

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)	
)	
Implementation of the Commercial)	MB Docket No. 11-93
Advertisement Loudness Mitigation)	
(CALM) Act)	

COMMENTS OF THE NATIONAL ASSOCIATION OF BROADCASTERS

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EXECUTIVE SUMMARY

As the Commission has recognized in its Notice of Proposed Rulemaking to implement the Commercial Advertisement Loudness Mitigation Act (“CALM Act”), dealing with the perceived loudness of television commercials is not a simple task. It is, however, one that the broadcast television industry has taken seriously and is addressing. In 2009, the Advanced Television Systems Committee (“ATSC”) produced a recommended practice for controlling loudness in digital television, ATSC A/85, which the Congress, in the CALM Act, has now ordered to be implemented to mitigate excessively loud commercials in television transmissions. The recently-added Annex J of ATSC A/85 specifically sets forth all necessary steps to effectively control the loudness of commercial advertising transmitted by broadcast television stations and, consistent with the limited scope of the CALM Act, NAB encourages the Commission to confirm that broadcaster compliance with Annex J of ATSC A/85 satisfies the CALM Act.

NAB also asks that, in implementing the CALM Act, the Commission follow the same practical, balanced approach that Congress took when adopting the Act. Like Congress, the Commission should focus on whether a station has adopted a “commercially reasonable” process when determining whether the station qualifies for the statutory safe harbor. As long as the station follows commercially reasonable practices to ensure compliance with Annex J, the safe harbor should cover not only commercials that the station inserts, but also those inserted by networks and third-party programming providers. Annex J of ATSC A/85, by its terms, does not require *stations*

to measure the loudness of every single commercial that they transmit or to prescreen commercials obtained from networks or syndicators.

In these comments, NAB outlines commercially reasonable station practices that will result in effectively controlling loudness for delivery of television content to consumers' receivers, in accordance with ATSC A/85 and Annex J. Our approach is consistent with the text and legislative history of the CALM Act, and will result in rules that are easy to enforce and that pose minimal administrative burdens. In applying these criteria, NAB encourages the Commission to provide flexibility for small businesses and stations in small television markets, as well as providing a blanket waiver for small stations.

NAB also urges the Commission to follow Administrative Procedure Act notice-and-comment rulemaking procedures when adopting any successor recommended practice. Not only is this process required by law, but it is likely to elicit information necessary to interpret future recommended practices, to surface unforeseen issues, and to help formulate and implement new requirements.

TABLE OF CONTENTS

I.	THE COMMISSION SHOULD CONFIRM THAT ANNEX J IS THE OPERATIVE PORTION OF ATSC A/85 FOR LOUDNESS CONTROL BY BROADCASTERS.....	3
II.	THE COMMISSION SHOULD FOCUS ON COMMERCIALY REASONABLE EFFORTS IN APPLYING ANNEX J AND THE CALM ACT'S SAFE HARBOR PROVISION.....	3
III.	THE COMMISSION SHOULD ADOPT A BLANKET WAIVER FOR SMALL BUSINESSES AND SMALL MARKETS AND SHOULD APPLY A REASONABLE DEADLINE FOR FORESEEN WAIVERS.....	9
IV.	STATIONS THAT QUALIFY FOR THE SAFE HARBOR SHOULD NOT BE REQUIRED TO DEMONSTRATE COMPLIANCE ON A PER-COMMERCIAL BASIS.....	12
V.	THE COMMISSION MUST FOLLOW NOTICE-AND-COMMENT RULEMAKING PROCEDURES WHEN ADOPTING A SUCCESSOR RECOMMENDED PRACTICE.....	14

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The National Association of Broadcasters (“NAB”)¹ hereby comments on the Commission’s proposals to implement the Commercial Advertisement Loudness Mitigation Act.² The television industry has been working on the challenging issue of the perceived loudness of commercials for a number of years, including the challenge presented by the expanded aural dynamic range of digital television’s cinema-like sound quality.³ This work produced the recommended practice ATSC A/85, which most recently was updated on May 25, 2011.⁴

¹ NAB is a nonprofit trade association that advocates on behalf of local radio and television stations and also broadcast networks before Congress, the Federal Communications Commission and other federal agencies, and the courts.

² Commercial Advertisement Loudness Mitigation Act, Pub. L. No. 111-311 (Dec. 15, 2010) (“CALM Act”).

³ The perceived loudness of a commercial relates to the perceived loudness of the preceding and succeeding broadcast material, which can vary greatly as a result of the expanded aural dynamic range that digital television offers. In addition, broadcast material can be produced by a number of different sources that may apply different processing decisions.

⁴ See Advanced Television Systems Committee (“ATSC”) A/85: “ATSC Recommended Practice: Techniques for Establishing and Maintaining Audio Loudness for Digital Television,” (May 25, 2011) (“ATSC A/85” or “A/85”), *available at* <http://www.atsc.org/cms/index.php/standards/recommended-practices/185-a85-techniques-for-establishing-and-maintaining-audio-loudness-for-digital-television>.

The Commission's Notice of Proposed Rulemaking is an important step in ensuring that the ATSC's recommended practice, to the extent that it concerns the transmission of commercial advertisements, is implemented consistently across the industry.⁵ As the Commission appropriately notes in the NPRM, however, a number of important technical, practical, and administrative challenges remain. The CALM Act explicitly recognizes that the television industry, working through the ATSC, is in the best position to address the technical and operational aspects of these challenges.⁶

Nevertheless, the Commission has an important role to play in implementing and interpreting the CALM Act. As discussed below, NAB specifically encourages the Commission to: (1) confirm that television stations will be subject only to the requirements of Annex J in ATSC A/85; (2) focus on commercially reasonable efforts when applying Annex J's requirements and the CALM Act's safe harbor compliance provision; (3) adopt a blanket waiver for small businesses and small markets and apply a reasonable deadline for requesting waivers in advance; (4) avoid any interpretation requiring stations that qualify for the safe harbor to demonstrate compliance on a per-commercial basis; and (5) follow Administrative Procedure Act ("APA") notice-and-comment rulemaking procedures when adopting successor versions of ATSC A/85.

⁵ Implementation of the Commercial Advertisement Loudness Mitigation (CALM) Act, *Notice of Proposed Rulemaking*, FCC 11-84 (May 27, 2011) ("NPRM").

⁶ See CALM Act, § 2(a).

I. THE COMMISSION SHOULD CONFIRM THAT ANNEX J IS THE OPERATIVE PORTION OF ATSC A/85 FOR LOUDNESS CONTROL BY BROADCASTERS.

The Commission has invited comment on how to identify the portions of ATSC A/85 that concern the transmission of commercial advertisements.⁷ Through its work, ATSC has provided the Commission with a complete roadmap governing broadcast transmissions. As the Commission notes, the current version of ATSC A/85 includes an Annex J titled “Requirements for Establishing and Maintaining Audio Loudness of Commercial Advertising in Digital Television When Using AC-3 Codecs.” According to Section J.1 of ATSC A/85, Annex J “contains all the courses of action necessary to perform effective loudness control of digital television commercial advertising.” The ATSC’s statement provides clear guidance on what the recommended practice requires for digital television stations and dovetails neatly with the limited scope of the CALM Act. Thus, the Commission should confirm that broadcast television stations will be required to comply only with the provisions of Annex J to ATSC A/85.⁸

II. THE COMMISSION SHOULD FOCUS ON COMMERCIALLY REASONABLE EFFORTS IN APPLYING ANNEX J AND THE CALM ACT’S SAFE HARBOR PROVISION.

NAB agrees at a general level with the Commission’s tentative conclusion that a station is responsible for commercials that are transmitted by the station, including commercials that are included in programming that the station receives from networks,

⁷ NPRM at ¶ 9.

⁸ Annex J recites that compliance with Sections J.4 and J.5 is “vital,” which is defined in A/85 to mean “a course of action to be followed strictly (no deviation is permitted).” ATSC A/85, § 1.1.

syndicated programming providers, and other third parties.⁹ However, the Commission’s proposed interpretation of the CALM Act’s safe harbor provision — which would result in stations having to measure the audio and retain detailed records for every single commercial, including commercials in programming provided by networks and syndicated programming providers — would be inconsistent with the text and legislative history of the CALM Act and contrary to the Commission’s stated goal of adopting rules that “are easy to enforce and, at the same time, pose minimal administrative burdens.”¹⁰

The proposed interpretation of the CALM Act’s safe harbor provision mischaracterizes the statute in two important ways. First, the Commission appears to interpret “utilization” to require, for every commercial for which the safe harbor is claimed, that the broadcaster measure the commercial’s loudness and use that measured value as the “dialnorm” loudness value during that commercial.¹¹ Second, the Commission suggests that the safe harbor is unavailable with respect to commercials that are provided by networks and syndicators.¹² The effect of this approach is that stations would be required to locate each commercial and measure the loudness value for each, and then retain detailed records of these activities to demonstrate compliance.

⁹ NPRM at ¶ 10.

¹⁰ *Id.* at ¶ 15.

¹¹ The term “dialnorm” represents the numerical loudness value that is sent with the AC-3 audio content.

¹² *Id.* at ¶¶ 16–17, 20.

This result is contrary to the text and legislative history of the CALM Act. This interpretation contradicts the statutory text because it would improperly impose additional requirements on stations far beyond what is included in Annex J of ATSC A/85. The text of the CALM Act is clear that the Commission's regulatory authority is limited to "incorporating by reference and making mandatory" ATSC A/85 to the extent that the recommended practice concerns the transmission of commercial advertisements.¹³ ATSC A/85's Annex J, which "contains all the courses of action necessary to perform effective loudness control of digital television commercial advertising," does not require *stations* to measure the loudness of every single commercial that they transmit or to prescreen commercials obtained from networks or syndicators.¹⁴ The FCC's proposed interpretation, which has the effect of expanding the scope of the regulations beyond the four corners of the ATSC A/85's Annex J, goes beyond the Commission's statutory authority.

The proposed interpretation also contradicts the legislative history of the CALM Act. Both the House Energy and Commerce Committee report accompanying H.R. 1084 and the Senate Commerce Committee report accompanying S. 2847 anticipate that the vast majority of broadcast television stations will qualify for the safe harbor provision and state that the "FCC should presume that an entity is in compliance with its rule where the entity can demonstrate that it has properly installed and is properly

¹³ CALM Act, § 2(a).

¹⁴ The body of A/85 enumerates many ways program providers or others can determine loudness so that the loudness value can be associated with the content and result in effective loudness control.

maintaining all needed equipment.”¹⁵ Congress clearly did not intend that the FCC apply such a restrictive interpretation of the term “utilizes” or make unreasonable distinctions between commercials that are inserted by the station and those that are included in programming provided by networks and syndicated programming providers. Rather, Congress intended that the Commission focus simply on whether the station employs a “commercially reasonable” process for complying with ATSC A/85 or its successors. The recently adopted successor A/85 now contains in Annex J all necessary requirements to comply with the CALM Act, and it does not include requiring *stations* to constantly measure loudness.

In addition, the FCC’s proposed interpretation essentially would impose strict liability on stations for upstream errors, and is inconsistent with the Commission’s stated goal of adopting rules that “are easy to enforce and, at the same time, pose minimal administrative burdens.”¹⁶ Broadcast television stations currently do not measure every commercial that is transmitted, and such an approach would not be practical from a technical, administrative, or financial standpoint. Rather, stations must rely to a great extent on their networks and syndicators to take these steps. Today, networks and, to a lesser degree, syndicated programming providers already measure the audio loudness of their programming and commercials and provide this information to the stations, which then typically insert the loudness value (dialnorm).¹⁷ Some third-party

¹⁵ See H.R. REP. NO. 111-374, at 6 (2009); S. REP. NO. 11-340, at 4 (2010).

¹⁶ NPRM at ¶ 15.

¹⁷ The ATSC A/53 Digital Television Standard (which is incorporated into the FCC’s rules) mandates the carriage of AC-3 audio which includes dialnorm (*i.e.*, the loudness value). See NPRM at ¶ 12 n. 53.

programming providers, however, such as Fox and PBS, not only measure the audio loudness but also encode their programming into AC-3 before sending the audio (with the dialnorm loudness value already embedded) to their affiliates or member stations. Constant monitoring would therefore be impractical, inefficient, and unnecessary.

Instead, NAB urges the Commission to focus its implementation of the CALM Act's safe harbor compliance provision on what is "commercially reasonable." A station should be permitted to rely on the CALM Act's safe harbor for all of the commercials that it transmits — including commercials that are included in network and syndicated programming — as long as it implements a *commercially reasonable* process for installing, utilizing, and maintaining the equipment and associated software needed to comply with ATSC A/85 Annex J.¹⁸ Specifically, a station's practices should be deemed "commercially reasonable" if the station:

- obtains and readies for use equipment that measures the loudness of commercials transmitted to consumers consistent with ATSC A/85 Annex J;
- for commercials that the station inserts, uses the equipment in the ordinary course of business 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;
- for commercials inserted by third-party programming providers, (1) contractually requires that the third-party make the measurements of the loudness of the commercials and the program content in a manner that is compliant with ATSC A/85 Annex J; (2) contractually requires that the third party either communicate the measured values to the broadcaster or conform the audio to a uniform loudness value; and (3) performs regular quality control measurements of the delivered audio to ensure that the third-party programming provider is meeting these contractual obligations; and

¹⁸ CALM Act, § 2(c).

- performs periodic calibration of its equipment to ensure that the equipment continues to function in a proper manner and repairs malfunctioning equipment within 60 days.¹⁹

This approach is consistent with the text and legislative history of the CALM Act, and would result in rules that are easy to enforce and that pose minimal administrative burdens. Perhaps most importantly, this approach effectively controls loudness for the delivery of television content to consumers' receivers. In the rare event that a network or syndicated programming provider's loudness value is inaccurate due to, for example, an equipment malfunction, the station will be able to discover this problem through its quality control tests and can correct the problem working with the programming provider or otherwise.

In applying the above criteria for determining whether a station's practices are commercially reasonable, NAB encourages the Commission to provide flexibility for small businesses²⁰ and stations in small television markets. For example, it may not be commercially reasonable for small businesses and stations in small markets to purchase equipment to measure loudness values or to perform frequent quality control tests. Accordingly, such stations should be permitted to periodically rent such

¹⁹ NAB encourages the Commission to use its EAS rules as a model for determining whether equipment is repaired in a timely fashion. These rules provide stations 60 days to repair or replace defective equipment without special FCC authority. Stations must record the date and time the equipment was removed and restored to service. If the equipment cannot be repaired or replaced within 60 days, the station may submit an informal request to the District Director of the FCC field office serving the station's region for additional time to repair the equipment. This request should explain what steps have been taken to repair or replace the equipment, the alternative procedures, if any, being used while the equipment is out of service, and when the defective equipment is expected to be repaired or replaced. See 47 C.F.R. § 11.35.

²⁰ The Small Business Administration defines a television broadcasting station as a small business if such station has no more than \$14.0 million in annual receipts. See 13 C.F.R. § 121.201.

equipment and should be permitted to conduct quality control tests on a less frequent basis.

III. THE COMMISSION SHOULD ADOPT A BLANKET WAIVER FOR SMALL BUSINESSES AND SMALL MARKETS AND SHOULD APPLY A REASONABLE DEADLINE FOR FORESEEN WAIVERS.

For some stations, the process of coming into compliance with the Commission's final rules could be difficult, especially given that these rules could become effective around the same time that stations are required to implement the Common Alerting Protocol (CAP) for emergency messaging.²¹ It can take up to a year and a half or more for a station to, for example, budget for the expenditures required to comply with the rule (including the capital outlay and ongoing operating costs), order and install equipment, and negotiate amended contracts with third-party programming providers. This process will be particularly burdensome for small businesses and stations in small markets.

Accordingly, NAB encourages the Commission to adopt a blanket waiver of the effective date for stations that are "small businesses," as defined by the Small Business Administration, or that are located in television markets 150 to 210.²² This waiver

²¹ See, e.g., Review of the Emergency Alert System; Independent Spanish Broadcasters Association, the Office of Communication of the United Church of Christ, Inc., and the Minority Media and Telecommunications Council, Petition for Immediate Relief; Randy Gehman Petition for Rulemaking, *Third Further Notice of Proposed Rulemaking*, FCC 11-82 (rel. May 26, 2011).

²² The legislative history of the CALM Act explicitly recognizes that stations in small markets and small businesses as a class may need additional time to obtain equipment and comply with the Act's requirements. See, e.g., H.R. REP. NO. 111-374, at 6 (2009); S. REP. NO. 11-340, at 4 (2010). Television stations that are struggling financially but that do not qualify as small businesses and are not in small markets could still qualify for (continued...)

should not be contingent on whether the station is affiliated with a Big 4 network, because a station's network affiliation is not determinative of its financial ability to purchase new equipment and otherwise comply with the Commission's rules. In addition, because advertising revenue in smaller markets is much more limited than the revenue available in larger markets, even stations affiliated with a Big 4 network in the smaller markets may be struggling. A blanket waiver is appropriate in these circumstances because it is an efficient and reasonable use of Commission resources. Rather than processing hundreds of individual station waivers, the Commission can reach the same result by issuing a single waiver. There also is good cause for a blanket waiver because the waiver process, which can include significant legal and administrative costs, can be unduly burdensome for small businesses and small market stations.

NAB agrees with the Commission's proposal to permit waiver requests based on unforeseen circumstances at any time. The proposed requirement that stations otherwise seek a waiver 180 days in advance of the effective date, however, is impractical.²³ In effect, the 180-day filing deadline advances the rule's effective date by six months, because many stations will feel compelled to come into compliance before the waiver deadline in order to determine whether a waiver is needed. In addition, because there are sometimes significant delays between the time that the Commission's final rules are adopted and the time the final rules are published in the Federal Register (which is used to calculate the effective date), it may be difficult for a

a financial hardship waiver, but would need to request waivers on a station-by-station basis.

²³ NPRM at ¶ 43.

station to accurately predict the filing deadline until it is too late.²⁴ Such delays are especially common where, as is the case here, the rules impose new or modified information collection requirements that must be approved by the Office of Management and Budget.²⁵

There also is a significant chance that a station's circumstances may change in the six-month period between the date waivers are due and the effective date. For example, over the course of six months, a station's financial condition could change, a contract negotiation could take longer than expected, equipment could become unavailable or malfunction, or there even could be a successor to ATSC A/85 that concerns the transmission of commercial advertisements.

Consequently, rather than having the intended effect of allowing the Bureau time to consider waiver requests before the rules take effect, the proposed deadline will simply increase the number of waivers that are based on "unforeseen" circumstances.

To help avoid these unintended consequences, NAB requests that the Commission adopt a more reasonable deadline requiring stations to submit waiver requests 60 days before the effective date of the Commission's rules, unless the waiver

²⁴ See 5 U.S.C. § 553(d); Commission's Ex Parte Rules and Other Procedural Rules, *Final Rule*, 76 FED. REG. 24376 (May 2, 2011) (announcing the effective date for new rules that were adopted by the Commission more than 90 days earlier on February 1, 2011).

²⁵ See Implementation of the Commercial Advertisement Loudness Mitigation (CALM) Act, *Proposed Rule*, 76 FED. REG. 32116, 32130 (June 3, 2011) (explaining that the NPRM contains proposals that, if adopted, would require OMB approval); Commission's Ex Parte Rules and Other Procedural Rules, *Final Rule and Announcement of Effective Date*, *id.* at 30551 (May 26, 2011) (announcing OMB approval for and the effective date of new rules that were adopted by the Commission on February 1, 2011); Wireless E911 Location Accuracy Requirements, *Final Rule and Announcement of Effective Date*, *id.* at 23713 (Apr. 28, 2011) (announcing OMB approval for and the effective date of new rules that were adopted by the Commission on September 23, 2010).

is based on unforeseen circumstances. In addition, consistent with the Commission's procedures for undue burden determinations in the closed-captioning context, the Commission should adopt a blanket waiver for stations with pending waiver requests.²⁶

IV. STATIONS THAT QUALIFY FOR THE SAFE HARBOR SHOULD NOT BE REQUIRED TO DEMONSTRATE COMPLIANCE ON A PER-COMMERCIAL BASIS.

The Commission properly recognizes the “subjective nature” of consumers’ perceived loudness for television commercials.²⁷ While ATSC A/85 Annex J is a positive step forward in enabling television broadcast stations to control the loudness of commercials, there remain a number of variables outside their control that could cause a consumer to complain about a perceived loud commercial, even though the station’s practices are fully compliant with Annex J. For example, many television receivers and home theater systems offer a variety of digital signal processing presets — such as “movie,” “sports,” and “music” modes — with varying dynamic ranges that may affect how a consumer perceives the loudness of a commercial. When a consumer selects the maximum dynamic range mode, the receiver will then produce very soft and very loud audio. An explosion will be loud, and whispers will be soft. A commercial featuring racing cars that is right after a whispering conversation may seem relatively loud, even if over the duration of the commercial the loudness was the same as the loudness over the duration of the program.

²⁶ See 47 C.F.R. § 79.1(f)(11).

²⁷ NPRM at ¶ 3.

As a result, it is impossible to know what complaints and consumer inquiries regarding “loud” commercials stem from variations in the implementation and use of dialnorm, as opposed to the consumer’s receiver settings, home theater configuration, or other subjective factors.

Given the potentially high risk of consumer complaints that are false positives, stations that rely on the statutory safe harbor — including stations that implement a commercially reasonable process with respect to content provided by third-party programming providers — should not have to demonstrate compliance on a per commercial basis. Rather, if the Commission has launched an investigation into the station’s practices by notifying the station using the contact information provided in existing records,²⁸ the station should be permitted to demonstrate compliance by explaining the commercially reasonable process that it has taken to ensure compliance with Annex J. Specifically, documentation proving that equipment has been installed or rented, that this equipment is used in the normal course of business, that the station has entered into contracts with third-party programming providers to ensure compliance and has performed periodic quality control tests, and that the equipment is regularly maintained and calibrated should be sufficient. If the Commission concludes that there are any flaws in the station’s process (e.g., malfunctioning equipment was not repaired within 60 days), then the station should explain the steps that it will take to correct its process or represent that such steps have been taken.

²⁸ Stations should not be required to designate a specific contact person to receive loud commercial complaints. It is unnecessary to have a specific person named when there is not a direct interaction with the consumer.

V. THE COMMISSION MUST FOLLOW NOTICE-AND-COMMENT RULEMAKING PROCEDURES WHEN ADOPTING A SUCCESSOR RECOMMENDED PRACTICE.

Pursuant to the APA, the Commission must follow notice-and-comment rulemaking procedures when adopting a successor recommended practice. The NPRM suggests that the agency is excused from following the notice-and-comment procedures under the APA's "good cause" exception.²⁹ However, this exception is unavailable here.

The D.C. Circuit has long held that the "good cause" exception is to be "narrowly construed and only reluctantly countenanced."³⁰ The exception is not an "escape clause"; its use "should be limited to emergency situations."³¹ The "unnecessary" prong of the exception is especially limited. The Attorney General's Manual on the APA explains that the term "[u]nnecessary" refers to the issuance of a minor rule in which the public is not particularly interested.³² And the courts have concluded that its use is "confined to those situations in which the administrative rule is a routine determination, insignificant in nature and impact, and inconsequential to the industry and to the public."³³

In some cases, the adoption of a successor recommended practice might not be "insignificant in nature and impact" or "inconsequential to the industry." For example, a

²⁹ NPRM at ¶ 13 n. 58.

³⁰ *Tennessee Gas Pipeline Co. v. FERC*, 969 F.2d 1141, 1144 (D.C. Cir. 1992) (quoting *New Jersey v. EPA*, 626 F.2d 1038, 1045 (D.C. Cir. 1980)).

³¹ *American Fed'n of Gov't Employees v. Block*, 655 F.2d 1153, 1156 (D.C. Cir. 1981).

³² Attorney General's Manual at 31.

³³ *South Carolina v. Block*, 558 F. Supp. 1004, 1016 (D.S.C. 1983) (internal quotations omitted); see also *Texaco, Inc. v. FPC*, 412 F.2d 740, 743 (3d Cir. 1969); *Utility Solid Waste Activities Group v. EPA*, 236 F.3d 749 (D.C. Cir. 2001) (rejecting the EPA's reliance on the "unnecessary" prong of the good cause exception to correct a clerical error).

successor recommended practice that adds a small quality improvement could require the installation of new or modified — potentially costly — equipment, and stations that have installed equipment that complies with an earlier version of ATSC A/85 may need to seek waivers under either the financial hardship provision or pursuant to section 1.3 of the Commission’s rules. And as the NPRM itself illustrates, A/85 and successor recommended practices may raise issues of *interpretation* that could have a significant impact on industry practices and that are best worked out *before* stations are required to comply. Moreover, as demonstrated in the case of this proceeding, notice and comment may be desirable to elicit information necessary to formulate and implement the new requirements and to surface unforeseen issues. This process can be undertaken and completed quite expeditiously, as the Commission did in the digital television context.

NAB also urges the Commission to clarify that the financial hardship waiver will be available for any successor to ATSC A/85. This position is supported by the text of the CALM Act, which states that such a waiver is appropriate whenever a station “demonstrates that obtaining the equipment to comply with the regulation adopted pursuant to subsection (a) would result in financial hardship,”³⁴ because the regulation adopted pursuant to subsection (a) includes any successor to ATSC A/85. This position also is supported by the public policy rationale underlying the financial hardship waiver; small businesses and small market stations are just as likely to face economic and administrative challenges in complying with successor recommended practices as they will for the current ATSC A/85 Annex J.

³⁴ CALM Act, § 2(b)(2).

* * *

As the Commission has found, solving the technical challenge of effectively controlling the loudness of television commercials is no simple matter.³⁵ NAB welcomes the opportunity to serve as a resource for the Commission as it implements the CALM Act. In the meantime, the industry will continue to work on this important issue.

Respectfully submitted,



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³⁵ NPRM at ¶ 3.