Consumer Electronics Association
1919 South Eads Street
Arlington, VA
22202 USA
(866) 858-1555 toll free
(703) 907-7600 main
(703) 907-7601 fax
www.CE.org

Via Electronic Filing

September 16, 2013

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

Re: Written Ex Parte Submission – MB Docket No. 12-108

Dear Ms. Dortch:

The Consumer Electronics Association ("CEA"), by the undersigned, writes to urge the Commission to resolve the issues regarding the scope of Sections 204 and 205 of the Twenty-First Century Communications and Video Accessibility Act of 2010 ("CVAA")[1] by acting consistently with the "clear path forward" proposed in the *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").[2]

Consistent with the CEA-AFB-ACB Letter, the Commission should establish unequivocally that the eleven essential functions crafted by the Video Programming Accessibility Advisory Committee ("VPAAC")[3] is the complete array of "appropriate built-in apparatus functions" that a manufacturer would be required to make accessible, if achievable, pursuant to Section 204.

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[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).

[2] 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, at 1-2 (filed Aug. 16, 2013).

[3] SECOND REPORT OF THE VIDEO PROGRAMMING ACCESSIBILITY ADVISORY COMMITTEE ON THE TWENTY-FIRST CENTURY COMMUNICATIONS AND VIDEO ACCESSIBILITY ACT OF 2010: USER

Moreover, 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 in the CEA-AFB-ACB Letter, CEA would be agreeable to the Commission applying 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.[4]

CEA believes that the Commission's definition of navigation devices in Section 76.1200 of its rules[5] is consistent with the position taken by CEA regarding Section 205 in the CEA-AFB-ACB Letter. Section 76.1200 defines navigation devices as equipment "used by consumers to access multichannel video programming and other services offered over multichannel video programming systems."[6]

As the National Cable & Telecommunications Association ("NCTA") has pointed out, "the Commission has consistently and repeatedly applied the definition of 'navigation device' [that is, Section 76.1200] to equipment, such as cable set-top boxes, used to access Title VI cable services that are made available by a cable operator. These cable services include 'multichannel video programming services,' such as linear cable channels, as well as 'other services,' such as an operator's program guide and interactive TV services."[7] In the order adopting Section 76.1200, the Commission discussed a broad range of products that can be configured as navigation devices, if so designed and equipped.[8] However it did so because the purpose of that proceeding was "to make navigation devices commercially available, rather than to create a market for certain specific equipment."[9] The Commission has never insisted that *all* televisions, VCRs, and other broad categories of equipment must actually be configured as navigation devices in conformance with its rules.

Thus, it is reasonable, based on the Commission's consistent practice, to interpret Section 76.1200 as applying to devices that are *actually configured* to operate as navigation devices

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INTERFACES, AND VIDEO PROGRAMMING GUIDES AND MENUS 7, 8 (2012), *available at* http://vpaac.wikispaces.com.

[4] *See* CEA-AFB-ACB Letter at 2. 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. *Id*.

[5] 47 C.F.R. § 76.1200.

[6] *Id*.

[7] *See* Letter from Rick Chessen, NCTA, to Marlene H. Dortch, FCC, MB Docket No. 12-108, at 2-3 (filed Sept. 12, 2013); *see also id*. at 2-3, nn.7-8.

[8] *See Implementation of Section 304 of the Telecommunications Act of 1996: Commercial Availability of Navigation Devices*, Report & Order, 13 FCC Rcd 14775, 14784, ¶ 25 (1998).

[9] *See id*. at 14784, ¶ 26.

comparable to MVPD-furnished devices.[10] Applying Section 205 only to MVPD-provided equipment, as well as to equipment that is similar in kind to MVPD-provided equipment (*e.g.*, set-top boxes) made available to consumers via retail outlets is completely consistent with this interpretation of Section 76.1200.[11] In short, as discussed in the CEA-AFB-ACB Letter, MVPD and retail products that are actually configured to operate as navigation devices comparable to MVPD-furnished devices should be within the scope of Section 205. This is entirely consistent with Section 76.1200 and the Commission's past practice in applying that section of the rules.

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Pursuant to Section 1.1206 of the Commission's rules,[12] 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

[10] *See id.*at 14784-14785, ¶¶24-26 (1998).

[11] *See* AFB Reply Comments, MB Docket No. 12-108, at 5-6 (filed Aug. 7, 2013) (arguing that the Commission should interpret the definition of "navigation device" to apply only to MVPD-provided equipment).

[12] 47 C.F.R. § 1.1206.