

118TH CONGRESS
1ST SESSION

S. 1127

To amend the CALM Act to include video streaming services, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MARCH 30, 2023

Mr. WHITEHOUSE (for himself, Ms. DUCKWORTH, and Mr. BLUMENTHAL) introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

A BILL

To amend the CALM Act to include video streaming services, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Commercial Advertise-
5 ment Loudness Mitigation Modernization Act of 2023” or
6 the “CALM Modernization Act of 2023”.

1 **SEC. 2. MODERNIZATION OF THE CALM ACT AND RULE-**
2 **MAKING ON LOUD COMMERCIALS ON**
3 **STREAMING VIDEO.**

4 (a) AMENDMENTS.—The CALM Act (Public Law
5 111–311; 124 Stat. 3294) is amended—

6 (1) in section 2 (47 U.S.C. 621)—

7 (A) by striking “Federal Communications
8 Commission” each place the term appears and
9 inserting “Commission”;

10 (B) by striking subsection (c) and insert-
11 ing the following:

12 “(c) COMPLIANCE.—

13 “(1) REBUTTABLE PRESUMPTION.—There is a
14 rebuttable presumption that any television broadcast
15 station, cable operator, or other multichannel video
16 programming distributor that installs, uses, and
17 maintains in a commercially reasonable manner the
18 equipment and associated software in compliance
19 with the regulations issued by the Commission in ac-
20 cordance with subsection (a) is in compliance with
21 those regulations.

22 “(2) FACTORS TO DETERMINE REBUTTAL.—In
23 determining whether the presumption of compliance
24 under paragraph (1) has been rebutted with respect
25 to a television broadcast station, cable operator, or

1 other multichannel video programming distributor,
2 the Commission shall consider the following:

3 “(A) The number of complaints regarding
4 loud commercials the Commission has received
5 with respect to that station, operator, or other
6 distributor.

7 “(B) Substantive patterns or trends from
8 complaints on loud commercials the Commis-
9 sion has received.

10 “(C) Data and conclusions in any report
11 issued by a Federal agency (including the Gov-
12 ernment Accountability Office) regarding the
13 effectiveness of this Act in moderating the loud-
14 ness of commercials in comparison with accom-
15 panying video programming.

16 “(D) Any other factor established by the
17 Commission by regulation.”; and

18 (C) in subsection (d)—

19 (i) by redesignating paragraph (1) as
20 paragraph (3) and moving it to appear
21 after paragraph (2);

22 (ii) in paragraph (3), as so redesign-
23 ated, by striking “; and” at the end and
24 inserting a period;

1 (iii) by redesignating paragraph (2) as
2 paragraph (1);

3 (iv) in paragraph (1), as so redesign-
4 nated—

5 (I) by striking “multi-channel”
6 and inserting “multichannel”; and

7 (II) by striking the period at the
8 end and inserting a semicolon; and

9 (v) by inserting after paragraph (1),
10 as so redesignated, the following:

11 “(2) the term ‘Commission’ means the Federal
12 Communications Commission; and”;

13 (2) by adding at the end the following:

14 **“SEC. 3. RULEMAKING ON LOUD COMMERCIALS ON**
15 **STREAMING VIDEO.**

16 “(a) RULEMAKING REQUIRED FOR LOUD STREAM-
17 ING VIDEO COMMERCIALS.—

18 “(1) IN GENERAL.—Not later than 1 year after
19 the date of enactment of this section, the Commis-
20 sion shall prescribe pursuant to the Communications
21 Act of 1934 (47 U.S.C. 151 et seq.) a regulation
22 that prohibits video streaming services from trans-
23 mitting the audio of commercial advertisements
24 louder than the video content the advertisements ac-

1 company in a manner that is similar in effect to the
2 regulation prescribed under section 2.

3 “(2) REBUTTABLE PRESUMPTION.—In pre-
4 scribing the regulation under paragraph (1), the
5 Commission may include a rebuttable presumption
6 provision that is similar to the rebuttable presump-
7 tion under section 2(c) if it is practicable and war-
8 ranted for effective enforcement of this section.

9 “(3) EFFECTIVE DATE.—Except as provided in
10 paragraph (4), the regulation required under para-
11 graph (1) shall take effect 180 days after the date
12 on which the regulation is published in the Federal
13 Register.

14 “(4) EXTENSION OF EFFECTIVE DATE.—The
15 Commission may extend the effective date described
16 in paragraph (3) for 1 year for any video streaming
17 service that demonstrates that complying with the
18 regulation would result in significant financial hard-
19 ship.

20 “(5) UPDATES.—The Commission shall update
21 the regulation prescribed under paragraph (1) as
22 necessary.

23 “(b) DEFINITIONS.—In this section:

24 “(1) COMMISSION.—The term ‘Commission’
25 means the Federal Communications Commission.

1 “(2) VIDEO PROGRAMMING.—The term ‘video
2 programming’ has the meaning given the term in
3 section 713(h) of the Communications Act of 1934
4 (47 U.S.C. 613(h)).

5 “(3) VIDEO STREAMING SERVICE.—The term
6 ‘video streaming service’—

7 “(A) means an entity that makes available
8 directly to the end user through a distribution
9 method that uses internet protocol—

10 “(i) video programming; or

11 “(ii) video content the entity makes
12 available for users to view; and

13 “(B) does not include—

14 “(i) a television broadcast station,
15 cable operator, or other multichannel video
16 programming distributor (as those terms
17 are defined in section 2(d)), only with re-
18 spect to commercial advertisements and
19 video programming subject to section 2; or

20 “(ii) an entity that serves video pro-
21 gramming or video content that is served
22 without video commercial advertisements.

23 **“SEC. 4. ENFORCEMENT.**

24 “(a) IN GENERAL.—The Federal Communications
25 Commission shall implement and enforce this Act as if this

1 Act were a part of the Communications Act of 1934 (47
2 U.S.C. 151 et seq.).

3 “(b) VIOLATIONS.—A violation of this Act, or a regu-
4 lation promulgated under this Act, shall be considered to
5 be a violation of the Communications Act of 1934, or a
6 regulation promulgated under that Act, respectively.

7 “(c) NO CITATION REQUIRED.—Paragraph (5) of
8 section 503(b) of the Communications Act of 1934 (47
9 U.S.C. 503(b)) shall not apply to a determination of for-
10 feiture liability under that subsection against a person who
11 commits a violation described in subsection (b) of this sec-
12 tion.”.

13 (b) GAO REPORT ON CALM ACT ENFORCEMENT.—

14 (1) IN GENERAL.—Not later than 180 days
15 after the date of enactment of this Act, the Comp-
16 troller General of the United States shall submit to
17 the Committee on Commerce, Science, and Trans-
18 portation of the Senate and the Committee on En-
19 ergy and Commerce of the House of Representatives
20 a report on section 2 of the CALM Act (47 U.S.C.
21 621), as amended by subsection (a), that—

22 (A) analyzes the effectiveness of that sec-
23 tion in moderating the loudness of commercials
24 in comparison to accompanying video program-
25 ming;

1 (B) evaluates the ability of the Federal
2 Communications Commission to effectively mod-
3 erate the loudness of commercials in compari-
4 son to accompanying video programming under
5 subsection (c) of that section; and

6 (C) as appropriate, recommends policy so-
7 lutions that would enable better moderation of
8 the loudness of commercials in comparison to
9 accompanying video programming.

10 (2) VIDEO PROGRAMMING DEFINED.—In this
11 subsection, the term “video programming” has the
12 meaning given the term in section 713(h) of the
13 Communications Act of 1934 (47 U.S.C. 613(h)).

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