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July 1, 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, CS Docket No. 97-80

Dear Ms. Dortch:

On June 30, 2008, the undersigned, accompanied by Adam Goldberg of Pioneer Electronics, on behalf of the Consumer Electronics Association (CEA), met with Bureau Chief Monica Desai, Associate Chief Nancy Murphy, and Thomas Horan, Mary Beth Murphy, Steven Broeckaert, and Brendan Murray, all of the Media Bureau. The subject was a request by CEA that waiver applications pending in "CSR" dockets, and all comments and *ex parte* submissions thereon, also be required to be published in CS Docket No. 97-80.

As discussed in the meeting, CEA believes that in most cases these petitions and other *ex parte* statements pose fundamental public policy issues with respect to Section 629 and the Commission's regulations to implement this Congressional directive.[1] We suggested that at least until such time as the Bureau and the Commission resolve core issues addressed in such petitions, comments, and *ex parte* submissions, the Commission should require that all of them also be filed in CS Docket No. 97-80 so that CEA and the public will have an opportunity to be aware of, and to address them.

[1] Certain filings relevant to CSR Dockets have also been filed in Docket No. 97-80. *See Implementation of Telecommunications Act of 1996: Commercial Availability of Navigation Devices*, CS Docket No. 97-80, letter from Seth A. Davidson, Counsel for Beyond Broadband Technology LLC to Marlene Dortch, Secretary, FCC, Notice of *Ex Parte* presentation (June 5, 2008); *Implementation of Telecommunications Act of 1996: Commercial Availability of Navigation Devices*, CS Docket No. 97-80, letter from Robert S. Schwartz, Counsel for CEA, to Marlene Dortch, Secretary, FCC, Notice of *Ex Parte* Presentation (Jun. 20, 2008, CEA reply). However, similar *ex parte* filings relevant to the same CSR docket were not filed in Docket No. 97-80. *See, e.g.*, Letter from Nicole Paolini-Subramanya, Cinnamon Mueller to Monica Shah Desai, Chief, Media Bureau, FCC, CSR-7131-Z, DA 07-3320 (Aug. 7, 2007) (attaching letter from William D. Bauer, CEO, Beyond Broadband Technology to Nicole Paolini-Subramanya, Cinnamon Mueller).

We argued on behalf of CEA that the absence of such publication puts public policy consideration at risk. For example, CEA recently opposed a waiver filing by Evolution Broadband. Evolution, a manufacturer, stressed that the products for which a general waiver were sought would be standard definition, *not* "advanced" products under policies set forth in the Commission's 2005 "Deferral Order." In opposing the petition, CEA noted, *inter alia*, that the Evolution petition did not include any information from or commitment by any cable operator. However, among the Comments discovered by CEA *only* upon a manual search of many CSR files at the FCC was a Comment of Cable One, Inc., that (1) urges grant of a waiver for Evolution products *with* "advanced features," disclaimed by Evolution, such as HD tuning and display, and (2) asks the Commission to "update its 2005 Deferral Order … to permit the deployment of low-cost, one-way set-tops with HD functionality."[2]

We argued that granting such petitions or crediting such Comments would not be merely "adjudicatory," but rather would entail significant changes in policy for the Commission. We noted that when CEA intervened in the Court of Appeals in support of the FCC's defense of its denial of a waiver to Comcast Corporation, a prime CEA argument in support of the Commission was that granting the waiver would effectively undermine the FCC's policy to which the waiver would be an exception.[3] CEA's view pertains to waiver applications such as Evolution's, and to comments such as those of Cable One, as well.

In the meeting we stressed that the nature of the pending petitions, and the many public comments urging the Bureau *not* to grant waivers of the common reliance rule, show that the core issue of *connection to the network*, to which Section 629 and the FCC's navigation rules are in the first instance addressed, has not yet been resolved. Some petitioners have noted that CEA has been the only opponent to their petition. We observed that not even CEA can reliably monitor dozens of CSR dockets on a daily basis by physically inspecting files, and surely members of the public at large cannot be expected to.

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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[2] Comments of Cable One, Inc., CSR-7902-Z.
[3] *Comcast Corp. v. Federal Communications Commission*, 2008 WL 2065800 (C.A.D.C.).

Respectfully submitted,

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cc:

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