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Via Electronic Filing

June 17, 2011

Marlene H. Dortch
Secretary
Federal Communications Commission
445 Twelfth St., S.W.
Washington, DC 20554

*Re: Notice of Ex Parte Presentation – CG Docket No. 10-213, WT Docket No. 96-198,
CG Docket No. 10-145*

Dear Ms. Dortch:

This is to notify you that on June 15, 2011, Julie Kearney, Vice President, Regulatory Affairs, Consumer Electronics Association (“CEA”), accompanied by representatives of CEA members John Godfrey, Vice President, Government & Public Affairs, Samsung Information Systems America, Inc. and Paul G. Schomburg, Senior Manager, Government & Public Affairs, Panasonic Corporation of North America, and CEA counsel William Maher and Mark Walker of Wilkinson Barker Knauer, LLP, met with Karen Peltz Strauss (CGB), Rosaline Crawford (CGB), Eliot Greenwald (CGB), Jane Jackson (WTB), Elizabeth Lyle (WTB), David Hu (WTB), Brian Regan (WTB), Vijay Pattisapu (WTB), Jeffrey Tignor (WTB), Renee Roland (WTB) (by telephone), Doug Brake (WTB), Richard Hindman (EB), and Darryl Cooper (EB).

Consistent with its comments and reply comments in the above-captioned proceedings,¹ CEA urged implementation of the Twenty-First Century Communications and Video Accessibility Act (“CVAA”) in a manner that balances the increased accessibility of advanced communications services with manufacturers’ and service providers’ continued ability to innovate. To help guide the meeting, CEA provided attendees with the attached agenda, which summarizes the items discussed and provides cross-references to the relevant portions of CEA’s comments and reply comments. In addition, the following items were discussed during the meeting:

¹ See Comments of CEA, CG Docket Nos. 10-213 & 10-145, WT Docket No. 96-168 (filed Apr. 25, 2011); Reply Comments of CEA, CG Docket Nos. 10-213 & 10-145, WT Docket No. 96-168 (filed May 23, 2011).

- **Interoperable Video Conferencing Services:** CEA emphasized that “interoperable” should be interpreted in a reasonable manner – *i.e.*, by applying the Section 716 accessibility obligations to only those video conferencing services that operate between and among different platforms, networks, and providers.² The discussion included questions regarding the applicability of the definition of “interoperable” in the context of Video Relay Services.
- **Phase-In Period:** CEA emphasized that a phase-in period of at least 24 months is consistent with Commission precedent, including the various phase-in periods provided for closed captioning in digital television receivers,³ E911 location accuracy requirements in handsets,⁴ V-Chip requirements in television receivers,⁵ CableCARD requirements,⁶ and wireless hearing aid compatibility.⁷
- **Products Released Prior to Promulgation of the Final Rules:** CEA noted that the requirements of Section 716(a) and (b) respectively apply only to equipment manufactured, and services provided, after the effective date of the implementing rules. The discussion included questions regarding whether the Commission should adopt Section 255’s approach under which, if there is a “substantial change or upgrade” to products released prior to the promulgation of the final rules, covered entities would have to assess whether it is achievable to incorporate accessibility features and functions, pursuant to Section 716.
- **Waivers:** Section 716(h)(1)(B) provides that a waiver of Section 716 may be granted if a device “is *designed* for multiple purposes, but is *designed* primarily for purposes other than using advanced communications services.”⁸ The use of the term “designed” indicates Congress’s intent to have the waiver request evaluated from the perspective of the covered entity that designs the product or service for which a waiver is requested. CEA also supported the grant of blanket waivers for appropriate classes of devices in the Commission’s upcoming order.

² See CEA Comments at 14-15.

³ See *Closed Captioning Requirements for Digital Television Receivers*, Report and Order, 15 FCC Rcd 16788, 16807 ¶ 56 (2000).

⁴ See *Wireless E911 Location Accuracy Requirements*, Report and Order, 22 FCC Rcd 20105, 20112 ¶ 17 (2007), *voluntarily vacated*, *Rural Cellular Ass’n v. FCC*, 2008 U.S. App. LEXIS 19889 (D.C. Cir. Sept. 17, 2008).

⁵ See *Technical Requirements to Enable Blocking of Video Programming based on Program Ratings*, Report and Order, 13 FCC Rcd 11248, 11257 ¶ 23 (1998); 47 C.F.R. § 15.120.

⁶ See *Implementation of Section 304 of the Telecommunications Act of 1996*, Report and Order, 13 FCC Rcd 14775, 14803 ¶ 69 (1998); 47 C.F.R. § 76.1204.

⁷ See *Section 68.4(a) of the Commission's Rules Governing Hearing Aid-Compatible Telephones*, Report and Order, 18 FCC Rcd 16753, 16780 ¶ 65 (2003).

⁸ 47 U.S.C. § 617(h)(1)(B) (emphasis added).

- **Enforcement**: CEA emphasized that the answer requirements proposed in the NPRM should be narrowed to focus on resolving the specific issues raised in informal complaints.⁹ The Commission should only “investigate the allegations in an informal complaint” as set forth in Section 717¹⁰ and narrow the answer requirements accordingly.

Pursuant to Section 1.1206 of the Commission’s rules,¹¹ this letter is being electronically filed with your office and a copy of this submission is being provided to the meeting attendees. Please let undersigned know if you have any questions regarding this filing.

Respectfully submitted,

/s/ Julie M. Kearney

Julie M. Kearney
Vice President, Regulatory Affairs

Attachment

cc: Karen Peltz Strauss
Rosaline Crawford
Eliot Greenwald
Jane Jackson
Elizabeth Lyle
David Hu
Brian Regan
Vijay Pattisapu
Jeffrey Tignor
Renee Roland
Doug Brake
Richard Hindman
Darryl Cooper

⁹ See CEA Comments at 45-46; CEA Reply Comments at 21.

¹⁰ 47 U.S.C. § 618(a)(3)(B).

¹¹ 47 C.F.R. § 1.1206.

CVAA – Advanced Communications Services NPRM
(CG Docket Nos. 10-213, 10-145, WT Docket No. 96-198)
CEA *Ex Parte* Meeting Agenda

June 15, 2011

1. Introduction/Background on CEA

- a. Principal U.S. trade association for the consumer electronics and information technologies industries (Com. at 2)
- b. 2,000 member companies that cumulatively generate more the \$186 billion in annual factory sales (Com. at 2 n.4)
- c. CEA and its member companies were actively involved in the CVAA legislative process and continue to engage in regulatory and standards activities relating to accessibility (Com. at 2 & n.6)

2. CVAA Purpose and Legislative History

- a. Congress intended to balance increased accessibility of ACS with manufacturers’ and service providers’ continued ability to innovate (Com. at 3)
- b. Congress consciously narrowed the scope of the legislation to ensure this balance, for example:
 - i. Added Section 2(a) – limitation on liability (Com. at 3 & n.7)
 - ii. Added “interoperable” and “service” to limit the forms of video conferencing subject to the CVAA (Com. at 3 & n.8)
 - iii. Added the waiver authority (Com. at 3-4 & n.9)

3. An Initial Phase-In Period is Essential

- a. A minimum 24 month phase-in period before commencing enforcement will provide the needed time for covered entities to comply with the final rules (Com. at 39; Rep. at 3-4)
- b. Such a phase-in period also provides time to address waiver requests filed in response to the final rules (Com. at 40; Rep. at 4-5)
- c. The Commission should grandfather in products released prior to the promulgation of the final rules (Com. at 40; Rep. at 5)

4. Definitions and Scope of the Rules Should Be Interpreted Consistently With the Statute

- a. A product or service that only includes incidental ACS should be excluded from the scope of the CVAA; Section 716 makes clear that the accessibility obligations only apply to an “offer” of ACS (Com. at 10; Rep. at 6)
- b. No authority exists to impose an interoperability mandate; the inclusion of “interoperable” limits the scope of video conferencing services covered by the CVAA (Com at 36; Rep. at 8-9)
- c. Section 2(a)’s liability limitation should be incorporated in the Commission’s final rules to ensure that the accessibility of a third-party app is the responsibility of the third-party developer, rather than the device manufacturer or underlying service provider (Com. at 7, 34-35; Rep. at 17)

5. Exemptions/Waivers Should Be Applied Reasonably

- a. Customized equipment or services exemption should apply broadly; this exemption was expressly added by Congress (Com. at 16; Rep. at 9-10)
- b. Waiver authority was also added in the legislative process; the Commission should focus on the plain language of the statute and not favor individualized over class waivers nor limit the duration of waivers (Com. at 17-18; Rep. at 10-11)
- c. Small entities exemption should be used to minimize the burden on small business and promote the pace of technological innovation (Com. at 20-21; Rep. at 11)

6. Achievability Rules Should Reflect The CVAA’s Balanced Approach

- a. The Commission should only consider the four factors provided in the statute, giving each equal weight (Com. at 21; Rep. at 12)
- b. The four factors should be incorporated into the Performance Objectives to help ensure greater clarity for covered entities as well as the FCC
- c. Built-in solutions should not be preferred to third-party solutions (Com. at 27-28; Rep. at 14-15)
- d. Nominal cost should be determined objectively on a case-by-case basis, considering the nature of the service or product as well as its total lifetime cost (Com. at 27; Rep. at 15)
- e. The “compatibility” rules should permit flexible and economical implementation (Com. at 29-30)

7. Recordkeeping Requirements Must be Realistic

- a. Covered entities should only be required to maintain records for those categories set forth in Section 717 and not go beyond what Congress intended (Com. at 41)
- b. The Commission should provide flexibility in how covered entities implement the recordkeeping requirements (Com. at 41-42; Rep. at 19)

8. Enforcement Should Focus On Resolution of Consumer Issues

- a. Requiring a pre-filing notice will facilitate timely resolution of consumer complaints (Com. at 43-44; Rep. at 20-21)
- b. Screening complaints prior to forwarding to defendants will reduce the burden on industry and the Commission alike (Com. at 44)
- c. A 40-day answer period will provide a reasonable timeframe for a defendant to fully and accurately respond to a complaint (Com. at 45; Rep. at 21)
- d. The answer content requirements should be streamlined to focus narrowly on (i) whether the device or service is accessible and (ii) if not accessible, whether accessibility is achievable (Com. at 45-46; Rep. at 21)
- e. The foregoing is consistent with the 180-day statutory period in which a complaint must be resolved
- f. CEA submitted draft rules which we urge the Commission to adopt (Com. at App. A)

9. Mobile Internet Browsers

- a. Section 718 should be applied consistently with the flexibility requirements of Section 716 (Com. at 49; Rep. at 22-23)
- b. Section 718 does not cover data-only devices such as laptops and tablets (Com. at 49)