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Via Electronic Filing

November 14, 2011

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

Re: Notice of Ex Parte Presentation – MB Docket No. 11-154

Dear Ms. Dortch:

This is to notify you that on November 9, 2011, Julie Kearney, Vice President, Regulatory Affairs, Consumer Electronics Association ("CEA"), Brian E. Markwalter, Senior Vice President, Research and Standards, CEA, and Bill Belt, Senior Director, Technology and Standards, CEA, accompanied by Jim Morgan, Sony Electronics, Inc., Paul Schomburg, Panasonic Corporation of North America, and outside counsel William Maher and Mark Walker of Wilkinson Barker Knauer, LLP, met with Michelle Carey (MB), Mary Beth Murphy (MB), Steve Broeckaert (MB), Krista Witanowski (MB), Alison Neplokh (MB), Jeff Neumann (MB), Diana Sokolow (MB), Tom Apone (MB) (by phone), Walid Kassem (MB), Karen Peltz Strauss (CGB), Rosaline Crawford (CGB), Eliot Greenwald (CGB), Roger Holberg (CGB), and Alan Stillwell (OET).

Consistent with its comments and reply comments in the above-captioned proceeding,[1] CEA urged the careful implementation of the IP captioning provisions of Twenty-First Century Communications and Video Accessibility Act ("CVAA") to ensure that industry has (i) the continued flexibility to innovate and (ii) certainty regarding the scope of its obligations. To help guide the meeting, CEA provided each attendee with the attached agenda that summarizes the items discussed and provides cross-references to the relevant portions of CEA's comments and reply comments and other portions of the record.

[1] *See* Comments of CEA, MB Docket No. 11-154 (filed Oct. 18, 2011) ("CEA Comments"); Reply Comments of CEA, MB Docket No. 11-154 (filed Nov. 1, 2011) ("CEA Reply Comments").

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

Safe Harbor Based on SMPTE-TT. CEA explained that its proposed safe harbor based on the relevant portions of SMPTE-TT best balances the need for industry flexibility and certainty. Specifically, as proposed in CEA's initial comments,[2] the Commission should adopt the SMPTE-TT standard (i) as a "safe harbor" interchange standard and (ii) in the case of consumer video players (VPAAC Report – Use Case #1), as a "safe harbor" delivery standard. As a safe harbor, SMPTE-TT would ensure consistency and transparency for entities seeking compliance. The adoption of a safe harbor standard is also consistent with Commission precedent. For instance, in implementing Communications Assistance for Law Enforcement Act ("CALEA"), the Commission provided carriers with certainty by identifying that compliance with a specific industry standard, J-STD-025, would satisfy a carrier's obligations under the statute.[3]

Covered Apparatus. CEA urged the Commission to conform its final rules implementing Section 203 of the CVAA closely to the statutory framework. The captioning obligations set forth in Section 303(u) of the Communications Act, as amended by the CVAA are applicable only when "technically feasible" and only for apparatus "designed to" receive or playback video programming "transmitted" by wire or radio.[4] Moreover, for apparatus that use a picture screen that is less than 13 inches in size, Section 303(u) further limits the applicability of the captioning obligations through an "achievable" pre-condition.[5] Similarly, the captioning obligations set forth in Section 303(z) only apply when "achievable" and only to apparatus "designed to" record video programming "transmitted" by wire or radio.[6] Because of the complex nature of these statutory provisions, the Commission's implementing rules should track the provisions closely to avoid confusion and to reflect the flexibility that Congress provided in these provisions.

Waivers. The Commission should act on Section 203(a) waiver petitions promptly to provide certainty and avoid inhibiting the introduction of new products and technologies. Consistent with the *ACS Order*,[7] the Commission should determine the "primary design" and "essential utility" of an apparatus from the perspective of the manufacturer.[8] Moreover, the determination

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[2] CEA Comments at 6-7.

[3] *See* 47 C.F.R. § 1.20006(a) ("A carrier may satisfy [the CALEA] requirements by complying with publicly available technical requirements or standards adopted by an industry association or standard-setting organization, such as J-STD-025 (current version), or by the Commission.").

[4] 47 U.S.C. § 303(u)(1).

[5] *Id.* § 303(u)(2)(A).

[6] *Id.* § 303(z)(1).

[7] *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*, CG Docket No. 10-213, Report and Order and Further Notice of Proposed Rulemaking, FCC 11-151, ¶ 183 (rel. Oct. 7, 2011) ("*ACS Order*") (requiring "an examination of the purpose or purposes for which the manufacturer . . . designed the product" and recognizing that "consumer use patterns may not always accurately reflect design").

[8] *See* 47 U.S.C. § 303(u)(2)(C).

of a device's "essential utility" is statutorily limited to one of the multiple purposes for which the device was designed.[9]

Interconnection Mechanisms and Standards. CEA explained its continued view that no regulation of interconnection mechanisms and standards is needed at this time. Some mechanisms already support the pass-through of closed captions to client devices, including MoCA ("Multimedia over Coax Alliance") and DLNA® ("Digital Living Network Alliance") home networking technologies. High Definition Multimedia Interface ("HDMI") currently meets the statutory requirement "to permit or render the display of closed captions."[10] HDMI permits the rendering of closed captions, but it must be understood that the captions and video are decoded in the source device and carried as opened captions to the display, which acts only as a monitor.

Forfeitures. CEA urged the commission to refrain from adopting the proposal that it establish a minimum forfeiture of $10,000 for each violation of the IP captioning rules. Instead, the Commission should follow its standard approach and adopt a flexible, case-by-case approach to forfeitures, consistent with the approach of the *ACS Order*.[11] The Commission should establish a baseline (not minimum) forfeiture amount and use its discretion to increase or decrease the fine based on the situation.[12]

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[9] *See id.* § 303(u)(2)(C)(ii) ("[T]he Commission shall have the authority . . . to waive the requirements of this subsection for any apparatus or class of apparatus . . . for equipment *designed for multiple purposes*, capable of receiving or playing video programming transmitted simultaneously with sound but whose essential utility is derived from *other purposes*." (emphasis added)).

[10] 47 U.S.C. § 303(z)(2).

[11] *See, e.g.*, *ACS Order* ¶ 276.

[12] *See, e.g.*, Microsoft Reply Comments at 7-8.

Pursuant to Section 1.1206 of the Commission's rules,[13] this letter is being electronically filed with your office and a copy of this submission is being provided to the meeting attendees 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

Attachment

cc:	Michelle Carey	Tom Apone
	Mary Beth Murphy	Walid Kassem
	Steve Broeckaert	Karen Peltz Strauss
	Krista Witanowski	Rosaline Crawford
	Alison Neplokh	Eliot Greenwald
	Jeff Neumann	Roger Holberg
	Diana Sokolow	Alan Stillwell

[13] 47 C.F.R. § 1.1206.

CVAA – IP Closed Captioning NPRM
(MB Docket No. 11-154)
CEA *Ex Parte* Meeting Agenda

November 9, 2011

1. **Introduction/Background on CEA**

    a. Principal U.S. trade association for the consumer electronics and information technologies industries (Com. at 1)

    b. 2,000 member companies that cumulatively generate more than $190 billion in annual factory sales (Com. at 1-2 n.3)

    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, including the VPAAC (Com. at 2)

2. **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 22-24; Rep. at 2-3)

    b. This phase-in period is consistent with and supported by FCC precedent implementing similar technical requirements and the record (Com. at 23-24; Rep. at 3)

    c. The Commission should grandfather products released prior to the promulgation of the final rules (Com. at 24)

3. **A Safe Harbor Based on SMPTE-TT Best Balances the Need for Industry Flexibility and Certainty**

    a. The Commission should adopt the SMPTE-TT standard (i) as a "safe harbor" interchange standard and (ii) in the case of consumer video players (VPAAC Report – Use Case #1), as a "safe harbor" delivery standard (Com at 6-7; Rep. at 3)

    b. To be eligible for the safe harbor, a manufacturer or service provider should be required to incorporate only the portion of the SMPTE-TT standard necessary to support the closed captioning functionality set forth in current FCC rules 15.119 and 15.122 (Com. at 7)

4. **The Commission's Final Rules Should Reflect the Limitations Contained in Section 203 of the CVAA and the Legislative History**

    a. Captioning requirements for receiving or playback apparatus only apply when "technically feasible" and only for apparatus "designed to" receive or playback video programming that is "transmitted" by wire or radio (Com. at 10-14; Rep. at 4-5)

    b. Receiving or playback apparatus with a screen size of less than 13 inches must comply with the caption requirements "only if . . . achievable" (Com. at 14-15; Rep. at 5)

    c. Captioning requirements for recording apparatus only apply "if achievable" and only for such apparatus that is "designed to" record video programming "transmitted" by wire or radio (Com. at 11-15; Rep. at 7)

    d. The "Display-Only" exemption applies to any apparatus that requires a separate source device to render the video content (Com. at 15-16; Rep. at 10-11)

    e. The legislative history makes clear that the requirements of Section 203 only apply to "consumer" devices; thus, commercial video equipment should be excluded from the captioning requirements (Com. at 19)

5. **The Section 203 Closed Captioning Requirements Should Apply Only To The Principal Means of Viewing Video Programming That a Manufacturer Includes in Covered Apparatus**

    a. Consistent with the *ACS Order*, manufacturers of covered apparatus should not be held responsible for whether third-party software downloaded by end users complies with the captioning requirements (Rep. at 7-8)

    b. To comply with Section 203, the manufacturer of a covered apparatus should only have to ensure that the principal means of viewing video programming, included at the time of sale, renders or displays closed captioning when provided in a standard format (Rep. at 8-9)

6. **Waivers Should be Acted Upon Promptly to Provide Certainty and Avoid Inhibiting the Introduction of New Products and Technologies**

    a. The Commission should interpret its Section 203(a) waiver authority consistent with its ACS waiver authority (Com. at 16)

    b. Consistent with the *ACS Order*, "primary design" and "essential utility" should be determined from the perspective of the manufacturer (Com. at 16-17)

    c. The determination of a device's "essential utility" is statutorily limited to one of the multiple purposes for which the device was designed (Rep. at 6-7)

7. **The Commission Should Adopt Minimum Technical Requirements, If Achievable**

    a. The proposed mandate that IP captioning be "at least the same quality" as television captions would create uncertainty and inhibit innovation (Com. at 4)

    b. Instead, the Commission should adopt minimum technical requirements, if achievable, to help ensure functional equivalency and preserve flexibility (Com. at 4-5)

8. **The Commission Should Defer Making New Rules Regarding Interconnection Mechanisms and Standards and the Retention of User Settings**

    a. No regulation of interconnection mechanisms and standards is needed at this time because existing as well as emerging interconnection mechanisms already support the pass-through of captions to client devices (Com. at 21; Rep. at 10)

    b. Deferring regulations regarding the retention of captioning settings will enable better coordination and harmonization of how the various user accessibility settings will be retained between viewing sessions (Com. at 22)

9. **The Commission Should Refrain From Adopting the Proposal That It Establish a Minimum $10,000 Forfeiture for Each Violation of the IP Captioning Rules**

    a. Instead, the Commission should follow its standard approach and adopt a flexible, case-by-case approach to forfeitures

    b. The ACS rules did not merit the establishment of a minimum forfeiture (*See, e.g., ACS Order* ¶ 276) and neither should the closed captioning rules

    c. The Commission should establish a baseline (not minimum) forfeiture amount and use its discretion to increase or decrease the fine based on the context of the violation (*See, e.g.*, Microsoft Reply Comments at 7-8)