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March 6, 2008

The Honorable Kevin J. Martin
Chairman
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: *Ex Parte* Submission, MB Docket No. 07-148

Dear Chairman Martin:

Thank you for meeting with Gary Shapiro, President and CEO, Brian Markwalter, Vice President, Technology and Standards, and the undersigned, all of the Consumer Electronics Association (“CEA”), on March 5, 2008.

We appreciated the opportunity to discuss with you, Michelle Carey, Senior Legal Advisor, and Monica Desai, Chief, Media Bureau CEA’s concerns about the timing for implementation of the DTV notice requirement for manufacturers, as required in the recent DTV Consumer Education Initiative Order.¹ We also expressed concerns about the scope of products that are covered in the Order,² but discuss these in more detail herein.

CEA respectfully requests that the Commission, on its own motion, grant to manufacturers the same time period for implementation of the notice requirement that is required of MVPDs. Pursuant to the Order, “MVPDs must begin including these monthly notices to consumers 30 days after the effective date of the rules and must continue including them monthly through March 2009.”³ Because manufacturing and shipping cycles are implicated by this Order, it is imperative that manufacturers have sufficient advance notice in order to configure machinery along the production chain. The implementation date, and any subsequent enforcement, therefore, should reflect and focus only on compliance as of the date of manufacture. Without sufficient lead-time, manufacturers risk being out of compliance with the new rules the day that they become effective because products may be in different phases of the manufacturing process prior to shipping. Manufacturers simply cannot risk facing costly enforcement actions when a reasonable period for preparation could have facilitated compliance.

¹ *DTV Consumer Education Initiative*, MB Docket 07-148, Report and Order (rel. March 3, 2008), at para. 46.

² *See id.*, at para. 47.

³ *Id.*, at para. 38.

CEA remains concerned about the overly broad scope of products that are implicated by the Order. On May 24, 2007, Chairman Dingell and Chairman Markey expressed in a letter to the Chairman and Commissioners that the FCC “require manufacturers to include information with television receivers and related devices about the transition ...”⁴ According to the Order, if taken literally, the new rules would even apply to flash memory devices (such as USB and SD Memory Cards) and to PCs, as some TVs now have USB or SD card and ethernet ports. It would appear to apply to camcorders, personal computers, iPods, and home theater systems. Notifying consumers of the DTV transition in regard to devices that do not have a digital tuner not only would be confusing to consumers, but also violates the ruling of the DC Court of Appeals regarding the scope of Commission authority over devices.⁵

In order to clarify the scope of products included in the rule and to avoid consumer and manufacturer confusion, CEA urges the Commission, on its own motion, to include only those devices over which it has jurisdiction and which have TV reception capability. CEA recommends that the scope of devices only should include those that are covered by the FCC’s “tuner mandate” rules, as described in Section 15.117 of the FCC’s rules. These devices are:

“[N]ew TV broadcast receivers and other video devices (videocassette recorders (VCRs), digital video recorders such as hard drive and DVD recorders, etc.) that receive television signals. The requirement to include digital television reception capability in new TV broadcast receivers does not apply to devices such as mobile telephones and personal digital assistants where such devices do not include the capability to receive TV service on the frequencies allocated for broadcast television service.”⁶

This clarification of scope is fully consistent with the request from Chairman Dingell and Chairman Markey.

⁴ Letter from the Honorable John D. Dingell, Chairman of the Committee on Energy and Commerce, and the Honorable Edward J. Markey, Chairman of the Subcommittee on Telecommunications and the Internet, U.S. House of Representatives, to the Honorable Kevin J. Martin, Chairman, the Honorable Michael J. Copps, Commissioner, the Honorable Jonathan S. Adelstein, Commissioner, the Honorable Deborah Taylor Tate, Commissioner, and the Honorable Robert M. McDowell, Commissioner, Federal Communications Commission, received May 24, 2007, at p. 3.

⁵ *American Library Ass’n v. FCC*, 406 F.3d 689, 704, (D.C. Cir 2005). The Court stated that: “In sum, we hold that, at most, the Commission only has general authority under Title I to regulate apparatus used for the receipt of radio or wire communication while those apparatus are engaged in communication.”

⁶ See 47 C.F.R. § 15.117 (2007).

Assuming the issue of scope is clarified, CEA recommends that the Commission adopt uniform language for manufacturers to use in order to prevent consumer confusion and to provide clarity for manufacturers. Commission rules no longer allow the shipping in interstate commerce of devices containing analog-only tuners; therefore, the notice requirement can and should apply only to devices with digital tuners. Therefore, CEA recommends that the Commission adopt the following language on its own motion:

“This device contains a digital television tuner so it can receive free, over-the-air digital television broadcasts. When the U.S. transitions to all-digital broadcasting on February 17, 2009 (as required under Federal law), this device will continue to work. For more information, visit www.dtv2009.gov or call 1-888-388-2009 (1-888-DTV-2009).”

CEA and its members have been leaders in educating consumers about the DTV transition. Our commitment to continue these award-winning efforts remains steadfast. In order to continue providing consumers with the most accurate and timely information, CEA respectfully requests that the Commission provide immediate clarity on the above issues.

Respectfully submitted,

/s/ Julie M. Kearney

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cc: The Honorable Kevin J. Martin
The Honorable Michael J. Copps
The Honorable Jonathan S. Adelstein
The Honorable Deborah Taylor Tate
The Honorable Robert M. McDowell
Ms. Michelle Carey
Ms. Monica Desai
Ms. Marlene Dortch, Secretary (for filing in MB Docket 07-148)