

COVINGTON & BURLING LLP

1201 PENNSYLVANIA AVENUE NW
WASHINGTON, DC 20004-2401
TEL 202.662.6000
FAX 202.662.6291
WWW.COV.COM

BEIJING
BRUSSELS
LONDON
NEW YORK
SAN DIEGO
SAN FRANCISCO
SILICON VALLEY
WASHINGTON

GERARD J. WALDRON
TEL 202.662.5360
GWALDRON@COV.COM

October 5, 2011

Ms. Marlene Dortch
Secretary
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, D.C. 20554

Re: *Ex parte meeting on MB No. 11-154*

Dear Ms. Dortch:

On October 3, 2011, Paula Boyd, Laura Ruby, Ann Marie Rohaly, and Sean Hayes of Microsoft, Tom Cohen of Run Studios LLC (a consultant to Microsoft), and the undersigned met with Michelle Carey, Deputy Chief of the Media Bureau and Steven Broeckaert, Roger Holberg, Walid Kassem, Mary Beth Murphy, Alison Neplokh, Jeffrey Neumann, Diana Sokolow, and John P. Wong of the Media Bureau; Rosaline Crawford and Eliot Greenwald of the Consumer and Government Affairs Bureau; Alan R. Stillwell of the Office of Engineering and Technology; and Commission intern Alan deLevie. Mss. Ruby and Rohaly, along with Messrs. Cohen and Hayes, participated by telephone. The purpose of the meeting was to discuss the Commission's implementation of Sections 202(b) and 203 of the Twenty-First Century Communications and Video Accessibility Act of 2010 ("CVAA") and the Notice of Proposed Rulemaking issued in this proceeding.

First, the parties discussed technical issues concerning the ecosystem applicable to video programming delivered by Internet Protocol. The parties discussed technological mechanisms in the market today by which video programming is transferred in turn from video programming owners to video programming distributors and from video programming distributors to end consumers. The parties discussed how the market place today handles these various steps and also discussed what may need to be done technically to address captioning obligations.

Second, the parties discussed the nature of the obligations imposed by Sections 202(b) and 203 of the CVAA. The parties discussed the responsibilities imposed by Section 202(b) related to closed captioning within the ecosystem applicable to video programming delivered by Internet Protocol. The parties also reviewed the definition of the term "apparatus" in Section 203. Specifically, the parties explained that the term "apparatus" refers to a physical, tangible device. Thus, by using "apparatus" to define the scope of Section 203, Congress intended to

COVINGTON & BURLING LLP

Ms. Marlene Dortch

October 5, 2011

Page 2 of 3

make clear that the Commission's Section 203 authority does not extend to software developers or hardware component makers. The parties noted that this formulation is consistent with the position advocated by a number of commenters in the title I proceeding implementing the CVAA. The parties added that in this framework software developers and component makers necessarily would be involved deeply with original equipment manufacturers to ensure the apparatus built and shipped by the manufacturer is compliant with FCC requirements.

The parties finally discussed the scope of the term "video programming" as used in Section 203, and explained that in the context of the entire CVAA, in which Congress clearly identified the advanced communications services and video content that should be made accessible, this phrase clearly should be seen as having the same meaning and scope as the term is given in Section 202. Therefore, the requirement that a covered apparatus must "be equipped with . . . capability designed to display closed-captioned video programming," 47 U.S.C. § 303(u)(1)(A), means that the apparatus must display "video programming delivered using Internet protocol that was published or exhibited on television with captions," 47 U.S.C. § 613(c)(2)(A). As such, Section 203 does not impose any legal obligation on apparatus manufacturers with respect to the display of closed captioning contained in programming that was not shown on television. Nevertheless, the parties explained that it is likely that once apparatus manufacturers ensure that their devices can display closed captioning for video that previously was shown on television, a device will be capable of displaying video with closed captioning that are compliant with the standard being used within the device.

* * *

Please direct any questions to the undersigned.

Sincerely,

/s/

Gerard J. Waldron
Counsel to Microsoft Corp.

cc: Mr. Steven Broeckaert
Ms. Michelle Carey
Ms. Rosaline Crawford
Mr. Alan deLevie
Mr. Eliot Greenwald
Mr. Roger Holberg
Mr. Walid Kassem
Ms. Mary Beth Murphy
Ms. Alison Neplokh
Mr. Jeffrey Neumann
Ms. Diana Sokolow

COVINGTON & BURLING LLP

Ms. Marlene Dortch

October 5, 2011

Page 3 of 3

Mr. Alan R. Stillwell

Mr. John P. Wong