

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of

**IMPLEMENTATION OF THE COMMERCIAL  
ADVERTISEMENT LOUDNESS MITIGATION  
(CALM) ACT**

MB Docket No. 11-93

**REPLY COMMENTS OF DIRECTV, INC.**

Comments filed in response to the *Notice* issued in this proceeding<sup>1</sup> reveal a clear consensus on many aspects of how the Commission should implement the Commercial Advertisement Loudness Mitigation (“CALM”) Act. In these reply comments, DIRECTV, Inc. (“DIRECTV”) highlights two such areas of consensus: (1) the CALM Act’s carefully circumscribed mandate does not impose responsibility upon those that pass through commercials in a programming stream received from others; and (2) the complaint process must reflect the complexity of resolving a loudness issue. The Commission’s implementing rules should reflect these agreed-upon principles.

**I. MATCHING LOUDNESS LEVELS OF COMMERCIALS AND PROGRAMMING IS THE RESPONSIBILITY OF THOSE THAT INSERT COMMERCIALS THEMSELVES**

Compared to the level of divisiveness often found in rulemaking proceedings, the level of consensus here is striking. Commenters agree that the Commission’s authority under the CALM Act is quite modest, circumscribed by the terms of ATSC Recommended Procedure A/85 (“RP

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<sup>1</sup> See *Implementation of the Commercial Advertisement Loudness Mitigation (CALM) Act*, FCC 11-84 (rel. May 27, 2011) (“*Notice*”).

A/85”).<sup>2</sup> Applying that limited mandate, commenters also agree that a party is responsible for the loudness level of commercial advertisements only if that party inserts the commercial into the programming stream or changes the commercial loudness levels relative to long-form content in the programming stream.<sup>3</sup> Conversely, a party that does not perform either of these two functions would not be responsible for commercial loudness so long as it had a commercially reasonable process in place for matching the transmitted loudness to the settings in the programming stream as received.

Under the reading of the statute endorsed by the overwhelming majority of commenters, a multichannel video programming distributor (“MVPD”) such as DIRECTV can qualify for the safe harbor established by the CALM Act in two ways. First, to the extent it is actually inserting commercials into one or more programming streams, it can install, utilize, and maintain equipment necessary to make such insertions at the appropriate loudness levels consistent with RP A/85. Second, for a programming stream in which it is not inserting commercials, the MVPD can install, utilize, and maintain equipment necessary to transmit the programming

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<sup>2</sup> See, e.g., Comments of the American Cable Association at 5 (discussing why “the obligations placed on MVPDs by ATSC A/85 are much more limited than set forth in the NPRM”); Comments of AT&T Corporation at 4 (arguing that the CALM Act “should be read to require content distributors to perform only those practices specifically assigned to them by A/85”); Comments of the National Association of Broadcasters at 3 (broadcasters should be required to comply only with requirements of Annex J); Comments of the National Cable and Telecommunications Association at 6 (“the Commission would exceed its very specific mandate to incorporate the ATSC A/85 Recommended Practice if it were to impose responsibilities on cable operators not included in that Recommended Practice”); Comments of Verizon at 1 (“rather than providing the Commission with a broad and undefined mandate to address an issue, Congress already weighed the puts and takes of the various potential approaches and decided on the proper balance for how the Commission should proceed”). Unless otherwise indicated, all citations herein are to comments in MB Docket No. 11-93 and filed on July 8, 2011.

<sup>3</sup> Comments of AT&T Corp. at 10 (a station or MVPD should be deemed in compliance “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”); see also, e.g., Comments of the American Cable Association at 6; Comments of the National Association of Broadcasters at 7; Comments of the National Cable and Telecommunications Association at 4-5; Comments of Verizon at 8 (each suggesting a similar formulation for safe harbor compliance).

stream using a commercially reasonable process that maintains the commercial loudness levels relative to long-form content (with appropriate periodic adjustments for non-AC-3 programming). Such a commercially reasonable process may include efforts to obtain contractual commitments by programmers to insert commercials at loudness levels consistent with RP A/85, to monitor loudness levels in programming received, and to notify programmers of, and work through, loudness issues as they arise. It would not, however, require the MVPD to measure and (if necessary) correct the loudness of commercials in such a programming stream in real time, which would exceed both the requirements of RP A/85 and the capabilities of currently available equipment.

DIRECTV currently employs such a commercially reasonable process. It has installed, utilized, and maintained equipment to measure commercial loudness as directed under RP A/85. To the limited extent it inserts commercials, it matches the loudness of those commercials to the level of the long-form content in the programming stream. It monitors the programming it transmits to subscribers, and has worked with programmers whenever loudness issues arise.

As discussed in DIRECTV's initial comments, DIRECTV has slightly increased the gain of AC-3 programming in order to ensure that all television sets can perform with sufficient audio volume.<sup>4</sup> As demonstrated in the figures in Attachment A hereto, DIRECTV simply adjusts the loudness of the channel *as a whole*, so that viewers with all televisions can hear the audio. It does not change the relative loudness *within the channel* of either short-form or long-form content. Such channel-by-channel adjustment is "commercially reasonable" as that term is

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<sup>4</sup> See Comments of DIRECTV at 17-19. Specifically, DIRECTV sets dialnorm for AC-3 programming such that the consumer's set-top box passes it on to the television at -28 LKFS rather than -31 LKFS. If dialnorm has been properly set in the programming stream provided to DIRECTV, this requires a 3 dB adjustment. However, the adjustment could be more or less if the initial dialnorm setting was not correct. This explains why the offsets are not all uniform in the graphs in Attachment A.

defined in the safe harbor<sup>5</sup> both because it maintains the relative loudness levels of programming received by DIRECTV and because it permits service to televisions that would not yield sufficient audio volume without the added gain. Accordingly, such an across-the-board gain adjustment should have no bearing in determining compliance with RP A/85.

## **II. COMPLAINT PROCEDURES SHOULD REFLECT THE COMPLEXITY OF RESOLVING LOUDNESS ISSUES**

Commenters also generally agree that loudness issues cannot be resolved using the traditional complaint procedure. Although RP A/85 adopts a process for quantifying loudness in a standardized way, the issue remains a subjective one for the viewing public. Differing individual tolerances are further complicated by the fact that, even if programming loudness is properly calibrated under RP A/85, soft dialog in a program leading into a loud portion of a commercial can be perceived as an inappropriate disparity. With more than 2,000 digital video and audio channels available to its subscribers, DIRECTV transmits hundreds of thousands of commercials every day and cannot possibly be expected to identify every instance in which a viewer might perceive a commercial as too loud. In adopting a process for handling loudness-related complaints, the Commission must recognize these facts and establish a regime that reflects the complexity of resolving loudness issues.

First, such a regime must require that complaints be registered relatively soon after the commercial has aired, as the burden of maintaining data on the myriad commercials escalates rapidly. DIRECTV currently maintains loudness data for approximately ten days,<sup>6</sup> after which it is overwritten with newer data. Retaining data for a longer period would impose a burden that would increase substantially were the retention period to be increased. DIRECTV submits that

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<sup>5</sup> CALM Act, § 2(c).

<sup>6</sup> Even this data only provides a basis for inferential analysis, as there is no indication in the programming stream that distinguishes commercials from long-form content.

ten days should be more than sufficient for a complaint to be filed with the Commission. The complainant should also serve the complaint on the distributor so that it may take steps to preserve evidence as appropriate.

Second, complaints must have sufficient specificity to enable the distributor to identify the offending event and investigate it fully. At a minimum, the complaint must identify the product or service being promoted by the commercial, the date and time it aired, and the network on which it aired. Without this elemental information, a distributor would have no way to investigate a complaint, much less determine the facts or resolve the issue going forward.

Third, as the National Cable and Telecommunications Association suggests, the Commission should not require a formal response from any distributor to individual complaints, but instead should require a response only where the Commission determines that the volume of complaints indicates that a possible rule violation has occurred.<sup>7</sup> For this purpose, as the American Cable Association suggests, all complaints about the airing of a particular commercial advertisement on a particular network should be consolidated into a single proceeding.<sup>8</sup> The distributor should then be given a brief window in which to demonstrate that it bears no responsibility for the commercial at issue and/or that it falls within the safe harbor established by the CALM Act because it has a commercially reasonable process for compliance in place.<sup>9</sup> Only if such a showing is not forthcoming should the distributor be required to make any additional showing of compliance with RP A/85 with respect to a particular commercial.

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<sup>7</sup> Comments of the National Cable and Telecommunications Association at 15.

<sup>8</sup> Comments of the American Cable Association at 30.

<sup>9</sup> Comments of the National Association of Broadcasters at 13.

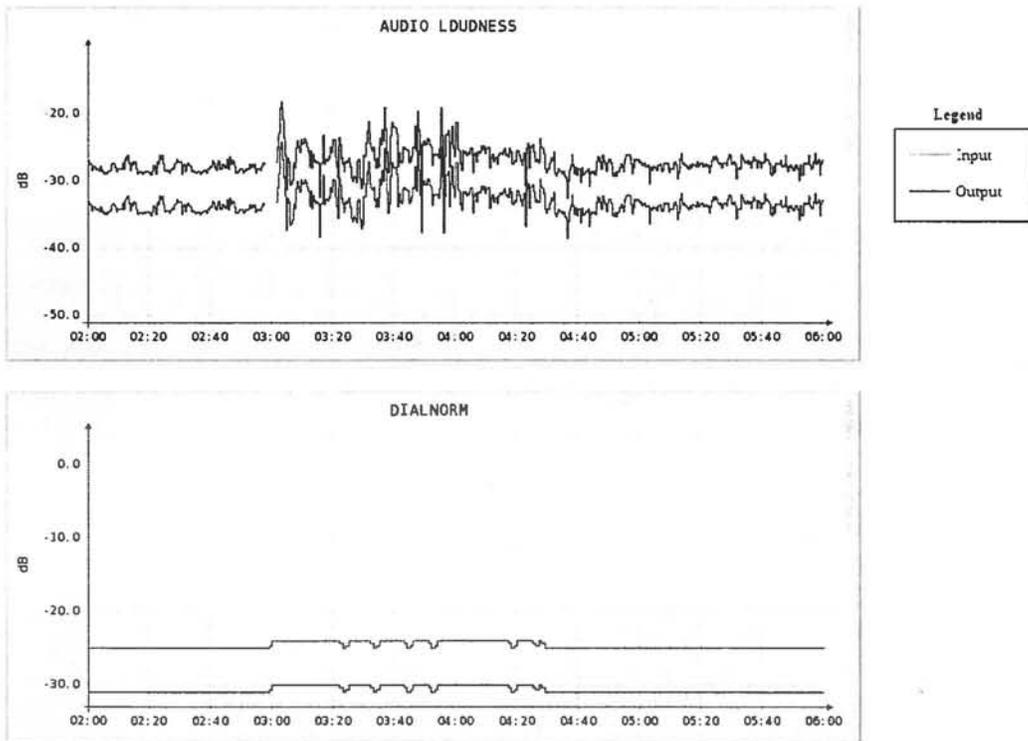


## ATTACHMENT A

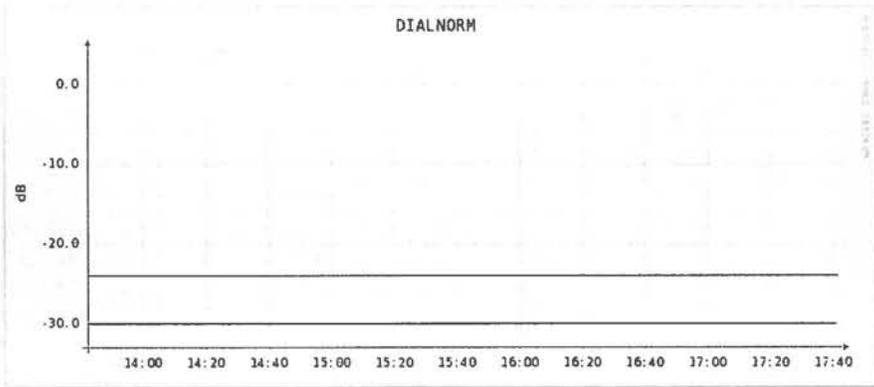
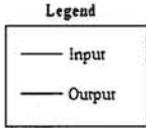
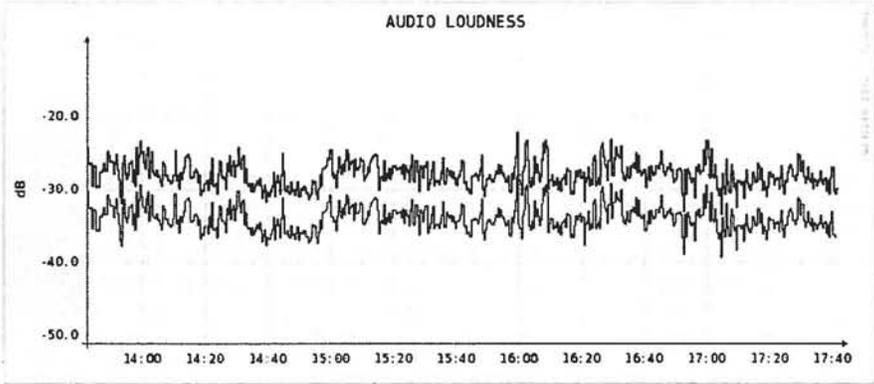
### SAMPLE COMPARISON OF DIRECTV INPUT AND OUTPUT LOUDNESS AND DIALNORM

Each pair of graphs below relate to a single programming channel. The first graph plots the input and output audio loudness of the channel, while the second plots the input and output dialnorm setting for that channel over the same period of time. As these graphs demonstrate, the adjustments made by DIRECTV for each channel are applied consistently.

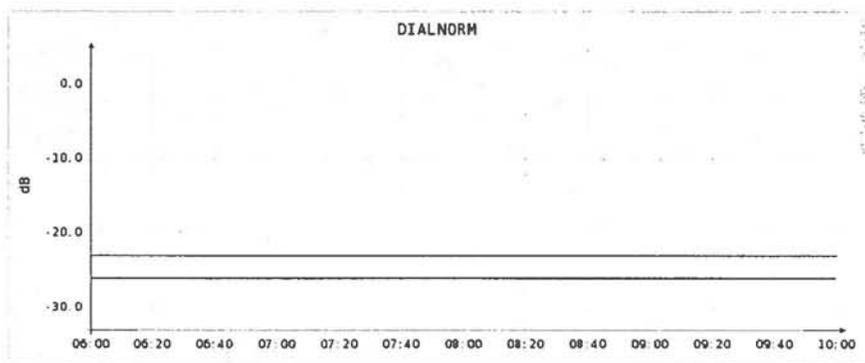
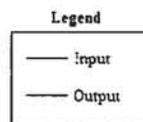
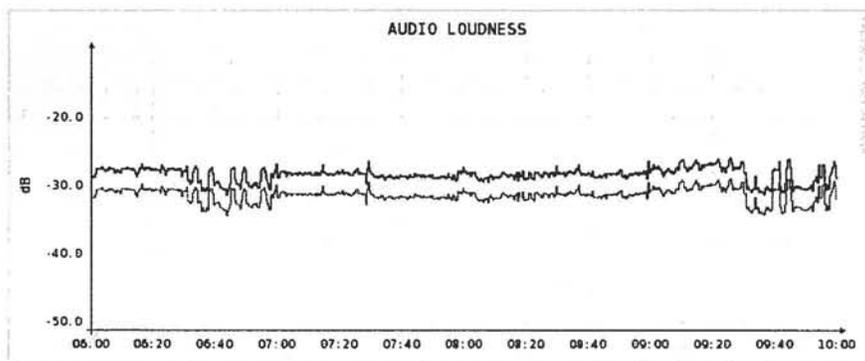
#### Channel 1



# Channel 2



### Channel 3



# Channel 4

