



December 5, 2011

Via Electronic Filing

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

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

Dear Ms. Dortch:

Starz Entertainment, LLC ("Starz")¹ submits this *ex parte* filing regarding the definition of "commercial advertisements" in the above-referenced rulemaking proceeding.

Section 2A of the CALM Act applies to "commercial advertisements," but does not define this term for purposes of the statute. *See* 47 U.S.C. §621(a). In its CALM Act notice of proposed rulemaking, the Commission requested comment regarding the commercial advertisements definition, and asked specifically if "the term 'commercial advertisements' appl[ies] to promotions of television or cable/MVPD programs?" *See Implementation of the Commercial Advertisement Loudness Mitigation (CALM) Act, Notice of Proposed Rulemaking*, MB Docket No. 11-93, FCC 11-84 (rel. May 27, 2011), at ¶11.

Starz urges the Commission to exclude brief, interstitial-type promotional announcements regarding cable program offerings from the commercial advertisements definition adopted in this proceeding.² The short promotional announcements for Starz's various program offerings that Starz airs on its programming networks do not qualify as "advertisements" or "commercial matter" as those terms are defined in other provisions of the Communications Act and the Commission's rules. Specifically, Section 399B of the Communications Act defines "advertisement" as "any message or other programming material which is broadcast or otherwise transmitted in exchange for any *remuneration...*" *See* 47 U.S.C. §399b(a) (*italics added*). The definition of "commercial matter" included in the children's programming commercial limitations regulations also includes a compensation component: "airtime *sold* for purposes of selling a

¹ Starz is one of the largest owners of video programming networks licensed to cable, satellite, and telephone company distributors. Starz provides sixteen different programming networks, including the Starz channel and its five multiplex channels, the Encore channel and its seven multiplex channels, MoviePlex, IndiePlex, and RetroPlex; most of which are available in both standard definition and high definition feeds. Starz also licenses the subscription video on demand services Starz on Demand, Encore on Demand, and MoviePlex on Demand. In addition to Starz's licensing of content through traditional terrestrial and satellite technologies, Starz also licenses, and will distribute, the IP-delivered services Starz Online and Encore Online that are or will be featured on several distributors' "TV Everywhere" offerings, and the Starz Play offering featured by online-only distributors such as Netflix. Starz's video programming services generally feature full length, theatrically released motion pictures licensed from various movie studios, as well as original series and entertainment specials.

² Based upon Starz's review of the record in this proceeding, no party addressed this issue in their comments.

product or service....” See 47 C.F.R. §73.670 note 1 & §76.225 note 1. In contrast, Starz receives no compensation for any of the promotional announcements for its programming.

The “commercial matter” definition extends to “promotions of television programs or video programming services other than children’s or other age-appropriate programming appearing on the same channel or promotions for children’s educational and informational programming on any channel.” See 47 C.F.R. §73.670 note 1 & §76.225 note 1. In revising the commercial matter definition, the Commission stated that the inclusion of program promotions in the definition “will help protect children from overcommercialization of programming consistent with the overall intent of Congress in the [Children’s Television Act of 1990].” See *Children’s Television Obligations of Digital Television Broadcasters, Report and Order and Further Notice of Proposed Rulemaking*, 19 FCC Rcd. 22997 (2004), at ¶58. Thus, the Commission included promotions in the commercial matter definition pursuant to the specific statutory goal of limiting the commercialization of children’s television programming. Clearly, that concern is not present in this proceeding, and no such extension of the definition is warranted.

In addition to excluding short promotional announcements from the commercial advertisements definition, the Commission clearly should limit the commercial advertisements definition adopted in this proceeding solely to CALM Act compliance matters. As noted above, the other statutory and rule provisions contain specifically-tailored definitions of advertising/commercial matter. The CALM Act definition of commercial advertisements should not affect the definition and/or regulation of advertising/commercial matter in other contexts.

Please contact me if you have any questions regarding Starz’s views as set forth above. Thank you for your attention to this matter.

Respectfully submitted,



Richard H. Waysdorf
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Business & Legal Affairs-Distribution

RHW:tb