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January 31, 2013

VIA ELECTRONIC SUBMISSION

The Secretary
Federal Communications Commission
445 12th Street S.W.
Washington, DC 20554

**Re: Written Ex Parte Submission
MB Docket No. 12-107**

Dear Madam Secretary:

Nintendo of America Inc. (“Nintendo”), respectfully submits this letter in order to clarify the record in the above-referenced proceeding with respect to capabilities of the new Nintendo Wii U game console (the “Wii U”). Nintendo appreciates the important goals of this proceeding as well as the many efforts of those who have participated in this proceeding, which intends to implement aspects of the Twenty First Century Communications and Video Accessibility Act (the “CVAA”) that relate to the accessibility of local emergency information and video description, including Section 203 of the CVAA.¹ In part, Section 203(a) of the CVAA directs the Commission to require, if technically feasible, “apparatus designed to receive or play back video programming transmitted simultaneously with sound” to be able to decode and make available the transmission and delivery of video description services and emergency information.² Similarly, if achievable, Section 203(b) requires that “apparatus designed to record video programming” must “enable the rendering or the pass through of closed captions, video description signals, and emergency information.”³

In November 2012, the Commission issued a Notice of Proposed Rulemaking to implement these specific CVAA provisions.⁴ The Notice proposes “to apply the video

¹ Pub. L. No. 111-260, 124 Stat. 2751 (2010) (as codified, in part, at 47 U.S.C. §§ 303(u) & 303(z)).

² 47 U.S.C. § 303(u).

³ 47 U.S.C. § 303(z). For these and other CVAA elements, “video programming” is defined to mean “programming by, or generally considered comparable to programming provided by a television broadcast station, but not including consumer-generated media.”

⁴ See *Accessible Emergency Information, and Apparatus Requirements for Emergency Information and Video Description: Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010*, Notice of Proposed Rulemaking, MB Docket No. 12-107 (rel. Nov. 19, 2012) (“Notice”). The Notice excludes other CVAA provisions relating to user interfaces, video programming guides, navigation devices, and on-screen text menus used to access certain video programming apparatus functionalities, which are to be addressed in a separate proceeding. See Notice at n. 6; see also Second VPAAC Report: User Interfaces and Video Programming Guides and Menus, MB Docket No. 12-108, at 8 (last viewed on Jan. 23, 2013, at <http://vpaac.wikispaces.com/file/view/120409+VPAAC+User+Interfaces+and+Video+Programming+Guides+and+>

description and emergency information requirements of Section 203 of the CVAA only to apparatus designed to receive, play back, or record television broadcast services or MVPD services.”⁵ In comments responding to the Notice, the Entertainment Software Association (the “ESA”) indicated that, among other video game consoles, the Wii U allows a user to search across all of his or her “available video content from providers like Hulu and Amazon, including his or her MVPD’s listings” through its Nintendo TVii feature.⁶ The ESA also noted that “if a user selects a program from his or her MVPD provider, the Wii U assists the viewer in changing the channel on the MVPD set-top box in order to view the program through that box, not the console.”⁷ Separately, a joint reply comment submitted by Telecommunications for the Deaf and Hard of Hearing and other groups cited the Wii U as an example of a device “used to access MVPD services” or that “receive[s], play[s] back or record[s] MVPD-delivered content” and that should be subject to the Notice’s proposed rules.⁸

In light of these submissions, Nintendo seeks to clarify that the Wii U’s TVii feature does not receive, play back, record, or otherwise pass through video programming delivered as part of an MVPD (or broadcast television) service. What the Wii U’s TVii feature may do, subject to an individual consumer’s particular preferences, equipment and other services, is act as a multi-platform search engine through which a consumer may find video content he or she may want to watch, including his or her MVPD programming guide information. If the Wii U identifies video programming delivered by an MVPD of potential interest to a user, the TVii feature then may be used like a remote control to send an infrared signal to the television set and to the MVPD set-top box to change the television input and the MVPD set-top box to the appropriate channel. Notably in this context, the Wii U is not the means by which the consumer actually receives, plays back or sees the video programming. The television set receives the video programming directly from the MVPD set-top box. (Similarly, the Wii U can search a user’s TiVo recording device for program content already recorded by the user and serve as a one-step remote control by which the user can switch his or her television set to that recorded program, which is then transmitted by the TiVo device—not the Wii U—to the television set.) Accordingly, the Wii U’s TVii feature is not relevant to the transmission of local emergency information or video description as part of any broadcast television or MVPD service.

To be clear, Nintendo is not requesting any sort of waiver or unique exemption for the Wii U through this letter. Nintendo agrees with the Commission’s proposed distinction between IP-delivered video programming that is not part of an MVPD service and other classes of video programming that may be subject to the proposed rules. This submission intends simply to

Menus+REPORT+AS+SUBMITTED+4-9-2012.pdf) (citing “input selection” and “channel/program selection” as examples of essential functions “covered under CVAA Section 204 and CVAA Section 205”).

⁵ Notice at ¶ 30 (“Notably, Congress did not explicitly extend the scope of the emergency information rules to IP-delivered video programming, as it did in requiring closed captioning of IP-delivered video programming.”)

⁶ Comments of the Entertainment Software Association, in MB Docket No. 12-107, at 2 n. 4 (submitted Dec. 18, 2012) (“ESA Comments”).

⁷ *Id.*

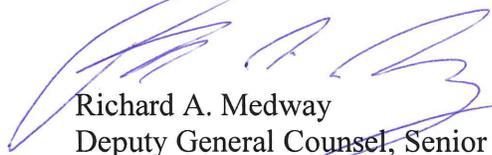
⁸ See Reply Comments of Telecommunications for the Deaf and Hard of Hearing, *et al.*, in MB Docket No. 12-107 at 13-14 (submitted Jan. 7, 2013).

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clarify the current capabilities of the Wii U in order to facilitate the Commission's deliberations of issues potentially relevant to the Notice.

Please contact the undersigned with any questions regarding the Wii U or the proposed submission.

Respectfully submitted,



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