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Via Electronic Filing

Marlene H. Dortch
Secretary
Federal Communications Commission
445 Twelfth Street, S.W.
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 July 25, 2011, Michael Gallagher, President and CEO of the Entertainment Software Association (the “ESA”), Erik Huey, ESA Sr. Vice President of Government Affairs, Gina Woodworth, ESA Sr. Director of Federal Government Affairs, and Michael Warnecke, ESA Sr. Policy Counsel, accompanied by Bill LeBeau of Holland & Knight LLP,¹ had separate meetings with the following: (1) Commissioner Michael Copps, his Wireline Policy Advisor Margaret McCarthy, and intern James Bangasser; (2) Commissioner Robert McDowell and his Policy Director and Wireline Counsel Christine Kurth; and (3) Commissioner Mignon Clyburn, her Legal Advisor Louis Peraertz, and intern Jonathan Whitaker.

During these meetings, and in accordance with the comments and reply comments submitted by the ESA in the above-captioned proceedings,² the ESA encouraged the implementation of the Twenty-First Century Communications and Video Accessibility Act (“CVAA”) consistent with the statutory text, including an important provision added during the legislative process that authorized the exclusion of equipment and services with multiple purposes from new requirements relating to advanced communications services (“ACS”) if the primary purpose of such offerings, as designed, is other than ACS. The ESA detailed why a sensible waiver or exemption for an appropriate class of products and services would advance

¹ Ms. Woodworth was not present at the first meeting, and Mr. Huey was not present at the second.

² 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).

the public interest by facilitating timely FCC implementation of the CVAA prior to the upcoming statutory deadlines, by promoting fair competition among products or services within the class, and by protecting innovation, which was the primary motive underlying the multipurpose waiver provision.

The ESA explained that the class of video game offerings, as defined in the ESA Reply Comments on page 12, especially merits an exemption or waiver to new ACS requirements. Equipment, products, and services relating to video games, computer games, online games, and mobile game apps are designed with a primary purpose – to enable gameplay. While these offerings may have incidental ACS features, those features do not outweigh the established game-playing purpose of these products and services. The ESA also noted that video games are well and broadly understood to be a separate class based on their design, prior regulatory treatment, and other characteristics, including their focus on entertainment, and recounted how many other commenters in the proceeding have articulated their support for a waiver for video games, including that an ACS class waiver should resolve potential questions relating to TRS matters, as noted in the ESA Reply Comments on page 11.

In addition, the ESA demonstrated how a waiver for the proposed class would further the Congressional interest in innovation. ESA highlighted the many technological advances made in video game hardware during the past several years, including showing some examples of recent innovations in game controllers. The ESA described how the innovation fostered by limited regulation and growing interest among entrepreneurs and others to develop games and mobile game apps continues to benefit consumers. The ESA also maintained that, given FCC authority to review an FCC rule waiver and the evolving nature of game development, efforts to predict a potential re-evaluation period for any ACS waiver would be unnecessarily speculative. Moreover, given that the hundreds or thousands of video games, as defined by the proposed exemption, may be released in a single year, the proposed waiver would greatly facilitate the Commission's focus on products and services more clearly within the purposes of the CVAA while demonstrating the Commission's commitment to the statutory text. Accordingly, the ESA respectfully urged the Commission to adopt, in its rules implementing the CVAA, an exemption or waiver for the proposed class of video game offerings.

Finally, the ESA discussed different ways that video game companies have responded to the concerns of persons with disabilities even absent any government mandate, including efforts with respect to aspects of video games that are not within any provision of the CVAA or that do not relate to advanced communications services, as defined by the CVAA. Among other matters, the ESA described the instances noted in footnote 69 of the ESA Reply Comments as recent examples of positive voluntary outreach.

Pursuant to Section 1.1206 of the Commission rules,³ 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,

/s/ Bill LeBeau

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Attorneys for the
Entertainment Software Association

cc: Commissioner Michael Copps (via Margaret McCarthy)*
Commissioner Robert McDowell (via Christine Kurth)*
Commissioner Mignon Clyburn (via Louis Peraertz)*
Margaret McCarthy, Wireline Policy Advisor to Commissioner Copps*
Christine Kurth, Policy Director and Wireline Counsel to Commissioner McDowell*
Louis Peraertz, Legal Advisor to Commissioner Clyburn*
James Bangasser*
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** transmitted via electronic mail*

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³ 47 C.F.R. § 1.1206.