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Via Electronic Filing

July 18, 2011

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

*Re: Written Ex Parte Submission – Definition of “Interoperable Video Conferencing Service”
CG Docket Nos. 10-213 & 10-145, WT Docket No. 96-198*

Dear Ms. Dortch:

Pursuant to Section 1.1206 of the Commission’s rules,¹ the Consumer Electronics Association (“CEA”) files this *ex parte* communication to address further the Commission’s treatment of “interoperable video conferencing service” as it implements the Advanced Communication Service (“ACS”) provisions of the Twenty-First Century Communications Accessibility Act (“CVAA”).² The CVAA added the definition of ACS, which includes “interoperable video conferencing service,” to Section 3 of the Communications Act of 1934, as amended (the “Act”).³

As the *NPRM* in the above-listed proceedings acknowledges, Congress added the words “interoperable” and “service” to the category of ACS that was known as “video conferencing” in

¹ See 47 C.F.R. § 1.1206.

² Twenty-First Century Communications and Video Accessibility Act of 2010, Pub. L. No. 111-260, 124 Stat. 2751 (2010) (as codified in various sections of Title 47 of the United States Code). The law was enacted on October 8, 2010 (S. 3304, 111th Cong.). See also Amendment of Twenty-First Century Communications and Video Accessibility Act of 2010, Pub. L. No. 111-265, 124 Stat. 2795 (2010), also enacted on Oct. 8, 2010, to make technical corrections to the CVAA and the CVAA’s amendments to the Communications Act of 1934.

³ See 47 U.S.C. §153(59).

early drafts of the legislation.⁴ The addition of these words substantially narrowed the scope of the service category. CEA believes that few if any “interoperable video conferencing services” exist at present.⁵ However, as these services develop over time, they will be subject to the requirements of Section 716.⁶ In any event, the CVAA did not provide the Commission with the necessary authority to *require* “interoperability” of video conferencing services, which would be an unwarranted intrusion into the ongoing (and unregulated) development of these services.⁷

In addition, the Commission’s treatment of Video Relay Service (“VRS”) should not be used as a model for implementing the CVAA with respect to interoperable video conferencing service, and especially is not authority for mandating interoperability for commercial video conferencing services. The Commission’s detailed regulation of VRS, pursuant to Section 225 of the Act,⁸ addresses VRS as a specialized means of providing voice accessibility supported by the Telecommunications Relay Services (“TRS”) Fund. Such comprehensive regulation is not appropriate for the highly competitive marketplace for commercial video conferencing services, including the general “interoperable video conferencing service” category, which heretofore have not been subject to Commission regulation and is not supported by the TRS Fund.

**THE MODIFIER “INTEROPERABLE” PROVIDES NO AUTHORITY
FOR MANDATING INTEROPERABILITY AMONG VIDEO
CONFERENCING SERVICES**

The inclusion of the term “interoperable” in the CVAA’s definition of “interoperable video conferencing service” as a type of ACS describes a particular type of video conferencing; it in no way creates authority for *mandating* the interoperability of video conferencing services.

The terms “interoperable” and “service,” added during the legislative process, narrow the types of video conferencing within the covered categories of ACS.⁹ There is no evidence in the statute or the legislative history for the proposition that the CVAA somehow authorized the Commission to mandate interoperability among video conferencing services. In fact, Section 716(e)(1)(D) expressly prohibits the Commission from mandating technical standards.¹⁰ Such standards would include those that would be necessary to implement interoperability among video conferencing services. The inclusion of this prohibition argues against any interpretation of Section 716 that authorizes a mandate of interoperability.

⁴ See *Implementation of Sections 716 and 717 of the Communications Act of 1934, as Enacted by the Twenty-First Century Communications and Video Accessibility Act of 2010*, Notice of Proposed Rulemaking, 26 FCC Rcd 3133, 3147 ¶ 35 (2011) (“NPRM”).

⁵ See Comments of the Consumer Electronics Association, CG Docket No. 10-213 at 14-15 (filed Apr. 25, 2010) (“CEA Comments”). In this *ex parte* letter, all comments filed on or about April 25, 2011 of this proceeding and all reply comments filed on or about May 23, 2011 are short-cited by name of party.

⁶ See 47 U.S.C. § 617.

⁷ See CEA Comments at 36; CEA Reply Comments at 8.

⁸ See generally 47 U.S.C. § 225.

⁹ See 47 U.S.C. § 153(53)(D).

¹⁰ 47 U.S.C. § 617(e)(1)(D).

As CEA has described, it is reasonable to interpret “interoperable video conferencing services” to mean only those video conferencing services that can operate between and among different platforms, networks, and providers.¹¹ “Interoperable” therefore is simply descriptive: it describes a specific subset of video conferencing services to which the CVAA applies. CEA’s understanding of “interoperable” – that is, the ability to operate among different platforms, networks, and providers – is consistent with the term’s technical definitions and widely-held meanings, and has widespread support in the record. For example, the Institute for Electrical and Electronic Engineers (“IEEE”) defines “interoperability” as the “ability of a system or a product to work with other products without special effort on the part of the customer,”¹² which captures the essence of “interoperable” from an end user’s viewpoint. To clarify, consistent with IEEE’s definition, CEA believes that “interoperable” means the ability to operate among different platforms, networks, and providers *without special effort or modification by the end user*.¹³

CEA’s understanding is also consistent with widely-held meanings of interoperability. For example, Newton’s Telecom Dictionary defines “interoperate” as “the ability of equipment to work together using a common set of protocols”¹⁴ and Merriam-Webster’s dictionary defines “interoperability” as the “ability of a system . . . to work with or use the parts of equipment of another system.”¹⁵

Moreover, there is widespread support in the record for CEA’s understanding of “interoperable.” Commenters agree that the Commission should treat the term “interoperable” as Congress intended: to narrow the scope of video conferencing services covered by the CVAA.¹⁶ Commenters also largely agree that the Commission lacks the authority to mandate interoperability.¹⁷

¹¹ See CEA Comments at 14-15.

¹² Institute of Electrical and Electronics Engineers, Standards Glossary (last revised Mar. 11, 2010), available at http://www.ieee.org/education_careers/education/standards/standards_glossary.html#sect9.

¹³ For example, certain enterprise video conferencing equipment has begun to support connections with other manufacturers’ equipment, but these connections require complex set-up of technical parameters that is usually beyond the ability of end users. Thus, this equipment is not truly “interoperable” because the operation among different platforms, networks, and providers *requires* special effort by the end user.

¹⁴ HARRY NEWTON, NEWTON’S TELECOM DICTIONARY 508 (24th ed. 2008).

¹⁵ *Interoperability Definition*, MERRIAM-WEBSTER DICTIONARY, <http://www.merriam-webster.com/dictionary/interoperability> (last visited July 18, 2011).

¹⁶ See, e.g., CTIA-The Wireless Association® Comments at 21-22; Entertainment Software Association Comments at 3; Internet Technology Industry Council Comments at 24, TechAmerica Comments at 4-5; Telecommunications Industry Association Comments at 10-11, Voice on the Net Coalition Comments at 5-6.

¹⁷ See, e.g., CTIA-The Wireless Association® Comments at 22-23; Microsoft Comments at 4-6; T-Mobile Comments at 7; Telecommunications Industry Association Comments at 11.

The meaning of interoperability proposed by advocacy groups and other commenters also is consistent with CEA's understanding. The Rehabilitation Engineering Research Centers on Universal Interface & Information Technology Access and Telecommunications Access (collectively "RERC"), the Rehabilitation Engineering Research Center for Wireless Technologies ("Wireless RERC"), and Consumers Groups have suggested that interoperability means that end users are able to use real-time video communication through a variety of services, systems, and devices, apparently including different providers, and that open source or widely available protocols for the transmission or receipt of ACS are factors of interoperability.¹⁸ This meaning is generally consistent with CEA's definitional approach.¹⁹

However, several commenters, including RERC and the Consumer Groups, ask the Commission to mandate interoperability of video conferencing services.²⁰ As CEA has explained, the CVAA provides the Commission with no authority to impose an interoperability mandate.

¹⁸ See Rehabilitation Engineering Research Centers on Universal Interface & Information Technology Access and Telecommunications Access (collectively "RERC") Comments at 14-15; Rehabilitation Engineering Research Center for Wireless Technologies ("Wireless RERC") Comments at 8-9; and Telecommunications for the Deaf and Hard of Hearing, *et. al.*, (collectively "Consumers Groups") Comments at 11.

However, RERC later suggests in an *ex parte* notice that a product or service is interoperable simply if one company's product or service can exchange video content with another company's product or service. Specifically, RERC suggests that services would be interoperable if: (1) a first company publishes its interface to facilitate interoperability; (2) private and confidential agreements and/or technology sharing between two companies allows the products or services of the two companies to exchange video; or (3) products from other companies work with a first company's product and the first company does not impede or actively discourage the products from working together. See *Ex Parte* Notice of RERC, CG Docket Nos. 10-213, 10-145, 10-51, WT Docket No. 96-198, at 3-4 (filed June 17, 2011). CEA disagrees with this explanation and its implications. A product or service reasonably can only be considered to be "interoperable" through intentional efforts of the manufacturer or provider to make it so. In addition, interoperability only can be considered to exist through broad industry action, such as through the development of recognized industry standards in consensus-based, industry-led, open processes that comply with American National Standards Institute ("ANSI") Essential Requirements. To be clear, the mere sharing of technology privately between two companies does not necessarily make the products "interoperable video conferencing services." Moreover, the CVAA does not permit the Commission to impose regulatory burdens when a product or service is used in a way not intended by the manufacturer or provider, nor to intrude into private and confidential agreements between companies.

The Coleman Institute for Cognitive Disabilities and the Samuelson-Glushko Technology Law Policy Clinic at the University of Colorado also suggest that interoperable merely requires services to be inter-platform. See Coleman Institute for Cognitive Disabilities and Samuelson-Glushko Technology Law Policy Clinic at the University of Colorado Reply Comments at 20-21. Their suggestion is ill-advised. Interoperability requires that the services work across providers as well.

¹⁹ RERC also correctly notes that the VRS definition does not apply. See RERC Comments at 15. As discussed below, the VRS definition was adopted in a narrow situation with a different purpose. It is inappropriate and unnecessary to base the definition of interoperability in the ACS context on one developed in distinctive circumstances.

²⁰ See Consumer Groups Comments at 9-10; RERC Comments at 15.

THE VRS RULES' APPROACH TO INTEROPERABILITY IS AN INAPPROPRIATE MODEL

The Commission's approach to imposing interoperability requirements on VRS should not be applied to market-based, commercially available video conferencing services. VRS is a type of TRS, which has developed pursuant to Section 225 of the Act, not Section 716. As a comparison of these statutory provisions shows, Congress took two separate and distinct approaches to TRS services and to the accessibility of ACS. As the Commission has recognized, "Congress specifically mandated in Section 225 that relay services [*i.e.*, VRS and TRS] offer *access to the telephone system* that is '*functionally equivalent*' to voice telephone services."²¹ Thus, Section 225 treats TRS and VRS as tools for persons with disabilities to use to obtain telephone access that is functionally equivalent to voice service.

The CVAA did not take this "functional equivalence" approach. Instead, the CVAA requires manufactures and service providers to make ACS equipment and services accessible to and usable by individuals with disabilities unless such accessibility and usability are not "achievable."²² The purpose of the CVAA is "[t]o *increase the access* of persons with disabilities to modern communications . . .,"²³ including ACS, not to regulate relay services such as VRS to meet a "functional equivalence" standard, as Section 225 does. The CVAA applies to a broad variety of ACS equipment and services commercially provided in competitive markets without the intervention of the FCC, in contrast to Section 225, which applies to the operation and funding of a specific set of relay services, including VRS. Because of these fundamental differences in the approaches of Section 225 and the CVAA, attempting to import the interoperability approach to VRS would serve as a poor model for implementing the ACS provisions of the CVAA.

In addition, the Commission's treatment of interoperability in the VRS context is unsuitable for application to the CVAA because of the unique origins of the VRS requirement. The Commission first mandated interoperability for VRS in 2006 because of a very specific concern: that a major VRS provider did not permit its customers to place calls through competing VRS providers.²⁴ Interoperability among VRS providers thus was needed in order to realize Section 225's goal of functional equivalence with voice telephone services. Moreover, interoperability was imposed as a condition to VRS providers receiving funding from the TRS Fund.²⁵

²¹ *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Declaratory Ruling and Further Notice of Proposed Rulemaking, 21 FCC Rcd 5442, 5444 ¶ 5 (2011) (emphasis added) ("*2006 VRS Declaratory Ruling*").

²² See 47 U.S.C. § 617(a)(1), (b)(1).

²³ See Twenty-First Century Communications and Video Accessibility Act of 2010 (emphasis added) ("An Act To increase the access of persons with disabilities to modern communications, and for other purposes").

²⁴ See *2006 VRS Declaratory Ruling*, 21 FCC Rcd at 5449, 5454 ¶¶ 16-17, 29.

²⁵ See *id.* at 5454, 5459 ¶¶ 29, 43.

In contrast, commercial, non-VRS, video conferencing providers operate in an unregulated and highly competitive marketplace.²⁶ These providers receive no funding from the TRS Fund or any similar fund for the provision of their services. The Commission itself recognizes that what may be appropriate for VRS may not be appropriate for market-based services. For example, when first requiring VRS interoperability, the Commission said that TRS, including VRS, is “fundamentally different from the provision of wireless telephone, satellite television, or similar services . . . in that these services are market-based and, unlike TRS, are paid for by any consumer wishing to subscribe.”²⁷

In 2008, the Commission additionally required interoperability for so-called “point-to-point” calls between users of different VRS providers.²⁸ The goal was to permit calls between VRS users even without the use of an interpreter. To impose this requirement, the Commission exercised ancillary jurisdiction, finding that “requiring that [VRS] providers facilitate point-to-point communications between persons with hearing or speech disabilities is reasonably ancillary to the Commission’s responsibilities in several parts of the Act – sections 225, 255, and 1.”²⁹ The Commission thus imposed “point-to-point” interoperability for a goal specifically related to VRS. This goal is inapplicable to the broad implementation of the CVAA.

In fact, imposing an interoperability mandate on video conferencing service providers based on ancillary jurisdiction is unjustified on both legal and policy grounds. Rather than being reasonably ancillary to Section 716, such a mandate would contradict the statutory process

²⁶ See, e.g., Arik Hesseldahl, *The Video Conferencing Business Just Got Interesting*, ALL THINGS D (June 8, 2011), <http://allthingsd.com/20110608/the-video-conferencing-business-just-got-interesting/> (“This occurrence brings into focus the apparent intensifying of competition in the enterprise video conferencing market . . .”). In the enterprise video conferencing marketplace, competitors include Nefsis and Vidyo, among other new challengers to established firms such as Polycom and Cisco. See *id.*; NEFSIS, <http://nefsis.com> (last visited July 18, 2011). In the consumer marketplace, video conferencing services are available from Apple, Google, ooVoo, Skype, and Tango, and numerous other startups. See Mark W. Smith, *Choose your service for making free video calls over the Web*, DETROIT FREE PRESS (May 17, 2011) (“A slew of services are popping up that let you place video calls over the Web for free.”). Facebook also has recently launched video calling powered by Skype. See Hayley Tsukayama, *Facebook announces video calling*, WASH. POST (July 6, 2011). The increasing number of competitors demonstrates the competitive and innovative nature of the video conferencing marketplace.

²⁷ *2006 VRS Declaratory Ruling*, 21 FCC Rcd at 5457 ¶ 38. Wireless RERC asks the Commission to define video conferencing services as VRS wherever possible. See Wireless RERC Comments at 5. Companies that provide video conferencing services are free to seek certification from the Commission to provide VRS – and consequently receive compensation. However, for the Commission to classify video conferencing services that do not seek certification and TRS funding as VRS is wholly inconsistent with the VRS regulatory scheme and would lead to absurd results.

²⁸ *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Second Report and Order and Order on Reconsideration, 24 FCC Rcd 791, 820 ¶ 65 (2011) (“*2008 VRS Order*”). “Point-to-point” calls in the VRS context “permit[] persons with hearing disabilities to communicate directly with each other” *Id.* at 793 ¶ 3.

²⁹ *Id.* at 820 ¶ 65. The Commission’s use of ancillary authority has been questioned in recent years in other contexts. See *Comcast Corp. v. FCC*, 600 F.3d 642 (D.C. Cir. 2010); *Am. Library Ass’n v. FCC*, 406 F.3d 689 (D.C. Cir. 2005).

established in Section 716, by which manufacturers and providers of interoperable video conferencing services must make their offerings accessible to and usable by people with disabilities unless doing so is not achievable. As mentioned above, the CVAA's addition of Section 716(e)(1)(D) argues against an interoperability mandate by prohibiting the Commission from imposing technical standards.

The use of ancillary jurisdiction nominally based on Section 716 to require interoperability also would be poor policy. It would create a slippery slope that apparently would allow the Commission unfettered ability to establish mandates, ostensibly related to the accessibility goals of Section 716, across all services. Such an unbounded theory could be used to justify virtually any regulation as long as the regulation allegedly advances accessibility. This unrestricted authority is inconsistent with the CVAA's twin goals of balancing the need to ensure accessibility for individuals with disabilities with the need to promote innovation for the benefit of all consumers.³⁰

Rather than looking to the specialized VRS industry, the Commission should base its interpretation of "interoperable" on the widely-held definition proposed by CEA and others, which is used in the commercial, non-VRS marketplace for video conferencing and other services. The VRS conception of interoperability was implemented in a narrow context – a heavily regulated service that is substantially funded by the government. That context is far from the competitive market for video conferencing services, which offers all consumers, including those with disabilities, a wide array of innovative products and services.

In short, the CVAA does not authorize the Commission to mandate the inoperability of video conferencing services. To give the term "interoperable" meaning, the Commission should adopt a definition consistent with the approach proposed by CEA – that "interoperable video conferencing service" means only those video conferencing services that can operate between and among different platforms, networks, and providers *without special effort or modification by the end user*. The Commission should not attempt to regulate this service or any other form of ACS based on its highly-specialized and government-funded approach to VRS, developed under dramatically different circumstances.

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³⁰ See CEA Comments at 3; CEA Reply Comments at 1-2.

Pursuant to Section 1.1206 of the Commission's rules,³¹ this letter is being electronically filed with your office. Please let the undersigned know if you have any questions regarding this filing.

Respectfully submitted,

/s/ Julie M. Kearney

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³¹ 47 C.F.R. § 1.1206.