

subcategory of Cable and Other Program Distribution that operated for the entire year.⁵⁷ Of this total, 939 firms had employment of 999 or fewer employees, and 16 firms had employment of 1000 employees or more.⁵⁸ Accordingly, The Commission believe that a majority of firms operating in this industry were small.

15. Cable Companies and Systems. The Commission has also developed its own small business size standards, for the purpose of cable rate regulation. Under the Commission's rules, a "small cable company" is one serving 400,000 or fewer subscribers, nationwide.⁵⁹ Industry data indicate that, of 1,076 cable operators nationwide, all but eleven are small under this size standard.⁶⁰ In addition, under the Commission's rules, a "small system" is a cable system serving 15,000 or fewer subscribers.⁶¹ Industry data indicate that, of 6,635 systems nationwide, 5,802 systems have under 10,000 subscribers, and an additional 302 systems have 10,000-19,999 subscribers.⁶² Thus, under this second size standard, most cable systems are small.

16. Cable System Operators. The Act also contains a size standard for small cable system operators, which is "a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1 percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed \$250,000,000."⁶³ The Commission has determined that an operator serving fewer than 677,000 subscribers shall be deemed a small operator, if its annual revenues, when combined with the total annual revenues of all its affiliates, do not exceed \$250 million in the aggregate.⁶⁴ Industry data indicate that, of 1,076 cable operators nationwide, all but ten are small under this size standard.⁶⁵ We note that the Commission neither requests nor collects information on whether cable system operators are affiliated with entities whose gross annual revenues exceed \$250 million,⁶⁶ and therefore we are unable to estimate more accurately the number of cable system operators that would

⁵⁷ U.S. Census Bureau, 2007 Economic Census, Subject Series: Information, Table 5, Employment Size of Firms for the United States: 2007, NAICS code 5171102 (located at http://factfinder.census.gov/servlet/IBQTable?_bm=y&-geo_id=&-_skip=600&-ds_name=EC0751SSSZ5&-_lang=en).

⁵⁸ See *id.*

⁵⁹ 47 C.F.R. § 76.901(e). The Commission determined that this size standard equates approximately to a size standard of \$100 million or less in annual revenues. *Implementation of Sections of the 1992 Cable Act: Rate Regulation*, Sixth Report and Order and Eleventh Order on Reconsideration, 10 FCC Rcd 7393, 7408 (1995).

⁶⁰ These data are derived from: R.R. Bowker, *Broadcasting & Cable Yearbook 2006*, "Top 25 Cable/Satellite Operators," pages A-8 & C-2 (data current as of June 30, 2005); Warren Communications News, *Television & Cable Factbook 2006*, "Ownership of Cable Systems in the United States," pages D-1805 to D-1857.

⁶¹ 47 C.F.R. § 76.901(c).

⁶² Warren Communications News, *Television & Cable Factbook 2008*, "U.S. Cable Systems by Subscriber Size," page F-2 (data current as of Oct. 2007). The data do not include 851 systems for which classifying data were not available.

⁶³ 47 U.S.C. § 543(m)(2); see also 47 C.F.R. § 76.901(f) & nn.1-3.

⁶⁴ 47 C.F.R. § 76.901(f); see *FCC Announces New Subscriber Count for the Definition of Small Cable Operator*, Public Notice, 16 FCC Rcd 2225 (Cable Services Bureau 2001).

⁶⁵ These data are derived from R.R. BOWKER, *BROADCASTING & CABLE YEARBOOK 2006*, "Top 25 Cable/Satellite Operators," pages A-8 & C-2 (data current as of June 30, 2005); WARREN COMMUNICATIONS NEWS, *TELEVISION & CABLE FACTBOOK 2006*, "Ownership of Cable Systems in the United States," pages D-1805 to D-1857.

⁶⁶ The Commission does receive such information on a case-by-case basis if a cable operator appeals a local franchise authority's finding that the operator does not qualify as a small cable operator pursuant to § 76.901(f) of the Commission's rules.

qualify as small under this size standard.

17. **Open Video Services.** Open Video Service (OVS) systems provide subscription services.⁶⁷ The open video system (“OVS”) framework was established in 1996, and is one of four statutorily recognized options for the provision of video programming services by local exchange carriers.⁶⁸ The OVS framework provides opportunities for the distribution of video programming other than through cable systems. Because OVS operators provide subscription services,⁶⁹ OVS falls within the SBA small business size standard covering cable services, which is “Wired Telecommunications Carriers.”⁷⁰ The SBA has developed a small business size standard for this category, which is: all such firms having 1,500 or fewer employees. To gauge small business prevalence for the OVS service, the Commission relies on data currently available from the U.S. Census for the year 2007. According to that source, there were 3,188 firms that in 2007 were Wired Telecommunications Carriers. Of these, 3,144 operated with less than 1,000 employees, and 44 operated with more than 1,000 employees. However, as to the latter 44 there is no data available that shows how many operated with more than 1,500 employees. Based on this data, the majority of these firms can be considered small.⁷¹ In addition, we note that the Commission has certified some OVS operators, with some now providing service.⁷² Broadband service providers (“BSPs”) are currently the only significant holders of OVS certifications or local OVS franchises.⁷³ The Commission does not have financial or employment information regarding the entities authorized to provide OVS, some of which may not yet be operational. Thus, at least some of the OVS operators may qualify as small entities. The Commission further notes that it has certified approximately 45 OVS operators to serve 75 areas, and some of these are currently providing service.⁷⁴ Affiliates of Residential Communications Network, Inc. (“RCN”) received approval to operate OVS systems in New York City, Boston, Washington, D.C., and other areas. RCN has sufficient revenues to assure that they do not qualify as a small business entity. Little financial information is available for the other entities that are authorized to provide OVS and are not yet operational. Given that some entities authorized to provide OVS service have not yet begun to generate revenues, the Commission concludes that up to 44 OVS operators (those remaining) might qualify as small businesses.

E. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

18. These rules impose new reporting, recordkeeping and/or other compliance requirements on small television broadcast stations and small MVPDs. Small stations and MVPDs must be prepared to demonstrate compliance with the RP in the event of an enforcement inquiry, including demonstrating in every circumstance that the equipment necessary to pass through programming compliant with the RP has

⁶⁷ See 47 U.S.C. § 573.

⁶⁸ 47 U.S.C. § 571(a)(3)-(4). See *13th Annual Report*, 24 FCC Rcd at 606, ¶ 135.

⁶⁹ See 47 U.S.C. § 573.

⁷⁰ U.S. Census Bureau, 2007 NAICS Definitions, “517110 Wired Telecommunications Carriers”; <http://www.census.gov/naics/2007/def/ND517110.HTM#N517110>.

⁷¹ See http://factfinder.census.gov/servlet/IBQTable?_bm=y&-fds_name=EC0700A1&-geo_id=&-skip=600&-ds_name=EC0751SSSZ5&-lang=en.

⁷² A list of OVS certifications may be found at <http://www.fcc.gov/mb/ovs/csovsr.html>.

⁷³ See *13th Annual Report*, 24 FCC Rcd at 606-07, ¶ 135. BSPs are newer firms that are building state-of-the-art, facilities-based networks to provide video, voice, and data services over a single network.

⁷⁴ See <http://www.fcc.gov/mb/ovs/csovsr.html> (current as of February 2007).

been properly installed, maintained, and utilized.⁷⁵ The R&O does not, however, mandate the method by which compliance is demonstrated. It does provide optional methods to demonstrate compliance by being “deemed in compliance” or in a “safe harbor.” For locally inserted commercials, a small station or MVPD must provide records showing the consistent and ongoing use of equipment to properly measure the loudness of the content and to ensure that the dialnorm metadata value correctly matches the loudness of the content when encoding the audio into AC-3 for transmitting the content to the consumer in the regular course of business and demonstrating that the equipment has undergone commercially reasonable periodic maintenance and testing to ensure its continued proper operation. It must also certify that it either has no actual knowledge of a violation of the ATSC A/85 RP, or that any violation of which it has become aware has been corrected promptly upon becoming aware of such a violation.⁷⁶ For embedded commercials, a small station or MVPD must perform a 24-hour spot check on programming containing complained-of commercials, and report the results to the Commission, and, if they show noncompliance, to the programmer.⁷⁷ In the event of a failed spot check, the station or MVPD must re-check the noncompliant commercial programming, and if the re-check reveals noncompliance with the RP, then the station or MVPD has actual knowledge of noncompliance and, going forward, is no longer in the safe harbor for that channel or programming.⁷⁸

F. Steps Taken to Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

19. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.⁷⁹

20. The express language of the statute requires that the RP be incorporated into the rules and made mandatory for all stations and MVPDs, regardless of size.⁸⁰ As a result, these rules may have a significant economic impact in some cases, and that impact may affect a substantial number of small entities, although, as discussed below, the streamlined waiver process for small entities will relieve much of this impact. Nonetheless, the R&O makes significant strides to minimize the economic impact of the rules on small entities. The “safe harbor” we adopt simplifies the process by which small stations and MVPDs may demonstrate compliance with the RP, by eliminating the need for retroactive demonstrations of compliance. Larger stations and MVPDs must either seek certifications that programming is compliant with the RP, or perform annual spot checks of programming that has not been certified.⁸¹ Smaller entities, however, are required only to install, maintain, and utilize the equipment necessary to comply, and in the case of an enforcement inquiry triggered by a pattern or trend of complaints regarding embedded commercials, to demonstrate ongoing compliance via means of a spot check.⁸² This gives

⁷⁵ R&O at para. 24.

⁷⁶ R&O at para 29.

⁷⁷ R&O at paras. 41-42.

⁷⁸ R&O at paras. 43-44.

⁷⁹ 5 U.S.C. § 603(c)(1) – (c)(4).

⁸⁰ See 47 U.S.C. § 621(a).

⁸¹ R&O at para. 32.

⁸² R&O at paras. 36-37, 41-42.

smaller entities the choice to demonstrate compliance via an approach which creates minimal economic impact on those entities.

21. The smaller entities eligible for this simplified process are broadcast stations with less than \$14 Million in annual receipts, and MVPDs with 400,000 or fewer subscribers, as of December, 2011. The R&O adopts the SBA size standard for stations, under which, as discussed above, approximately 78 percent of television broadcast stations are small.⁸³ The MVPD size standard adopted by the R&O is based on the Commission's definition of a "small cable company,"⁸⁴ allowing us to apply a relevant and easily-measurable size standard to all MVPDs. SBA considers MVPDs to be either Wired or Wireless Telecommunications Carriers, both of which use a 1,500 employee size standard. That standard, however, is less relevant than a subscriber-based measure to the goal of ensuring that the channels most subscribers watch are either certified or annually spot-checked, because the number of people employed by an MVPD does not necessarily directly correlate to the number of subscribers it reaches. Although the rules adopted in this R&O will look to MVPD size as of December, 2011, we note that as of June, 2011 all but 15 MVPDs are small.⁸⁵ Because the same program streams are provided to smaller and larger entities, spot checks by even a small number of large entities should ensure compliance for all while reducing the burden on smaller stations and MVPDs.

22. Furthermore, the statute provides that the Commission may grant a one-year waiver of the effective date of the rules implementing the statute to any station/MVPD that shows it would be a "financial hardship" to obtain the necessary equipment to comply with the rules, and may renew such waiver for one additional year.⁸⁶ To request a financial hardship waiver, a larger station or MVPD must provide: (1) evidence of its financial condition, such as financial statements; (2) a cost estimate for obtaining the necessary equipment to comply with the required regulation; (3) a detailed statement explaining why its financial condition justifies postponing compliance; and (4) an estimate of how long it will take to comply, along with supporting information. We do not require waiver applicants to show negative cash flow but, instead, require only that the station/MVPD's assertion of financial hardship be reasonable under the circumstances.⁸⁷ For small stations/MVPDs that face a financial challenge in obtaining the equipment needed to comply with our rules, we adopt a particularly streamlined financial hardship waiver approach.⁸⁸ Specifically, a small station or MVPD that seeks a waiver must file with the Commission a certification that it: (1) meets our definition of small for this purpose, and (2) needs a delay of one year to obtain specified equipment in order to avoid the financial hardship that would be imposed if it were required to obtain the equipment sooner. The station or MVPD is not required to submit any proof of financial condition. Small broadcast stations and small MVPDs may consider the waiver granted when they file this information online and receive an automatic "acknowledgement of request," unless the Media Bureau notifies them of a problem or question concerning the adequacy of the certification.⁸⁹

23. This streamlined process is available to stations with no more than \$14.0 million in annual receipts or that are located in television markets 150 to 210. With respect to the latter, the legislative

⁸³ *Supra* para. 10.

⁸⁴ *Supra* para. 15.

⁸⁵ These fifteen MVPDs include DIRECTV, DISH Network, AT&T, and Verizon, along with more traditional cable companies like Time Warner and Suddenlink. See <http://www.ncta.com/Stats/TopMSOs.aspx> (visited November 16, 2011).

⁸⁶ R&O at para. 50.

⁸⁷ R&O at para. 51.

⁸⁸ R&O at para. 52.

⁸⁹ *Id.*

history of the CALM Act specifically expressed concern about the difficulties faced by broadcasters in smaller markets, where the advertising revenue base is much more limited than in larger markets. Unlike small MVPD systems, most of the steps small broadcasters must take to comply with the RP must be undertaken internally, rather than by a third party programmer providing embedded commercials or third party contractors providing local insertions. Consequently, we expect that small broadcast stations will be more likely to need to obtain equipment, and, therefore, more likely to need a waiver to delay the effective date of the rule. We will therefore allow all of these stations to use the streamlined process. The streamlined process is also available to MVPD systems with fewer than 15,000 subscribers (as of December 31, 2011) that are not affiliated with a larger operator serving more than 10 percent of all MVPD subscribers. Our definition of “small MVPD system” for purposes of the streamlined waiver is different from our definition of smaller MVPD operators for purposes of being in the safe harbor.⁹⁰ While the waiver is available to all systems likely to face financial hardships in complying with the RP, we believe that only the smallest need an expedited process, and as discussed above, many of the steps small MVPD systems must take to comply with the RP may be undertaken by a third party.

24. Finally, Section 2(b)(3) of the CALM Act provides that the statute does not affect the Commission’s authority to waive any rule required by the CALM Act, or the application of any such rule, for good cause shown with regard to any station/MVPD or class of stations/MVPDs under Section 1.3 of the Commission’s rules. We will use our general waiver authority, consistent with Section 2(b)(3), for waivers necessitated by unforeseen circumstances as well as for MVPDs that demonstrate they cannot implement the RP because of the technology they use.⁹¹

G. Federal Rules that May Duplicate, Overlap, or Conflict With the Proposed Rule

25. None.

H. Report to Congress

26. The Commission will send a copy of the *Report and Order*, including this FRFA, in a report to be sent to Congress pursuant to the Congressional Review Act.⁹² In addition, the Commission will send a copy of the *Report and Order*, including this FRFA, to the Chief Counsel for Advocacy of the SBA. The *Report and Order* and FRFA (or summaries thereof) will also be published in the Federal Register.⁹³

⁹⁰ R&O at paras. 35-36.

⁹¹ R&O at para. 56.

⁹² See 5 U.S.C. § 801(a)(1)(A).

⁹³ See 5 U.S.C. § 604(b).

**STATEMENT OF
CHAIRMAN JULIUS GENACHOWSKI**

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

For a very long time, viewers have experienced commercials that blare out louder than the programming they accompany. Most of us have either experienced this ourselves, or had friends and family who have experienced it. You're watching your favorite television program, or the news, and all of a sudden, a commercial comes on and it sounds like someone turned up the volume – but no one did.

Today I am pleased that the Commission implements the Commercial Advertisement Loudness Mitigation Act, or CALM Act, requiring broadcasters, cable, telecommunications companies, satellite, and other TV providers to prevent spikes in volume. Under our new rules, TV providers must ensure that the average loudness of commercials will be no higher than the average volume of the programming they accompany.

The bottom line? Today, the FCC is quieting a persistent problem of the television age – loud commercials.

I want to thank Congresswoman Anna Eshoo for her leadership on this issue. I also want to thank Chairman Rockefeller and Senator Sheldon Whitehouse for their work and leadership on this issue.

The Commission has received almost 6,000 complaints or inquiries about loud commercials since 2008. In fact, as Consumers Union notes, “[I]n the twenty five quarterly reports on consumer complaints that have been released since 2002, twenty one have listed complaints about the ‘abrupt changes in volume during transition from regular programming to commercials,’ as among the top consumer grievances regarding radio and television broadcasting.”

As the Pittsburgh Post-Gazette observed earlier this year, one would think TV providers “wouldn't want to annoy people [they] are trying to attract as customers by making their TV watching miserable,” but loud commercials continue to vex viewers.

So I'm pleased that we have crafted a process that will protect consumers from inappropriately loud commercials, while remaining sensitive to resource constraints of small broadcasters and subscription TV providers. As the CALM Act requires, these rules will go into effect no later than one year from today. This will provide stations and MVPDs ample opportunity to prepare for full compliance.

I urge the content creators who provide much of the programming that is transmitted by broadcasters and MVPDs to step up over the next year and certify that their programming complies with the industry practice.

With today's vote, I'm pleased that we are able to help eliminate this pervasive problem for millions of American television viewers.

**STATEMENT OF
COMMISSIONER MICHAEL J. COPPS**

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

This is an important day for consumer protection. I cannot tell you how many hundreds of citizens have told me—personally, through e-mails and letters, at public hearings, even across the family dinner table—how obnoxiously intrusive they find loud commercials. So do I. I am therefore delighted that this proceeding made it onto our agenda before I depart the Commission.

Of course, we would not be here today without the leadership of Congresswoman Anna Eshoo who spearheaded this effort in Congress. Always an inspiration, Representative Eshoo introduced the legislation that made today possible and then shepherded it through to enactment. Once again, she delivers for American consumers. And her colleague on the other side of the Capitol, Senator Sheldon Whitehouse also did an excellent job of navigating this measure through the Senate.

I'm proud this agency has tackled so many consumer protection issues under Chairman Genachowski's leadership, and I am confident more are on the way. There is a definitive nexus between the actions taken in this room and in the bureaus with the everyday lives of Americans. This is at the heart of what the public interest is all about. And, one more time, I want us to remember that the term "public interest" appears by my count 112 times in our governing statute, the Communications Act.

I want to be sure the spirit and letter of the new law are fully implemented by this Commission. The purpose of the Act was to get rid of loud commercials, period. I realize that the program production chain is a long one and not every link in that chain is under FCC purview, but that just means we have to work all the harder to make sure consumers receive the protections envisioned in this law. I also realize that sometimes what people think is an easy fix doesn't turn out that way. For example, technical questions regarding locally-inserted commercials versus passing through commercials inserted upstream made for some very complicated discussions. But the Bureau worked assiduously, and in the spirit of the act, throughout the process. While I might not have made every single call the identical way, I do believe the item before us provides an appropriate balance—as required by statute—of giving some measure of flexibility to the smallest providers even while providing the necessary heft to drive all parties to workable and implementable solutions. And I am confident the Commission will be closely monitoring implementation each and every step of the way and will make any adjustments that are called for to ensure that consumers get what the legislation intended them to get.

I want to recognize and thank the numerous industry interests, such as NCTA, for stepping up to the plate and working with us to find workable solutions. And I thank everyone who lent a hand, contributed to the record, and put shoulder to the wheel to help fashion the item before us. As part of the implementation going forward, we are going to need consumers to provide the FCC with feedback and to inform us if they hear—and I literally mean "hear"—any problem. The complaint process puts heavy emphasis on consumer complaints to monitor where instances of overly-loud commercials still exist.

Above all, thanks to the Bureau for working through this very important, but also very demanding, proceeding. I appreciate the hard work of all, and I want especially to recognize the contribution of the ever-indefatigable Eloise Gore and her partner in this work, Lyle Elder. Thanks to my colleagues for their input and to the Chairman for making sure we got this done both in time and creditably. I am pleased to support it.

**STATEMENT OF
COMMISSIONER ROBERT M. McDOWELL**

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

Today, we implement the CALM Act. From this point forward, TV commercials, such as those for OxyClean, ShamWow!, HeadOn and the like, will never be the same. Family rooms across America might be a little less noisy as the result of our implementation of Congress's will. The directly elected representatives of the American people have mandated that the FCC muffle the sudden volume increases of TV commercials and today we are giving that endeavor our best shot, absent reaching for our remote controls' volume or mute buttons.

Although I am generally supportive of our efforts today, I do have some reservations about a few of the rules we are adopting. I am concerned that Congress may not have given us the authority to take some of these actions¹ and, when addressing promotional announcements, we may not be faithfully executing the letter of the statute.² The legislative history of the CALM Act, however, stresses the overall objective of prohibiting disruptive and intrusive loud advertisements that are an annoyance to the consumer.³ I am unsure whether we are getting the legislative intent right, but I remain hopeful.

¹ In making broadcasters and multichannel video programming distributors ("MVPDs") ultimately liable for passing through loud, embedded commercials by programmers – over which broadcasters and MVPDs have no control and we have no jurisdiction, we may be exceeding our statutory authority.

² It is possible to interpret the language of the CALM Act as providing the Commission authority to regulate the volume of commercials, but not promos. The CALM Act states that the Commission must prescribe rules to implement the ATSC standards moderating abrupt volume increases in advertising "*only insofar as such recommended practice concerns the transmission of commercial advertisements. . .*" 47 U.S.C. § 621(a) (emphasis added). These standards differentiate between commercial and promotional content. See Advanced Television Systems Committee Inc., ATSC Recommended Practice: Techniques for Establishing and Maintaining Audio Loudness for Digital Television, ATSC A/85:2011, at § 3.4–Terms, Annex I, 1.1–Introduction (rev. July 25, 2011) (stating that "[c]ontent includes commercials, promotional materials . . . , and programming . . . [and that] [t]he term 'interstitials' applies to both commercials and promos"), available at http://www.atsc.org/cms/standards/a_85-2011a.pdf. The Commission itself also has recognized the content distinction between advertisements and promos and has treated them differently. See 47 C.F.R. § 79.1(a)(1), (d)(6) (providing different treatment of advertisements and promos in the context of or closed captioning rules); Closed Captioning and Video Description of Video Programming, MM Docket No. 97-279, Report and Order, 13 FCC Rcd 3272, 3345-46 ¶¶ 151-53 (1997) (same); see also Children's Television Obligations of Digital Television Broadcasters, MM Docket No. 00-167, *Second Order on Reconsideration and Second Report and Order*, 21 FCC Rcd 11065, 11083-84 ¶¶ 46-49 (2006) (explaining that "commercial matter" was traditionally defined to exclude promotions of upcoming programs and why, in the context of limitations on the amount of advertising inserted in children's programming, certain promos were included as part of a joint settlement). Promos are also not considered to be commercial advertisements under the statutory constraints governing noncommercial educational ("NCE") stations. See 47 U.S.C § 399b (an advertisement has to be broadcast or otherwise transmitted in exchange for consideration). We have excluded NCE stations from the rules adopted in this proceeding because they may not broadcast advertisements – and yet they remain free to air promos. In short, it is not readily apparent, based on the language of the statute alone, that it covers promos.

³ See, e.g., S. REP. NO. 11-340, at 1-2 (2010); 156 CONG. REC. H7720-21 (daily ed. Nov. 30, 2010) (statements of Reps. Anna Eshoo, Lee Terry and Gene Green); 155 CONG. REC S12710-11 (daily ed. Dec. 8, 2009) (statement of Sen. Sheldon Whitehouse).

Many thanks to my colleagues for taking specific measures to reduce the burden on stations and multichannel video programming distributors (“MVPDs”), such as adopting safe harbors, using programmer certifications to establish compliance for embedded commercials, providing for the sunset of the annual requirement to perform spot checks on non-certified programming, and lessening the effect on small operators by requiring them to monitor the volume of commercials only if there is a pattern of complaints specific to their particular station or system. I am also appreciative that Congress specifically provided the Commission with the ability to provide financial hardship waivers and recognized our general authority to waive our rules for good cause. I am hoping that such waivers will be reasonably provided to alleviate burdens on broadcast stations and MVPDs if our rules should cause unintended consequences.

I thank the Chairman and my colleagues for their willingness to incorporate some of my edits, and I applaud the Media and Enforcement Bureaus for their dedication and thoughtful work on a complicated matter. Thank you.

**STATEMENT OF
COMMISSIONER MIGNON L. CLYBURN**

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

I don't often quote my colleagues on the bench. But today, I proudly embrace the line that we've heard many times from the distinguished gentleman from Virginia in stating that as a commissioner, I don't tell Congress what to do. Congress tells me what to do.

And in that vein, we move forward with an Order which will greatly improve the parity of volume levels in commercials to that of the programs they accompany. For far too long, TV viewers either frantically reached for the remote to turn down the volume when television commercials began or endured what sometimes were frightening decibel levels that resulted in considerable alarm, anger, and spilled popcorn.

Congress heard the cries of the TV-watching public and saw fit to construct a bill that addressed this concern. Congresswoman Anna Eshoo, who notes that the issue of loud commercials has been a top consumer complaint for almost 50 years, constructed a bill that passed the House via voice vote, meaning a roll call vote was not even necessary. The Senate followed a similar path, passing the bill by unanimous consent.

Ms. Eshoo went on to proclaim that the CALM act "gives the control of sound back to the consumer, where it belongs", and I absolutely agree.

In crafting an item that adheres to the bill Congress passed, we had to try as best we could to achieve a balance and to not over-burden industry with new requirements that would adversely harm the bottom lines of smaller operators and add onerous new expenses. As I mentioned when I began speaking, we do as Congress instructs us, but hopefully with a glow stick and not a flamethrower.

Our Media Bureau's staff, including our engineers, worked tirelessly to guide us through this rulemaking while consulting with industry. We did all we could to minimize the burden on operators large and small while at the same time maintaining the broad coverage that Congress specified with regard to technology parameters. Further, we needed to put into place an enforcement mechanism to address future problems as they arise and to continue to field complaints from the public.

Congress chose the ATSC A/85 recommended practice, which the industry created and the Commission incorporated from this point forward. Making that mandatory will add certainty to the business planning of stations, cable operators, and other MVPDs nationwide, just as Congress intended. Safe harbor and compliance provisions, including certifications, spot checks, and waiver requests, will serve to maintain the balance sought by Congress and the FCC in not burdening industry.

This item demonstrates the deft handling of interests that could potentially collide when Congress, an agency, industry players, and consumers intersect. All four can be, and often are, filled with passion for their stake in what's being considered, and finding common ground can be elusive. I believe we've done that here, in a way that satisfies all of the parties involved. Consumers cried out, Congress heard them, and the FCC worked with affected industries as well as consumer representatives to address the issue. This is an example of government receptiveness and efficiency, and the American public should take great comfort in it.

I want to thank Lyle Elder, Evan Baranoff, Alison Neplokh, Shabnam Javid, and the often-imitated but never duplicated Eloise Gore. This item is the result of your hard work and dedication, and I thank you for it.