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| December 1, 2017 | Abe Rafi *Director, Digital Strategy & Online Services, The Arc of the United States*  rafi@thearc.org  202-534-3729 |

Before the

**Federal Communications Commission**

Washington, DC

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

**Comments of**

**The Arc of the United States**

The Arc respectfully comments 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).[[1]](#footnote-2)

For context, The Arc is the largest provider of services to people with cognitive disabilities in the USA. Through our 660 locations in 40 states, our 120,000 full-time staff serve approximately 1 million people with cognitive disabilities and their family members. The Arc provides services to support this population to achieve employment, gain independent living skills, pursue an education, access medical services, and participate in many other important dimensions of life in the community.

We remind the Commission and the ESA that people with cognitive disabilities include those with autism, Down syndrome, intellectual disabilities,[[2]](#footnote-3) pervasive developmental disabilities,[[3]](#footnote-4) acquired brain injuries,[[4]](#footnote-5) neurodegenerative disease,[[5]](#footnote-6) and learning disabilities.[[6]](#footnote-7)

We note that the ESA’s Petition and its 2017 Mid-Year Progress Report[[7]](#footnote-8) make no obvious mention of steps made toward meeting the usability and accessibility needs of people with cognitive disabilities, specifically. This is problematic, because people with cognitive disabilities comprise a large portion of the population. According to the Coleman Institute for Cognitive Disabilities at the University of Colorado, approximately 30 million Americans, or more than 9% of the total U.S. population, had a cognitive disability in 2015.[[8]](#footnote-9)

Moreover, accessible and usable ACS features of multi-player online video games are especially valuable to many people with cognitive disabilities because such features can enable many people with cognitive disabilities to overcome barriers to participating in the community. These barriers may be caused by their disabilities (e.g., impairments to verbal communication, impairments to information-processing skills, inability to recognize or respond to some social cues, impairments that prevent the independent use of private or public transportation to access the community, etc.) or the ways their disabilities are perceived by others (e.g., stigmatization of people with cognitive disabilities, difficult in understanding the communication styles of people with cognitive disabilities, etc.). By communicating with members of the community through video game avatars in structured, multi-player online environments where interactions are constrained within the bounds of a game, many people with cognitive disabilities can connect with others more effectively than through in-person, unstructured social situations. Many people with cognitive disabilities use online video games to practice and improve communication skills, increase their confidence to communicate with strangers, and participate in the cultural phenomena that manifests around popular online games which are increasingly important to understanding and participating in society—especially, for teenagers and young adults with cognitive disabilities.

The Commission’s 2016 Waiver Order [[9]](#footnote-10) directed the ESA to submit a mid-year report in 2017 to include information about challenges related to achieving accessibility of ACS in video game software and “detailed milestones for their resolution.” ESA’s 2017 Mid-Year Report did not mention any such detailed milestones. Instead, ESA staed that this “continues to be challenging” and gave some isolated examples of work done by some of its members to meet the accessibility needs of some users with disabilities (though, again, not cognitive disabilities).

Given the rapid evolution of video game technology and the complexity of interaction models in video games, The Arc advocates that the Commission direct the ESA to meet a less challenging requirement that will allow the Commission to develop a better grasp of the challenges to achieving accessibility of ACS in video game technology. Namely, if the Commission opts to grant the ESA’s current petition, we urge the Commission to direct the ESA to submit a 2018 Mid-Year Report that includes (a) the steps its members have taken to include people with cognitive disabilities in members’ existing user research, product design, product testing, and online community curation and cultivation; (b) the resulting insights and learning that members have generated about the accessibility and usability needs of people with cognitive disabilities and; (c) the changes (if any) that ESA’s members made to their products or services as a result of those insights and learning.

The Arc reminds the Commission that its White Paper on ICT Access for People with Cognitive Disabilities released on October 6, 2016 notes that “there is no replacement for hands-on user testing, which can identify design and usability solutions for specific users…This is especially true when designing for users with cognitive disabilities, as developers may have little experience in working with this population, and therefore may not understand their functional needs with adequate precision.” [[10]](#footnote-11) The White Paper describes challenges that may cause companies to avoid including people with cognitive disabilities in product testing and recommends solutions to those challenges, which could be useful to ESA’s members.

Respectfully submitted,

/s/

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1. 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. [↑](#footnote-ref-2)
2. Intellectual disability is characterized by significant limitations in both **intellectual functioning** and in **adaptive behavior**, which originate **before the age of 18**. American Association on Intellectual & Developmental Disabilities, *Definition of Intellectual Disability,* <http://aaidd.org/intellectual-disability/definition#.V8g4_zU-KVM> (last visited Sept. 1, 2016). [↑](#footnote-ref-3)
3. Pervasive developmental disabilities are characterized by delays in the development of socialization and communication skills, and includes disabilities on the autism spectrum. National Institutes of Health, National Institute of Neurological Disorders & Stroke, *NINDS Pervasive Developmental Disorders Information Page,* <http://www.ninds.nih.gov/disorders/pdd/pdd.htm> (last visited Sept. 1, 2016). [↑](#footnote-ref-4)
4. Acquired brain injuries include all types of traumatic brain injuries caused by external forces, and also brain injuries caused after birth by cerebral vascular accidents (commonly known as stroke), and loss of oxygen to the brain (hypoxic brain injury). Brain Injury Association of America, *Frequently Asked Questions: What is the Difference between an Acquired Brain Injury and a Traumatic Brain Injury?*, <http://www.biausa.org/FAQRetrieve.aspx?ID=43913> (last visited Sept. 1, 2016). [↑](#footnote-ref-5)
5. Neurodegenerative disease includes Alzheimer’s disease, amyotrophic lateral sclerosis (ALS), Huntington’s disease, and Parkinson’s disease. National Institutes of Health, U.S. National Library of Medicine, *Degenerative Nerve Diseases, Also Called: Neurodegenerative Diseases*,<https://www.nlm.nih.gov/medlineplus/degenerativenervediseases.html> (last visited Sept. 1, 2016). [↑](#footnote-ref-6)
6. Learning disabilities are neurological conditions that interfere with an individual’s ability to store, process, or produce information. Learning Disabilities Association of America, *New to LD,* <http://ldaamerica.org/support/new-to-ld/> (last visited Sept. 1, 2016). The Coleman Institute confirms that “autism spectrum disorders, severe, persistent mental illness, brain injury, stroke, and Alzheimer's disease and other dementias” should be included in the “broad range of cognitive conditions that can impact quality of life and independent living.” Coleman Institute, *A Few FAQs about the Declaration,* *The Rights of People with Cognitive Disabilities to Technology and Information Access,* <http://www.colemaninstitute.org/declaration-faq> (last visited Sept. 1, 2016). [↑](#footnote-ref-7)
7. The Commission required 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. [↑](#footnote-ref-8)
8. Coleman Institute, *About Us,* <http://colemaninstitute.org/about-the-institute> (last visited Sept. 15, 2016); *see also* David L. Braddock et al., *The State of the States in Intellectual and Developmental Disabilities: Emerging from the Great Recession* 74 (10th ed. 2015) (estimating the population of Americans with cognitive disabilities at 29.9 million). [↑](#footnote-ref-9)
9. Petition for Class Waiver of Sections 716 and 717, Order, 31 FCC Rcd. 13,464, 13,464, ¶ 1 (Dec. 23, 2016). [↑](#footnote-ref-10)
10. <https://apps.fcc.gov/edocs_public/attachmatch/DOC-341628A1.pdf> last visited on Dec 1, 2017 [↑](#footnote-ref-11)