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March 17, 2008

VIA ELECTRONIC FILING

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

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

Dear Ms. Dortch:

On March 14, 2008, the undersigned, on behalf of the Consumer Electronics Retailers Coalition (CERC), accompanied by Jennifer Blum of Drinker, Biddle & Reath, counsel to CERC member RadioShack Corporation, met separately with Michelle Carey, Legal Advisor to Chairman Martin, Rick Chessen, Legal Advisor to Commissioner Copps, Rudy Brioché, Legal Advisor to Commissioner Adelstein, and Cristina Chou Pauzé, Legal Advisor to Commissioner McDowell, and communicated by telephone with Evan Baranoff and John Gabrysch of the Media Bureau. The main purpose of the meetings was to support the proposal made in the March 6, 2008 *ex parte* letter of Julie Kearney of the Consumer Electronics Association, as amplified and elaborated upon in the March 10 *ex parte* letter of the undersigned.

On behalf of CERC and its members we represented that as written it would appear impossible to determine, for any given product, what constitutes “compliance” with the new regulation, irrespective of whether the regulation was to be effective immediately, in 30 days, or even after a much longer period. Thus we recommended the approach of requiring responsible parties to accomplish compliance at the time the product is shipped from the factory, as advocated in the referenced *ex parte* letters, as the only workable solution. Equally important, a more clearly defined and limited product scope, as urged by CEA, will facilitate compliance and enforcement.

Accordingly, we urged that new Section 15.124(c), purporting to pertain to any “shipment” by any party, needed to be eliminated or revised to reflect an approach limited to tasks within the proximate control of the party responsible as the “manufacturer.” An approach that would apply instead to all interstate shipments, whether or not from the factory, would be unworkable as applied to a new regulation made immediately effective – or even to one made effective in 30 days or even six or nine months – because identical products will have been in various stages of preparation, shipment, and storage when the regulation becomes effective.

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Moreover, such a broad application to product distribution, after manufacture, would go well beyond affixing responsibility on, and impacting the business of, the party responsible as the “manufacturer.” Thus it would go well beyond the relevant subject matter noticed for public comment in this docket.

As to product scope, we adhered to the CEA and CERC position that scope should most appropriately be limited to “TV receivers.” However, if “related devices” are to be included, we suggested that the only products that “depend” on TV receivers are (1) recording products marketed specifically for use with TVs (that are not themselves covered as TV receivers), and (2) display products that are marketed specifically as “televisions” but lack any tuner so are not covered as “TV receivers.” These products might in some cases depend on a TV receiver for acquisition of an over the air signal via antenna. By contrast a pure “player” product (DVD player, game player, *etc.*) does not, by definition, depend on a TV tuner for content; and any content sent *to* a TV tuner would be sent to the analog tuner (“channel 3”), which remains in all televisions that also have digital tuners. Similarly, a “home theater receiver” is essentially a switching and amplification device that does not tune, record, or display video content, so does not itself depend on a TV tuner for its operation.

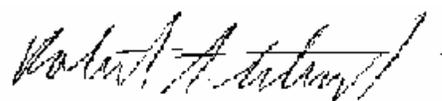
We also suggested that, while a “mandate” of specific notice language would not be appropriate, and would be inconsistent with the existing Order, a specification of some “safe harbor” language for products within the defined scope, and a listing of the covered products, would be of great benefit to manufacturers and retailers who wish to present a unified and helpful message to consumers. Toward these ends we recommended specimen “safe harbor” language, and offered to work with the Commission and with CEA to promulgate such language as co-branded guidance for the affected industries, as CERC and CEA have done in the past. A specimen of such language, as discussed in the meetings, is attached.

We stressed that CERC members want to work with the Commission to achieve implementation that is workable, understandable, and, most of all, helpful to consumers. There is significant urgency to resolving these matters and we look forward to working with the Commission to promulgate and explain the Commission’s action to retailers at large, whether or not they are CERC members.

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.

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Respectfully submitted,



Robert S. Schwartz
Constantine Cannon LLP
CERC Counsel

cc: Chairman Martin
Commissioner Copps
Commissioner Adelstein
Commissioner Tate
Commissioner McDowell
Michelle Carey
Rick Chessen
Rudy Brioché
Cristina Chou Pauzé
Evan Baranoff
John Gabrysch

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Suggested "Safe Harbor" Notices For TV Receivers And Related Products¹

A. *"Safe harbor" text for packing with a "TV receiver" (any product with an ATSC tuner):*

"Digital Television Transition Notice: This device contains a digital television tuner, so it should receive digital over the air TV programming, with a suitable antenna, after the end of full-power analog TV broadcasting in the United States on February 17, 2009. Some older television receivers, if they rely on a TV antenna, will need a TV Converter to receive over the air digital programming, but should continue to work as before for other purposes (e.g., for watching low-power TV stations still broadcasting in analog, watching pre-recorded movies, or playing video games). When a Converter is used with an older television receiver, a signal splitter might be necessary to continue to receive low-power analog broadcasts via an antenna. For more information, please see www.DTV.gov. For information on the TV Converter program, and on government coupons that may be used toward the purchase of one, see www.dtv2009.gov, or call the NTIA at 1-888-DTV-2009."

B. *"Safe harbor" text for packing with a "related product": (1) any component home entertainment video recording device designed primarily for an installed connection to a TV set (thus excluding, e.g., camcorders) and not containing its own TV tuner, and (2) any display device marketed and sold explicitly for use as a "Television" and not containing its own TV tuner (these devices might rely on the TV tuner in a "TV receiver" so might be secondarily affected by the Transition; this excludes PC monitors):*

"Digital Television Transition Notice: Full-power analog TV broadcasting in the United States will end on February 17, 2009, after which full-power TV broadcasts will be digital only. If this device is used after that date to record or display programming from a product with a TV tuner that relies on a TV antenna, that product would need to contain a digital tuner, or a TV Converter would be necessary to tune the digital signal received with a TV antenna. Analog TVs should continue to work as before for other purposes (e.g., for watching low-power TV stations still broadcasting in analog, watching pre-recorded movies, or playing video games). When a Converter is used with an older television receiver or directly with this product, a signal splitter might be necessary to continue to receive low-power analog broadcasts via an antenna. For more information, please see www.DTV.gov. For information on the TV Converter program, and on government coupons that may be used toward the purchase of one, see www.dtv2009.gov, or call the NTIA at 1-888-DTV-2009."

¹ CERC is advised that CEA endorses this text as a safe harbor as well.

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Recommended Clarifications to Report & Order Text²

The following possible clarifications to the text of the Report & Order text, to read as follows, were discussed:

D. Consumer Electronics Manufacturer Notices

46. We require that parties **responsible for the** [[that]] manufacture [[,import, or ship interstate]] **of** television receivers and devices designed to work with television receivers (including digital-to-analog converter boxes like the NTIA Coupon Eligible Converter Boxes) include information **upon the manufacture of** those devices explaining to consumers what effect, if any, the full-power DTV transition will have on their use. This information must be included with all devices shipped **from the factory**

47. As noted above, this requirement applies not only to television receivers, but also to electronic devices that are designed to be connected to, and are dependent on, television receivers. Notices included with these devices, which include DVD [[players and]] recorders, VCRs, and monitors **sold specifically as “televisions,”** must

APPENDIX B
Amended Rules

2. Section 15.124 is added and reads as follows:

§ 15.124 DTV Transition Notices by Manufacturers of Televisions and Related Devices

(a) The requirements of this section shall apply to television receivers and related devices. Related devices are electronic devices that are designed to be connected to, and **are dependent on** [[operate with]] television receivers, and which include [[,but are not limited to,]] DVD [[players and]] recorders, VCRs, monitors **sold specifically as “televisions,”** [[,set-top boxes (including)]] NTIA Coupon Eligible Digital-to-Analog Converter Boxes, and personal video recorders **sold specifically for use with televisions.**

(b) Television receivers and related devices shipped **from the factory** between the effective date of these rules and March 31, 2009

(c) Manufacturers or other parties responsible for importation are responsible for inclusion of these notices prior to shipment from the factory for distribution or importation.

² CERC is advised that CEA endorses these clarifications as well.