

**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

**COMMENTS OF DIRECTV, LLC IN SUPPORT
OF PETITION FOR PARTIAL RECONSIDERATION**

DIRECTV, LLC (“DIRECTV”) hereby supports the Petition for Partial Reconsideration filed in the above referenced proceeding by the National Cable & Telecommunications Association (“NCTA”).¹ In particular, DIRECTV supports NCTA’s requests that the Commission reconsider the rules adopted in this proceeding² by (1) clarifying that a multichannel video programming distributor (“MVPD”) will not be held liable in instances where, after performing spot checks of embedded network advertising, the MVPD has notified that network and the Commission of the network’s non-compliance; and (2) not prohibiting MVPDs from contacting program networks when performing compliance spot checks. No commenter filed in opposition to either of these proposals. The Commission should adopt them in the interest of a more efficient and appropriate implementation of the CALM Act.

MVPD Liability. Under the rules currently in place, an MVPD that is notified of a “pattern or trend” of complaints about loud commercials must perform a spot check of the

¹ See Petition for Partial Reconsideration of the National Cable & Telecommunications Association, MB Docket No. 11-93 (filed Aug. 8, 2012) (“Petition”). Notice of this petition was published in the Federal Register on August 20, 2012. See 77 Fed. Reg. 50071 (Aug. 20, 2012).

² See *Implementation of the Commercial Advertising Loudness Mitigation (CALM) Act*, 26 FCC Rcd. 17222 (2011) (“Order”).

subject network. If that spot check indicates non-compliance with the rule, the MVPD must so inform the Commission and the programmer, and thereafter conduct a follow-up spot check to determine whether the programmer has come into compliance. If the network has not remedied the problem, the MVPD risks being “liable for future commercial loudness violations in that programming” if it continues to carry such programming.³

As NCTA points out, faced with potential liability, MVPDs may feel compelled to drop non-compliant networks, resulting in disruption and confusion for consumers.⁴ Rather than leave such liability to discretionary decisions in case-by-case enforcement actions, the Commission should make clear that an MVPD that has taken the proper steps to notify a non-complaint network of the loudness issue and has worked in good faith with that network to resolve the issue is not liable if it continues to carry that programming while the problem is being addressed. Granting MVPDs additional certainty where all parties are proceeding in good faith would help avoid undesirable disruptions in program carriage without undermining the objectives of the CALM Act.

Compliance Spot Checks. The Commission recognized that implementing the ATSC Recommended Practice (“RP”) for CALM Act compliance requires cooperation between programmers and distributors, and “without it, transmission of ‘embedded’ commercials that comport with the RP would be impractical at best.”⁵ Nonetheless, such cooperation is prohibited in one respect, as the rules provide that MVPDs are not allowed to inform the network or programmer of a spot check prior to performing it.⁶ Yet, as NCTA argues, “[s]pot checks will be

³ *Order*, ¶ 44.

⁴ *See* Petition at 5.

⁵ *Order*, ¶ 11.

⁶ *See* 47 C.F.R. § 76.607(a)((3)(iv)).

