

Calendar No. 625

111TH CONGRESS }
2d Session }

SENATE

{ REPORT
{ 111-340

COMMERCIAL ADVERTISEMENT LOUDNESS
MITIGATION ACT

R E P O R T

OF THE

COMMITTEE ON COMMERCE, SCIENCE, AND
TRANSPORTATION

ON

S. 2847



SEPTEMBER 29, 2010.—Ordered to be printed

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SENATE COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

ONE HUNDRED ELEVENTH CONGRESS

SECOND SESSION

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SEPTEMBER 29, 2010.—Ordered to be printed

Mr. ROCKEFELLER, from the Committee on Commerce, Science, and
Transportation, submitted the following

REPORT

[To accompany S. 2847]

The Committee on Commerce, Science, and Transportation, to which was referred the bill (S. 2847) to regulate the volume of audio on commercials, having considered the same, reports favorably thereon with an amendment (in the nature of a substitute) and recommends that the bill (as amended) do pass.

PURPOSE OF THE BILL

The purpose of the Commercial Advertisement Loudness Mitigation Act, S. 2847, as reported, is to 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 NEEDS

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 sudden disparity between the volume of the commercial and the

¹Federal 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).

volume of the programming disruptive and intrusive. The FCC does not currently regulate the volume of commercial advertisements. Television broadcasters and multichannel video programming distributors (MVPDs) in the United States are aware of the problem. A non-profit organization that develops international standards for digital television, the Advanced Television Systems Committee (ATSC), has developed the technical standards necessary to control variations in commercial loudness. These standards, the “ATSC Recommended Practice: Techniques for Establishing and Maintaining Audio Loudness for Digital Television,” were approved by ATSC’s membership on November 4, 2009.

SUMMARY OF PROVISIONS

S. 2847 would require the FCC, within one year of enactment of the bill, to prescribe a regulation limited to incorporating by reference the ATSC report “ATSC Recommended Practice: Techniques for Establishing and Maintaining Audio Loudness for Digital Television.” In addition, the bill would provide for a process at the FCC to provide waivers to television broadcast stations, cable operators, or other multichannel video programming distributors for whom complying would entail a financial hardship.

LEGISLATIVE HISTORY

S. 2847 was introduced by Senator Whitehouse and Senator Schumer on December 8, 2009. The Senate Committee on Commerce, Science, and Transportation reported S. 2847 favorably, as amended, on June 9, 2010. The Committee approved a substitute amendment from Senator Rockefeller that makes minor technical adjustments regarding the availability of waivers.

ESTIMATED COSTS

In accordance with paragraph 11(a) of rule XXVI of the Standing Rules of the Senate and section 403 of the Congressional Budget Act of 1974, the Committee provides the following cost estimate, prepared by the Congressional Budget Office:

JULY 2, 2010.

Hon. JOHN D. ROCKEFELLER IV,
Chairman, Committee on Commerce, Science, and Transportation,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for S. 2847, the CALM Act.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Susan Willie, who can be reached at 226–2860.

Sincerely,

DOUGLAS W. ELMENDORF.

Enclosure.

S. 2847—CALM Act

S. 2847 would require the Federal Communications Commission (FCC) to adopt, within one year of enactment, 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 S. 2847 would have no significant effect on the federal budget. Enacting S. 2847 would not affect direct spending or revenues; therefore, pay-as-you-go procedures would not apply.

S. 2847 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 (\$70 million in 2010, 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 (\$141 million in 2010, adjusted annually for inflation).

On December 9, 2009, CBO transmitted a cost estimate for H.R. 1084, the CALM Act, as ordered reported by the House Committee on Energy and Commerce on November 19, 2009. The two bills are similar and the CBO cost estimates are the same.

The CBO staff contacts for this estimate are Susan Willie (for federal costs), 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 Peter H. Fontaine, Assistant Director for Budget Analysis.

REGULATORY IMPACT STATEMENT

In accordance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee provides the following evaluation of the regulatory impact of the legislation, as reported:

NUMBER OF PERSONS COVERED

S. 2847 would affect television broadcast stations, cable operators and other multichannel video programming distributors.

ECONOMIC IMPACT

S. 2847 would not have a significant impact on the nation's economy. CBO estimates that the aggregate cost to private entities would total at least tens of millions of dollars but would probably be less than \$140 million annually.

PRIVACY

S. 2847 is not expected to have an adverse effect on the personal privacy of any individuals that will be affected by this legislation.

PAPERWORK

S. 2847 would have minimal or no impact on current paperwork levels.

CONGRESSIONALLY DIRECTED SPENDING

In compliance with paragraph 4(b) of rule XLIV of the Standing Rules of the Senate, the Committee provides that no items contained in the bill, as reported, meet the definition of congressionally directed spending items under the rule.

SECTION-BY-SECTION ANALYSIS

Section 1. Short title

This section would provide that the legislation may be cited as the Commercial Advertisement Loudness Mitigation Act.

Section 2. Rulemaking on loud commercials required

Subsection 2(a) of the bill would require the FCC to promulgate rules within one year of the date of enactment of S. 2847. Any FCC rules must be limited to incorporating by reference the ATSC standard “ATSC Recommended Practice: Techniques for Establishing and Maintaining Audio Loudness for Digital Television” 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 bill, television broadcast stations, cable and direct broadcast satellite (DBS) operators, and other MVPDs would 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.

Section 2(b) of the bill would require that the rule prescribed by the FCC become effective one year after the date the FCC adopts it. It would allow 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 bill 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 one additional year. This section of the bill also would clarify that nothing in this section affects the FCC’s authority under section 1.3 of its rules (47 CFR 1.3) to waive any rule

required by the bill, or the application of any such rule, for good cause shown to a television broadcast station, cable operator, or other MVPD, or to a class of such stations, operators, or distributors.

Section 2(c) of the bill would define 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.

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, the Committee states that the bill as reported would make no change to existing law.

