



PUBLIC NOTICE

Federal Communications Commission
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Washington, DC 20554

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Internet: <https://www.fcc.gov>

DA 21-447

Released: April 19, 2021

MEDIA BUREAU SEEKS COMMENT ON EFFECTIVENESS OF THE COMMISSION'S RULES IMPLEMENTING THE COMMERCIAL ADVERTISEMENT LOUDNESS MITIGATION (CALM) ACT AND ON POTENTIAL UPDATES TO THOSE RULES

MB Docket No. 21-181

Comments Due: June 3, 2021

Reply Comments Due: July 9, 2021

Through this Public Notice, we invite comment from consumers and industry on whether any updates are needed to the Commission's rules implementing the Commercial Advertisement Loudness Mitigation (CALM) Act.¹ The CALM Act was enacted just over 10 years ago to protect viewers from excessively loud commercials. In 2011, the Commission adopted implementing rules that require television stations and multichannel video programming providers (MVPDs) to ensure that all commercials are transmitted to consumers at the appropriate loudness level in accordance with the industry standard mandated in the statute.²

These rules have been in effect now for many years and have been revisited only once since initial adoption to adopt minor changes.³ We seek comment on the extent to which our rules have been effective in preventing loud commercials. In particular, we invite consumers to tell us their experiences as they watch programming provided by television broadcasters and MVPDs.⁴ Further, we seek input from all stakeholders on whether the Commission's CALM Act rules are effectively serving their intended purpose and on specific areas in which commenters believe updates are needed given improvements in technology or new industry practices. Comments filed will help inform the

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

² 47 CFR §§ 73.682(e), 73.8000(b)(5), 76.607, 76.602(b)(2); *see Implementation of the Commercial Advertisement Loudness Mitigation (CALM) Act*, MB Docket No. 11-93, Report and Order, 26 FCC Rcd 17222 (2011). 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), which describes how the television industry can monitor and control the audio of digital television programming. *See id.* The rules establish a safe harbor for both locally inserted commercials (stations and MVPDs will be deemed in compliance if they demonstrate that they use certain equipment in the ordinary course of business), as well as for embedded commercials that television stations and MVPDs pass through from programmers (can demonstrate compliance through certifications and periodic testing). *See* CFR §§ 73.682(e)(2)-(6), 76.607(a)(2)-(6).

³ *See Implementation of the Commercial Advertisement Loudness Mitigation (CALM) Act*, MB Docket No. 11-93, Second Report and Order, 29 FCC Rcd 6294 (2014) (making "minor changes" to the Commission's rules restricting the volume of television commercials by referencing the ATSC March 12, 2013 A/85:2013 RP).

⁴ *See* Letter from Rep. Anna G. Eshoo, U.S. House of Representatives, to Jessica Rosenworcel, Acting Chairwoman, FCC (Apr. 13, 2021) (requesting that the Commission investigate a reported increase in complaints related to loud television advertisements and citing a press report showing that complaints increased sharply from April 2020 through February 2021).

Commission's determination of whether to take additional actions—and if so, what measures should be proposed or taken—in furtherance of the purpose of the CALM Act to prevent television stations and MVPDs from transmitting commercial advertisements at louder volumes than the program material they accompany.

Ex Parte Rules. The proceeding this Public Notice initiates shall be treated as a “permit-but-disclose” proceeding in accordance with the Commission's *ex parte* rules.⁵ Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with rule 1.1206(b). In proceedings governed by rule 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (*e.g.*, .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

Filing Requirements. All filings responsive to this Public Notice must reference MB Docket No. 21-181. Pursuant to sections 1.415 and 1.419 of the Commission's rules, 47 CFR §§ 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS). *See Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998).

- Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: <http://apps.fcc.gov/ecfs/>.
- Paper Filers: Parties who choose to file by paper must file an original and one copy of each filing.
- Filings can be sent by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.
 - Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701.
 - U.S. Postal Service first-class, Express, and Priority mail must be addressed to 45 L Street, NE, Washington, DC 20554.
- Effective March 19, 2020, and until further notice, the Commission no longer accepts any hand or messenger delivered filings. This is a temporary measure taken to help protect the health and safety of individuals, and to mitigate the transmission of COVID-19.
- During the time the Commission's building is closed to the general public and until further notice, if more than one docket or rulemaking number appears in the caption of a proceeding, paper filers need not submit two additional copies for each additional docket

⁵ 47 CFR § 1.1200 *et seq.*

or rulemaking number; an original and one copy are sufficient.

People with Disabilities. To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to fcc504@fcc.gov or call the FCC's Consumer and Governmental Affairs Bureau at (202) 418-0530 (voice).

Availability of Documents. Comments, reply comments, and *ex parte* submissions will be available via ECFS. Documents will be available electronically in ASCII, Microsoft Word, and/or Adobe Acrobat.

Additional Information. For additional information, contact Lyle Elder, Lyle.Elder@fcc.gov, of the Media Bureau, Policy Division, (202) 418-2120.

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