

Before the  
**Federal Communications Commission**  
Washington, DC

In the Matter of:

**ESA Petition for Extension of** )  
**Video Game Software Class Waiver** )  
**of Commission's Rules for Access** ) **CG Docket No. 10-213**  
**to Advanced Communications** )  
**Services and Equipment by People** )  
**with Disabilities** )

**Comments of**

**Telecommunications for the Deaf and Hard of Hearing, Inc. (TDI)**  
**National Association of the Deaf (NAD)**  
**Hearing Loss Association of America (HLAA)**  
**Association of Late-Deafened Adults (ALDA)**  
**Cerebral Palsy and Deaf Organization (CPADO)**  
**American Foundation for the Blind (AFB)**  
**American Council of the Blind (ACB)**  
**California Coalition of Agencies Serving the**  
**Deaf and Hard of Hearing (CCASDHH)**  
**National Association of State Agencies of the**  
**Deaf and Hard of Hearing (NASADHH)**  
**Deaf and Hard of Hearing Consumer Advocacy Network (DHHCAN)**  
**Rehabilitation Engineering Research Center on Technology for the Deaf and Hard**  
**of Hearing, Gallaudet University (DHH-RERC)**

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Telecommunications for the Deaf and Hard of Hearing, Inc. (TDI), the National Association of the Deaf (NAD), the Hearing Loss Association of America (HLAA), the Association of Late-Deafened Adults (ALDA), the Cerebral Palsy and Deaf Organization (CPADO), the American Foundation for the Blind (AFB), the American Council of the Blind (ACB), the California Coalition of Agencies Serving the Deaf and Hard of Hearing (CCASDHH), the National Association of State Agencies of the Deaf and Hard of Hearing (NASADHH), and the Deaf and Hard of Hearing Consumer Advocacy Network (DHHCAN), collectively, “Consumer Groups,” and the Rehabilitation Engineering Research Center on Technology for the Deaf and Hard of Hearing, Gallaudet University (DHH-RERC), respectfully comment on the October 27, 2017 Petition for Extension of Waiver of the Entertainment Software Association (ESA Petition), in response to the Commission’s November 1, 2017 Request for Comments (RFC).<sup>1</sup>

At the outset, we again acknowledge the sincere and significant efforts that ESA and its members have taken over the past several years to improve the accessibility of gaming equipment and software.<sup>2</sup> We continue to appreciate the efforts of ESA and its members to dialogue and work with the deaf and hard of hearing and blind and visually impaired

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<sup>1</sup> Petition for Waiver (2017 Petition), <https://www.fcc.gov/ecfs/filing/102722016691>; Request for Comment (RFC), [http://transition.fcc.gov/Daily\\_Releases/Daily\\_Business/2017/db1101/DA-17-1076A1.pdf](http://transition.fcc.gov/Daily_Releases/Daily_Business/2017/db1101/DA-17-1076A1.pdf). As the RFC notes, the ESA Petition is rooted in a petition initially filed in 2012 for multiple classes of video-game-related equipment, which the Consumer and Governmental Affairs Bureau granted until 2015 and then partially renewed for video-game software only through January 1, 2017. *RFC* at 1. The Commission subsequently renewed the waiver through December 31, 2017, requiring the ESA to submit a progress report to the Consumer and Governmental Affairs Bureau on June 30, 2017. Petition for Class Waiver of Sections 716 and 717, Order, 31 FCC Rcd. 13,464, 13,464, ¶ 1 (Dec. 23, 2016). ESA submitted the progress report on June 30, 2017. 2017 Mid-Year Progress Report, <https://www.fcc.gov/ecfs/filing/10630092346778>.

<sup>2</sup> *See generally* 2016 Waiver Petition Comments of TDI, et al. at 1 (Nov. 30, 2016) (2016 TDI Comments), <https://www.fcc.gov/ecfs/filing/1130208530839>.

communities and gather feedback on their products and services from gamers who are deaf, hard of hearing, blind, visually impaired, or DeafBlind, including the additional steps taken throughout 2017 detailed in ESA's mid-year progress report and the Petition.<sup>3</sup>

We remind the Commission and ESA that compliance with the Commission's Advanced Communications Services (ACS) rules from which ESA seeks to renew its waiver and the associated provisions of the Twenty-First Century Communications and Video Accessibility Act (CVAA) remains critical to ensuring that people who are deaf, hard of hearing, blind, visually impaired, or DeafBlind can experience the immersive communicative, social, and cultural touchstones that video games provide on equal terms.<sup>4</sup> Given the importance to the deaf and hard of hearing and blind and visually impaired communities of equal access to ACS components of video games, it remains critical that the Commission subject the ESA Petition to a high level of scrutiny and ensure that ESA provides adequate justification for the final, temporary extension it requests.<sup>5</sup>

Against that backdrop, we remain concerned about key aspects of the ESA Petition. As in our comments on the previous petition, the 2017 Petition's description of progress over the preceding waiver period appears limited to high-level themes and scattered examples and does not systematically survey the extent to which progress has been made across at least a representative sample of games.<sup>6</sup> We also remain concerned about the high level of generality in which the 2017 Petition describes the technical challenges to accessibility.<sup>7</sup> Granting a continuing waiver that has now remained active for more than five years without systemic analysis of progress and challenges sets a dangerous precedent for future waiver

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<sup>3</sup> *Id.*; 2017 Mid-Year Progress Report at 12-22; 2017 Petition at 12-18.

<sup>4</sup> 2016 TDI Comments at 2.

<sup>5</sup> *See id.* at 2-3.

<sup>6</sup> *See* 2017 Petition at 12-18; 2016 TDI Comments at 2.

<sup>7</sup> *See* 2017 Petition at 9-12; 2016 TDI Comments at 2-3.

requests. And we are newly concerned about ESA's allusion to future reliance on the CVAA's achievability framework, which raises the prospect that ACS components in games released after the expiry of the waiver may remain inaccessible.<sup>8</sup>

Those concerns notwithstanding, we note with approval ESA's commitment that its request is the "final extension" it will seek of the ongoing waiver.<sup>9</sup> We take in good faith ESA's commitment that its members will leverage the progress in developing meaningful accessibility solutions that has accrued over the lengthy preceding waiver period and shift into a mode of accessibility by design in new products, while continuing to meaningfully engage with consumers with disabilities to ensure that its products serve their needs.<sup>10</sup>

Bearing ESA's commitment and good faith engagement with consumers with disabilities over the waiver period, we tentatively offer our support of the final waiver extension proposed in the petition. We note, however, that our support is conditioned on the finality of the extension and a meaningful transition into large-scale compliance following the expiry of the waiver. We urge the Commission to make clear (a) that no further extensions will be granted; and (b) that claims that making ACS components of future video games accessible is unachievable will be scrutinized skeptically against the backdrop of the multi-year waiver period. And we strongly encourage ESA and its members to continue their collaborative work with consumers with disabilities to ensure that games are designed with accessibility in mind and that problems can be rooted out before products hit the market rather than after the fact via enforcement action.

We appreciate ESA's and the Commission's continued attention to the importance of making the social, cultural, and communicative benefits of video games accessible to all

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<sup>8</sup> *See* 2017 Petition at 2.

<sup>9</sup> *See* 2017 Petition at 1.

<sup>10</sup> *See id.* at 24-26.

consumers who are deaf, hard of hearing, blind, visually impaired, or DeafBlind, and stand ready to continue conversations and collaborations to ensure that goal is reached.

Respectfully submitted,

/s/

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