

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554**

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

**COMMENTS OF AT&T**

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As a relative new entrant in the market for multichannel video programming distribution services, AT&T has recognized the critical importance of offering a cutting-edge, high quality video service that meets the needs of consumers. As a consequence, well-before Congress enacted the Commercial Advertisement Loudness Mitigation (CALM) Act,<sup>1</sup> and the Advanced Television Systems Committee (ATSC) adopted its recommended practice for establishing and maintaining audio loudness for digital television (*i.e.*, ATSC A/85),<sup>2</sup> AT&T already had deployed in its next-generation, IP-based video distribution architecture systems and equipment designed to take advantage of the significantly greater aural dynamic range offered by digital television and effectively control the loudness of content delivered over that system, in order to provide its subscribers the highest quality audio soundtracks. While those systems and equipment differ in some respects from the specific design contemplated by ATSC A/85 (in particular, AT&T does not use the AC-3 audio system, on which A/85 is based, to format and encode digital audio data), that is because AT&T launched U-verse in 2006, before ATSC completed development of ATSC A/85. Instead, AT&T uses two other audio encoding

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<sup>1</sup> Commercial Advertising Loudness Mitigation Act, Pub. L. No. 111-311, 124 Stat. 3294 (2010) (codified at 47 U.S.C. § 621) (“CALM Act”).

<sup>2</sup> ATSC A/85: “ATSC Recommended Practice: Techniques for Establishing and Maintaining Audio Loudness for Digital Television,” (Nov. 4, 2009) (“ATSC A/85”).

standards in U-verse: (1) AT&T uses High Efficiency – Advanced Audio Coding (HE-AACv1) to encode linear standard definition (SD) main audio program (MAP) channels, SD secondary audio program (SAP) channels, and high definition (HD) SAP channels; and (2) it uses E-AC-3 (Enhanced AC-3) to encode linear HD MAP channels. Nevertheless, AT&T’s audio processing and distribution architecture are consistent with AC-3, and provide the identical functionality and end-result as AC-3 by preserving the relationship between content loudness (in units of LKFS as calculated using the ITU-R BS.1770 algorithm) and the Dialog Normalization (dialnorm) parameter encoded in audio content and transmitted as metadata by upstream content providers. AT&T thus recognizes consumers’ legitimate concerns about being bombarded with television commercial advertisements that are transmitted at volumes significantly louder than the program material they accompany, and proactively has taken steps to address that issue on U-verse.

AT&T fully supports the CALM Act’s objective of effectively managing content loudness to prevent television commercial advertisements from being transmitted at louder volumes than the program material they accompany, and welcomes this opportunity to comment on the Commission’s proposals for implementing the CALM Act in the Notice.<sup>3</sup> In implementing that Act, the Commission should recognize that it was not intended to apply to any and all content transmitted by a broadcast station/MVPD, but rather was limited only to commercial advertising. Nor was the ATSC A/85 recommended practice intended to lock stations/MVPDs into a particular network architecture, equipment or loudness management system. Instead, it was designed to afford content distributors flexibility in managing audio content to provide consistent loudness using the methods and equipment that are best suited to their specific systems and operational practices. The Commission also should recognize that

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<sup>3</sup> *Implementation of the Commercial Advertisement Loudness Mitigation (CALM) Act*, MB Docket No. 11-93, FCC 11-84 (rel. May 27, 2011) (“Notice”).

ATSC A/85 is predicated on all links in the content distribution chain (from content creator to distributor to consumer) performing their part to control loudness, by properly measuring and matching content loudness to dialnorm metadata. The Commission’s rules implementing the CALM Act, and in particular those implementing the Act’s safe harbor provision, should preserve content distributors’ flexibility in implementing ATSC A/85, and allow distributors to use audio systems that differ from the AC-3 audio system on which ATSC A/85 is based if such systems provide the same functionality and end-result as the AC-3 system. It also should allow distributors to show compliance with the Act by contracting with content providers to deliver content that complies with ATSC A/85. We elaborate on these points, and respond to other questions posed by the Commission in the Notice, below.

**I. The CALM Act Applies Only to Commercial Advertising.**

The CALM Act requires the Commission to adopt a regulation that is “limited to incorporating by reference and making mandatory ATSC A/85 (and any successor thereto),” but “only insofar as such recommended practice concerns the transmission of commercial advertisements” by a television broadcast station, cable operator, or other MVPD.<sup>4</sup> As the Commission correctly acknowledges, this provision “expressly limits” the Commission’s authority, and precludes it from modifying the ATSC A/85 recommended practice or adopting other actions inconsistent with the express limits of the statute.<sup>5</sup>

AT&T acknowledges that the Act applies to all “commercial advertisements” transmitted by a station/MVPD, and that a station/MVPD thus is responsible for accurately measuring the loudness of any commercial advertising content (in units of LKFS as calculated using the ITU-R

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<sup>4</sup> 47 U.S.C. § 621(a).

<sup>5</sup> Notice at ¶ 8.

BS.1770 algorithm) that it inserts into programming content, and for properly encoding the dialnorm parameter for such commercial advertisements and transmitting it as metadata with such content.<sup>6</sup> But that does not mean that a station/MVPD is responsible for *all* commercial advertisements that it transmits (or retransmits) to viewers, including those it receives from unaffiliated content providers (such as cable programming networks and broadcast signals), and thus potentially is liable for non-compliant commercials over which it has no control.

ATSC A/85 does not establish recommended practices only for content distributors. Rather, as the Commission itself acknowledges, it was drafted to provide guidance to the entire television industry (from content providers ((such as cable programming networks and local broadcast stations)) to content distributors to consumers) regarding DTV loudness management.<sup>7</sup> It further presumes that each link in the content delivery chain (from content creators to distributors) will perform its part to ensure that properly normalized content is transmitted downstream.<sup>8</sup> Specifically, it provides that content loudness should be measured during production and that content producers should transmit dialnorm metadata reflecting such loudness measurements downstream to content distributors.<sup>9</sup> Insofar as ATSC A/85 itself assigns different roles to different links in the content distribution chain, and the CALM limits the Commission's authority to incorporate A/85 "only insofar as" it concerns transmission of commercial advertisements by a station/MVPD,<sup>10</sup> that provision should be read to require content distributors to perform only those practices specifically assigned to them by A/85. Thus,

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<sup>6</sup> *Id.* at ¶ 10.

<sup>7</sup> *Id.* at ¶ 7.

<sup>8</sup> ATSC A/85 at 13 (noting that the operation of the system is "predicated on having properly normalized content delivered to it").

<sup>9</sup> *Id.* at 15 (regarding making loudness measurements) and 17 (noting the need for accurate dialnorm metadata).

<sup>10</sup> 47 U.S.C. § 621(a).

content distributors should be responsible for measuring the loudness of any commercial advertising content they insert into programming and transmitting accurate dialnorm metadata for such content, and for having equipment and systems in place to accurately forward any dialnorm metadata it receives from an upstream content provider. It should not, however, be responsible for correcting (and thus liable for) any inaccurate dialnorm metadata transmitted by content suppliers. Any such requirement would be beyond the scope of section 2(a) of the CALM Act.<sup>11</sup>

At a minimum, the Commission should not interpret the Act to make a content distributor (such as a cable system or MVPD) responsible for correcting any inaccurate loudness measurements performed, or dialnorm metadata transmitted, by another entity expressly covered by the CALM Act, such as a commercial broadcast station.<sup>12</sup> Insofar as a television broadcast station expressly is subject to the requirements of the CALM Act, and MVPDs are prohibited by the Commission's signal carriage rule from materially altering or otherwise degrading the signals of broadcast stations that they retransmit, the Commission should not hold a MVPD liable for any failure on the part of a broadcast station to comply with the requirements of the CALM Act.<sup>13</sup>

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<sup>11</sup> As discussed below, to the extent the Commission finds (wrongly, in AT&T's view) that a content distributor is liable for commercial advertising content that is in programming that it receives from content providers and transmits to viewers, it should broadly construe the safe harbor provision of the Act to protect content distributors that: (1) contract with content providers to ensure that content delivered to them complies with A/85, or (2) install, utilize and maintain in a commercially reasonable manner equipment that performs automatic, real-time loudness monitoring, measurement and correction.

<sup>12</sup> See Notice at ¶ 30 (soliciting comment on whether special considerations should apply to MVPD carriage of broadcast stations).

<sup>13</sup> By the same token, if a station complies with ATSC A/85, and an MVPD retransmits that station's signal without altering the audio content to the consumer, the MVPD's retransmission of the station necessarily will comply with the recommended practice and the CALM Act.

The Commission also should interpret the Act to apply only to commercial advertisements, and thus not to political advertising, public service announcements, or to leased access or PEG programming. Although the CALM Act does not define the term “commercial advertisements,”<sup>14</sup> consistent with principles of statutory construction, the Commission should interpret that term so as to give meaning to each of the words in the text. In ordinary usage, the term “advertising” is defined as a “paid announcement,”<sup>15</sup> and the term “commercial” is defined as “of, pertaining to, or characteristic of commerce.”<sup>16</sup> Insofar as the CALM Act expressly limits application of A/85 only to the “transmission of commercial advertisements,” the Commission cannot reasonably interpret the Act to apply to any and all interstitial (or short form) content, nor even to all advertising content, but rather only to those advertisements that relate to “commerce” – that is, those pertaining to “trade” or “business.”<sup>17</sup> Accordingly, consistent with the plain language and express limitations of the CALM Act, the Commission should find that any interstitial/short form content that is not a paid announcement and/or does not relate to the sale of goods or services is beyond the scope of the Act and its implementing rules. Thus, for example, public service announcements and political advertising,<sup>18</sup> as well as PEG and leased access programming,<sup>19</sup> are outside the scope of the CALM Act.

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<sup>14</sup> Notice at ¶11.

<sup>15</sup> <http://dictionary.reference.com/browse/advertisement> (last visited Jul. 6, 2011).

<sup>16</sup> <http://dictionary.reference.com/browse/commercial> (last visited Jul. 6, 2011) (further defining “commercial” as “done . . . with sole or chief emphasis on salability, profit, or success”).

<sup>17</sup> <http://dictionary.reference.com/browse/commerce> (last visited Jul. 6, 2011) (defining “commerce” as “an interchange of goods or commodities, especially on a large scale between different countries (**foreign commerce**) or between different parts of the same country (**domestic commerce**); trade; business”) (emphasis in original).

<sup>18</sup> Notice at ¶ 11.

<sup>19</sup> *Id.* at ¶ 31.

## II. Content Distributors Must Have Flexibility in Managing Audio Content.

As the Commission recognizes, ATSC A/85 was drafted as a recommended practice, and was intended only to provide guidance to the television industry (from content providers to distributors to consumers) about DTV loudness management.<sup>20</sup> ATSC A/85 thus was intended to establish certain basic methods/techniques for managing loudness in a DTV environment, while providing content distributors (*i.e.*, television stations/MVPDs) flexibility in implementing those methods based on their specific network architecture, systems, equipment, and operational practices.<sup>21</sup> In its essentials, however, ATSC A/85 recommends that the TV industry measure the loudness of content according to the technique specified in ITU BS.1770 and transmit dialnorm metadata that accurately reflects the measured loudness level of that content.<sup>22</sup>

Consistent with these principles, the Commission should ensure that any rules it adopts in this proceeding do not lock distributors into using specific equipment, systems or methods, but rather provide distributors flexibility to use the methods and equipment that best suits their network architecture and operational practices to achieve the goals of the CALM Act. Thus, it should conclude that any television station/MVPD that has deployed systems and equipment that perform the essential functions of measuring content loudness consistent with ITU BS.1770 and transmitting audio content with accompanying dialnorm metadata downstream to decoders that apply dialog normalization in a manner consistent with the recommendations of A/85 complies with the CALM Act, regardless of what specific equipment it has deployed and where in the

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<sup>20</sup> *Id.* at ¶ 4.

<sup>21</sup> *See* ATSC A/85 at 7-8, 13 (noting that section 7 of the recommended practice describes three methods for using audio metadata to manage loudness, and that a broadcaster is free to use the method that best suits their operational practices).

<sup>22</sup> *Id.* at 13 (noting that the operation of the system is “predicated on having properly normalized content is delivered to it”).

distribution stream those functions occur. And, it should interpret the CALM Act to permit non-AC-3 transmission of commercials if the loudness of such commercials is effectively controlled using the techniques described within ATSC A/85 before such transmission.<sup>23</sup>

As discussed above, for example, AT&T uses E-AC-3 and HE-AACv1 audio encoding in U-verse. In the case of transcoding from AC-3 to E-AC-3, the dialog normalization is transparently preserved by the direct transcode, as E-AC-3 uses precisely the same methods and metadata. In the case of transcoding to HE-AACv1, all of the source streams are AC-3 encoded, so the AC-3 decoder which precedes the HE-AAC encoder applies the dialog normalization in exactly the same way as it would if it were located in the customer's set-top-box (STB). The gain structure beyond the AC-3 decoder is fixed and precisely calibrated to the STB volume control, exactly as it would be if the decoder were located in the STB. Although AT&T's system thus does not use the same architecture and equipment as that described in ATSC A/85, the result is identical to a system that decodes content in a set-top box using the AC/3 audio system. In both cases, the dialog in audio content is measured according to ITU BS.1770 and normalized in order to prevent loudness variations during content transitions on a channel or between channels, and thus the loudness of commercial advertisements is effectively controlled using the techniques described in ATSC A/85 prior to transmission of such advertisements. Consistent with the flexibility intended by ATSC A/85, the Commission should find that AT&T's method of complying with the recommended practice is consistent with A/85, and thus complies fully with the CALM Act, even though AT&T does not use AC-3 transmission of commercials.<sup>24</sup>

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<sup>23</sup> See Notice at ¶ 27.

<sup>24</sup> *Id.*

Narrowly construing ATSC A/85 and the CALM Act to require a station/MVPD like AT&T to fundamentally alter its network architecture, and to deploy new equipment and audio management systems solely to reflect the precise architecture and AC-3 audio system described in A/85 would not only be inconsistent with the flexibility intended by that recommended practice but also contrary to sound public policy. As discussed above, AT&T's U-verse systems employs two different audio systems that perform the identical functions (albeit in different parts of the network) and produce the same results as the AC-3 audio system. Requiring it (and other MVPDs in comparable circumstances) to replace its existing audio management systems with the AC-3 system would serve no purpose, but would impose significant additional costs on AT&T (and such other MVPDs), which would inevitably flow through to consumers. Accordingly, the Commission should broadly construe the CALM Act and find that a television station/MVPD that has deployed audio systems and equipment that perform the essential functions of measuring content loudness consistent with ITU BS.1770 and transmitting normalized audio content (*i.e.*, normalized based on the dialnorm parameter) downstream to consumers complies with the CALM Act, regardless of what specific equipment and systems it has deployed and where in the distribution stream those functions occur.

### **III. The Commission Should Broadly Construe the Section 2(c) Safe Harbor.**

Consistent with the foregoing, the Commission also should broadly construe the safe harbor to apply to any television station/MVPD that “installs, utilizes, and maintains in a commercially reasonable manner” audio management systems and equipment that perform the essential functions of measuring content loudness consistent with ITU BS.1770 and transmitting normalized audio content (*i.e.*, normalized based on the dialnorm parameter) downstream to consumers, regardless of which specific equipment and systems that station/MVPD has deployed or where in the distribution stream those functions are performed. AT&T believes that a

station/MVPD that can show that it has installed, uses, and maintains in a commercially reasonable manner such systems and equipment should be deemed to comply with the CALM Act for commercial advertisements that it inserts into a channel. It also should be deemed to comply with the Act for commercial advertisements that were embedded into the programming stream by the content creator (such as a television broadcast station, broadcast network and/or cable programming network), provided the station/MVPD can show that its systems and equipment accurately preserve the relationship between the content loudness and the dialnorm metadata as received from the upstream supplier. As discussed above, ATSC A/85 assigns different functions to different links in the content distribution chain, and a station/MVPD should be deemed to comply with the CALM Act if it installs, utilizes and maintains the systems and equipment necessary to perform its functions. It should not be found to be out-of-compliance or held liable for the failure of an up-stream link to perform accurately its functions (such as by transmitting incorrect dialnorm metadata).

At a minimum, the Commission should conclude that a television station/MVPD satisfies the Section 2(c) safe harbor, and thus would be deemed to comply with the Act, if it installs, uses, and maintains equipment and systems to accurately measure content loudness consistent with ITU BS.1770 and to correct either the dialnorm metadata or the content loudness before transmitting such content to consumers. For MVPDs, like AT&T, that transmit content created by others (*i.e.*, television broadcast stations, cable programming networks, etc.) such equipment would have to perform automatic, real-time loudness correction of audio content because all such content streams are essentially real-time programming streams, leaving no opportunity for offline processing of audio content and metadata. AT&T currently has not deployed such equipment, and thus lacks the technical capability to prescreen and correct audio content before transmitting it to consumers. While equipment currently is available on the market that performs automatic,

real-time loudness measurement and correction of audio content, such equipment would preclude the implementation of improvements to the processing efficiencies of AT&T's system already scheduled to be implemented in the near future and would require the deployment of costly additional equipment. We are aware of solutions currently under development that would resolve these issues, allowing AT&T to implement software based real-time audio correction in currently deployed equipment without perceptibly altering audio content or compromising processing efficiencies. Although it is difficult to predict when such solutions will be commercially available, it is likely that it will be at least 18 months, which means it could be two years or more before they can be deployed in MVPD systems. Accordingly, until such solutions are available and can be installed in a commercially reasonable manner, the Commission should consider an MVPD to have satisfied the safe harbor (and thus should be deemed to comply with the CALM Act) if it installs, uses and maintains equipment that: (1) measures content loudness of commercials it inserts into programming consistent with ITU BS.1770 and transmits normalized audio content downstream to consumers, and (2) accurately preserves the relationship between the measured content loudness and dialnorm metadata of commercials inserted by upstream content suppliers. Alternatively, it should waive the requirements of the CALM Act insofar as they apply to commercials inserted by upstream content suppliers and transmitted or retransmitted by an MVPD to consumers until those solutions are commercially available, and can be installed, used and maintained in a commercially reasonable manner.

#### **IV. Stations/MVPDs Should Be Able to Take Contractual Approach to Show Compliance with the CALM Act.**

To the extent the Commission concludes (wrongly, in AT&T's view) that a MVPD is liable for commercial advertising content that is in programming that it receives from content creators and transmits (or retransmits) to viewers, it should permit that MVPD to rely on

contracts that require such upstream content providers to properly measure content loudness and transmit dialnorm metadata matching the loudness of such content to demonstrate compliance with A/85, and allow such MVPDs a reasonable amount of time to negotiate such contracts with content providers. As discussed above, ATSC A/85 assumes that content creators will accurately measure content loudness using ITU BS.1770 and encode dialnorm metadata for transmission downstream to content distributors and, ultimately, viewers. That is because, as the Commission recognizes, such functions are far more efficiently performed at the production stage than further downstream,<sup>25</sup> and, in many – if not most – cases downstream content distributors lack the technical ability to perform real-time loudness measurement and correction on commercials embedded in a program stream by an upstream supplier. Accordingly, it makes imminent sense to permit stations/MVPDs to utilize a contractual approach to show compliance with the CALM Act. Specifically, the Commission should find that a MVPD/station complies with the CALM Act if it ensures – via contracts with content suppliers – that the dialnorm value encoded in content supplied by such content providers matches the loudness of the underlying content.

AT&T disagrees with the Commission’s conclusion that the MVPD/station would remain responsible (and thus liable) if the program source fails to deliver content in compliance with ATSC A/85, and the MVPD/station transmits such nonconforming content to viewers, and the content is the subject of consumer complaints.<sup>26</sup> As noted above, a MVPD/station should be responsible for, and thus potentially liable for failing to perform, only those functions specifically assigned to them by the recommended practice. Accordingly, a station/MVPD should be liable for transmitting nonconforming content created by another source (such as a cable programming network) only if the station/MVPD failed to have equipment and systems in

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<sup>25</sup> Notice at ¶ 23.

<sup>26</sup> Notice at ¶ 24.

place to accurately forward any dialnorm metadata it receives from an upstream content provider.

If the Commission nevertheless holds an MVPD/station liable for the failure of a program source to deliver content that complies with ATSC A/85, it must provide MVPDs/stations a reasonable amount of time to negotiate appropriate contractual terms, including but not limited to indemnification provisions, with content providers. Because content agreements currently do not include language addressing the CALM Act, it will take up to eight years to add indemnification provisions to all existing contracts – assuming such provisions are added to agreements as they come up for renewal. Forcing content distributors to reopen agreements solely for the purpose of negotiating language addressing the CALM Act, and, in particular, indemnification provisions, is simply unrealistic.

Reopening such agreements prior to their expiration requires the voluntary cooperation of content providers. Even if content providers willingly cooperated in such negotiations, the logistics of renegotiating hundreds of existing contracts would be extremely time consuming and burdensome. But content providers are unlikely to be so cooperative. Undoubtedly, many will be reluctant to open existing contract to take on CALM Act liability and responsibilities absent a station/MVPD providing some form of offsetting consideration, which means the content providers would have all the leverage in the negotiations. Accordingly, the Commission should not hold an MVPD/station liable for transmitting non-conforming content created by other sources until the MVPD/station can incorporate language addressing the CALM Act, and, in particular, indemnification provisions, in its content agreements with those sources as those agreements come up for renewal.

To the extent the Commission desires to accelerate this process, it should implement measures to support regulated entities efforts to obtain indemnification from content providers.

Although the Commission may lack authority directly to require content providers to comply with the CALM Act and to cooperate with MVPDs/stations in negotiating language addressing the CALM Act in content agreements, it can do so indirectly. AT&T notes in this regard that, even though the Commission lacks authority over foreign telecommunications carriers, it has taken steps to encourage those carriers to reduce their settlement rates by ordering domestic carriers to withhold payment of settlements where foreign carriers impose settlement rates above the Commission's benchmarks. The Commission can and should adopt a similar strategy here to encourage content producers to comply with the CALM Act and to cooperate with content distributors in negotiating language addressing that Act for inclusion in content agreements. For example, the Commission could authorize content distributors not to carry content that does not comply with the CALM Act and ATSC A/85. Such guidance may help encourage content providers to perform the actions contemplated for their link in the content distribution the recommended practice.

**V. The Commission Should Provide Interested Parties an Opportunity to Comment on Any Successor to ATSC A/85 Before Incorporating Such a Successor Into its Rules.**

AT&T Recognizes that the CALM Act requires the Commission to incorporate any successor to ATSC A/85,<sup>27</sup> but that does not mean that it should or must do so automatically, without providing interested parties notice and an opportunity to comment on such a successor. The Commission should afford such an opportunity to ensure that any such successor was developed according to ATSC procedures and that interested parties had notice and an opportunity to participate in development of such a successor. Providing notice and comment before incorporating a successor to ATSC A/85 in the Commission's rules would ensure that interested parties have appropriate notice of any impending changes to the rules, and an

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<sup>27</sup> Notice at ¶ 13.

opportunity to comment on any special circumstances the Commission should consider in determining the effective date of such changes, and whether such changes are reasonable and consistent with the CALM Act.

**VI. Conclusion.**

For the foregoing reasons, the Commission should adopt rules implementing the CALM Act consistent with these comments.

Respectfully submitted,

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