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ALERT

Reminder: FCC CALM Act Rules Take Effect December 13

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October 31, 2012

The Federal Communications Commission's (FCC) Commercial Advertisement Loudness Mitigation (CALM) Act rules, which regulate the loudness level of commercial advertisements on television, will take effect December 13, 2012. As described in detail in a prior Client Alert, the rules apply to digital TV broadcasters, digital cable operators and other digital multichannel video programming distributors (MVPD) and require ads to be transmitted at a loudness level that comports with the programming they accompany.

The FCC's CALM Act rules are limited to television station and MVPD responsibilities, and compliance ultimately rests with these programming distributors. Steps that television stations and MVPDs must take to comply with the rules differ depending on whether the commercials are "inserted" by the television station or MVPD or "embedded" from an upstream programmer, and received by the television station or MVPD.

For inserted commercials, a television station or MVPD will be deemed in compliance if it uses measuring equipment to ensure that a commercial's loudness volume matches the loudness volume of the programming content. Television stations and MVPDs can comply by meeting the Advanced Television Systems Committee A/85 Recommended Practice (ATSC A/85 RP) standards, which measure and control the audio loudness of digital programming, including commercials. The equipment must be installed and functional by December 13, 2012.

For commercials that an upstream programmer embeds and send to the programming distributor, the programming distributor may comply either by (1) using a real-time processor or (2) falling into a

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regulatory "safe harbor." To qualify for the safe harbor, the programming distributor must obtain a compliance certification by December 13, 2012 from the upstream programmer, and it must have no reason to believe that the certification is false.