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Via Electronic Filing

February 26, 2013

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

Re: Written Ex Parte Submission – MB Docket Nos. 11-154 and 12-107

Dear Ms. Dortch:

The Consumer Electronics Association (“CEA”), by the undersigned, hereby responds to certain statements made by Telecommunications for the Deaf and Hard of Hearing, Inc., et al. (“TDI”) in a recent *ex parte* filing (“TDI *Ex Parte*”)¹ regarding CEA’s pending petition for reconsideration of the *IP Captioning Order* in MB Docket No. 11-154 (“CEA PFR”),² and the pending notice of proposed rulemaking on accessible emergency information and video description in MB Docket No. 12-107 (“*Notice*”).³ The TDI *Ex Parte* repeats arguments that

¹ Notice of *Ex Parte* Presentation of Telecommunications for the Deaf and Hard of Hearing, Inc. (“TDI”), MB Docket Nos. 11-154 and 12-107, CG Docket Nos. 05-231 and 06-181, ET Docket No. 99-254, PRM11CG, RM-11065 (filed Feb. 15, 2013) (“TDI *Ex Parte*”).

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

³ *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, 27 FCC Rcd 14728 (2012) (“*Notice*”); see also CEA Comments, MB Docket No. 12-107 (filed Dec. 18, 2012) (“CEA Comments”); CEA Reply Comments, MB Docket No. 12-107 (filed Jan. 7, 2013) (“CEA Reply Comments”).

overlook the plain language of the Communications Act of 1934, as amended (the “Act”) and the Twenty-First Century Communications and Video Accessibility Act of 2010 (“CVAA”).⁴

As CEA has shown, the Commission should reject TDI’s arguments regarding the CEA PFR and should grant the CEA PFR immediately. The Commission also should adopt CEA’s recommendations regarding the *Notice*. Below, CEA briefly addresses TDI’s few novel arguments regarding the CEA PFR, and responds to TDI’s arguments concerning the *Notice*.

The Commission Should Grant the CEA PFR Immediately

The Apparatus Closed Captioning Rules Should Apply Only to Apparatus Designed to Receive or Play Back Video Programming. As requested in the CEA PFR, the Commission should immediately revise new Section 79.103 of the rules and the accompanying note to clarify that the apparatus closed captioning requirements apply only to apparatus **designed to** receive or play back “video programming.”⁵ CEA has explained on multiple occasions⁶ that this clarification is necessary to bring the rule in line with Section 303(u) of the Act.⁷

The Apparatus Rules Should Not Apply to Removable Media Players. As requested in the CEA PFR, the Commission should reconsider the *IP Captioning Order*’s application of the apparatus closed captioning rules to removable media players. CEA previously has shown that Section 203 of the CVAA does not apply to stand-alone removable media players such as DVD or Blu-ray Disc™ (“Blu-ray disc”) players because, among other things, the *IP Captioning Order* erroneously interprets the term “transmitted simultaneously with sound” in that section to mean how video programming is conveyed from the player to the end user, rather than how the video programming is sent to the device.⁸ In fact, as CEA has explained, removable media players would only be subject to the apparatus rules if they are equipped with an interface to the Internet and an app or feature, included at time of sale, for accessing Internet protocol (“IP”) video

⁴ Pub. L. No. 111-260, 124 Stat. 2751 (2010) (“CVAA”) (as codified in various sections of Title 47 of the United States Code), *amended by* Pub. L. 111-265, 124 Stat. 2795 (2010).

⁵ *See* 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”); *but see* TDI *Ex Parte* at 3.

⁶ *See, e.g.*, CEA PFR at 3–5, 8; Written *Ex Parte* Submission of CEA, MB Docket No. 11-154, at 2–4 (filed Nov. 26, 2012) (providing numerous examples of consumer devices, ranging from baby monitors to digital picture frames, that may be affected by the current overbroad rule).

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”). Section 303(u) 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. *Id.* §§ 303(u)(1), 613(h)(2).

⁸ *See* CEA PFR at 9, 11-14.

programming, in which case they would be covered with respect to that video programming, not video played back from a disc.⁹ The CVAA does not, by its terms, impose a closed captioning requirement on removable media or removable media players. This is rational, because it leaves undisturbed the successful and well-established use of Subtitles for the Deaf and Hard of Hearing (“SDH”) on Blu-ray discs and other forms of removable media.¹⁰

As CEA has explained,¹¹ it does not serve the public interest for the apparatus closed captioning rules to apply to removable media players when the Commission does not require closed captioning on the video programming content on the removable media (*e.g.*, DVD or Blu-ray discs) that these players need to operate.¹² Although the TDI *Ex Parte* makes claims about the costs of implementing closed captioning decoder capability in removable media players,¹³ it misses the basic point that the costs of building mandatory decoders into removable players are excessive when the removable media itself is not required to be captioned. Moreover, Panasonic Corporation of North America recently explained that DVD players are a mature technology and that all physical media players, including Blu-ray disc players, face increasing competition from online streaming and video on demand services.¹⁴ Requiring these devices to include closed caption decoder capability would provide little benefit to consumers.¹⁵

Finally, the Commission must reject TDI’s inaccurate and misleading claim that “the costs to manufacturers of including closed captioning decoder functionality likely would be minimal or nonexistent, at least where the decoder is implemented in software.”¹⁶ Stand-alone removable media players do not include the technologies necessary to support software-based caption decoding. To offer caption decoding in a removable media player, manufacturers will either need to develop and integrate a new video decoder chip for hardware-based caption decoding, or add, at minimum, a general-purpose microprocessor and operating system to the product to enable software-based caption decoding. Either approach would impose significant additional costs on these products, costs that the consumer market will not support.

⁹ See CEA, Reply to Opposition to Petition for Reconsideration, MB Docket No. 11-154, at 5 (filed June 18, 2012) (“CEA PFR Reply”); *but see* TDI *Ex Parte* at 2.

¹⁰ See CEA PFR Reply at 7; *but see* TDI *Ex Parte* at 2.

¹¹ See CEA PFR Reply at 6.

¹² See Written *Ex Parte* Submission of CEA, MB Docket No. 11-154, at 3–4 (filed Oct. 26, 2012); *IP Captioning Order*, 27 FCC Rcd at 846 ¶ 99.

¹³ See TDI *Ex Parte* at 3.

¹⁴ See Written *Ex Parte* Submission of Panasonic Corporation of North America, MB Docket No. 11-154 (filed Feb. 15, 2013).

¹⁵ See *id.*

¹⁶ TDI *Ex Parte* at 3. TDI neglects to include the cost of the hardware required to execute closed-caption decoding software. This hardware could cost several times the current average sales price of a stand-alone DVD or Blu-Ray player.

The Commission Should Clarify that the January 1, 2014 Deadline for Compliance Refers to the Date a Product Is Manufactured. CEA urges the Commission to clarify that the January 1, 2014 compliance deadline for the apparatus closed captioning rules refers to the date of manufacture, not the date of importation of apparatus. In opposing CEA's request, TDI improperly argues that all apparatus offered for sale after January 1, 2014 must satisfy the apparatus closed caption decoder requirements.¹⁷ As CEA has shown, TDI's proposal should be dismissed as a late-filed petition for reconsideration and is impractical.¹⁸ The Commission also should reject TDI's request for a labeling requirement¹⁹ as an untimely request for reconsideration.²⁰ Section 203 of the CVAA contains no provision authorizing labeling of the type requested.²¹

Other Issues. Contrary to the TDI *Ex Parte*²² and as the Commission found in the *IP Captioning Order*, VPOs and VPDs, not manufacturers, are best situated to ensure captioning quality, including timing, and thus should bear the responsibility of ensuring the integrity of timing data for closed captions.²³ None of the arguments in the TDI *Ex Parte* should affect this conclusion. Indeed, in many cases VPDs use their own applications, devices, or plug-ins to render the video programming, including closed captions, thus minimizing any risk that a consumer's apparatus will introduce possible synchronization issues.²⁴

Moreover, the television closed captioning issues raised in petitions for rulemaking filed by TDI in 2004 and 2011 are outside the scope of the Commission's IP closed captioning proceeding and its proceeding on video description and accessible emergency information for the blind and

¹⁷ See TDI *Ex Parte* at 3.

¹⁸ See CEA PFR Reply at 7–10.

¹⁹ See TDI *Ex Parte* at 3.

²⁰ See CEA PFR Reply at 10.

²¹ See *id.*; CVAA § 203.

²² See TDI *Ex Parte* at 4.

²³ See CEA, Opposition to Petitions for Reconsideration Filed by TVGuardian and the Consumer Groups, MB Docket No. 11-154, at 17 (filed June 7, 2012).

²⁴ See *id.* At 17–18. This is consistent with the Video Programming Accessibility Advisory Committee's identification of delivery of managed video programming content to managed applications or consumer devices as one of three methods of delivery of video programming content to consumers. See FIRST REPORT OF THE VIDEO PROGRAMMING ACCESSIBILITY ADVISORY COMMITTEE ON THE TWENTY-FIRST CENTURY COMMUNICATIONS AND VIDEO ACCESSIBILITY ACT OF 2010, at 20 (July 13, 2011), available at http://beta.fcc.gov/cgb/dro/VPAAC/First_VPAAC_Report_to_the_FCC_7-11-11_FINAL.pdf.

visually impaired.²⁵ The Commission should reject TDI's attempt to expand the pending accessibility proceedings, which are subject to short deadlines.

The Commission Should Adopt CEA's Recommendations for Apparatus Rules regarding Emergency Information and Video Description

CEA supports the proposal in the *Notice* to limit the scope of the apparatus requirements for emergency information and video description to devices that make available the type of programming that is subject to the current rules – devices designed to receive, play back, or record television broadcast services or MVPD services, consistent with Section 203 of the CVAA.²⁶ The Commission therefore should reject TDI's arguments seeking to broaden the proposed rules.²⁷ To the extent that devices interact with IP-delivered video, they are not covered because Congress did not extend the CVAA's emergency information and video description provisions to IP-delivered video programming. As CEA has explained, the provisions of Section 303(u) of the Act that address emergency information and video description, which were added by the CVAA, differ in scope from the provision that addresses IP closed captioning.²⁸

Moreover, the apparatus requirements for emergency information and video description should not apply to “removable media players” because such requirements would be based on an unreasonable reading of the CVAA.²⁹ In fact, the removable media that the devices play are not required to contain emergency information or video description and, as the Commission recognizes, emergency information will not be timely at the time of playback.³⁰ Section 203's apparatus requirements for emergency information and video description were not intended to reach standalone removable media players. Instead, Congress intended the requirements to apply to devices that access the types of programming covered by the Commission's current emergency information and reinstated video description rules — traditional, linear broadcast and MVPD services.³¹

Contrary to the TDI *Ex Parte*,³² the waiver process is not an appropriate mechanism for addressing the infirmities of the *Notice*'s proposal to include removable media players within the

²⁵ See TDI *Ex Parte* at 4. See also TDI et al., Petition for Rulemaking, RM-11065, CG Docket No. 05-231, ET Docket No. 99-254 (filed July 23, 2004); TDI et al., Petition for Rulemaking, PRM11CG (filed Jan. 27, 2011).

²⁶ See CEA Comments at 4; see also CEA Reply Comments at 3–4.

²⁷ See TDI *Ex Parte* at 3.

²⁸ See CEA Comments at 4–6; CEA Reply Comments at 3–4 & n.19.

²⁹ See CEA Comments at 8; CEA Reply Comments at 3; but see TDI *Ex Parte* at 3.

³⁰ See CEA Comments at 8–9; see also CEA Reply Comments at 5.

³¹ See *Notice*, 27 FCC Rcd at 14745–46 ¶ 30; see also *id.* at 14734 ¶ 6; 47 C.F.R. §§ 79.2(a)–(b), 79.3(a)–(c).

³² TDI *Ex Parte* at 3.

scope of the new apparatus requirements for emergency information and video description.³³ The mere presence of a waiver process cannot save an irrational application of a rule.³⁴ The Commission should not and cannot require manufacturers to apply for waivers of a rule that exceeds the Commission's authority in order to exempt devices from that rule.

CEA recognizes the value of ensuring that emergency information is accessible to individuals who are blind or visually impaired and deaf or hard of hearing.³⁵ However, Congress has instructed the Commission to prescribe regulations to ensure that emergency information is conveyed in a manner accessible to individuals who are blind or visually impaired. Accessibility of emergency information for the deaf and hard of hearing is not within the scope of the IP captioning proceeding or the proceeding on accessible emergency information and video description.³⁶

Pursuant to Section 1.1206 of the Commission's rules,³⁷ 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

³³ *Notice*, 27 FCC Rcd at 14747 ¶ 34.

³⁴ *See* CEA PFR at 7 (citing *ALLTEL Corp. v. FCC*, 838 F.2d 551, 561 (D.C. Cir. 1988)).

³⁵ *See* TDI *Ex Parte* at 3–4.

³⁶ *See* National Association of Broadcasters Reply Comments, MB Docket No. 12-107, at 6–8 (filed Jan. 7, 2012).

³⁷ 47 C.F.R. § 1.1206.