



Nonprofit Publisher
of Consumer Reports

“H.R.1084, The Commercial Advertisement Loudness Mitigation Act (CALM);
H.R.1147, The Local Community Radio Act Of 2009; and H.R.1133, The Family
Telephone Connection Protection Act Of 2009”

Testimony
of

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Subcommittee on Communications, Technology and the Internet

On

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Chairman Boucher, Ranking Member Stearns and esteemed members of the Committee, thank you for the opportunity to testify before you, for the first time, on behalf of Consumers Union, the non-profit publisher of *Consumer Reports*.¹ In addition to fighting for consumers in Washington, D.C., we also provide unbiased advice and educational materials to assist consumers in making marketplace decisions through our magazine and online products.

While I am here to offer consumer viewpoints on the H.R. 1084, the Commercial Advertisement Loudness Mitigation (CALM) Act, I would be remiss if I did not also take this opportunity to highlight Consumers Union's support of the Local Community Radio Act. The current cost of starting up an FM radio station is close to \$2.5 million.² This financial hurdle often places station licenses outside the reach of local hands, at a time when consumers are craving access to more local media. Efforts to support the LPFM bill are efforts to support the families, workers, and places of worship that serve as the anchors in our communities.

The CALM Act, introduced by Representative Eshoo, addresses a widespread consumer complaint: the abrupt loudness of television advertisements. Representative Eshoo's legislation will go a long way towards preventing advertisements from screaming at consumers in their own living rooms. Specifically, the Act would enable the Federal Communications Commission (FCC) to monitor the volume of advertisements in television programming and determine acceptable levels. This would ensure that the volume levels of commercial breaks are consistent with the volume level of the programming which it brackets.

¹ Consumers Union is a nonprofit membership organization chartered in 1936 under the laws of the State of New York to provide consumers with information, education and counsel about goods, services, health, and personal finance. Consumers Union's income is solely derived from the sale of *Consumer Reports*, its other publications and from noncommercial contributions, grants and fees. In addition to reports on Consumers Union's own product testing, *Consumer Reports* regularly carries articles on health, product safety, marketplace economics and legislative, judicial and regulatory actions that affect consumer welfare. Consumers Union's publications carry no advertising and receive no commercial support.

² See Sect, 2 (5) of H.R. 1147.

For years consumers have noticed that when a television program cuts to commercial breaks, the volume of the television suddenly rises to a shout, far beyond the average level of the TV program it follows. Are advertisers trying to scare consumers into remembering their products? Are they worried viewers may step outside and want to make sure their ad can be heard on the way to the garage or the mailbox? Although the answers to solving this problem can be somewhat technical, we are confident the FCC can find a measured approach to addressing this long held consumer gripe.

The abrupt, sometimes shocking, change in volume during advertisements is not a new phenomenon. Consumer complaints about loud commercials began streaming into the FCC in the 1960's.³ At that point the agency contended that there was no way to measure the volume level of commercials, but did conclude loud commercials were contrary to the public interest and should be avoided.⁴ Throughout the next two decades, the Commission launched several fact finding proceedings, ultimately concluding that although the technology to measure the volume of commercials was later developed, the perceived loudness of commercials is subjective and varies from listener to listener. In 1984, the FCC commented, "As more is learned about loudness, it is likely that more sophisticated control devices will be developed and used by broadcasters. Such actions should begin to eliminate complaints of objectionable loudness."⁵

Twenty five years later, complaints continue to flood the Commission. In fact, in 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.⁶ We believe this widespread consumer issue, which has spanned forty five years is a result of more than just the arbitrary, or subjective, perception of consumers.

³ Federal Communications Commission. See *Notice of Inquiry*, Docket No. 14904, 27 Fed. Reg. 12681, published December 21, 1962.

⁴ Federal Communications Commission. See *Notice of Inquiry, Amendment to 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*. 72 F.C.C. 2d 677 [3] (1979).

⁵ Federal Communications Commission. See *Memorandum Opinion and Order, Amendment to 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*. 56 Rad. Reg. 2d (P & F) 390. (1984).

⁶ To view the FCC's Quarterly Inquiries and Complaints Reports, visit <http://www.fcc.gov/cgb/quarter/>.

Rather, it is a real consumer grievance that deserves a new approach in the new era of digital communications.

The current FCC guidance regarding loud commercials mostly points consumers toward equipment they can purchase to stabilize the volume during the transitions to commercials.⁷ However, not every consumer can afford to purchase TV sets with “smart sound”, nor should they have to. Advertisers simply do not have a right to scream at consumers in their living rooms and consumers should not have to pay to experience peace and quiet in the sanctity of their own home.

In the new world of digital broadcasting, the CALM Act appropriately instructs the expert federal agency to adopt a national standard for commercials, which require their volume not be any louder than the average level of the programs they accompany. There are several complexities that accompany this action by the agency. In particular, there are differences in the compressed audio levels of television show and commercials. While the audio of a television show usually matches natural sound more closely, the audio of a commercial has less distinction between loud and soft sounds, resulting in everything seeming louder. We recommend the FCC focus in on this question and develop an approach consistent with the 1979 Notice of Inquiry. In the Notice, the FCC concedes that a dynamic range of volume levels are desirable with regard to broadcasting content, but at some point the amount of deviation from the average audio levels begins to conflict with the “public’s sensibilities”.⁸

Placing a national standard on the loudness of commercials is not without precedent. In fact, the Library of Congress has noted that legislation addressing this matter has already been adopted in Australia, Brazil, France, Israel, Russia and the United Kingdom. Additionally, the International Telecommunications Union (ITU) has adopted standards that offer guidance to measuring the

⁷ Federal Communications Commission. Consumer & Governmental Affairs Bureau. *FCC Consumer Facts: Program Background Noise and Loud Commercials*. <http://www.fcc.gov/cgb/consumerfacts/backgroundnoise.html>

⁸ *Notice of Inquiry, Amendment to 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*. 72 F.C.C. 2d 677 [12] (1979).

audio program loudness.⁹ In particular, it is worth highlighting that Free TV Australia, a trade group representing the free over-the-air television broadcast license holders, has written additional technical guidance with regard to the audio level of commercial advertisements.¹⁰ This guidance is designed to assist broadcasters in complying with requirements that advertisements not be noisy or “excessively strident.”¹¹

In conclusion, the CALM Act provides an elegant and common sense solution to finally ending a forty-five year consumer complaint in the United States. It requires that advertisements during a program should not be any louder than the loudest moment of that program, nor should those peak volumes be sustained throughout the advertisement.

Consumers Union endorses the CALM Act as a solid step towards protecting consumers from unduly loud television advertisements, commends Representative Eshoo for championing the legislation and urges lawmakers to bring this measure forward.

⁹ Soares, Eduardo. Foreign Law Specialist, Library of Congress. Memo to the Honorable Anna Eshoo, Re: *Volume of TV Commercial Advertisements*. June 26, 2008.

¹⁰ Available at <http://www.freetv.com.au/Content/Common/pg-CAD-Operational-Practices.seo> (click on Op 48).

¹¹ Australia’s Commercial Television Code of Practice; Sections 1.11–1.13. Available at http://www.acma.gov.au/webwr/aba/contentreg/codes/television/documents/comm_tv_industry_cop-060907.pdf