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Via Electronic Filing

September 11, 2013

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

Re: Notice of Ex Parte Presentation – MB Docket No. 12-108

Dear Ms. Dortch:

This is to notify you that on September 9, 2013, Julie Kearney, Vice President, Regulatory Affairs, Consumer Electronics Association (“CEA”), together with John Godfrey, Samsung Electronics America, and CEA outside counsel William Maher and Chris Clark of Wilkinson Barker Knauer, LLP, met with Matthew Berry, Chief of Staff, Office of Commissioner Pai. In addition, Ms. Kearney, Mr. Godfrey, Mr. Maher, and Mr. Clark, met separately on September 9, 2013, with Priscilla Delgado Argeris, Legal Advisor, Office of Commissioner Rosenworcel.

Meeting attendees from the Commission were provided with copies of the attached *ex parte* letter filed on August 16, 2013, by CEA and the American Foundation for the Blind (“AFB”) in the above-captioned docket, which discussed areas of agreement and disagreement among CEA, AFB, and the American Council of the Blind (“ACB”) (the “CEA-AFB-ACB Letter”).¹ Mrs. Argeris was provided with a copy of the attached agenda as well.²

The CEA representatives discussed the significance of the CEA-AFB-ACB Letter and urged adoption of the positions on which CEA, AFB, and ACB agree, as expressed in that joint filing. The CEA representatives also discussed the evolution of CEA’s views regarding the

¹ Letter from Julie M. Kearney, Vice President, Regulatory Affairs, CEA, and Mark Richert, Director, Public Policy, AFB, to Marlene H. Dortch, Secretary, FCC, MB Docket No. 12-108 (filed Aug. 16, 2013) (“CEA-AFB-ACB Letter”) (Attachment A).

² CEA *Ex Parte* Meeting Agenda, MB Docket No. 12-108 (Sept. 2013) (Attachment B).

implementation of Sections 204 and 205 of the Twenty-First Century Communications and Video Accessibility Act of 2010,³ which the Commission is considering in a pending Notice of Proposed Rulemaking.⁴

CEA requested that the Commission adopt a uniform three-year phase-in period for all devices covered by Sections 204 and 205.⁵ CEA explained that, due to the timing of the product development cycle for TVs, a uniform three-year phase-in period for compliance with Sections 204 and 205 would not significantly delay the timing of the introduction of accessible devices.⁶ New TV models are usually introduced in the spring. Assuming that rules in this docket are published in the Federal Register in October 2013, a three-year phase-in period would end in October 2016. However, that season's new TV models would be introduced in spring 2016, which would be an effective phase-in period of only about two and a half years.

³ Pub. L. No. 111-260, §§ 204-205, 124 Stat. 2751, 2773-76 (2010) (as codified at 47 U.S.C. § 303), *amended by* Pub. L. 111-265, 124 Stat. 2795 (2010).

⁴ *Accessibility of User Interfaces, and Video Programming Guides and Menus*, Notice of Proposed Rulemaking, 28 FCC Rcd 8506 (2013). *See* CEA Comments, MB Docket No. 12-108 (filed July 15, 2013); CEA Reply Comments, MB Docket No. 12-108 (filed Aug. 7, 2013) (erratum filed).

⁵ *See* SECOND REPORT OF THE VIDEO PROGRAMMING ACCESSIBILITY ADVISORY COMMITTEE ON THE TWENTY-FIRST CENTURY COMMUNICATIONS AND VIDEO ACCESSIBILITY ACT OF 2010: USER INTERFACES, AND VIDEO PROGRAMMING GUIDES AND MENUS 15 (2012), *available at* <http://vpaac.wikispaces.com> (recommending a phase-in period of “not less than two years” for compliance with Section 204).

⁶ *See* Letter from Julie M. Kearney, Vice President, Regulatory Affairs, CEA, to Marlene H. Dortch, Secretary, FCC, MB Docket No. 12-108, at 3 (filed Aug. 1, 2013).

Pursuant to Section 1.1206 of the Commission's rules,⁷ 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

Attachments

cc: Priscilla Delgado Argeris
Matthew Berry

⁷ 47 C.F.R. § 1.1206.

ATTACHMENT A

Via Electronic Filing

August 16, 2013

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

Re: Notice of Ex Parte Presentation – MB Docket No. 12-108

Dear Ms. Dortch:

This is to notify you that on August 14, 2013, representatives of the Consumer Electronics Association (“CEA”), the American Foundation for the Blind (“AFB”), and the American Council of the Blind (“ACB”) met with members of the staff of the Commission’s Media Bureau (“MB”), Consumer and Governmental Affairs Bureau (“CGB”), and Office of General Counsel (“OGC”) regarding MB Docket No. 12-108. CEA participants were Julie Kearney, Vice President, Regulatory Affairs, Brian Markwalter, Senior Vice President, Research and Standards, and Bill Belt, Senior Director, Technology and Standards, who were accompanied by John Godfrey and Zachary Rothstein, Samsung Information Systems America, Inc., Paul Schomburg, Panasonic Corporation of North America (“Panasonic”), and CEA outside counsel William Maher and Chris Clark of Wilkinson Barker Knauer, LLP. Tony Jasionowski, on behalf of Panasonic, participated by telephone. AFB was represented by Paul Schroeder, Vice President, Programs and Policy, and Mark Richert, Director, Public Policy. Brian Charlson, Chairman, Information Access Committee, ACB, participated via phone. Commission attendees were Michelle Carey, Steve Broeckaert, Evan Baranoff, Adam Copeland, Maria Mullarkey, Brendan Murray, Jeffrey Neumann, and Raelynn Remy of MB, as well as Alison Neplokh and Mary Beth Murphy of MB, who participated by phone; Rosaline Crawford and Eliot Greenwald of CGB; and Royce Sherlock of OGC.

CEA, AFB, and ACB agreed on the need to ensure that devices are made accessible to individuals who are blind or visually impaired, as provided in Sections 204 and 205 of the Twenty-First Century Communications and Video Accessibility Act of 2010 (“CVAA”).¹ The parties explained that, while they generally maintain their positions already on record in MB Docket No. 12-108 with regard to Sections 204 and 205, there are certain areas of agreement that may be significant to the Commission’s resolution of the numerous complex issues in this docket.

CEA, AFB, and ACB indicated to Commission staff that one clear path forward would be for the Commission to establish unequivocally that the eleven essential functions crafted by the VPAAC is the complete array of "appropriate built-in apparatus functions" that a manufacturer would be

¹ Pub. L. No. 111-260, §§ 204-205, 124 Stat. 2751, 2773-76 (2010) (as codified at 47 U.S.C. § 303), *amended by* Pub. L. 111-265, 124 Stat. 2795 (2010).

required to make accessible, if achievable, pursuant to Section 204. While AFB and ACB expressed their appreciation for the Commission's proposed intent to impose an accessibility obligation for virtually all conceivable apparatus functions whether or not such functions pertain to video programming at all, CEA, AFB, and ACB reached consensus that the VPAAC's list of eleven essential functions² refers to the complete set of "appropriate built-in apparatus functions" that must be accessible, if achievable, under Section 204. CEA made it clear that, should the Commission agree to reframe its proposed broader approach so that apparatus manufacturers will only be accountable for the accessibility of the eleven essential functions as described above and subject to the clarification described below, CEA would be agreeable to the Commission proceeding to apply section 205 of the CVAA only to MVPD-provided equipment, as well as to equipment that is similar in kind to MVPD-provided equipment (i.e., set-top boxes) made available to consumers via retail outlets. CEA, AFB, and ACB were not, however, able to reach consensus about how to categorize the narrow class of devices, inclusive of devices such as TiVo; CEA views such equipment as section 205-covered navigation devices, and AFB and ACB view such equipment as section 204-covered apparatus.

With respect to clarification of the Commission's treatment of the application of the eleven essential functions requirement, CEA was careful to note that the accessibility of each of the eleven essential functions for a given piece of apparatus is the responsibility of a manufacturer if, and only if, the manufacturer offers such functionality generally in that piece of apparatus. CEA urged, and AFB and ACB agreed, that manufacturers should only be obligated, for instance, to make apparatus volume control accessible when volume control is native to the equipment. If no volume control is available to purchasers of the equipment generally, then the CVAA imposes no obligation on manufacturers to add volume control to equipment.

CEA, AFB, and ACB agreed that certain simple consumer electronics devices, such as display-only video monitors,³ should be exempt from coverage under Sections 204 and 205. In addition, the parties agreed that the Commission should clarify that the devices exempted from coverage under Section 203 of the CVAA, such as digital still cameras and baby monitors, are also exempt from coverage under Sections 204 and 205.⁴

² SECOND REPORT OF THE VIDEO PROGRAMMING ACCESSIBILITY ADVISORY COMMITTEE ON THE TWENTY-FIRST CENTURY COMMUNICATIONS AND VIDEO ACCESSIBILITY ACT OF 2010: USER INTERFACES, AND VIDEO PROGRAMMING GUIDES AND MENUS 7, 8 (2012), *available at* <http://vpaac.wikispaces.com> (“*User Interfaces Report*”).

³ Display-only video monitors include computer monitors, as well as video display screens and video projectors that require a separate source device to receive video programming. *See* CEA Comments, MB Docket No. 12-108, at 9-10 (filed July 15, 2013).

⁴ *See Closed Captioning of Internet Protocol-Delivered Video Programming: Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010*, Order on Reconsideration and Further Notice of Proposed Rulemaking, 28 FCC Rcd 8785, 879-93, ¶¶ 11-15 (2013).

CEA, AFB, and ACB submit that the above-discussed agreement represents a significant step forward toward resolving the complex scoping issues of Section 204 and 205, while balancing the interests of the blind and low vision community and industry. Should the Commission choose to adopt rules that depart from the CEA-AFB-ACB recommended approach, then the parties reserve the right to challenge any part of the forthcoming FCC order.

The parties did not discuss a number of other issues that have been thoroughly reviewed in this docket, such as the concept of reasonable comparability of captioning and description controls. Pursuant to Section 1.1206 of the Commission's rules,⁵ 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
Consumer Electronics Association

/s/ **Mark Richert**

Mark Richert
Director, Public Policy
American Foundation for the Blind

cc: Michelle Carey
Allison Neplokh
Mary Beth Murphy
Steven Broeckaert
Evan Baranoff
Adam Copeland
Maria Mullarkey

Brendan Murray
Jeffrey Neumann
Raelynn Remy
Rosaline Crawford
Eliot Greenwald
Royce Sherlock

⁵ 47 C.F.R. § 1.1206

ATTACHMENT B

**CEA EX PARTE MEETING AGENDA – CVAA
User Interfaces, Guides and Menus NPRM (MB Docket No. 12-108)**

1. Introduction/Background on CEA

- a. Principal U.S. trade association for the consumer electronics and information technologies industries (CEA Comments at 1 n.1)
- b. 2,000 member companies that cumulatively generate more than \$209 billion in annual factory sales (CEA Comments at 1 n.1)
- c. CEA and its member companies were actively involved in the VPAAC advisory process and production of the VPAAC’s User Interfaces Report.

2. The Commission should implement the plain language of CVAA Sections 204 and 205 by applying Section 205 to *all* navigation devices and applying Section 204 to specified digital apparatus, with an express carve-out for navigation devices

- a. Consistent with the canons of statutory construction, the rules implementing Section 205 should apply to all navigation devices, as the plain language of that section states, not merely MVPD-supplied navigation devices. (CEA Comments at 6-7)
 - i. Section 205 expressly covers “navigation devices (as such term is defined in section 76.1200 of title 47, Code of Federal Regulations).”
 - ii. Section 76.1200 broadly defines “navigation devices” as “converter boxes, interactive communications equipment, and other equipment used by consumers to access multichannel video programming and other services offered over multichannel video programming systems,” which includes TVs, personal computers, cable modems, and VCRs. (CEA Comments at 6)
 - iii. Even mobile devices, tablets and laptops that have Internet connectivity and video capability are navigation devices because consumers can use them to access multichannel video programming. (CEA Comments at 7)
 - iv. Section 205 should not apply to display-only video monitors. This limited class of consumer electronics, which includes computer monitors, video display screens, and video projectors, consists of equipment that requires a separate source device to display multichannel video programming. (CEA Comments at 9-10)
 - v. Professional video products also should be exempt from Section 205.
- b. Similarly, the plain language of Section 204 indicates that its provisions apply to “digital apparatus designed to receive or play back video programming transmitted in digital format simultaneously with sound,” excluding navigation devices as defined in the Commission’s rules. A device subject to Section 204 as covered digital apparatus is not subject to Section 205 as a navigation device. (CEA Comments at 7)

3. The rules implementing Section 204 must be limited in scope

- a. Even if the Commission were to apply Section 205 only to MVPD-supplied navigation devices, Section 204 applies to a focused class of “digital apparatus” that must be carefully delineated, and only to “appropriate” functions of those apparatus. (CEA Comments at 10-12)
 - i. Section 204 applies only to digital apparatus that **receive or play back** “video programming,” *i.e.*, “programming by, or generally considered comparable to programming provided by a television broadcast station, but not including consumer-generated media.” Display-only monitors do not “receive or play back” video programming and thus are not subject to Section 204.
 - ii. Section 204 contains an express carve-out for navigation devices.
 - iii. Section 204 does not cover software applications by themselves. The Commission can reasonably rely on the dictionary meaning of “apparatus,” and the precedent of the *IP Captioning Order*.
- b. The Commission should not impose the Section 204 obligations on “all user functions of the device,” as the *NPRM* tentatively concludes. (CEA Comments at 13-15)
 - i. Applying Section 204 to “all user functions of the device” would be inconsistent with the plain language of that section, which imposes accessibility requirements only on “**appropriate** built-in apparatus functions.”
 - Because Section 204 applies specifically to digital apparatus designed to receive or play back video programming, the functions to be considered “appropriate” must be limited to those necessary for the apparatus to receive or play back that programming.
 - Attempting to define and make accessible “all user functions” on covered digital apparatus would be extremely costly and burdensome and could stall innovations in product design and functionality, contrary to the goals of the CVAA.
 - ii. Because Section 204 applies only to “appropriate built-in apparatus functions,” the plain language of the statute indicates that manufacturers should be afforded discretion to determine which functions are “appropriate” functions of covered digital apparatus that must be accessible, if achievable.
 - iii. **At most**, the eleven “essential functions” identified in the VPAAC’s *User Interfaces Report* are the “appropriate built-in apparatus functions” that must be accessible to and usable by individuals who are blind or visually impaired, if achievable.
 - To the extent that a covered digital apparatus provides these functions, if the functions are accessible to and usable by individuals who are

blind or have visual impairments, the apparatus should qualify for “safe harbor” treatment and be deemed in compliance with Section 204.

- A given function should not become a requirement for all apparatus merely by virtue of its inclusion on the list of essential functions, because certain functions may not be provided on a device for **any** user.

4. The rules implementing Sections 204 and 205 must reflect the different substantive requirements of those sections

- a. Section 204 focuses on making “appropriate” built-in functions on covered digital apparatus accessible to and usable by the blind and visually impaired, if achievable. As mentioned previously, identification of “appropriate” built-in apparatus functions should be left to the manufacturer, based on the particular capabilities of the device in question. (CEA Comments at 16-17)
- b. In contrast, Section 205 centers on access to specific features of navigation devices: “on-screen text menus and guides provided by navigation devices . . . for the display or selection of multi-channel video programming.” The plain language of Section 205 indicates that it does not apply to “all of the user functions that are offered via on-screen text menus and guides,” as the *NPRM* tentatively concludes, but only those used for the display or selection of multichannel video programming. (CEA Comments at 16)
- c. Additionally, Section 204 focuses on the accessibility of covered apparatus, while Section 205, in turn, focuses only on the accessibility of navigation devices provided to a **“requesting blind or visually impaired individual.”** (CEA Comments at 17-18)

5. Sections 204 and 205 afford covered entities flexibility to select user control activation mechanisms

- a. Sections 204 and 205 do not require use of a dedicated button or a single step for user control activation mechanisms. (CEA Comments at 18-21)
 - i. Limiting activation mechanisms for closed captioning or video description features to a dedicated physical button or a single step would be inconsistent with the plain language of the CVAA – “reasonably comparable” – and Congress’s intent to provide flexibility to industry.
 - ii. More than a single step often is needed to activate a feature using a button, key, or icon, and some devices do not include any buttons but instead rely on voice or gesture recognition.
 - iii. “Reasonably comparable” in this context should mean that manufacturers are in compliance if the number of steps in which a person who is blind or

visually impaired can access the covered features is very similar to the number of steps in which a person without disabilities can access those features

- b. Sections 204 and 205 limit the applicability of the user control activation mechanisms (CEA Comments at 21-23)
 - i. The user control activation mechanism requirement in Section 204 expressly applies only to covered apparatus with built-in “closed captioning and video description features.”
 - ii. The corresponding requirement in Section 205 expressly applies only to navigation devices with built-in “closed captioning capability.”
 - iii. The phrase “or accessibility features” in Section 205 does not authorize the Commission to extend Section 205’s requirement for user control activation mechanisms beyond closed captioning capability.
- 6. The Commission should adopt a uniform three-year phase-in period for implementing the new accessibility requirements in Sections 204 and 205**
 - a. A three-year phase-in period will allow manufacturers to implement the new regulatory requirements in a coherent, efficient manner without significantly delaying the introduction of accessible devices. (CEA Comments at 23-24)
- 7. The Commission should also implement the following recommendations, consistent with the CVAA and Commission precedent.**
 - a. The Commission should clarify that manufacturers are not responsible for the accessibility of third-party applications downloaded and installed by users after sale. The Commission already has defined the extent of manufacturers’ responsibility for the accessibility of pre-installed software, and that should not be expanded in this proceeding. (CEA Comments at 24-25)
 - b. The Commission should also clarify that the devices subject to waiver of the Section 203 requirements in the *IP Captioning Reconsideration Order* are not subject to the Sections 204 and 205 rules. (CEA Comments at 25-26)
 - c. As proposed in the *NPRM*, the Commission should eliminate the analog closed captioning labeling requirement and rename Part 79 of the rules. (CEA Comments at 27)