MVPD System” is defined as an MVPD 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.¹³

¹³ Note that the terms “Small Broadcast Station” and “Small MVPD System” for purposes of the streamlined waiver do not mean the same thing as “small TV stations” and “small MVPDs” for purposes of being in the safe harbor (described above).

- General. The CALM Act provides that the statute does not affect the Commission's authority to waive any rule, even one required by the CALM Act, for good cause shown under Section 1.3 of the Commission's rules. The Commission states in the R&O that it may use the general waiver authority to consider waivers necessitated by unforeseen circumstances, as well as for stations or MVPDs that demonstrate they cannot strictly implement the RP because of the technology they use and that propose to use an alternative approach to achieving the same goals.