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June 30, 2011

Via Electronic Filing

Marlene H. Dortch, Esq., Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: Notice of Ex Parte Presentation
Entertainment Software Association
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 28, 2011, Michael Warnecke, Senior Policy Counsel, Entertainment Software Association (the “ESA”), accompanied by Bill LeBeau of Holland & Knight LLP, met, in person or telephonically, in a single meeting with Karen Strauss (Deputy Chief, Consumer & Government Affairs Bureau (“CGB”)), Rosaline Crawford (CGB), Eliot Greenwald (CGB), Jane Jackson (Associate Bureau Chief, Wireless Telecommunications Bureau (“WTB”)), Elizabeth Lyle (Special Counsel, WTB), David Hu (WTB), Brian Regan (WTB), Vijay Pattisapu (WTB), Jeffrey Tignor (WTB), Genevieve Ross (WTB), Doug Brake (WTB), and Janet Sievert (Enforcement Bureau).

Consistent with its comments and reply comments in the above-captioned proceedings,¹ the ESA urged implementation of the Twenty-First Century Communications and Video Accessibility Act (“CVAA”) in a manner that reflects Congressional intent to exclude equipment and services from new requirements under the Act applicable to advanced communications

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

services (“ACS”) unless their primary purpose, as designed, is to provide ACS. The ESA explained why sensible waivers or exemptions from new ACS rules implementing the CVAA for a class of equipment or service is consistent with Congressional intent and the public interest. Exemptions within the rules for obvious multiple-use products or services will better implement Congressional intent and Commission rollout of the new ACS rules, especially in light of the statutory deadlines established in the CVAA. The ESA encouraged the Commission to adhere to the text of the statute and determine waiver eligibility based on how a product or service is designed. ESA noted that Congress did not craft the statutory language authorizing waivers in order to exclude devices or services with no ACS functionality; these offerings already are outside the scope of the CVAA. Because the waiver provision requires some ACS capability, denying waiver eligibility to every multi-purpose product or service that has any ACS functionality would make the statutory waiver provision meaningless.

The ESA also explained that a class of video game offerings warrants an exemption within the rules to be adopted by the Commission. Congress did not intend the CVAA’s ACS requirements to apply to multi-feature products and services for which the primary purpose, as designed, is not advanced communications services. Equipment and services relating to video games, computer games, online games, and mobile game apps within the class are designed with a primary purpose – to enable gameplay. While these offerings may have incidental ACS features, those features are largely in service of gameplay functionality. The ESA also underscored that many commenters are on record supporting a waiver, exemption or other exclusion for video game offerings because the primary purpose of these offerings, as designed, is self-evident and because they are not a substitute for the advanced communications services that Congress intended to promote through the CVAA. Granting a class waiver or exclusion for video game offerings also would foster innovation, reduce the risk of regulatory arbitrage, and promote administrative efficiency. Accordingly, the ESA respectfully urged the Commission to adopt, in its rules implementing the CVAA, an exemption for a defined class of video game offerings, as set forth in the ESA’s reply comments on page 12.

During the meeting, the participants discussed the scope of the proposed class, which, in some cases, may depend on the specific details of a particular offering. The ESA noted that video games are well and broadly understood to be a separate class based on their design and other characteristics, including their focus on entertainment. For example, the Electronic Software Rating Board’s game ratings encompass virtually all games sold at retail, and video game equipment enables parents to limit what games their children may play through setting the parental controls which, among other things, enforce ESRB ratings. The Federal Trade Commission and the FCC have both viewed video games as a separate sector. In addition, the participants discussed whether any waiver under the CVAA should be subject to periodic re-evaluation. Finally, the ESA also discussed recent outreach by the video game industry to individuals with disabilities with respect to matters beyond the scope of the CVAA.

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Pursuant to Section 1.1206 of the Commission's rules,² this letter is being electronically filed with your office and a copy of this submission is being provided to the meeting attendees. Please contact Bill LeBeau if you have any questions regarding this filing.

Respectfully submitted,

HOLLAND & KNIGHT LLP

By: /s/ Bill LeBeau
Bill LeBeau
Leighton Brown
Counsel for Entertainment Software Association

cc: Doug Brake
Rosaline Crawford
Eliot Greenwald
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Jane Jackson
Elizabeth Lyle
Vijay Pattisapu
Brian Regan
Genevieve Ross
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Karen Peltz Strauss
Jeffrey Tignor

² 47 C.F.R. §1.1206.