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Via Electronic Filing

September 21, 2012

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 September 19, 2012, Julie Kearney, Vice President, Regulatory Affairs, Consumer Electronics Association (“CEA”), accompanied by Jim Morgan, Sony Electronics, Inc., Paul Schomburg and Tony Jasionowski, Panasonic Corporation of North America, and CEA outside counsel William Maher and Chris Clark of Wilkinson Barker Knauer, LLP, met with General Counsel Sean Lev, as well as Suzanne Tetreault, Joel Kaufman, Susan Aaron, and Marilyn Sonn of the Office of General Counsel, and Alison Neplokh, Steven Broeckaert, Diana Sokolow, and Jeffrey Neumann of the Media Bureau.

CEA urged the Commission to act in the near future to grant CEA’s pending petition for reconsideration of the *IP Captioning Order*¹ (the “PFR”),² filed on April 30, 2012. The pleading cycle for the PFR is complete, and CEA’s members need certainty in the near future as they design products affected by issues raised in the PFR. To help guide the meeting, CEA provided attendees with the attached agenda, which summarizes the items discussed and includes page references to both the PFR and CEA’s reply to an opposition to the PFR (“PFR Reply”).³

¹ *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).

² CEA, Petition for Reconsideration, MB Docket No. 11-154 (filed Apr. 30, 2012).

³ CEA, Reply to Opposition to Petition for Reconsideration, MB Docket No. 11-154 (filed Jun. 18, 2012).

Consistent with the PFR, the PFR Reply, and the attached agenda, CEA explained its positions urging 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 for apparatus 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.

CEA representatives discussed the legal underpinnings of these points as well as their policy and enforcement aspects, and answered questions from the Commission attendees.

Pursuant to Section 1.1206 of the Commission's rules,⁴ 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: Sean Lev
Suzanne Tetreault
Joel Kaufman
Susan Aaron
Marilyn Sonn
Alison Neplokh
Steven Broeckaert
Diana Sokolow
Jeffrey Neumann

⁴ 47 C.F.R. § 1.1206.

IP CAPTIONING ORDER
CEA Petition for Reconsideration
(MB Docket No. 11-154)
Ex Parte Meeting Agenda

Consumer Electronics Association
September 19, 2012

I. CEA REQUESTS THE COMMISSION TO RECONSIDER THREE ASPECTS OF THE IP CLOSED CAPTIONING RULES FOR APPARATUS.

- A. The Commission should narrow the scope of “apparatus” covered by Section 79.103 to apply only to apparatus “designed” with “video programming” players, rather than “video players.”
- B. The apparatus closed captioning rules should not cover “removable media players” such as DVD and Blu-ray Disc™ players.
- C. The Commission should clarify that the January 1, 2014 compliance deadline applies to devices manufactured on or after that date.

II. THE COMMISSION SHOULD NARROW THE SCOPE OF “APPARATUS” COVERED BY SECTION 79.103 TO APPLY ONLY TO APPARATUS “DESIGNED” WITH “VIDEO PROGRAMMING” PLAYERS.

- A. 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)
 - i. 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)
 - ii. 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)

- B. 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)
 - i. 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.
 - ii. The unambiguous term “designed to” must be given its ordinary and widely-held meaning – *i.e.*, “to intend for a definite purpose.”
- C. Devices such as camcorders and digital still cameras illustrate the overbreadth of Section 79.103. (PFR at 4, 7)
 - i. 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.
- D. The inclusion of a waiver mechanism is insufficient to save or justify the overly broad scope of Section 79.103. (PFR at 7-8)
- E. 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)

III. THE APPARATUS CLOSED CAPTIONING RULES SHOULD NOT COVER “REMOVABLE MEDIA PLAYERS.”

- A. Requiring removable media players to decode closed captions disserves the public interest, given:
 - i. the costs involved,
 - ii. 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
 - iii. 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)
- B. 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)

- C. 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)
 - i. 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)
 - ii. 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)
- D. 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)
- E. The *IP Captioning Order*’s treatment of removable media players exceeds the Commission’s general and ancillary jurisdiction. (PFR at 17-18)

IV. THE COMMISSION SHOULD CLARIFY THAT THE JANUARY 1, 2014 COMPLIANCE DEADLINE APPLIES TO DEVICES MANUFACTURED ON OR AFTER THAT DATE.

- A. 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)
 - i. 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)
 - ii. 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)
 - iii. 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)

- B. 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)
- C. 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)
- D. 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)