wiley

NEWSLETTER

FCC Adopts Rules to Regulate the Loudness of Television Commercials

December 2011

Authors

Kathleen A. Kirby
Partner
202.719.3360
kkirby@wiley.law

Henry Gola
Partner
202.719.7561
hgola@wiley.law

On December 13, 2011, the Federal Communications Commission (Commission) issued a Report and Order adopting rules to implement the Commercial Advertisement Loudness Mitigation (CALM) Act. The rules will 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 and matches the loudness volume of the surrounding programming.

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. Compliance responsibility rests with both television stations and MVPDs, even those not using AC-3 audio systems. The steps 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 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 by either 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 and conducts spot checks. The Order provides specifics about how television stations and MVPDs must conduct annual and other spot checks, and 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."

* District of Columbia Bar pending, supervised by principals of the firm.