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*Via Electronic Filing*

July 16, 2012

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, MB Docket No. 11-154*

Dear Ms. Dortch:

This is to notify you that on July 12, 2012, Julie Kearney, Vice President, Regulatory Affairs, Consumer Electronics Association ("CEA"), accompanied by John Godfrey, Samsung Information Systems America, Inc., Adam Goldberg, on behalf of Mitsubishi Electric Visual Solutions America, Inc., Jim Morgan, Sony Electronics, Inc., Paul Schomburg, Panasonic Corporation of North America, and CEA outside counsel Natalie Roisman and William Maher of Wilkinson Barker Knauer, LLP, met with Priscilla Delgado Argeris, Legal Advisor, Wireline, Office of Commissioner Rosenworcel, and Holly Saurer, Acting Legal Advisor for Media Issues, Office of Commissioner Rosenworcel.

***General.*** To help guide the meeting, CEA provided attendees with the attached agenda, which summarizes the items discussed. CEA urged the Commission to act in the near future to grant CEA's limited petition for waiver of the Advanced Communications Service ("ACS") rules adopted in the *ACS Order*[1] (the "Waiver Petition") for IP-TVs and IP-DVPs,[2] filed on March 22,

[1] *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*, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 14557 (2011).

[2] CEA, Petition for Waiver, CG Docket Nos. 10-213 & 10-145, WT Docket No. 96-198 (filed Mar. 22, 2012).

2012, and CEA's petition for reconsideration of the *IP Captioning Order*[3] (the "PFR"),[4] filed on April 30, 2012. The pleading cycles for both the Waiver Petition and the PFR are complete, and CEA's members need certainty in the near future as they design products affected by issues raised in the Waiver Petition and the PFR.

***CEA's Petition for Waiver of the ACS Rules.*** CEA participants presented an overview of the Waiver Petition, which requests waiver of the ACS rules for two classes of equipment: Internet Protocol ("IP")-enabled television sets ("TVs") and IP-enabled digital video players ("DVPs"). These devices satisfy the applicable waiver standard, because they are designed primarily to display video content rather than to provide access to ACS. The Waiver Petition defines these two classes as "IP-TVs" and "IP-DVPs," respectively.

Both the Telecommunications Industry Association ("TIA") and the National Cable and Telecommunications Association ("NCTA") support the Waiver Petition.[5] Because the combined membership of CEA, TIA, and NCTA represents a vast portion of the manufacturing community, this support demonstrates the importance of the requested waiver to manufacturers.

CEA participants cautioned that, absent grant of the requested waiver, manufacturers may simply leave ACS features out of IP-TVs and IP-DVPs in the short term, due to the significant burdens and costs that would be associated with developing and implementing accessibility solutions for the ACS features in these devices. As Panasonic noted in its comments in support of the Waiver Petition, such an outcome would not be in the public interest and would not further the goals of Congress as expressed in the CVAA.[6]

Furthermore, consistent with CEA's reply comments[7] regarding the Waiver Petition, and as noted by Panasonic,[8] CEA participants explained that grant of the requested waiver for IP-TVs and IP-DVPs is unlikely to limit the accessibility of ACS for consumers who are viewing video programming using these devices. This is due to consumers' widespread use of "second screens," such as smartphones and tablets, while watching video programming displayed via IP-TVs and IP-DVPs. These second-screen devices contain numerous ACS features and are subject to the accessibility rules for ACS.

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[3] *Closed Captioning of Internet Protocol-Delivered Video Programming: Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010*, Report and Order, 27 FCC Rcd 787 (2012).

[4] CEA, Petition for Reconsideration, MB Docket No. 11-154 (filed Apr. 30, 2012).

[5] *See* Reply Comments of TIA, CG Docket No. 10-213 (filed June 25, 2012) (supporting the Waiver Petition); Comments of NCTA, CG Docket No. 10-213 (filed June 14, 2012) (supporting the Waiver Petition).

[6] *See* Comments of Panasonic Corp. of North America ("Panasonic") Supporting CEA, CG Docket No. 10-213, at 9 (filed June 14, 2012) ("Panasonic Comments").

[7] CEA, Reply Comments Regarding Petition for Waiver, CG Docket No. 10-213 (filed June 25, 2012).

[8] *See* Panasonic Comments at 7–8, 11.

Additionally, CEA participants noted that the brief interval – until July 1, 2016 – requested for the waiver coincides well with the work of the Video Programming Accessibility Advisory Committee to implement the requirements of the Twenty-First Century Communications and Video Accessibility Act of 2010 ("CVAA") for accessible user interfaces.[9] Harmonizing upcoming accessibility deadlines will better enable industry to offer devices that meet the needs of individuals with disabilities.

***CEA's Petition for Reconsideration of the IP Captioning Order.*** Consistent with the PFR, CEA urged the Commission to (i) limit the applicability of the apparatus closed captioning rules to only those devices intended by the manufacturer to receive, play back, or record video programming, rather than broadly applying them to any device with a video player, (ii) reconsider the finding in the *IP Captioning Order* that standalone removable media players (*e.g.*, Blu-ray Disc™ and DVD players) are covered by Section 79.103, and (iii) clarify that the January 1, 2014 compliance deadline refers specifically to the date of manufacture, so that only apparatus manufactured on or after that date are subject to the new rules, without affecting the importation, shipment, or sale in the United States of apparatus manufactured before that date.

Limiting the January 1, 2014 compliance deadline to manufacture date would provide needed regulatory certainty for manufacturers and as a practical matter would not exempt many products covered under the current rule language. To illustrate this point, CEA clarified that there typically is only a short lag time between manufacture and importation of any given apparatus. Depending on the equipment type and the place of manufacture, the length of this lag time varies from two to three days for truck shipments to the United States to about two to three weeks for shipments by sea. CEA also urged the Commission not to adopt a rule that all apparatus offered for sale after January 1, 2014 must satisfy the apparatus closed caption decoder requirements and not to adopt a labeling requirement, which is not authorized by the CVAA.

***Other Issues***. Finally, CEA urged the Commission to deny the petitions for reconsideration of the *IP Captioning Order* filed by Telecommunications for the Deaf and Hard of Hearing, Inc. et al. ("Groups") and TVGuardian, LLC.[10] In particular, CEA stated that the Commission should not impose a closed caption synchronization requirement on device manufacturers, as requested by the Groups, and noted that there is no evidence that any devices have ever had a synchronization delay problem.

Pursuant to Section 1.1206 of the Commission's rules,[11] this letter is being electronically filed with your office and a copy of this submission is being provided to the meeting attendees from

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[9] *See* SECOND REPORT OF THE VIDEO PROGRAMMING ACCESSIBILITY ADVISORY COMMITTEE ON THE TWENTY-FIRST CENTURY COMMUNICATIONS AND VIDEO ACCESSIBILITY ACT OF 2010: USER INTERFACES, AND VIDEO PROGRAMMING GUIDES AND MENUS (2012), *available at* http://vpaac.wikispaces.com/file/view/120409+VPAAC+User+Interfaces+and+Video+Programming+Guides+and+Menus+REPORT+AS+SUBMITTED+4-9-2012.pdf; *see also* CVAA § 204.

[10] Petition of Telecommunications for the Deaf and Hard of Hearing, Inc. et al. for Reconsideration, MB Docket No. 11-154 (filed Apr. 27, 2012); Petition of TVGuardian, LLC for Reconsideration, MB Docket No. 11-154 (filed Apr. 16, 2012).

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: Priscilla Delgado Argeris
Holly Saurer

[11] 47 C.F.R. § 1.1206.

**CEA *EX PARTE* MEETING AGENDA – CVAA**
**ACS Waiver Petition and IP Captioning Petition for Reconsideration**
July 12, 2012

**ADVANCED COMMUNICATIONS SERVICES (ACS) WAIVER PETITION (CG Docket No. 10-213)**

## 1. INTRODUCTION/BACKGROUND ON CEA

a. Principal U.S. trade association for the consumer electronics and information technologies industries. (CEA ACS Waiver Petition ("Waiver Petition") at 1 n.1)

b. 2,000 member companies that cumulatively generate more than $195 billion in annual factory sales. (Waiver Petition at 1 n.1)

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.

d. In June 2012, CEA launched its charitable supporting organization, the CEA Foundation, with a mission to link seniors and people with disabilities with technology to enhance their lives.

## 2. THE COMMISSION SHOULD GRANT A WAIVER OF THE ACS RULES FOR ALL IP-TV AND IP-DVP (DIGITAL VIDEO PLAYER) MODELS FIRST MANUFACTURED PRIOR TO JULY 1, 2016

a. **The requested class waiver for IP-TVs and IP-DVPs readily satisfies the Section 716(h)(1) and Rule 14.5 requirements**

i. IP-TVs and IP-DVPs each constitute a distinct class of equipment. (Waiver Petition at 5-6, 12-13)

- As defined in the Waiver Petition, IP-TVs are TVs that (i) allow consumers to access and use ACS via IP but that (ii) are designed primarily to receive and display video content, principally full-length, professional-quality video programming, not to access ACS.

- IP-DVPs are digital video players that (i) allow consumers to access and use ACS via IP but that (ii) are designed primarily for the playback and rendering of video content, principally full-length, professional-quality video programming, not access to ACS.

ii. IP-TVs and IP-DVPs are multi-purpose but are designed primarily for the display of video content, not to access ACS. (Waiver Petition at 8-10, 15-16)

- Although marketed as having numerous capabilities beyond their primary purpose of delivering video and entertainment content to consumers, these devices are marketed primarily as products that may enhance the television viewing experience. (CEA ACS Reply ("ACS Reply") at 9)

- This primary purpose of delivering video is consistent with the popularity of video-related apps among IP-TV purchasers. (ACS Reply at 9)

iii. The Commission should grant the requested waiver for all IP-TV and IP-DVP models that are first manufactured prior to July 1, 2016, reflecting their product lifecycle as defined by the Commission. (Waiver Petition at 7-8, 13-14)

- The proposed term of CEA's requested waiver is properly based on the lifecycle approach taken in the *ACS Order*. (ACS Reply at 10)

- CEA is not requesting a class waiver for multiple generations of products. (ACS Reply at 11)

- CEA urges the FCC to find that the date first manufactured is equivalent to the date "introduced into the market." (Waiver Petition at 2 n.3)

- This clarification will provide greater certainty to manufacturers of IP-TVs and IP-DVPs as they determine when and for which models the requested waiver would apply. (Waiver Petition at 2 n.3)

- The brief interval – until July 1, 2016 – requested for the waiver also is consistent with manufacturers' implementation of future accessibility regulations under the CVAA. (ACS Reply at 11)

b. **The requested class waiver for IP-TVs and IP-DVPs is in the public interest and also satisfies the FCC's general waiver standard (Waiver Petition at 10-12, 16-18)**

i. The requested class waiver would serve the public interest by facilitating innovation in IP-TVs and IP-DVPs, specifically, the integrated delivery of Internet video content with video programming delivered via linear broadcast and non-broadcast channels, a public policy goal identified in the National Broadband Plan. (Waiver Petition at 11, 17)

ii. Imposing the Section 716 requirements on IP-TVs and IP-DVPs would harm the public interest by inhibiting innovation in these devices without meaningfully increasing access to ACS for persons with disabilities. (Waiver Petition at 12, 18)

iii. As Panasonic explains, grant of the requested waiver for IP-TVs and IP-DVPs is unlikely to limit the accessibility of ACS for consumers who are viewing video programming using IP-TVs or IP-DVPs because of the widespread use of "second screens." (ACS Reply at 6)

- Consumers already are extensively using smartphones and tablets, which contain numerous ACS features, while they watch video programming displayed via IP-TVs and IP-DVPs.

- These "second screens" are subject to the accessibility rules for ACS and thus will be available to persons with disabilities.

iv. Grant of the requested waiver will help ensure that manufacturers will not remove ACS features from their IP-TVs and IP-DVPs in the very short-term. (ACS Reply at 7)

- Developing ACS accessibility solutions for these devices, which are primarily intended to display video content, is complex. Non-manufacturer entities have not identified accessibility solutions for the ACS features of IP-TVs and IP-DVPs. (ACS Reply at 5)

- Applying the ACS rules to the limited ACS features of IP-TVs and IP-DVPs will result in significant burdens and costs for manufacturers without benefiting consumers with disabilities. (ACS Reply at 7)

- To avoid such unnecessary costs, manufacturers are considering simply leaving ACS features out of IP-TVs and IP-DVPs. (ACS Reply at 7)

- Such a result would not promote technological innovation or the accessibility of ACS features, contrary to the intent of Congress. (ACS Reply at 7)

**PETITION FOR RECONSIDERATION OF APPARATUS CLOSED CAPTIONING RULES (MB Docket No. 11-154)**

## 1. THE COMMISSION SHOULD RECONSIDER THREE ASPECTS OF THE APPARATUS CLOSED CAPTIONING RULES

### a. The Commission should narrow the scope of "apparatus" covered by Section 79.103 to apply only to apparatus "designed" with "video programming" players

i. The *IP Captioning Order* does not give practical effect to the "video programming" limitation in the CVAA. (CEA IP Captioning PFR ("PFR") at 4–5)

1. The *Order* concludes that *any* device "built with a video player" is "designed to receive or play back video programming transmitted simultaneously with sound" within the meaning of Section 203 of the CVAA and is therefore covered by the apparatus closed captioning rules. This is incorrect. (PFR at 4)

2. It is possible to have a "video player" that does not receive or play back "video programming." Congress did not intend such video players to be covered by the scope of the CVAA. (PFR at 3-5, 7)

- Rather, Congress intended to limit the apparatus closed captioning rules to only those players intended for receiving or playing back *video programming*, which the CVAA defines as "programming by, or generally considered comparable to programming provided by a television broadcast station." (PFR at 4)

- Congress did not intend for the Commission to extend its captioning rules to all video players. (PFR at 4)

ii. The *IP Captioning Order* misinterprets the term "designed to" in Section 203 of the CVAA – and thus exceeds the statute's scope – by treating that term as meaning "capable of" – a far broader reading than the plain language of the statute commands. (PFR at 5-6)

1. By equating the term "design" with the inclusion of a capability, the *Order* impermissibly removes the manufacturer's intent as a limitation on the scope of Section 79.103.

2. The unambiguous term "designed to" must be given its ordinary and widely-held meaning – *i.e.*, "to intend for a definite purpose"

iii. Devices such as camcorders and digital still cameras illustrate the overbreadth of Section 79.103. (PFR at 4, 7)

1. Although not *designed* to receive or play back "video programming," camcorders and digital still cameras may be technically able to play back video programming. Thus they could be covered under the current version of the rules, even though this clearly is not what Congress intended.

iv. The inclusion of a waiver mechanism is insufficient to save or justify the overly broad scope of Section 79.103. (PFR at 7-8)

v. The Commission should reconsider the *IP Captioning Order* and expressly limit the applicability of the apparatus closed captioning rules only to apparatus designed with "video programming" players. (PFR at 8)

**b. The apparatus closed captioning rules should not cover "removable media players"**

i. Requiring removable media players to decode closed captions disserves the public interest, given:

- the costs involved,
- the work underway to decode and display subtitles for the deaf and hard of hearing – a recognized form of captioning – on removable media players, and
- the fact that Section 79.103 does not require the removable media essential to operation of the players to contain such captions. (PFR at 10, 17 & n.54)

ii. To the extent that other agency regulations require captioning of programs on DVDs for specific purposes, there already are DVD players available in the marketplace that can render or pass through the captioning. (CEA IP Captioning PFR Reply ("PFR Reply") at 6-7)

ii. The *IP Captioning Order* inappropriately equates "transmitted simultaneously with sound" with a consumer's playback of a disc or other removable media. This conflicts with the meaning of "transmitted" and is not supported in the CVAA. (PFR at 11)

1. The term "transmitted," and the related terms "transmit" and "transmission," are consistently used in the CVAA and other communications statutes to describe how a signal is conveyed or sent over a *distance*, which is consistent with the common dictionary meaning of the term. (PFR at 11-13)

2. As now used in the *IP Captioning Order* with respect to removable media players, the term "transmit" does not square with Congress's consistent use of the term, as implemented by the Commission, for example, in the *Video Description Order* and the *CALM Act Order*. (PFR at 13-14)

iii. The phrase "transmitted simultaneously with sound" in the specific context of Section 203 does not lead to the conclusion that Section 203 must apply to removable media players. (PFR Reply at 6)

iv. The *IP Captioning Order*'s treatment of removable media players exceeds the Commission's general and ancillary jurisdiction. (PFR at 17-18)

**c. The Commission should clarify that the January 1, 2014 compliance deadline applies to devices manufactured on or after that date**

i. The clarification would provide that the compliance deadline refers specifically to the date of manufacture, so that only apparatus manufactured on or after January 1, 2014 are subject to the new rules, without affecting the importing, shipping, or sale of apparatus manufactured before that date. (PFR at 19)

- Depending on the equipment type and the place of manufacture, the typical intervals between date of manufacture and date of importation are short, varying from two to three days for truck shipments to the United States to about two to three weeks for shipments by sea. (PFR Reply at 10)

- The requested clarification is consistent with the Commission's past practices regarding similar equipment compliance deadlines, including those for digital closed captioning, V-chip implementation, and analog captioning. (PFR at 20)

- Ambiguity surrounding the compliance deadline provides no consumer benefit and creates unnecessary compliance risks for manufacturers. Manufacturers can identify and control the date they manufacture apparatus. However, the date of importation is subject to variables outside the control of manufacturers. (PFR at 20)

ii. The Commission should not adopt a rule that all apparatus *offered for sale* after January 1, 2014 must satisfy the apparatus closed caption decoder requirements. (PFR Reply at 8-9)

iii. The Commission should not adopt a labeling requirement, which is not authorized by the CVAA and was not imposed for digital closed captioning or V-chip implementation. (PFR Reply at 10)

iv. The Commission should add explanatory notes to Sections 79.103(a) and 79.104(a), as well as Sections 79.101(a)(2) and 79.102(a)(3), stating that the new obligations in those rule provisions "place no restriction on the importing, shipping or sale of apparatus that were manufactured before January 1, 2014." This proposed language closely follows the relevant statutory language of the CVAA, as well as past FCC practice. (PFR at 21)