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August 25, 2011

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

Re: *Ex Parte* Submission – CC Docket Nos. 10-213 and 10-145; WT Docket No. 96-198

Dear Ms. Dortch:

On August 23, 2011, Mark Uncapher and Brian Scarpelli of TIA, accompanied by David Hilliard of Wiley Rein LLP representing TIA, met with Rick Kaplan, Bureau Chief, and Jane Jackson, Associate Bureau Chief, both of the Wireless Telecommunications Bureau, Federal Communications Commission (Commission), to discuss TIA's concerns in the above-noted proceedings. Mary Brooner of TIA and Laura Ruby of Microsoft participated by conference call. A copy of the materials distributed during the meeting is attached.

TIA discussed its positions consistent with its filing on the implementation of the 21st Century Communications and Video Accessibility Act of 2010 (CVAA),[1] noting that TIA believes that the CVAA will help industry enable technologies for the disabled community in ways not foreseen by the Americans with Disabilities Act. As part of this effort, TIA submitted (1) its previously filed *ex parte* regarding the status of standards development in the area of interoperable video conferencing,[2] and (2) a visual depiction of what TIA currently understands to be the Commission's proposed Advanced Communications Services complaint resolution under the CVAA and TIA's proposal that the plan include a period for direct engagement between a prospective complainant and the prospective target of the complaint before the Commission's informal complaint process with its 180 day clock is triggered. This visual depiction was provided to facilitate discussion of the informal complaint process.

[1] *See* Comments of TIA, CG Docket Nos. 10-213, 10-145; WT Docket No. 96-198 (filed Apr.25, 2011).

[2] Telecommunications Industry Association *Ex Parte*, CC Docket Nos. 10-213 and 10-145; WT Docket No. 96-198 (filed Aug. 10, 2011).

Initially, TIA noted that manufacturers of information and communication technologies (ICT) have long strived to innovate for the improvement of access to communications services to populations with disabilities. To ensure that manufacturers and service providers can continue this history of innovation, TIA supported a reasonable phase-in period that will allow for manufacturers and service providers to fully establish and implement required processes. Specifically, TIA supported a 2-year phase in period after the enactment of the regulations.

TIA then discussed issues related to the scope of the CVAA, and inquired as to what would be considered relevant specialized customer premises and peripheral devices in connection with accessibility, it was recommended that:

1) the Commission specify that "advanced communications services" (ACS) be limited to those which are human-to-human; and then

2) the Commission clarify that it will look to a device's or service's primary purpose using a fact-based determination. This determination would consider consumers' principal motivation in purchasing products.

Regarding waivers, TIA strongly recommended that the FCC initiate class-level waivers in order to provide maximum certainty to product developers, facilitating innovation. As a product's primary purpose evolves, the Commission can then initiate a renewed examination of the exempt class.

TIA noted that a direct resolution period to resolve complaints between consumers and companies is an opportunity for companies to resolve matters with the consumer, where possible. TIA recommends 60 days for this direct resolution, noting that it often takes this amount of time (based upon the Section 255 complaint resolution process) to contact the consumer, understand the consumer's concern and address a resolution. TIA also noted the difficulty that may be faced in attaining attestation of a complaint resolution, and encouraged the consideration of informal exchanges to determine resolution in this point of the process. On the topic of the treatment of informal complaints, TIA discussed the need for clarity on the use of affirmative defenses, including devices and services not covered by the CVAA, those fitting within established safe harbors, those already covered under Section 255, and those otherwise excluded or exempt under the CVAA.

TIA's representatives also discussed record keeping, noting that excessive documentation requirements could defeat the goal of encouraging the development of accessible products and services. TIA noted the need to maintain records that describe features of devices that address accessibility. Additionally, anticipatory documentation was discussed, and TIA urged that documentation requirements should not burden or derail the product design process, which includes consultation on disabled access issues.

Additionally, the conversation addressed the need to avoid burdensome discovery in the handling of informal complaints, and the processes under the Commission's rules for maintaining the confidentiality of business information and trade secrets submitted to the Commission in responding to a complaint. TIA noted that Freedom of Information Act (FOIA) Exemption 3 treatment may not apply, because the CVAA does not contain the specific citation to this disclosure exemption required by the 2009 update.[3] As the CVAA requires the Commission to keep confidential records compiled pursuant to Section 717(a)(5)(A), TIA submitted that the Commission, upon its request in connection with a complaint investigation, construe broadly the confidentiality provision in Section 717(a)(5)(C) of the CVAA during the process. To this end TIA submitted that the preferable approach would be to amend Section 0.457(d) of the Commission's Rules to list confidential business information submitted in response to a request from the Commission in connection with an accessibility complaint as information that would be accorded confidentiality. While this would not preclude the filing of a FOIA Request, and the grant of such a request if the requisite showing under Section 0.461 of the Rules is persuasive to the Commission, the agency would establish the presumption that such information is entitled to confidentiality as provided in the CVAA.

Pursuant to Section 1.1206 of the Commission's rules,[4] this letter is being electronically filed via ECFS and a copy of this submission is being provided electronically to the meeting attendees.

Respectfully submitted,

TELECOMMUNICATIONS INDUSTRY ASSOCIATION

By: *<u>/s/ Mark Uncapher</u>*

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[3] 5 U.S.C. § 552(b)(3)(B).

[4] 47 C.F.R. § 1.1206

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August 10, 2011

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

Re: *Ex Parte* Submission – CC Docket Nos. 10-213 and 10-145; WT Docket No. 96-198

Dear Ms. Dortch:

In accordance with Section 1.1206 of the Commission's Rules the Telecommunications Industry Association ("TIA") submits this *ex parte* letter to address the current state of development of "interoperable video conferencing service" and the implementation of the Twenty-First Century Communications Accessibility Act ("CVAA")[1] with respect to such service.

As TIA noted in its comments, "[a]lthough the *NPRM* implies that the term "interoperable" does not change the meaning of the definition,[2] the Commission cannot ignore the term's existence and its significance, which is uniformly understood in FCC rules and precedent to entail inter-platform, inter-network and inter-provider communications.[3] This understanding of "interoperable" as reflected in the FCC's rules and precedent is consistent with the IEEE definition which defines "interoperability" as the "ability of a system or a product to work with other products without special effort on the part of the consumer." As noted by CEA the IEEE definition captures "interoperability" from an end user/consumer point of view.[4] The Commission should assume that Congress did not intend for it to adopt an entirely different and more

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[1] Twenty-First Century Communications and Video Accessibility Act of 2010, Pub. L. No. 111-260, 124 Stat. 2751 (2010) ("CVAA").

[2] *See NPRM* ¶ 45.

[3] *See* 47 C.F.R. § 90.7 (defining "interoperable" in the public safety wireless context as "An essential communication link within public safety and public service wireless communications systems which permits units from two or more different entities to interact with one another and to exchange information according to a prescribed method in order to achieve predictable results."); *Telecommunications Relay Services for Individuals with Hearing and Speech Disabilities*, Declaratory Ruling and Further Notice of Proposed Rulemaking, 21 FCC Rcd 5442 (May 9, 2006) (imposing an interoperability obligation such that "All VRS consumers should be able to place a VRS call through any of the VRS providers' service, and all VRS providers should be able to receive calls from, and make calls to, any VRS consumer."); *see also* 47 C.F.R. § 51.325(b) (defining "interoperability" as "the ability of two or more facilities, or networks, to be connected, to exchange information, and to use the information that has been exchanged.").

[4] CEA Written *Ex Parte* Submission, CG Docket Nos. 10-213 & 10-145, WT Docket No. 96-198 (July 18, 2011) at 3.

expansive definition for purposes of the CVAA. Thus, as part of the definition, the term "interoperable" is not meant to require interoperability, but instead, to narrow the scope of services covered by the definition." [5] During TIA's June 14, ex parte meeting with the Commission's staff, TIA's representatives emphasized that by mandating accessibility for interoperable video conferencing, Congress looked to the future time when interoperable video conferencing would become available. At that point, the CVAA requires accessibility. The Commission's staff inquired as to the current state of standards development for interactive video conferencing. TIA said that it would review this matter and follow up with the commission on this issue.

Having now conferred with various stakeholders in the interactive video conferencing industry, TIA reaffirms that while substantial progress has been made toward achieving the sort of operating environment that would achieve interoperability, truly interoperable video conferencing has not yet been implemented.[6] As such, the Commission should refrain from imposing accessibility requirements on such video conferencing in this proceeding at this time.

TIA notes several pre-standards initiatives of industry. More than a dozen telecom providers including AT&T, Verizon and Global Crossing have joined the Open Visual Communications Consortium ("OVCC"), an initiative fostered by Polycom.[7] This is an effort by participating companies to work together, using open based standards, to achieve a measure of interoperability between and among consortia members using various technologies. While these efforts could lead to a de facto standard, it is not a standards development initiative.

In addition, there are efforts underway to achieve a large measure of interoperability through the cloud. Thus, the Blue Jeans Network, a third party service, has announced that it offers inter-platform bridging of disparate video conferencing services using cloud computing. As the company explains:

To do this it must be able to transcode between different video and audio protocols, mix video and audio streams together, insert a wide range of security and controls for both the meeting host and meeting participants, and scale to meet growing demand worldwide.[8]

As promising as such a service is, it still does not signal the arrival of interoperable video conferencing services in which end users of disparate platforms and services can achieve interoperable video conferencing without the need for third party conversions. For such an era to arrive, additional standards development work will need to be done if users are

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[5] TIA Comments at 11.

[6] Thus, interactive video conferencing in which participants freely converse among themselves with audio and video from each participant is certainly a reality. The missing aspect is interoperability across networks and platforms so that such conversations may occur without special effort on the part of consumers.

[7] http://www.polycom.com/company/industry_affiliations/ovcc/index.html (last accessed August 3, 2011).

[8] http://bluejeans.com/how (last accessed August 2, 2011).

to have true "plug and play" interoperability. Ultimately, the customer premises equipment will need to negotiate with that used by others in the conference to utilize a standard protocol. The challenge facing those who develop standards and those who develop hardware is to come up with such protocols without unduly freezing the state of innovative systems development.

TIA also notes the work underway by the Unified Communications Interoperability Forum (UCIF).[9] UCIF is working to facilitate the use of H.264/SVC and to develop a testing certification program to determine when equipment meets this standard. The National Emergency Numbering Association (NENA) through its i3 standards initiative to facilitate the handling of "video calls" as part of NG 911 is also working to facilitate interoperable video conferencing.[10]

In sum, efforts are underway on multiple fronts in the quest to bring interoperable video conferencing to consumers. Notwithstanding the progress that has been made, *interoperable* video conferencing as described in TIA's comments has not yet arrived, although that day does not appear to be far off. Given that there are not yet standards developed that would offer "the ability of a system or a product to work with other products without special effort on the part of the customer, and given the fact that Section 716(e)(1)(D) of the CVAA prohibits the Commission from mandating a technical standard on ACS providers, the Commission should refrain from mandating interoperability for interactive conferencing when it adopts rules to implement the CVAA.

[9] http://www.ucif.org/Home.aspx (last accessed August 2, 2011).

[10] http://www.nena.org/sites/default/files/08-003%20Detailed%20Functional%20and%20Interface%20Specification%20for%20the%20NENA%20i3%20Solution%20-%20Stage%203_1.pdf (last accessed August 2, 2011).

Respectfully submitted,

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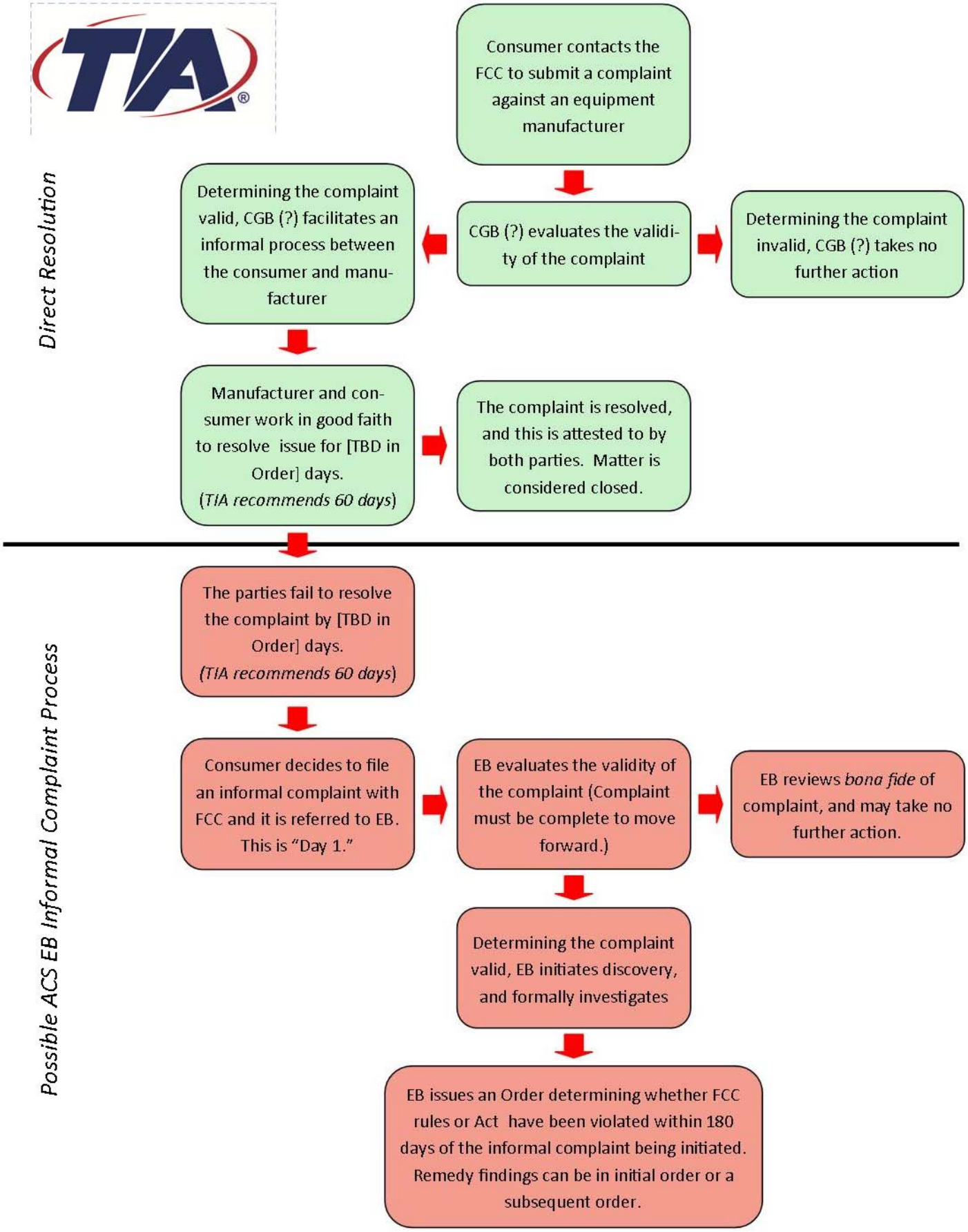
FCC Proposed ACS Complaint Process, as Understood by TIA as of 8/10/11