

COMMERCIAL ADVERTISEMENT LOUDNESS MITIGATION ACT

DECEMBER 14, 2009.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. WAXMAN, from the Committee on Energy and Commerce,
submitted the following

R E P O R T

together with

DISSENTING VIEWS

[To accompany H.R. 1084]

[Including cost estimate of the Congressional Budget Office]

The Committee on Energy and Commerce, to whom was referred the bill (H.R. 1084) to require the Federal Communications Commission to prescribe a standard to preclude commercials from being broadcast at louder volumes than the program material they accompany, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

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AMENDMENT

The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the “Commercial Advertisement Loudness Mitigation Act” or the “CALM Act”.

SEC. 2. RULEMAKING ON LOUD COMMERCIALS REQUIRED.

(a) **REGULATION REQUIRED.**—Within 1 year after the date of enactment of this Act, the Federal Communications Commission shall prescribe pursuant to the Communications Act of 1934 (47 U.S.C. 151 et seq.) a regulation that is limited to incorporating by reference the “Recommended Practice: Techniques for Establishing and Maintaining Audio Loudness for Digital Television” (A/85), and any successor thereto, approved by the Advanced Television Systems Committee, only insofar as such recommended practice concerns the transmission of commercial advertisements by a television broadcast station, cable operator, or other multichannel video programming distributor.

(b) IMPLEMENTATION.—

(1) **EFFECTIVE DATE.**—The Federal Communications Commission shall prescribe that the regulation adopted pursuant to subsection (a) shall become effective 1 year after the date of its adoption.

(2) **WAIVER.**—For any television broadcast station, cable operator, or other multichannel video programming distributor that demonstrates that obtaining the equipment to comply with the regulation adopted pursuant to subsection (a) would result in financial hardship, the Federal Communications Commission may grant a waiver of the effective date set forth in paragraph (1) for 1 year and may renew such waiver for 1 additional year.

(c) DEFINITIONS.—For purposes of this section—

(1) the term “television broadcast station” has the meaning given such term in section 325 of the Communications Act of 1934 (47 U.S.C. 325); and

(2) the terms “cable operator” and “multichannel video programming distributor” have the meanings given such terms in section 602 of Communications Act of 1934 (47 U.S.C. 522).

PURPOSE AND SUMMARY

H.R. 1084, the “Commercial Advertisement Loudness Mitigation Act” or the “CALM Act”, was introduced by Rep. Anna G. Eshoo (D-CA) on February 13, 2009. The legislation would require the Federal Communications Commission (FCC) to incorporate into its rules by reference the standard developed by an industry standards-setting body for moderating the loudness of commercials in comparison to accompanying video programming.

BACKGROUND AND NEED FOR LEGISLATION

The FCC has been aware of excessively loud commercial advertisements on television and radio since at least 1954.¹ The most common example is when a commercial advertisement, without any action by the consumer, becomes abruptly louder than the programming that the commercial accompanies. Many consumers find

¹ Federal Communications Commission, In the Matter of Amendment of Part 73 of the Commission’s Rules and Regulations to Eliminate Objectionable Loudness of Commercial Announcements and Commercial Continuity over AM, FM and Television Broadcast Stations, BC Docket No. 79–168, 1984 FCC LEXIS 2425 (June 27, 1984).

the disparity between the volume of the commercial and the volume of the programming disruptive and intrusive.

The FCC does not currently regulate the volume of commercial advertisements. Other countries, including Australia, Brazil, France, Israel, Russia, and the United Kingdom, have passed legislation or instituted regulations concerning the volume of commercials. Television broadcasters and multichannel video programming distributors (MVPDs) in the United States are aware of the problem, and an industry standards-setting body, the Advanced Television Systems Committee (ATSC), has developed the technical standards necessary to control variations in commercial loudness. ATSC's membership approved the "ATSC Recommended Practice: Techniques for Establishing and Maintaining Audio Loudness for Digital Television" on November 4, 2009.

LEGISLATIVE HISTORY

H.R. 1084 was introduced by Rep. Eshoo on February 13, 2009. The bill was referred to the Subcommittee on Communications, Technology, and the Internet on February 23, 2009. On June 11, 2009, the Subcommittee held a legislative hearing on H.R. 1084. The Subcommittee heard testimony from witnesses representing the Association for Maximum Service Television; the Advanced Television Systems Committee's Subgroup on Digital Television Loudness; and Consumers Union.

COMMITTEE CONSIDERATION

On October 8, 2009, the Subcommittee on Communications, Technology, and the Internet met in open markup session to consider H.R. 1084. The Subcommittee adopted an amendment in the nature of a substitute (manager's amendment) offered by Ms. Eshoo, and subsequently favorably forwarded H.R. 1084, amended, to the full Committee by a voice vote.

The full Committee met in open markup session on November 19, 2009, to consider H.R. 1084, as forwarded by the Subcommittee. The Committee adopted an amendment in the nature of a substitute (manager's amendment) offered by Ms. Eshoo. Subsequently the Committee ordered reported H.R. 1084, amended, by a voice vote.

COMMITTEE VOTES

Clause 3(b) of rule XIII of the Rules of the House of Representatives requires the Committee to list the recorded votes on the motion to report legislation and amendments thereto. A motion by Mr. Waxman to order H.R. 1084 favorably reported to the House, amended, was agreed to by a voice vote. There were no recorded votes taken during full Committee consideration and passage of H.R. 1084.

STATEMENT OF COMMITTEE OVERSIGHT FINDINGS AND RECOMMENDATIONS

In compliance with clause 3(c)(1) of rule XIII and clause (2)(b)(1) of rule X of the Rules of the House of Representatives, the oversight findings and recommendations of the Committee are reflected in the descriptive portions of this report.

NEW BUDGET AUTHORITY, ENTITLEMENT AUTHORITY, AND TAX
EXPENDITURES

Pursuant to clause 3(c)(2) of rule XIII of the Rules of the House of Representatives, the Committee finds that H.R. 1084 would result in no new budget authority, entitlement authority, or tax expenditures or revenues.

STATEMENT OF GENERAL PERFORMANCE GOALS AND OBJECTIVES

In accordance with clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the Committee's performance goals and objectives are reflected in the descriptive portions of this report.

CONSTITUTIONAL AUTHORITY STATEMENT

Under clause 3(d)(1) of rule XIII of the Rules of the House of Representatives, the Committee must include a statement citing the specific powers granted to Congress to enact the law proposed by H.R. 1084. Article I, section 8, clauses 3 and 18 of the Constitution of the United States grants the Congress the power to enact this law.

EARMARKS AND TAX AND TARIFF BENEFITS

H.R. 1084 does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9 of rule XXI of the Rules of the House of Representatives.

FEDERAL ADVISORY COMMITTEE STATEMENT

The Committee finds that the legislation does not establish or authorize the establishment of an advisory committee within the definition of 5 U.S.C. App., section 5(b).

APPLICABILITY OF LAW TO THE LEGISLATIVE BRANCH

The Committee finds that H.R. 1084 does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(b)(3) of Public Law 104-1

FEDERAL MANDATE STATEMENT

Section 423 of the Congressional Budget and Impoundment Control Act (as amended by section 101(a)(2) of the Unfunded Mandate Reform Act, P.L. 104-4) requires a statement whether the provisions of the reported bill include unfunded mandates. In compliance with this requirement the Committee adopts as its own the estimates of federal mandates prepared by the Director of the Congressional Budget Office.

COMMITTEE COST ESTIMATE

Pursuant to clause 3(d)(2) of rule XIII of the Rules of the House of Representatives, the Committee adopts as its own the cost estimate on H.R. 1084 prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

Pursuant to clause 3(c)(3) of rule XIII of the Rules of the House of Representatives and section 402 of the Congressional Budget Act of 1974, the Committee has received the following cost estimate for H.R. 1084 from the Director of the Congressional Budget Office:

DECEMBER 10, 2009.

Hon. HENRY A. WAXMAN,
Chairman, Committee on Energy and Commerce,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 1084, the CALM Act.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Matthew Pickford.

Sincerely,

DOUGLAS W. ELMENDORF.

Enclosure.

H.R. 1084—CALM Act

H.R. 1084 would require the Federal Communications Commission (FCC) to adopt, within one year, an industry-created standard capping the volume level of television commercials and equalizing the volume between advertisements and other television programming. CBO estimates that implementing H.R. 1084 would have no significant impact on the federal budget.

H.R. 1084 would impose an intergovernmental and private-sector mandate as defined in the Unfunded Mandates Reform Act (UMRA) by requiring television broadcast stations, cable operators, and other distributors of television programming to meet the proposed standard. The cost to those entities would depend on the method used to comply with the mandate. According to information from industry sources, the cost of equipment that controls the volume of programming ranges from a few thousand dollars to about \$20,000 per device. Based on information from the FCC and industry sources, CBO expects that several thousand entities would have to comply with the mandate. Because a small number of those entities are publicly owned, CBO estimates that the aggregate cost to public entities would be small and would fall below the annual threshold established in UMRA for intergovernmental mandates (\$69 million in 2009, adjusted annually for inflation). CBO estimates that the aggregate cost to private entities would total at least tens of millions of dollars, but would probably fall below the annual threshold established in UMRA for private-sector mandates (\$139 million in 2009, adjusted annually for inflation).

The CBO staff contacts for this estimate are Matthew Pickford (for federal costs), Leo Lex and Elizabeth Cove Delisle (for the state and local impact), and Amy Petz and Sam Wice (for the private-sector impact). The estimate was approved by Theresa Gullo, Deputy Assistant Director for Budget Analysis.

SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

Section 1. Short title

This Act is titled the “Commercial Advertisement Loudness Mitigation Act.”

Section 2. Rulemaking on loud commercials required

Subsection 2(a) of the bill requires the FCC to promulgate rules within one year of the date of enactment of the CALM Act. Any FCC rules must be limited to incorporating by reference the ATSC standard concerning the loudness levels of commercial advertisements accompanying any video programming shown by a television broadcast station or distributed by a MVPD. Pursuant to the Act, television broadcast stations, cable and direct broadcast satellite (DBS) operators, and other MVPDs will be required to install and maintain equipment that is compliant with the ATSC Recommended Practice. After initial installation, the Committee expects that stations and MVPDs will use commercially reasonable efforts to maintain equipment and to repair or replace malfunctioning equipment. 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 maintaining all needed equipment. Stations that fail to timely install equipment, fail to maintain it, or—in the event of a malfunction—fail to repair such equipment in a commercially reasonable and timely manner shall be subject to fines and penalties as determined by the FCC.

Subsection 2(b) of the bill requires that the rule prescribed by the FCC become effective one year after the date the FCC adopts it. It allows the FCC to grant a one-year waiver of the rule to those entities demonstrating that compliance would cause them financial hardship. The Committee intends for the FCC to interpret “financial hardship” broadly and to take into account, for example, the fact that television broadcast stations in smaller markets and smaller cable systems may face greater challenges budgeting for the purchase of equipment to comply with the Act than television broadcast stations in larger markets or larger cable systems. The FCC should not require stations or MVPDs to demonstrate that they have negative cash flow or are in receivership for bankruptcy to be eligible for a waiver based on financial hardship. The FCC may renew waivers for an additional year.

Subsection 2(c) of the bill defines the terms “television broadcast station”, “cable operator”, and “multichannel video programming distributor” as those terms have been defined elsewhere in the Communications Act of 1934.

EXPLANATION OF AMENDMENTS

An amendment in the nature of a substitute was adopted during Subcommittee consideration of H.R. 1084. The original legislation directed the FCC to prescribe a regulation prohibiting advertisements accompanying video programming from: (1) being excessively noisy or strident; (2) having modulation levels substantially higher than the accompanying program; and (3) having an average maximum loudness substantially higher than that of the accompanying program. The amended legislation requires the FCC to implement the ATSC standard on commercial loudness, to allow no more than 2 years to implement the standard, and permits the FCC to grant compliance waivers on a showing of financial hardship.

CHANGES IN EXISTING LAW MADE BY THE BILL AS REPORTED

With respect to clause 3(e) of rule XIII of the Rules of the House of Representatives, there are no changes in existing law made by the bill, as reported.

DISSENTING VIEWS

We, the undersigned Members of the Committee on Energy and Commerce, submit the following comments to express our concerns with H.R. 1084.

The Commercial Advertisement Loudness Mitigation (CALM) Act would require the Federal Communications Commission (FCC) to incorporate into its rules, by reference, the standard developed by the Advanced Television Systems Committee (ATSC) for moderating the volume of commercials in comparison to accompanying programming. While it is true that loud commercials can be a nuisance, this is not a problem that calls for Congressional action. Even though this issue is a frequent consumer complaint filed with the FCC, Americans' televisions still have volume control and remote controls still have "mute" buttons. Consumers do not need the government to come into their homes and operate their remote controls for them.

Furthermore, the issue of commercial volume is much more complex than it seems. Many entities are responsible for producing and distributing the content consumers see and hear. Different advertisers produce the various commercials. Different programmers produce the various shows. Different broadcast affiliates, broadcast networks, and cable and satellite companies then transmit the content. Each element may be recorded and provided to the broadcaster or cable or satellite operator at a different volume level. Moreover, shows and movies have a dynamic sound range to cover everything from rustling leaves in a peaceful lakeside moment to explosions in an action-packed chase scene. Commercials, meanwhile, tend to have a narrow sound range. Volume levels are typically set for the programming, which can distort the volume of commercials.

The technical challenges presented by these facts are significant, but with the transition to digital television, industry has responded and has attempted to solve this problem on its own. On Nov. 5, 2009, the ATSC announced the approval of the "ATSC Recommended Practice: Techniques for Establishing and Maintaining Audio Loudness for Digital Television." The Recommended Practice (RP) provides guidance to broadcasters and creators of audio for high-definition or standard-definition television content, and also recommends production, distribution, and transmission practices needed to provide the highest quality audio soundtracks to the digital television audience. The document focuses on audio measurement, production and postproduction monitoring techniques, and methods to control loudness for content delivery or exchange.

While Ms. Eshoo should be applauded for engaging industry and for amending her bill to acknowledge industry's work, this legislation is now entirely unnecessary. We therefore believe there is no reason for Congressional intervention, and oppose the bill.

JOE BARTON,
Ranking Member.
JOHN SHADEGG.
JOE PITTS.
MICHAEL C. BURGESS.
MARSHA BLACKBURN.
SUE MYRICK.
PHIL GINGREY.
LEE TERRY.
ROY BLUNT.
JOHN SHIMKUS.
FRED UPTON.
RALPH M. HALL.
GEORGE RADANOVICH.

