Leora Hochstein
Executive Director
Federal Regulatory

1300 I Street, NW, Suite 400 West
Washington, DC 20005

Phone 202 515-2535
Fax 202 336-7922
leora.l.hochstein@verizon.com

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Ex Parte

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: Implementation of the Commercial Advertisement Loudness Mitigation (CALM) Act, MB Docket No. 11-93

Dear Ms. Dortch:

On September 19, 2011, Will Johnson, David Young and I met with Media Bureau Chief, William Lake, and the following members of his staff: Nancy Murphy, Michelle Carey, Alison Neplokh, Shabnam Javid, Lyle Elder as well as with Eloise Gore of the Enforcement Bureau to discuss implementation of the CALM Act.

We explained that the CALM Act provided the FCC with the limited authority to adopt a specific industry-developed recommended practice to help address commercial loudness. Under that practice, multichannel video programming distributors (MVPDs) are responsible for moderating the loudness of commercials to the extent they are encoding or re-encoding programming or are inserting commercials into programming. Regarding commercials that are inserted by content suppliers upstream, MVPDs are responsible, under the recommended practice, for passing along relevant data so that loudness settings are maintained and honored, but they are not required to actively monitor or adjust the loudness settings, nor could a provider reasonably do so. Ensuring proper volume levels for commercials and accompanying programming requires the coordination and cooperation of providers throughout the process of creating and distributing programming. The NPRM, however, suggests a much broader role for video distributors, making them responsible for ensuring that every participant in the content creation and aggregation process takes the steps necessary to create and maintain proper loudness levels. This approach is directly contrary to the CALM Act.

With respect to contractual provisions that would require our content supplies to comply with the CALM Act, we pointed out that this approach is not easy or without cost. Our programming contracts all expire at different times and each are the product of

negotiation. Content providers may or may not be willing to agree to this new obligation. And to the extent they do, they may demand something in return, particularly when they are negotiating with smaller or newer players in the video market with less negotiating leverage than incumbent cable operators.

Sincerely,

cc: William Lake