



National Cable & Telecommunications Association
25 Massachusetts Avenue, NW, Suite 100
Washington, DC 20001-1431
(202) 222-2300

Rick Chessen
Senior Vice President
Law and Regulatory Policy

(202) 222-2445
(202) 222-2448 Fax
rchesen@ncta.com

December 7, 2011

EX PARTE

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

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

Dear Ms. Dortch:

On December 5, 2011, Diane Burstein, Vice President and Deputy General Counsel (NCTA) and I met with Sherrese Smith, Senior Counsel and Legal Advisor to Chairman Genachowski, and Jessica Almond, Legal Advisor to the Chairman. Cristina Pauzé, Vice President, Regulatory Affairs, Time Warner Cable, Diane Burstein and I also met separately with Joshua Cinelli, Legal Advisor to Commissioner Michael J. Copps and with Dave Grimaldi, Chief of Staff & Legal Advisor to Commissioner Mignon Clyburn.

In our meetings, we urged the Commission not to impose undue testing or compliance burdens on the cable industry. We stated that the Commission's rules should not cover promotional announcements or digital networks that do not carry paid commercial advertisements. We pointed out that the specific language of the CALM Act only applies to "commercial advertisements." Finding the Act to reach those digital networks that are not advertiser-supported but provide only promotional material would unfairly sweep within the scope of the requirements virtually every digital network an operator carries. We explained that this misinterpretation of the Act would significantly increase burdens on cable operators and other MVPDs, requiring substantially more testing and more resources devoted to ensuring network compliance. We also stated that the Commission should not impose liability on cable operators or other MVPDs if testing in response to complaints revealed a network's non-compliance.¹

¹ On December 2, 2011, I also had a short phone conversation with Michelle Carey, Deputy Chief of the FCC Media Bureau, during which the points described herein were identified. The filing of this notice one day after the filing date was inadvertent.

Ms. Marlene H. Dortch
December 7, 2011
Page 2

Respectfully submitted,

/s/ Rick Chessen

Rick Chessen

cc: S. Smith
J. Almond
J. Cinelli
D. Grimaldi
M. Carey