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*Via Electronic Filing*

July 21, 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 July 19, 2011, Julie Kearney, Vice President, Regulatory Affairs, Consumer Electronics Association (“CEA”), accompanied by John Godfrey, Samsung Information Systems America, Inc., Paula Boyd, Microsoft Corp., and outside counsel William Maher and Mark Walker of Wilkinson Barker Knauer, LLP, met with Julius Knapp, Chief, Office of Engineering and Technology (“OET”), Ira Keltz (OET), Alan Stillwell (OET), Robert Weller (OET), and Hugh Van Tuyl (OET).

Consistent with its comments and reply comments in the above-captioned proceedings,<sup>1</sup> CEA urged implementation of the Advanced Communications Service (“ACS”) provisions of the Twenty-First Century Communications and Video Accessibility Act (“CVAA”) in a manner that balances the increased accessibility of ACS with manufacturers’ and service providers’ continued ability to innovate. To help guide the meeting, CEA provided attendees with the attached agenda that summarizes the items discussed and provides cross-references to the relevant portions of CEA’s comments and reply comments.

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<sup>1</sup> See Comments of CEA, CG Docket Nos. 10-213 & 10-145, WT Docket No. 96-198 (filed Apr. 25, 2011); Reply Comments of CEA, CG Docket Nos. 10-213 & 10-145, WT Docket No. 96-198 (filed May 23, 2011).

In addition, the following items were discussed during the meeting:

- **Phase-In:** CEA emphasized the need for at least a 24-month phase-in period to provide industry with the necessary time to comply with the Commission’s final rules. A 24-month phase-in is consistent with the one-year implementation period for the recordkeeping required by new Section 717 of the Communications Act (the “Act”), added by the CVAA.<sup>2</sup> With a 24-month phase-in for compliance with the rules, much of the design and development of compliant products will likely occur around the time that Section 717 requires covered entities to keep records.
- **Beta Products:** CEA urged the Commission to make clear that the accessibility obligations of Section 716 do not apply to Beta products (*i.e.*, in development or pre-release products).<sup>3</sup> The manufacturer has not finalized the design or completed development of Beta products for widespread consumer use. Enforcement actions against these products and services during development would only increase costs and slow innovation – including innovation in providing accessibility solutions – without providing any countervailing benefit to people with disabilities. Moreover, CEA noted that companies utilize the Beta process in very different ways, making it difficult to impose accessibility obligations in an effective or standardized manner.

Pursuant to Section 1.1206 of the Commission’s rules,<sup>4</sup> this letter is being electronically filed with your office and a copy of this submission is being provided to the meeting attendees from the Commission. Please let the 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: Julius Knapp  
Ira Keltz  
Alan Stillwell  
Robert Weller  
Hugh Van Tuyl

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<sup>2</sup> See 47 U.S.C. § 618(a)(5)(A) (“Beginning one year after the effective date of regulations promulgated pursuant to section 716(e), each manufacturer and provider subject to sections 255, 716, and 718 shall maintain, in the ordinary course of business and for a reasonable period, records of the efforts taken by such manufacturer or provider to implement sections 255, 716, and 718 . . .”).

<sup>3</sup> See CEA Reply Comments at 5.

<sup>4</sup> 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**

July 19, 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 than \$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 All of 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)