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September 12, 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 September 8, 2011, Mark Uncapher, Mary Brooner, and Brian Scarpelli of TIA, accompanied by Scott Delacourt of Wiley Rein LLP representing TIA, met with Margaret McCarthy, Wireline Policy Advisor in the Office of Federal Communications Commission (Commission) Commissioner Michael Copps to discuss TIA's concerns in the above-noted proceedings. 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) (TIA Interoperable Video Conferencing *Ex Parte*).

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 both meet the new advanced communications services (ACS) standard of achievability and the requisite reporting requirements, TIA supports a reasonable phase-in period that will allow for manufacturers and service providers to fully establish and implement these processes. Specifically, TIA supports a 2-year phase in period after the enactment of the regulations.

TIA then discussed issues related to the scope of the CVAA, including what would be considered relevant specialized customer premises and peripheral devices in connection with accessibility. With regard to scope, TIA recommends:

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 single primary purpose using a fact-based determination. This determination would consider consumers' principal motivation in purchasing products, as well as product collateral. Such a construction of Section 716 would best comport with the plain meaning of the statute, *see Merriam Webster's Collegiate Dictionary* 925 (10th ed. 1996) (defining "primary" as "of first rank, importance, or value"), and normal canons of statutory construction, *see, e.g.*, *Astrue v. Ratliff*, 130 S. Ct. 2521, 2526 (2010) (consulting dictionary definitions to determine "plain meaning" of a statutory term); *Kokoszka v. Belford*, 417 U.S. 642, 650 (1974) ("When interpreting a statute, the court will not look merely to a particular clause in which general words may be used, but will take in connection with it the whole statute.") (quotation omitted).

Regarding waivers, TIA strongly recommends that the FCC favorably act upon class-level waivers currently under consideration 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 recommends that the FCC permit 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 innovation and 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.

TIA's representatives then discussed interoperable video conferencing. TIA noted that there is really not today any true interoperable video conferencing, though the industry is moving in that direction. TIA also expressed the view that the Congressional inclusion of the word "interoperable" in the CVAA was both forward-looking and prescient because it clearly requires that the first generation of standards be interoperable, which is not the case often with new technology standards. Further comments are provided in TIA's *ex parte* of August 10, 2011.[3]

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.

[3] TIA Interoperable Video Conferencing *Ex Parte*.

[4] 47 C.F.R. § 1.1206

Respectfully submitted,

**TELECOMMUNICATIONS INDUSTRY ASSOCIATION**

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

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