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Via Electronic Filing

August 25, 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 August 23, 2011, Julie Kearney, Vice President, Regulatory Affairs, Consumer Electronics Association (“CEA”), accompanied by outside counsel William Maher and Mark Walker of Wilkinson Barker Knauer, LLP, met with Christine Kurth, Policy Director and Wireline Counsel for Commissioner Robert M. McDowell. The discussion focused on the following items:

Waivers for Internet-enabled Televisions and Digital Video Players. Consistent with its *July 19 Ex Parte Letter*,¹ CEA urged that the Commission grant the requested class waivers of Section 716 of the Communications Act, as amended (the “Act”)² for Internet-enabled televisions (the “subject TVs”) and Internet-enabled digital video players (the “subject DVPs”) in its order to be adopted in the above-referenced proceeding.³ The requested waivers meet all

¹ See *Ex Parte Letter* from Julie Kearney, CEA to Marlene H. Dortch, Secretary, FCC, CG Docket Nos. 10-213 & 10-145, WT Docket No. 96-198 (filed July 19, 2011) (“*July 19 Ex Parte Letter*”) (requesting class waivers for Internet-enabled televisions and digital video players).

² See 47 U.S.C. § 617. Section 716(h)(1) provides the authority under which the waivers are requested. See *id.* § 617(h)(1).

³ 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, 3156 ¶ 60 (2011) (“*NPRM*”) (“Are there specific classes of services or equipment that we should consider waiving in our final rules on Section 716?”).

the requirements of Section 716(h)(1) and serve the public interest.⁴ Specifically, CEA emphasized the narrow nature of the requested waivers. The primary purpose of the subject TVs and DVPs as described in the *July 19 Ex Parte* is the delivery of video content, principally full-length, professional quality video programming, not access to the “advanced communications services” (“ACS”) that are the subject of Section 716.⁵ Consistent with the *July 19 Ex Parte*, CEA described examples of the subject TVs and DVPs.⁶ CEA also emphasized the need for waivers in order to provide the consumer electronics industry with the needed certainty to continue to innovate and meet changing market preferences.⁷

Phase-in Period. 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 ACS rules. 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.⁸

Informal Complaint Process. CEA discussed the need for the Commission to narrow the proposed informal complaint process in order to focus on resolving customer complaints. CEA expressed its support for the direct resolution by manufacturers or service providers of any customer complaint before the commencement of an informal complaint process,⁹ but cautioned that requiring an attestation from both parties to close a complaint is impractical and will be difficult to secure from the average customer even when the complaint is fully resolved to the satisfaction of the customer. CEA is concerned that the “Possible ACS EB Informal Complaint Process”¹⁰ – summarized in a recent *ex parte* filing – may stray from the CVAA’s narrow requirement to “investigate the allegations in an informal complaint”¹¹ and open defendants to sweeping discovery and a wasteful litigation process, contrary to Congress’s intent.

Recordkeeping. CEA urged that the Commission only require that covered entities maintain records for the three categories set forth in Section 717(a)(5)(A).¹² CEA emphasized that any additional recordkeeping requirements beyond those set forth in the statute would unnecessarily burden covered entities and inhibit their operational flexibility.

⁴ See *July 19 Ex Parte Letter* at 2, 4, 7. The requested waivers also meet the Commission’s general waiver requirements. See *id.* at 8-9 & nn.42, 43.

⁵ See *id.* at 3, 5-7, 8.

⁶ See *id.* at 4-6 (describing subject TVs); 7-8 (describing subject DVPs).

⁷ See *id.* at 9-10.

⁸ See 47 U.S.C. § 618(a)(5)(A).

⁹ See *Ex Parte* Submission from Mark Uncapher, Telecommunications Industry Association (“TIA”) to Marlene H. Dortch, Secretary, FCC, CG Docket Nos. 10-213 & 10-145, WT Docket No. 96-198, Attachment – FCC Proposed ACS Complaint Process (filed Aug. 19, 2011).

¹⁰ *Id.*

¹¹ 47 U.S.C. § 618(a)(3)(B).

¹² *Id.* § 618(a)(5)(A).

Limitation on Liability. CEA urged that the Commission recognize that a manufacturer should only be responsible for CVAA compliance for the ACS applications that the manufacturer controls. CEA agrees with TIA and CTIA that manufacturers are only responsible for meeting the CVAA’s accessibility requirements with respect to a product’s hardware and ACS software that the manufacturer intentionally installs on the device before sale, unless it relies on third-party hardware or software to comply with accessibility obligations.¹³ Conversely, the Commission should hold the developers of any third-party applications, including applications offered through an app store, responsible for the accessibility of the software they develop.¹⁴ This common-sense approach is consistent with Section 2(a) of the CVAA,¹⁵ which precludes holding manufacturers liable for software downloaded by end users, where a third party controls the specifications of the downloaded software.

While there has been some recent discussion of the duties of a “manufacturer” for purposes of the CVAA,¹⁶ CEA agrees with the *NPRM* that the Commission should adopt for ACS purposes the definition of “manufacturer” used in the Section 255 rules: “an entity that makes or produces a product.”¹⁷ Doing so will provide substantial certainty to the industry without inhibiting innovation.¹⁸

Interoperable Video Conferencing Services. Consistent with its *July 18 Ex Parte Letter*,¹⁹ CEA emphasized that Congress’s inclusion of the term “interoperable” narrowed the scope of the video conferencing services covered by the ACS provisions of the CVAA. Moreover, CEA

¹³ See Comments of TIA, CG Docket Nos. 10-213 & 10-145, WT Docket No. 96-198, at 7-8 (filed Apr. 25, 2011); Reply Comments of CTIA, CG Docket Nos. 10-213 & 10-145, WT Docket No. 96-198, at 7 (filed May 23, 2011); see also Comments of AT&T, CG Docket Nos. 10-213 & 10-145, WT Docket No. 96-198, at 8 (filed Apr. 25, 2011).

¹⁴ See Comments of CEA, CG Docket Nos. 10-213 & 10-145, WT Docket No. 96-198, at 7 (filed Apr. 25, 2011).

¹⁵ CVAA § 2(a).

¹⁶ See *Ex Parte Letter* from Glenn S. Richards, Executive Director, Voice on the Net Coalition to Marlene Dortch, Secretary, FCC, CG Docket Nos. 11-47 & 10-213, at 3-4 (filed Aug. 12, 2011).

¹⁷ See *NPRM*, 26 FCC Rcd at 3142-43 ¶ 20 (quoting 47 C.F.R. § 6.3(f)). See *Implementation of Sections 255 and 251(a)(2) of the Communications Act of 1934, as Enacted by the Telecommunications Act of 1996*, Report and Order and Further Notice of Inquiry, 16 FCC Rcd 6417, 6454 ¶ 90 (1999) (“*Section 255 Order*”).

¹⁸ As provided in the *Section 255 Order* this definition recognizes the concept of “co-manufacturer.” See *Section 255 Order*, 16 FCC Rcd at 6454 ¶ 90 (finding that “[i]n appropriate circumstances . . . where an entity is otherwise extensively involved in the manufacturing process – for example, by providing product specifications – we may, as the individual circumstances warrant, deem such an entity to be a co-manufacturer of the product involved”).

¹⁹ *Ex Parte Letter* from Julie Kearney, CEA to Marlene H. Dortch, Secretary, FCC, CG Docket Nos. 10-213 & 10-145, WT Docket No. 96-198 (filed July 18, 2011) (“*July 18 Ex Parte Letter*”) (discussing the definition of “Interoperable Video Conferencing Service”).

explained that the modifier “interoperable” provides no authority for mandating interoperability among video conference providers.²⁰

Pursuant to Section 1.1206 of the Commission’s rules,²¹ this letter is being electronically filed with your office and a copy of this submission is being provided to the meeting attendee 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

cc: Christine Kurth

²⁰ *See id.* at 2-4.

²¹ 47 C.F.R. § 1.1206.