

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)
)
Implementation of the Commercial Advertisement) MB Docket No. 11-93
Loudness Mitigation (CALM) Act)

MEMORANDUM OPINION AND ORDER

Adopted: December 11, 2012

Released: December 11, 2012

By the Chief, Policy Division, Media Bureau:

I. INTRODUCTION

1. The Media Bureau has before it two requests for a temporary waiver of the December 13, 2012 effective date for complying with the Commission’s rules implementing the Commercial Advertisement Loudness Mitigation (CALM) Act.¹ First, the South Georgia Governmental Services Authority (SGGSA), a municipal cable system, has filed a financial hardship waiver request pursuant to Section 2(b)(2) of the CALM Act.² Second, CMCG Portland License LLC, the licensee of television station WPFO, Waterville, Maine (“WPFO” Facility ID No. 84088), has filed a general waiver request pursuant to Section 2(b)(3) of the CALM Act and Section 1.3 of our rules.³ For the reasons discussed below, we grant SGGSA and WPFO temporary waivers to the extent described herein. In addition, on our own motion, we waive the filing deadline for streamlined waivers, and will accept as timely-filed streamlined financial hardship waiver requests filed on or before December 13, 2012.

II. BACKGROUND

2. On December 13, 2011, the Commission released a Report and Order adopting rules implementing the CALM Act.⁴ As mandated by the statute, the Commission incorporated into its rules by reference and made mandatory the Advanced Television Systems Committee (ATSC) A/85 Recommended Practice (“RP”),⁵ which describes how the TV industry can monitor and control the audio

¹ Pub. L. No. 111-311, 124 Stat. 3294 (2010) (codified at 47 U.S.C. § 621).

² Petition for a Financial Hardship Waiver filed by South Georgia Governmental Services Authority (dated Sept. 14, 2012) (“SGGSA Waiver Request”).

³ Request for General Waiver filed by CMCG Portland License LLC, licensee of WPFO (dated Oct. 12, 2012) (“WPFO Waiver Request”).

⁴ *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*).

⁵ See ATSC A/85: “ATSC Recommended Practice: Techniques for Establishing and Maintaining Audio Loudness for Digital Television” (Nov. 4, 2009). The most current version of the RP, released July 25, 2011, is available at the ATSC website: http://www.atsc.org/cms/standards/a_85-2011a.pdf. 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>.

of digital TV programming. The rules take effect on December 13, 2012 and will require digital TV broadcasters, digital cable operators, satellite TV providers and other digital multichannel video programming distributors (MVPDs) to ensure that the commercials they transmit to viewers comply with the RP.⁶

3. The CALM Act includes two waiver provisions. The first allows the Commission to grant a waiver of the effective date to any station/MVPD that shows it would be a “financial hardship” to obtain the necessary equipment to comply with the rules.⁷ The Commission established a four-part test for demonstrating “financial hardship” for purposes of the CALM Act, requiring the 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.⁸ The Commission established a streamlined process to request this waiver for small stations and MVPDs, requiring only a certification of its size and the equipment necessary.⁹ Streamlined waivers are considered granted upon submission, unless the Media Bureau notifies the station/MVPD otherwise.¹⁰ The second waiver provision expressly reserves the Commission’s general authority to grant a waiver for good cause.¹¹ In the *CALM Act Report and Order*, the Commission stated its interest in providing for waivers where appropriate, while balancing this objective against the interests of consumers in realizing the benefit of the CALM Act without undue delay.¹²

III. DISCUSSION

A. SGGSA

4. We grant SGGSA a waiver of the December 13, 2012 effective date, allowing it until January 31, 2013 to comply with the CALM Act rules.¹³ As an initial matter, we reject SGGSA’s claim that it qualifies for the streamlined waiver process. We find that SGGSA is not eligible for the streamlined waiver process for a “small MVPD system,” which is defined (for purposes of the streamlined waiver) “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.”¹⁴ SGGSA’s four individual

⁶ See 47 C.F.R. §§ 73.682(e)(1), 76.607(a)(1).

⁷ 47 U.S.C. § 621(b)(2). The Commission observed that the legislative history indicated that Congress intended it to interpret “financial hardship” broadly and, in particular, recognized “that television broadcast stations in smaller markets and smaller cable systems may face greater challenges budgeting for the purchase of equipment to comply with the bill than television broadcast stations in larger markets or larger cable systems.” *CALM Act Report and Order*, 26 FCC Rcd at 17252, ¶ 50.

⁸ *CALM Act Report and Order*, 26 FCC Rcd at 17252, ¶ 51. The Commission did not require waiver applicants to show negative cash flow; rather, the Commission required only that the station or MVPD’s assertion of financial hardship be reasonable under the circumstances. *Id.* at 17252-53.

⁹ *CALM Act Report and Order*, 26 FCC Rcd at 17253, ¶ 52.

¹⁰ *Id.*

¹¹ 47 U.S.C. § 621(b)(3). 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 “[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.”).

¹² See *CALM Act Report and Order*, 26 FCC Rcd at 17251, ¶ 49.

¹³ 47 C.F.R. § 76.607.

¹⁴ *CALM Act Report and Order*, 26 FCC Rcd at 17254, ¶ 54.

communities share the use of one headend and share the same physical ID number (PSID) 016794, and collectively serve more than 18,000 subscribers.¹⁵ With respect to SGGSA's four-part financial hardship waiver showing, SGGSA indicated it needed \$98,500 worth of equipment to comply with our rules.¹⁶ In light of staff discussions with SGGSA, we have determined that this showing was based on a misunderstanding of what equipment was necessary to comply with our rules. After discussion with Commission staff, SGGSA has determined that it can comply with the CALM Act rules by January 31, 2013. Accordingly, we find that SGGSA has shown good cause for us to grant it a temporary waiver of the effective date until January 31, 2013, pursuant to Section 2(b)(3) of the CALM Act and Section 1.3 of the Commission's rules.

B. WPFO

5. We grant WPFO a waiver of the December 13, 2012 effective date, allowing the station until March 14, 2013, to comply with the CALM Act rules.¹⁷ WPFO seeks a temporary waiver of the December 13, 2012 effective date because the station will be moving or upgrading its studio facilities at that time. WPFO explained that it plans to upgrade its equipment after it accomplishes its move, and that such upgrade includes installation of the equipment that will allow it to comply with the CALM Act rules.¹⁸ After discussion with Commission staff, WPFO has stated that WPFO expects to sign a lease on December 14, 2012, and that it will need three months from this date to build out the space.¹⁹ We find that WPGO has shown good cause for us to grant it a temporary waiver of the effective date until March 14, 2012, pursuant to Section 2(b)(3) of the CALM Act and Section 1.3 of the Commission's rules. We agree with WPFO that this will avoid "duplication of expense for installing and removing the equipment before it is installed in the upgraded studio facilities."²⁰ Accordingly, we find that this temporary waiver is in the public interest.

C. Late-Filed Streamlined Waiver Requests

6. We received several streamlined financial hardship waiver requests after the filing deadline. On our own motion, we will grant streamlined financial hardship waiver applicants a waiver of the filing deadline and will accept as timely-filed those streamlined financial hardship waiver requests filed on or before the December 13, 2012 effective date.²¹ We find this is in the public interest, and consistent with Congress' intent to afford small entities more time to comply with the CALM Act rules. As stated in the *CALM Act Report and Order*, small broadcast stations and small MVPDs may consider the streamlined 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.

IV. ORDERING CLAUSES

7. Accordingly, IT IS ORDERED that, pursuant to Section 2(b)(3) of the CALM Act, 47 U.S.C. § 621(b)(2), and Section 1.3 of the Commission's rules, 47 C.F.R. § 1.3, we GRANT SGGSA a waiver to the extent described above.

¹⁵ See SGGSA Waiver Request at 3.

¹⁶ *Id.* at 4.

¹⁷ 47 C.F.R. § 73.682(e).

¹⁸ WPFO Waiver Request at 1.

¹⁹ WPFO told FCC staff that it does not know if the lease will be at a new location or in its current building.

²⁰ WPFO Waiver Request at 2.

²¹ 47 C.F.R. §§ 0.283, 1.3.

8. IT IS ALSO ORDERED that, pursuant to Section 2(b)(3) of the CALM Act, 47 U.S.C. § 621(b)(2), and Section 1.3 of the Commission's rules, 47 C.F.R. § 1.3, the request for general waiver filed by WPFO IS GRANTED to the extent described above.

9. IT IS ALSO ORDERED that, pursuant to Section 2(b)(3) of the CALM Act, 47 U.S.C. § 621(b)(2), and Section 1.3 of the Commission's rules, 47 C.F.R. § 1.3, we waive on our own motion the filing deadline for streamlined financial hardship waiver requests and accept as timely-filed any such streamlined waiver requests filed in the docket on or before December 13, 2012.

10. This action is taken by the Chief, Policy Division, Media Bureau, pursuant to the authority delegated by Section 0.283 of the Commission's rules.²²

FEDERAL COMMUNICATIONS COMMISSION

Mary Beth Murphy
Chief
Policy Division
Media Bureau

²² 47 C.F.R. § 0.283.