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Via Electronic Filing

September 19, 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 September 15, 2011, Julie Kearney, Vice President, Regulatory Affairs, Consumer Electronics Association ("CEA"), accompanied by Jim Morgan, Sony Electronics, Inc., Paul Schomburg, Panasonic Corporation of North America, John Godfrey, Samsung Information Systems America, Inc., and outside counsel William Maher and Mark Walker of Wilkinson Barker Knauer, LLP, met with Commissioner Mignon L. Clyburn, Dave Grimaldi, Chief of Staff and Media Legal Advisor, Office of Commissioner Mignon L. Clyburn, and Louis Peraertz, Legal Advisor, Wireless, International, and Public Safety, Office of Commissioner Mignon L. Clyburn.

Consistent with its comments and reply comments in the above-captioned proceedings,[1] CEA urged implementation of the Advanced Communications Service ("ACS") provisions of the Twenty-First Century Communications and Video Accessibility Act ("CVAA") in a manner that balances the increased accessibility of ACS with manufacturers' and service providers' continued ability to innovate. To help guide the meeting, CEA provided each attendee with (i) the attached agenda that summarizes the items discussed and provides cross-references to the relevant portions of CEA's comments and reply comments and (ii) the attached chart that compares the ACS provisions of the legislation originally introduced in the House of Representatives to the provisions enacted in the CVAA. The comparison demonstrates

[1] *See* Comments of CEA, CG Docket Nos. 10-213 & 10-145, WT Docket No. 96-168 (filed Apr. 25, 2011) ("CEA Comments"); Reply Comments of CEA, CG Docket Nos. 10-213 & 10-145, WT Docket No. 96-168 (filed May 23, 2011) ("CEA Reply Comments").

Congress's intent to narrow the scope of the statute and to achieve a greater balance between increased accessibility and continued innovation.

In addition, the following items were discussed during the meeting:

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. A phase-in period of at least 24 months is entirely consistent with Commission precedent, including the various phase-in periods provided for closed captioning in digital television receivers,[2] wireless hearing aid compatibility,[3] E911 location accuracy requirements in handsets,[4] V-Chip requirements in television receivers,[5] CableCARD requirements,[6] and digital tuner requirements for television sets.[7] CEA noted that the ACS implementation issues facing its members were much more complex than implementation of the foregoing individual requirements. In fact, 24 months represents the minimum amount of time needed for manufacturers to effectively comply with the ACS rules. Without that 24-month phase-in, the new rules could have an initial chilling effect on the introduction of new ACS functionality by manufacturers and service providers due to the inability to make new offerings immediately accessible as a result of a shortened manufacturing cycle. Alternatively, covered entities could face pressures to file waiver requests for new ACS offerings, unnecessarily burdening both the Commission and consumers.

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

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[2] *See Closed Captioning Requirements for Digital Television Receivers*, Report and Order, 15 FCC Rcd 16788, 16807-08 ¶¶ 56-58 (2000) (providing a 24-month phase-in period).

[3] *See Section 68.4(a) of the Commission's Rules Governing Hearing Aid-Compatible Telephones*, Report and Order, 18 FCC Rcd 16753, 16780 ¶ 65 (2003) (providing a 24-month phase-in period to meet the initial wireless hearing aid compatibility requirements).

[4] *See Wireless E911 Location Accuracy Requirements*, Report and Order, 22 FCC Rcd 20105, 20112 ¶ 17 (2007), *voluntarily vacated*, Rural Cellular Ass'n v. FCC, 2008 U.S. App. LEXIS 19889 (D.C. Cir. Sept. 17, 2008) (providing a 5-year phase-in period for compliance at the PSAP level).

[5] *See Technical Requirements to Enable Blocking of Video Programming based on Program Ratings*, Report and Order, 13 FCC Rcd 11248, 11257 ¶ 23 (1998) (providing television manufacturers with an approximately 22-month total phase-in period – approximately 16 months for compliance of at least half of their new product models and an additional 6 months for the remaining new models); *see also* 47 C.F.R. § 15.120.

[6] *See Implementation of Section 304 of the Telecommunications Act of 1996*, Report and Order, 13 FCC Rcd 14775, 14803 ¶ 69 (1998) (providing an approximately 6.5-year phase-in period for CableCARD set-top boxes); *see also* 47 C.F.R. § 76.1204.

[7] *See Review of the Commission's Rules and Policies Affecting the Conversion To Digital Television*, Second Report and Order and Second Memorandum Opinion and Order, 17 FCC Rcd 15978, 15996 ¶ 40 (2002), *as modified*, *Requirements for Digital Television Receiving Capability*, Report and Order, 20 FCC Rcd 18607, 18607 ¶ 1 (2005) (providing television manufacturers with a phase-in period totaling more than four years); *see also* 47 C.F.R. § 15.117(i).

customer complaint before the commencement of an informal complaint process,[8] 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"[9] – summarized in a recent *ex parte* filing – may stray from the CVAA's narrow requirement to "investigate the allegations in an informal complaint"[10] and open defendants to sweeping discovery and a wasteful litigation process, contrary to Congress's intent.

Waivers for Internet-enabled Televisions and Digital Video Players. Consistent with its *July 19 Ex Parte Letter*,[11] CEA stated that Internet-enabled televisions (the "subject TVs") and Internet-enabled digital video players (the "subject DVPs") should not be subject to ACS regulations, but urged in the alternative that the Commission grant the class waivers of Section 716 of the Communications Act, as amended (the "Act")[12] for the subject TVs and DVPs. These waivers should be included in the Commission's order to be adopted in the above-referenced proceeding.[13] The requested waivers meet all the requirements of Section 716(h)(1) and serve the public interest.[14] The requested waivers also meet the Commission's general waiver requirements.[15] CEA described the narrow nature of the requested waivers. The primary purpose of the subject TVs and DVPs is the delivery of video content, not access to ACS.[16] Consistent with the *July 19 Ex Parte*, CEA described examples of the subject TVs and DVPs.[17]

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).[18] CEA emphasized that any additional recordkeeping requirements beyond those set forth in the statute would unnecessarily burden covered entities and inhibit their operational flexibility.

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[8] *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).

[9] *Id.*

[10] 47 U.S.C. § 618(a)(3)(B).

[11] *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).

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

[13] *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?").

[14] *See July 19 Ex Parte Letter* at 2, 4, 7.

[15] *See id.* at 8-9 & nn.42, 43.

[16] *See id.* at 3, 5-7, 8.

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

[18] 47 U.S.C. § 618(a)(5)(A).

Small Entity Exemption. CEA emphasized the importance of the small entity exemption to help ensure such entities are not unduly burdened by the implementation of the CVAA.[19] In determining how best to implement this exemption, the Commission should consult with the Small Business Administration when defining "small entity" and consider as relevant factors the limits on a company's legal, financial, or technical capability.[20]

Interoperable Video Conferencing Services. Consistent with its *July 18 Ex Parte Letter*,[21] CEA stated that Congress's inclusion of the term "interoperable" narrowed the scope of the video conferencing services covered by the ACS provisions of the CVAA. The new rules must give meaning to Congress's inclusion of the term "interoperable," which was added during the legislative process, even though other portions of the statutory definition were unchanged.[22] The Commission should do so by ensuring that only the subset of video conferencing services that are genuinely interoperable are covered under Section 716. Consistent with the term's ordinary meaning, the Commission should define "interoperable" as the ability to operate among different platforms, networks, and providers without special effort or modification by the end user.[23]

There are currently few, if any, truly interoperable video conferencing services, but industry is working to develop the necessary standards to provide true interoperability among different platforms, networks, and providers.[24] Imposing the requirements of Section 716 on video conferencing services generally, including those that are not interoperable, will only stifle experimentation and innovation in this nascent marketplace.

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[19] *See id.* § 617(h)(2).

[20] *See* CEA Comments at 20-21; CEA Reply Comments at 11.

[21] *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").

[22] CEA, *Comparison of CVAA Advanced Communications Services Provisions: H.R. 3101 (as introduced) to Pub. L. 111-260 (as enacted)*, at 1 (Sept. 15, 2011) (attached).

[23] *July 18 Ex Parte Letter* at 3 (urging the adoption of an "interoperable" definition consistent with IEEE's definition).

[24] *See Ex Parte* Letter from Danielle Coffey, Vice President, Government Affairs, Telecommunications Industry Association ("TIA") to Marlene H. Dortch, Secretary, FCC, CG Docket Nos. 10-213 & 10-145, WT Docket No. 96-198, at 2-3 (filed Aug. 10, 2011) (discussing various industry initiatives relating to interoperability standards for video conferencing).

Pursuant to Section 1.1206 of the Commission's rules,[25] 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: Commissioner Mignon L. Clyburn
Dave Grimaldi
Louis Peraertz

[25] 47 C.F.R. § 1.1206.

CVAA – Advanced Communications Services NPRM
(CG Docket Nos. 10-213, 10-145, WT Docket No. 96-198)
CEA *Ex Parte* Meeting Agenda

September 15, 2011

1. **Introduction/Background on CEA**

    a. Principal U.S. trade association for the consumer electronics and information technologies industries (Com. at 2)

    b. 2,000 member companies that cumulatively generate more than $186 billion in annual factory sales (Com. at 2 n.4)

    c. CEA and its member companies were actively involved in the CVAA legislative process and continue to engage in regulatory and standards activities relating to accessibility (Com. at 2 & n.6)

2. **CVAA Purpose and Legislative History**

    a. Congress intended to balance increased accessibility of ACS with manufacturers' and service providers' continued ability to innovate (Com. at 3)

    b. Congress consciously narrowed the scope of the legislation to ensure this balance, for example:

        i. Added Section 2(a) – limitation on liability (Com. at 3 & n.7)

        ii. Added "interoperable" and "service" to limit the forms of video conferencing subject to the CVAA (Com. at 3 & n.8)

        iii. Added the waiver authority (Com. at 3-4 & n.9)

3. **An Initial Phase-In Period is Essential**

    a. A minimum 24 month phase-in period before commencing enforcement will provide the needed time for covered entities to comply with the final rules (Com. at 39; Rep. at 3-4)

    b. Such a phase-in period also provides time to address waiver requests filed in response to the final rules (Com. at 40; Rep. at 4-5)

    c. The Commission should grandfather in products released prior to the promulgation of the final rules (Com. at 40; Rep. at 5)

4. **Definitions and Scope of the Rules Should Be Interpreted Consistently With All of the Statute**

    a. A product or service that only includes incidental ACS should be excluded from the scope of the CVAA; Section 716 makes clear that the accessibility obligations only apply to an "offer" of ACS (Com. at 10; Rep. at 6)

    b. No authority exists to impose an interoperability mandate; the inclusion of "interoperable" limits the scope of video conferencing services covered by the CVAA (Com at 36; Rep. at 8-9)

    c. Section 2(a)'s liability limitation should be incorporated in the Commission's final rules to ensure that the accessibility of a third-party app is the responsibility of the third-party developer, rather than the device manufacturer or underlying service provider (Com. at 7, 34-35; Rep. at 17)

5. **Exemptions/Waivers Should Be Applied Reasonably**

    a. Customized equipment or services exemption should apply broadly; this exemption was expressly added by Congress (Com. at 16; Rep. at 9-10)

    b. Waiver authority was also added in the legislative process; the Commission should focus on the plain language of the statute and not favor individualized over class waivers nor limit the duration of waivers (Com. at 17-18; Rep. at 10-11)

    c. Small entities exemption should be used to minimize the burden on small business and promote the pace of technological innovation (Com. at 20-21; Rep. at 11)

6. **Achievability Rules Should Reflect The CVAA's Balanced Approach**

    a. The Commission should only consider the four factors provided in the statute, giving each equal weight (Com. at 21; Rep. at 12)

    b. The four factors should be incorporated into the Performance Objectives to help ensure greater clarity for covered entities as well as the FCC

    c. Built-in solutions should not be preferred to third-party solutions (Com. at 27-28; Rep. at 14-15)

    d. Nominal cost should be determined objectively on a case-by-case basis, considering the nature of the service or product as well as its total lifetime cost (Com. at 27; Rep. at 15)

    e. The "compatibility" rules should permit flexible and economical implementation (Com. at 29-30)

7. Recordkeeping Requirements Must be Realistic

a. Covered entities should only be required to maintain records for those categories set forth in Section 717 and not go beyond what Congress intended (Com. at 41)

b. The Commission should provide flexibility in how covered entities implement the recordkeeping requirements (Com. at 41-42; Rep. at 19)

8. Enforcement Should Focus On Resolution of Consumer Issues

a. Requiring a pre-filing notice will facilitate timely resolution of consumer complaints (Com. at 43-44; Rep. at 20-21)

b. Screening complaints prior to forwarding to defendants will reduce the burden on industry and the Commission alike (Com. at 44)

c. A 40-day answer period will provide a reasonable timeframe for a defendant to fully and accurately respond to a complaint (Com. at 45; Rep. at 21)

d. The answer content requirements should be streamlined to focus narrowly on (i) whether the device or service is accessible and (ii) if not accessible, whether accessibility is achievable (Com. at 45-46; Rep. at 21)

e. The foregoing is consistent with the 180-day statutory period in which a complaint must be resolved

f. CEA submitted draft rules which we urge the Commission to adopt (Com. at App. A)

9. Mobile Internet Browsers

a. Section 718 should be applied consistently with the flexibility requirements of Section 716 (Com. at 49; Rep. at 22-23)

b. Section 718 does not cover data-only devices such as laptops and tablets (Com. at 49)

10. Scope of Definitions/Waiver Request (*ex parte* filed July 19, 2011)

a. CEA's *ex parte* covers two classes of equipment: (i) Internet-enabled televisions and (ii) Internet-enabled digital video players ("DVPs"). The *ex parte* supports and is consistent with ESA's waiver request for video game offerings.

b. These classes of products should fall outside the scope of Section 716 and the definition of ACS. However, in an abundance of caution, CEA requests that the Commission grant class waivers of Section 716 for the Internet-enabled TVs and DVPs.

c. The requested waivers meet all the requirements of Section 716(h)(1) and serve the public interest.

d. Each class of equipment is multi-purpose, but is designed primarily for purposes other than ACS. The primary purpose of Internet-enabled TVs and DVPs is the delivery of video content, principally full-length, professional quality video programming.

11. "Interoperable Video Conferencing Service" (*ex parte* filed July 18, 2011)

a. The CVAA does not provide the Commission with the authority to mandate interoperability among video conferencing services.

b. "Interoperable" means the ability to operate among different platforms, networks, and providers without special effort or modification by the end user.

c. The VRS approach to interoperability is an inappropriate model for commercial video conferencing services because of (i) the fundamental differences between Section 225 and the CVAA and (ii) the unique origins of the VRS requirement, which do not apply in the context of commercial video conferencing services.

Comparison of CVAA Advanced Communications Services Provisions:
H.R. 3101 (as introduced) to Pub. L. 111-260 (as enacted)
Consumer Electronics Association
CG Docket Nos. 10-213, 10-145; WT Docket No. 96-168
September 15, 2011

Subject[1]	**H.R. 3101** (as introduced)	**Pub. L. 111-260** (as enacted)
Sections Applicable to Titles I & II of the CVAA		
Limitation on Liability	None	Added (CVAA Sec. 2)
Proprietary Technology	None	Added (CVAA Sec. 3)
Definitions added to Section 3 of the Communications Act		
Advanced Communications Services	"The term 'advanced communications' means . . . (C) electronic messaging; and (D) video conferencing."	"The term 'advanced communications *services*' means . . . (C) electronic messaging *service*; and (D) *interoperable* video conferencing *service*."[2]
Electronic Messaging Service	"The term 'electronic messaging' means a service that provides non-voice messages in text form between persons over communications networks."	"The term 'electronic messaging *service*' means a service that provides *real-time or near real-time* non-voice messages in text form between individuals over communications networks."
Interoperable Video Conferencing Service	"The term 'video conferencing' means a service that provides real-time video communications, including audio, to enable users to share information of the user's choosing."	"The term '*interoperable* video conferencing *service*' means a service that provides real-time video communications, including audio, to enable users to share information of the user's choosing."
Internet Access Equipment	". . . means equipment that is used to combine computer processing, information provision and computer interactivity with data transport . . ."	None
Internet Access Service	". . . means service that combines computer processing, information provision, and computer interactivity with data transport . . ."	None
Section 716 of the Communications Act		
Applicability to Manufacturers	". . .equipment and software that such manufacturer *designs, develops, and fabricates* . . ."	". . . equipment and software that such manufacturer *offers for sale or otherwise distributes in interstate commerce* . . ." (Sec. 716(a)(1))
Undue Burden and Achievability Standards	". . . unless the requirement of this subsection would result in an *undue burden*."	". . . unless the requirements of this subsection are *not achievable*." (Sec. 716(a)(1), (b)(1))

[1] This chart focuses on the advanced communications services ("ACS") provisions of H.R. 3101 (as introduced) and Pub. L. 111-260 (as enacted) most directly applicable to manufacturers and service providers, rather than a line-by-comparison of the legislation.

[2] Emphasis added throughout.

Comparison of CVAA Advanced Communications Services Provisions:
H.R. 3101 (as introduced) to Pub. L. 111-260 (as enacted)
Consumer Electronics Association
CG Docket Nos. 10-213, 10-145; WT Docket No. 96-168
September 15, 2011

Subject[1]	**H.R. 3101** (as introduced)	**Pub. L. 111-260** (as enacted)
Industry Flexibility	None	Added for manufacturers and service providers (Sec. 716(a)(2), (b)(2))
Applicability to Service Providers	". . . services offered by such provider. . ."	". . . services offered by such provider *in or affecting interstate commerce* . . ." (Sec. 716(b)(1))
Undue Burden and Achievability Definitions	". . . *'undue burden' means significant difficulty or expense*." Factors: 1. "the nature and cost of the steps required to develop and manufacture the product in question;" 2. "the impact on the operation of the manufacturer or provider;" 3. "the *financial resources of the manufacturer or provider*;" 4. "the type of operations of the manufacturer or provider."	". . . *'achievable' means with reasonable effort or expense, as determined by the Commission.*" Factors: 1. "The nature and cost of the steps needed *to meet the requirements of this section* with respect to the specific equipment or service in question." 2. "The *technical and economic* impact on the operation of the manufacturer or provider *and on the operation of the specific equipment or service in question, including on the development and deployment of new communications technologies*." 3. "The type of operations of the manufacturer or provider." 4. "*The extent to which the service provider or manufacturer in question offers accessible services or equipment containing varying degrees of functionality and features, and offered at differing price points.*" (Sec. 716(g))

Comparison of CVAA Advanced Communications Services Provisions:
H.R. 3101 (as introduced) to Pub. L. 111-260 (as enacted)
Consumer Electronics Association
CG Docket Nos. 10-213, 10-145; WT Docket No. 96-168
September 15, 2011

Subject[1]	**H.R. 3101** (as introduced)	**Pub. L. 111-260** (as enacted)
Waiver Authority	None	"The Commission shall have the authority . . . to waive the requirements of this section for any feature or function of equipment used to provide or access advanced communications services, or for any class of such equipment, for any provider of advanced communications services, or for any class of such services, that— (A) is capable of accessing an advanced communications service; and (B) is designed for multiple purposes, but is designed primarily for purposes other than using advanced communications services." (Sec. 716(h)(1))
Small Business Exemption	None	"The Commission may exempt small entities from the requirements of this section." (Sec. 716(h)(2))
Customized Equipment or Services Exemption	None	"The provisions of this section shall not apply to customized equipment or services that are not offered directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used." (Sec. 716(i))
Rule of Construction	None	"This section shall not be construed to require a manufacturer of equipment used for advanced communications or a provider of advanced communications services to make every feature and function of every device or service accessible for every disability." (Sec. 717(j))

Comparison of CVAA Advanced Communications Services Provisions:
H.R. 3101 (as introduced) to Pub. L. 111-260 (as enacted)
Consumer Electronics Association
CG Docket Nos. 10-213, 10-145; WT Docket No. 96-168
September 15, 2011

Subject[1]	**H.R. 3101** (as introduced)	**Pub. L. 111-260** (as enacted)
Sections 717, 718 of the Communications Act and Section 106 of CVAA		
Remedies	"CEASE AND DESIST ORDERS.—If the Commission's investigation . . . determines that a manufacturer of equipment or provider of service is engaged in an act prohibited by section 255, 716, 718, or 719, or is failing to perform any act required by section 255, 716, 718, or 719, the Commission shall have the authority to order such manufacturer or provider to cease from violating such section."	"If the Commission determines that a violation has occurred, the Commission may, in the order issued under this subparagraph or in a subsequent order, direct the manufacturer or service provider to bring the service, or in the case of a manufacturer, the next generation of the equipment or device, into compliance with requirements of those sections within a reasonable time established by the Commission in its order." (Sec. 717(a)(3)(B)(i))
Reporting and Recordkeeping	Required all manufacturers and providers to submit an annual report that details the steps taken to achieve compliance.	Replaced annual reporting requirement with a recordkeeping obligation and annual certification that the records are being kept. (Sec. 717(a)(5)(A), (B))
Internet Browsers Built into Telephones Used with Public Mobile Services	None	Added, effective 3 years after enactment (*See* Sec. 718).
Internet Access Service User Interface	"Every provider of Internet access service and every manufacturer of Internet access equipment shall, unless it would result in an undue burden, make user interfaces for such service and equipment accessible to individuals with disabilities, including those interfaces used to initiate, monitor, and control such service."	None
Advisory Committee	"Emergency Access *and Real-Time Text* Advisory Committee"	"Emergency Access Advisory Committee" CVAA Sec. 106