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March 10, 2008

**VIA ELECTRONIC FILING**

Ms. Marlene Dortch, Secretary  
Federal Communications Commission  
445 12th Street, SW  
Washington, D.C. 20554

Re: Notice of Ex Parte Presentation, MB Docket No. 07-148

Dear Ms. Dortch:

On March 7, 2008, the undersigned had a telephone conference with respect to the above entitled matter with Monica DeLoise Gore of the Media Bureau, and on March 10, with Eloise Gore and Bureau Chief Monica Desai. The subject of each was an endorsement and elaboration, on behalf of the Consumer Electronics Retailers Coalition, of the points made in the March 6, 2008 *ex parte* letter to Chairman Martin from Julie Kearney of the Consumer Electronics Association. This letter referred to a discussion that included Gary Shapiro, President and CEO of CEA, and Chairman Martin and Legal Advisor Michelle Carey.

**Effective Date.** In the telephone conferences, the undersigned stressed the importance of CEA's point that an Effective Date that provides some time for compliance is necessary in order for manufacturers to comply. CEA further noted that to be equivalent to the period given to MVPDs (30 days from OMB approval publication), a manufacturer would need to be given this period to arrange the printing and "stuffing" of the notices into sealed product boxes before they leave the factory.

The undersigned stressed the importance of focusing, as CEA proposes, both obligation and enforcement on the date that the product is packed and sealed at the factory for shipment. Otherwise, a product that has already left an overseas factory, prior to the Effective Date, could become subject to this provision while on board ship or awaiting entry into U.S. Customs. This point is of vital concern to CERC members in their capacity as the "responsible party" for private label goods and some other products, in which they "stand in the shoes" of the manufacturer, and thus are held responsible for FCC compliance as of the date of manufacture or importation.

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**Scope of Product Coverage.** The undersigned expressed that CERC, in its capacity as representing such “responsible parties,” also endorses CEA’s concern over the potentially boundless scope of the regulation as released. Moreover, in their capacity as retailers, CERC members are concerned about the potential for consumer confusion. The undersigned made these points:

- It is unclear what is meant by a device that is a “related device” to a TV receiver, or in what sense a device should be considered “dependent” on a TV receiver. One example mentioned – a “DVD player” – appears not to depend in any way on whether a TV receiver includes a digital tuner or not. Is a manufacturer therefore justified in including a notice that says, “this product is not affected by the transition to digital television in any way?” If so, where can one draw the line as to products that would have to have such a notice included? If not, how exactly *is* such a product dependent on whether a TV receiver has a digital tuner?
- CERC members are concerned that in this environment, notices that are left to manufacturer discretion, with no specific “safe harbor” per product, could heighten rather than reduce consumer confusion. As only one example, in the case noted above, twelve different DVD player manufacturers could pack twelve different notices, from different perspectives, as to whether the Transition might affect this product and how, and could even reach opposite conclusions. Which, if any, would be penalized as non-compliant? Equally important, if all are different, whose should be trusted by consumers?
- CERC agrees with CEA that congressional intent, as well as the Commission’s delegated and ancillary authority, would be best served by an obligation, and a standard notice, limited to “television receivers.” If, however, other products are to be covered, the coverage should be clearly and specifically defined, and an acceptable “safe harbor” message should be indicated for each product. If the intent is more general, rather than focused on specific products, there should be a more general “safe harbor” message for use with any and all products, once the product scope has been defined.

**Implementation.** The undersigned suggested that if CEA’s “date of manufacture” recommendation is accepted, paragraph 15.124(c), as released, would become entirely redundant because law and regulation already define the parties responsible for Part 15 compliance. Hence, this paragraph should be omitted. In any event, from strictly a retailer’s point of view, this paragraph’s separate references to both “import” and “ship interstate” are potentially highly misleading. These references could be read as focusing enforcement on subsequent importation and interstate distribution, rather than on compliance at the time of manufacture. Any such implication would face retailers with a regime that is impossible for them to implement, or for the FCC to enforce, as there would be no way to ascertain whether a factory-sealed box, identical to thousands or tens of thousands manufactured prior to the

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Effective Date, is subject to this regulation. (Opening a factory-sealed product prior to retail sale may impact a retailer's ability to sell the product as new.)

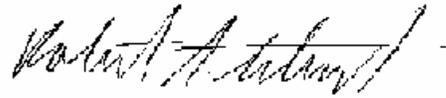
While the undersigned would not interpret these references as applying in any such absurd context, retailers should not be faced with holding up the distribution of products – including DTV Converters – that consumers need and want, out of concern that such an obligation could apply. Moreover, there would be the prospect of inconsistent, even contradictory, messaging stuffed into boxes – one by the manufacturer, one by the importer, one by the distributor, one by the retailer. Clearly this was not what the Commission intended.

The undersigned suggested that this circumstance can be avoided by omitting section 15.124(c) and relying on the existing, ample, law and regulation as to the obligations of “responsible parties” under Part 15. For example, once the product scope has been defined by the FCC, the manufacturer or other responsible party could, upon manufacture or importation, make a simple Declaration of Conformity, under section 2.906 of Commission rules, of compliance on the date of manufacture. There is nothing novel about this in Commission practice.

The undersigned stressed that CERC members want to work with the Commission to achieve implementation that is workable, understandable, and helpful to consumers, and that the broader the product scope, the more time may be necessary to achieve useful implementation. There is significant urgency to resolving these matters and we look forward to working with the Commission in this regard.

This letter is submitted pursuant to Section 1.1206(b)(2) of the Commission's rules to provide notice of an oral *ex-parte* presentation in the above referenced matter. Copies of the letter and the attachments are being sent by electronic mail to the meeting participants identified above.

Respectfully submitted,



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CERC Counsel

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cc: Chairman Martin  
Commissioner Copps  
Commissioner Adelstein  
Commissioner Tate  
Commissioner McDowell  
Michelle Carey  
Monica Desai  
Eloise Gore