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Via Electronic Filing

November 26, 2012

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

Re: Written Ex Parte Submission – MB Docket No. 11-154

Dear Ms. Dortch:

The Consumer Electronics Association (“CEA”), by the undersigned, hereby writes regarding its pending limited petition for reconsideration of the *IP Captioning Order*¹ (“PFR”), filed on April 30, 2012.²

Among other things, the PFR urges the Commission to revise new Section 79.103(a) of the rules and the accompanying note (“Section 79.103(a) and note”) to clarify that the

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) (“*IP Captioning Order*”).

² CEA, Petition for Reconsideration, MB Docket No. 11-154 (filed Apr. 30, 2012) (“PFR”). The PFR urges 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.

apparatus closed captioning requirements apply only to apparatus **designed to** receive or play back “video programming,”³ not to any apparatus that is “capable of” video playback.⁴ In particular, CEA has urged the Commission to revise the note to Section 79.103(a) to (i) replace the term “video player” with “video programming player,” and (ii) clarify that the term “video programming player” means a feature specifically intended by the manufacturer to enable access to “video programming,” not video in general.⁵

CEA has explained previously⁶ that this clarification is necessary to bring the rule in line with Section 303(u) of the Communications Act of 1934, as amended (the “Act”), which limits the applicability of the apparatus closed captioning rules to a subset of video players (*i.e.*, players intended for receiving or playing back “programming by, or generally considered comparable to programming provided by a television broadcast station”), rather than **all** video players.⁷ By equating “designed to” with “capable of,” the *IP Captioning Order* ignores the plain language of the statute and impermissibly removes the manufacturer’s intent – the hallmark of the term “design” – as a limitation to the scope of Section 79.103(a) and note.⁸

In its current form, Section 79.103 apparently applies to devices such as camcorders and digital still cameras, which are capable of video playback (because they contain video players), even though they are not designed to receive or playback video programming.⁹ As CEA has stated in prior filings, its concerns are not limited to narrow classes of camcorders and digital still cameras. These types of consumer electronics equipment are merely examples of the ill effects of the *IP Captioning Order*’s approach in this area.¹⁰ The Attachment shows that there are multiple types of consumer devices even within

³ 47 U.S.C. § 613(h)(2) (defining “video programming” as “programming by, or generally considered comparable to programming provided by a television broadcast station, but not including consumer-generated media”).

⁴ See *IP Captioning Order*, 27 FCC Rcd at 842 ¶ 95.

⁵ See CEA, Reply to Opposition to Petition for Reconsideration, MB Docket No. 11-154, at 3 (filed June 18, 2012) (“PFR Reply”); see also PFR at 8; Written *Ex Parte* Presentation of CEA, MB Docket No. 11-154, at 3 (filed Sept. 26, 2012) (“CEA September 26 *Ex Parte*”); Written *Ex Parte* Presentation of CEA, MB Docket No. 11-154, at 3 (filed Oct. 26, 2012) (“CEA October 26 *Ex Parte*”).

⁶ See, *e.g.*, PFR at 3–4, 8; CEA September 26 *Ex Parte* at 2; CEA October 26 *Ex Parte* at 2.

⁷ See 47 U.S.C. § 303(u)(1) (requiring “that, if technically feasible . . . apparatus designed to receive or play back **video programming** transmitted simultaneously with sound . . . be equipped with built-in . . . capability designed to display closed-captioned video programming” (emphasis added)).

⁸ See PFR at 5–6.

⁹ See *id.* at 4–7.

¹⁰ See *id.* at 4–5, 7.

what are often considered to be “camcorders” and “digital still cameras.” In fact, there are no standard industry definitions of these device types.

Moreover, there are many other devices that may be technically capable of playing back “video programming” but are not designed to do so and should not be covered by the apparatus closed captioning rules.¹¹ Examples include, but are not limited to, the following:

- Digital video baby monitors;¹²
- Direct-to-consumer digital security cameras and systems;¹³
- Digital video camera microscopes for students;¹⁴
- Digital playback binoculars;¹⁵
- Digital picture frames that display photos and home videos;¹⁶ and
- Digital probes for viewing and playing video of enclosed spaces (e.g., behind home walls and inside pipes).¹⁷

¹¹ The *IP Captioning Order* also indicates that the mere presence of a video player in equipment indicates that it is “technically feasible” within the meaning of Section 303(u) of the Act for that equipment to “include closed captioning functionality as well.” See *IP Captioning Order*, 27 FCC Rcd at 844 ¶ 98.

¹² See, e.g., Samsung, SEW-3020 RemoteVIEW Baby Monitoring System, <http://www.samsungsv.com/Model/Detail/16/Samsung-SEW-3020-RemoteVIEW-Baby-Monitoring-System> (last accessed Nov. 26, 2012).

¹³ See, e.g., Martha Entwistle, *Panasonic's direct-to-consumer IP video*, Security Systems News, (Jan. 7, 2010), <http://www.securitysystemsnews.com/blog/panasonics-direct-consumer-ip-video> (last accessed Nov. 26, 2012); Panasonic, PoE MPEG-4 Network Camera, <http://shop.panasonic.com/shop/model/BB-HCM511A> (last accessed Nov. 26, 2012).

¹⁴ See, e.g., Celestron, PentaView LCD Digital Microscope, <http://www.celestron.com/astromy/pentaview-lcd-digital-microscope.html> (last accessed Nov. 26, 2012) (featuring a 4.3" LCD touch screen and a 5 MP built-in digital camera).

¹⁵ See, e.g., Bushnell, Imageview Binocular - 8X 30mm - 5mp, <http://www.bushnell.com/hunting/outdoor-technology/digital-camera-binocular/imageview-binocular-8x-30mm-5mp#> (last accessed Nov. 26, 2012) (featuring “8-60 second instant replay video loops or continuous video”).

¹⁶ See, e.g., Sony, 10.1" Digital Photo Frame, <http://store.sony.com/webapp/wcs/stores/servlet/ProductDisplay?catalogId=10551&storeId=10151&langId=-1&productId=8198552921666369833> (last accessed Nov. 26, 2012) (displaying “up to 4,000 images; HD home video, motion jpg and MP3 audio playback”).

¹⁷ See, e.g., DeWalt, DCT410S1 12V MAX* 17mm Inspection Camera with Wireless Screen Kit, <http://www.dewalt.com/tools/cordless-instruments-inspection-cameras-dct410s1.aspx> (last accessed Nov. 26, 2012) (featuring “[p]hoto and video capturing on micro SD card to help with documentation”).

It is important to note that the Commission cannot properly cure the overbreadth of its current rule by specifically designating the examples identified here as exempt, and it should not be tempted to do so. CEA offers these examples to aid the Commission in its consideration of this issue, not to suggest that the equipment improperly covered under the current rule can be identified easily in an exhaustive list. Rather, these are just some types of products that *should* fall outside the scope of the apparatus captioning requirements, as indicated by Congress' language in Section 303(u), but arguably are covered by the current language in Section 79.103(a) and note. In light of these diverse examples, as well as the clear command of Section 303(u), it would be inadequate and harmful for the Commission to retain the current Section 79.103(a) and note while attempting to create a list of devices that contain video players but are outside the scope of that rule and note. Creating such a list in lieu of curing the existing legal infirmity of the rule would negatively affect manufacturers' incentives to develop innovative consumer products (which presumably would not be on the list).

The proper course of action, as CEA has indicated in prior filings and above, is for the Commission to adopt a clarification and revision of the note to Section 79.103(a) that replaces the term "video player" with "video programming player."¹⁸ The Commission should clarify that the term "video programming player" means a feature specifically intended by the manufacturer to enable access to "video programming," as defined in the CVAA, not video in general. CEA respectfully urges the Commission to grant the PFR as expeditiously as possible.

Pursuant to Section 1.1206 of the Commission's rules,¹⁹ this letter is being electronically filed with your office. 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

¹⁸ See PFR Reply at 3; *see also* PFR at 8; CEA September 26 *Ex Parte* at 3; CEA October 26 *Ex Parte* at 3.

¹⁹ 47 C.F.R. § 1.1206.

ATTACHMENT

Camcorder and Digital Still Camera Types

Camcorders

 <p>Samsung W300 Rugged Full HD 1080p Pocket Camcorder</p>	<p>Shoot and Share Camcorders – Ultra-portable, pocket-style, flash-based, digital zoom, 2-3 inch display, may have Wi-Fi (instant share), can capture video and still images.</p>
 <p>Sony HDR-CX210 High Definition Handycam</p>	<p>Standard Camcorders –Handheld, several media types (flash, HDD, shiny-disc, tape), both optical and digital zoom, optical viewfinder, 3-5 inch display, may have Wi-Fi, mostly for video capture, but may capture still images.</p>
 <p>GoPro HD Hero3</p>	<p>Action Camcorders – Small, mountable video cameras; flash based, may have Wi-Fi. No Display. Mostly for video capture, but may capture still images.</p>

Digital Cameras



Canon PowerShot S95

Point and Shoot Cameras - Pocket-style, fully automatic digital cameras. May or may not include optical viewfinder, 2-4 inch screens, flash based. Digital and optical zoom, fixed lens. Can capture video and still images.



Nikon 1 J1

Compact System Digital Cameras - Portable, fully automatic. May or may not include optical viewfinder. 2-4 inch display screen, flash based. Digital and optical zoom. Utilizes interchangeable lens systems with a proprietary lens mount. Can capture video and still images.



Canon EOS 5D Mark II

Digital Single Lens Reflex (DSLR) – Unlike other digital cameras, DSLRs include a single-lens reflex design. Light entering the lens is sent to both the image sensor and the viewfinder. These cameras feature fully manual or automatic operation and consist of a camera body with a proprietary lens mount supported by interchangeable lens systems. Viewfinder, 2-4 inch display screen, flash based. Can capture video and still images.

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Consumer Electronics Association – 11/19/12