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August 9, 2011

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 Friday, August 5, 2011, Gina Woodworth and Michael Warnecke, Sr. Director of Federal Government Affairs and Sr. Policy Counsel of the Entertainment Software Association (the "ESA") respectively, accompanied by Alicia Smith of The Smith-Free Group, LLC, and Bill LeBeau of Holland & Knight LLP, met with Jessica Almond, Special Counsel to Chairman Julius Genachowski.

In accordance with the comments and reply comments submitted by the ESA in the above-captioned proceedings,¹ the ESA encouraged the implementation of the Twenty-First Century Communications and Video Accessibility Act ("CVAA") consistent with the statutory text, including its provision that authorizes 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 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.

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).

The ESA further 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, such ancillary functionalities do not outweigh the established game-playing purpose and design of these products and services or justify the application of other regulatory complexities, including potential TRS issues, to the class of video games, as defined. *See, e.g.*, ESA Reply Comments on page 11. Our discussion of the proposed class included consideration of the ACS features present in some online games. The ESA also noted that video games are well and broadly understood to be a separate class and recounted how many other commenters in the current proceeding have articulated their support for a waiver for video games.

In addition, 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. Consistent with such innovation, and in light of FCC authority to review an FCC rule waiver and the evolving nature of game development, the ESA maintained that efforts to predict a potential re-evaluation period for any ACS waiver would be unnecessarily speculative. 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 that are clearly within the purposes of the CVAA while demonstrating the Commission's commitment to the statutory text. Moreover, the President's recent Executive Order asking that independent agencies reassess and streamline federal regulations periodically would provide an additional, built-in opportunity to consider any existing waiver as part of a review of the entire ACS regulatory framework. 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.

Apart from these matters, the ESA discussed different ways that video game companies have responded to the concerns of persons with disabilities 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.

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Pursuant to Section 1.1206 of the Commission rules, 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: Jessica Almond, Special Counsel to Chairman Julius Genachowski (via electronic mail)

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