

# Holland & Knight

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September 21, 2012

*Via Electronic Filing*

Ms. Marlene Dortch, Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW  
Washington, DC 20554

**Re: Notice of Ex Parte Presentation  
Entertainment Software Association  
CG Docket No. 10-213**

Dear Ms. Dortch:

This is to notify you that on Wednesday, September 19, Christian Genetski, Sr. Vice-President & General Counsel of the Entertainment Software Association (“ESA”), Michael Warnecke, ESA Sr. Policy Counsel, and Bill LeBeau, Holland & Knight LLP (collectively, the “ESA Representatives”) had a single meeting with the following FCC personnel: (i) from the Office of the General Counsel, Suzanne Tetreault, Deputy General Counsel, Diane Griffin Holland, Deputy Associate General Counsel, Marcus Maher, Assistant General Counsel, Administrative Law Division, and Raelynn Remy; and (ii) from the Consumers and Governmental Affairs Bureau, Kris Monteith, Acting Chief, Karen Strauss, Deputy Chief, and Rosaline Crawford.

The ESA presented an overview of its pending waiver petition, which was filed on March 21, 2012.<sup>1</sup> The Petition requests waivers of the rules governing advanced communications services (“ACS”)<sup>2</sup> for three classes of equipment or services, as expressly defined on page 4 of the Petition, that may allow consumers to access and use some ACS, but are marketed and

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<sup>1</sup> See ESA Petition for Waivers of 47 C.F.R. §§ 14.1 *et. seq.*, CG Docket No. 10-213 (filed March 21, 2012) (the “Petition”).

<sup>2</sup> *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, 14638-42 (2011) (“ACS Order”). See, e.g., ESA Reply Comments, CG Docket No. 10-213, at 6-7 (submitted June 25, 2012).

designed primarily to enable the playing of or access to video games. The ESA representatives explained how each of the proposed classes has a primary purpose of playing, enabling or distributing games.

The ESA representatives explained their understanding of key terms used by the *ACS Order*, including “co-primary” and “lifecycle.” We also explained our understanding of the various factors from the *ACS Order* for determining the “primary purpose” of the product or service, including reference to information and Nielsen data already submitted in the docket.<sup>3</sup>

Additional issues discussed by the ESA representatives included the proposed duration of our waiver request, the marketing of games with chat features, the role of chat within a game, uses of in-game chat, and the difference between commercial video games and educational software with game-like features.

Pursuant to Section 1.1206 of the Commission rules, we are electronically filing this letter with your office and are electronically providing a copy of this submission to the meeting attendees. Please note the change in this law firm’s street address, as needed, and please let the undersigned know if you have any questions relating to this filing.

Respectfully submitted,

/s/ Bill LeBeau

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Attorneys for the  
Entertainment Software Association

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Diane Griffin Holland\*  
Marcus Maher\*  
Kris Monteith\*  
Raelynn Remy\*  
Karen Strauss\*  
Suzanne Tetreault\*

\* via electronic mail

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<sup>3</sup> See, e.g., Petition at 14-17, 18-21, 26-27, 31-34 & Exhibits A-C; see also ESA Comments, CG Docket Nos. 10-213 & 10-145; WT Docket No. 96-168 (filed Apr. 25, 2011) & ESA Reply Comments, CG Docket Nos. 10-213 & 10-145, WT Docket No. 96-168 (filed May 23, 2011).