

ALERT

FCC Adopts Rules to Regulate the Loudness of Television Commercials

December 14, 2011

On December 13, 2011, the Federal Communications Commission (FCC or Commission) issued a Report and Order adopting rules to implement the Commercial Advertisement Loudness Mitigation (CALM) Act. The rules take effect on December 13, 2012 and will require digital TV broadcasters, digital cable operators and other digital multichannel video programming distributors (MVPDs) to ensure transmission of commercial advertisements at a loudness level that comports with industry standards.

The rules:

- incorporate 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;
- impose compliance responsibility on television stations and MVPDs, regardless of audio system used or whether the commercials are inserted or embedded in programming (as described below);
- exclude non-commercial broadcast stations, except those that transmit commercial advertisements on multicast channels as part of an "ancillary or supplementary service";
- provide that political advertisements and promotional announcements are subject to the rules; and
- include an enforcement mechanism triggered by consumer complaints rather than audits.

Authors

Kathleen A. Kirby
Partner
202.719.3360
kkirby@wiley.law
Henry Gola
Partner
202.719.7561
hgola@wiley.law

Practice Areas

Media
Telecom, Media & Technology

The 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. If a station or MVPD receives an enforcement inquiry, it must:
 - provide records about the equipment's use, maintenance, and testing; and
 - certify that it has no actual knowledge of a violation of the ATSC A/85 RP standards or that it has "promptly" corrected any violation of which it is aware.
- For embedded commercials, a station or MVPD may comply either by using a real-time processor or falling into a regulatory "safe harbor." A station or MVPD may use the safe harbor if it:
 - obtains compliance certifications from programmers;
 - annually spot checks non-certified programming for compliance with the ATSC A/85 RP standards; and
 - spot checks specific channels if the FCC alerts the television station or MVPD about a pattern of complaints.
- The Order provides specifics about how television stations and MVPDs must conduct annual and other spot checks; the requirements vary depending on the "size" of the programming distributor.

The rules allow a television station or MVPD to seek a waiver of the December 13, 2012 effective date of up to two years based on financial hardship. The Commission also reserved the right to issue waivers based on "good cause." The deadline for waiver requests is 60 days prior to the effective date absent extraordinary circumstances.