

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington D.C. 20554**

In the Matter of)	
)	
Implementation of Sections 716 and 717 of the)	CG Docket No. 10-213
Communications Act of 1934, as Enacted by the)	
Twenty-First Century Communications and Video)	
Accessibility Act of 2010)	
)	
Request for Comment on Petition for Class)	
Waiver of Commission’s Rules for Access to)	
Advanced Communications Services and)	
Equipment by People with Disabilities)	

**COMMENTS
OF THE CONSUMER ELECTRONICS ASSOCIATION
SUPPORTING THE E-READER PETITION FOR EXTENSION OF WAIVER**

I. INTRODUCTION AND SUMMARY

The Consumer Electronics Association (“CEA”)¹ supports grant of the petition (“Petition”)² by the Coalition of E-Reader Manufacturers (the “Coalition”) for extension of the waiver of the advanced communications services (“ACS”) rules now in place for the narrow class of e-readers (the “class E-Readers”) defined in the *Waiver Order*.³

¹ CEA is the principal U.S. trade association of the consumer electronics and information technologies industries. CEA’s more than 2,000 member companies lead the consumer electronics industry in the development, manufacturing and distribution of audio, video, mobile electronics, communications, information technology, multimedia and accessory products, as well as related services, that are sold through consumer channels. Ranging from giant multinational corporations to specialty niche companies, CEA members cumulatively generate more than \$211 billion in annual factory sales and employ tens of thousands of people.

² Petition for Extension of Waiver, Coalition of E-Reader Manufacturers, CG Docket No. 10-213 (filed Sept. 4, 2014).

³ *Implementation of Sections 716 and 717 of the Communications Act of 1934, as Enacted by the Twenty-First Century Communications and Video Accessibility Act of 2010; Coalition of E-Reader Manufacturers’ Petition for Class Waiver of Sections 716 and 717 of the Communications Act and Part 14 of the Commission’s Rules Requiring Access to Advanced Communications Services (ACS) and Equipment by People with Disabilities*, Order, 29 FCC Rcd

CEA participated actively in the crafting and implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010 (“CVAA”),⁴ which reflects Congress’s careful approach toward balancing the twin goals of preserving technological innovation and accessibility for people with disabilities. Granting the requested extension is consistent with the waiver provisions of the CVAA and the ACS rules. Moreover, pursuant to the Commission’s general waiver standard,⁵ the Petition amply demonstrates that an ongoing waiver extension will be for good cause and will serve the public interest by permitting the continued availability of the class E-readers while recognizing that accessible alternatives are available in the marketplace.⁶

II. THE REQUESTED EXTENSION IS CONSISTENT WITH THE WAIVER PROVISIONS OF THE CVAA AND THE RULES

Section 716 of the Communications Act, added by the CVAA, and the ACS rules expressly authorize the Commission to waive the ACS requirements for an equipment class if: (i) class offerings are “capable of accessing” ACS, and (ii) class offerings are “designed for multiple purposes” but are “designed *primarily for purposes other* than using [ACS].”⁷

674, 677-678 ¶ 7 (CGB 2014) (“*Waiver Order*”). The Consumer and Governmental Affairs Bureau (“CGB”) acted for the Commission on delegated authority.

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

⁵ *See* 47 C.F.R. § 1.3; *Northeast Cellular Telephone Co., L.P. v. FCC*, 897 F. 2d 1164, 1166 (D.C. Cir. 1990) (citing *WAIT Radio v. FCC*, 418 F. 2d 1153, 1159 (D.C. Cir. 1969)).

⁶ *See* Petition at 1 n.2 (discussing accessible Kindle Fire line of tablets, which supports access to ACS features as well as access to Kindle e-books). Amazon now markets this line of tablets as “Fire tablets” and has since released the Fire HD 6, which starts at \$99. *See Fire HD 6*, Amazon, <http://www.amazon.com/Fire-HD-Display-Wi-Fi-GB/dp/B00KC6I06S> (last visited Oct. 27, 2014).

⁷ 47 U.S.C. § 617(h)(1); 47 C.F.R. § 14.5(a)(1) (emphasis added). *See also Implementation of Sections 716 and 717 of the Communications Act of 1934, as Enacted by the Twenty-First Century Communications and Video Accessibility Act of 2010, et al.*, Order, 27 FCC Rcd 12970, 12972-12973 ¶ 3 (CGB 2012).

The *Waiver Order* properly waived the ACS requirements for the class E-Readers pursuant to Section 716, the ACS rules, and the Commission’s general waiver authority.⁸ Among other things, the *Waiver Order* found that a waiver is justified because the primary purpose of the class E-Readers “is for reading, rather than for ACS”⁹ and “access to ACS is not, at this time, a primary or co-primary purpose of basic e-readers but rather serves an incidental purpose on these devices.”¹⁰ Accordingly, the *Waiver Order* held that “good cause exists to waive the Commission’s ACS rules for the class of basic e-readers for the purpose of preserving basic e-readers as a niche product that is primarily designed for reading.”¹¹ Although the Commission set the term of the waiver for one year, the *Waiver Order* also expressly contemplates that the Coalition could request an extension of the waiver.¹²

In considering a request for extension of a waiver, the Commission has consistently applied the same legal standards as applied in the original grant of the waiver.¹³ For instance, in 2014, the Commission extended certain existing waivers for providers of video relay services

⁸ See *Waiver Order*, 29 FCC Rcd at 675-676 ¶ 3 & n.16.

⁹ *Id.* at 685 ¶ 18.

¹⁰ *Id.* at 686 ¶ 18.

¹¹ *Id.* at 688 ¶ 21.

¹² *Id.* at 691 ¶ 26 (“The action we take herein is without prejudice to the Coalition requesting an extension of the waiver period”).

¹³ *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Report and Order, Order, Declaratory Ruling, and Further Notice of Proposed Rulemaking, 29 FCC Rcd 10697, 10710-14, ¶¶ 27-39 (2014) (*2014 Waivers of iTRS Mandatory Minimum Standards Order*) (extending a waiver of the requirement to offer one-line voice carry over and one-line hearing carry over for two VRS providers after finding good cause under the general standard for waiver requests); *New York Telephone Company and New England Telephone and Telegraph Company, Nonrecurring Charges for Reconfiguration of Circuits; Applications for Review and Petition for Reconsideration; Petition for Indefinite Extension of Waiver*, Memorandum Opinion and Order, 13 FCC Rcd 8324 (1998) (*1998 Nonrecurring Reconfiguration Charges Waiver Order*) (holding that an indefinite extension of a waiver of the Commission’s policy governing assessment of nonrecurring reconfiguration charges was consistent with waiver standards articulated in *WAIT Radio* and *Northeast Cellular*).

after finding good cause under the same general standard used to evaluate initial requests for waiver.¹⁴ Similarly, in 1998, the Commission indefinitely extended existing waivers of its policy governing assessment of nonrecurring reconfiguration charges after finding that this decision was consistent with general waiver standards articulated by the Commission and the D.C. Circuit Court in *Northeast Cellular* and *WAIT Radio*.¹⁵

As the Petition shows, based on the standards applied in the *Waiver Order*, the Commission should grant the requested extension as quickly as possible. The Petition convincingly demonstrates that there is no evidence that ACS is a primary purpose of the class E-Readers¹⁶ and that the facts of today's e-reader marketplace fully support extension of the waiver.¹⁷

III. BECAUSE THE FACTS REGARDING CLASS E-READERS HAVE NOT APPRECIABLY CHANGED SINCE THE WAIVER GRANT, THE REQUESTED WAIVER EXTENSION IS JUSTIFIED

The Petition establishes that the class E-Readers continue to be used primarily and almost exclusively for a non-ACS purpose: namely, reading of books, magazines, and newspapers.¹⁸ In fact, to the extent that class E-readers have web browsers, the record evidence, which is based on almost a year of experience since the waiver was granted, indicates that e-reader web browsers are rarely launched, and that their use is consistent, not with the use of ACS, but with brief look-ups on Wikipedia or visiting links within the books being read.¹⁹ Indeed, “the limited

¹⁴ *2014 Waivers of iTRS Mandatory Minimum Standards Order*, 29 FCC Rcd at 10713 ¶ 35 & nn.142-43.

¹⁵ *1998 Nonrecurring Reconfiguration Charges Waiver Order*, 13 FCC Rcd at 8335-36 ¶¶ 22-23 & nn.72-73; *see supra* note 5.

¹⁶ *See* Petition at 9-10.

¹⁷ *See id.* at 3-7.

¹⁸ *See id.* at 4-5.

¹⁹ *See id.* at 6.

functions”²⁰ of e-readers means the user experience is extremely circumscribed compared to tablets, which consumers use “for myriad other things, mostly media consumption aside from reading.”²¹

Moreover, the very definition of the class E-Readers adopted in the *Waiver Order* helps ensure that the covered devices do not have a primary purpose of using ACS:

[A]ny mobile electronic device that is capable of accessing ACS, designed primarily for the purpose of reading text-based digital works, such as books and periodicals, and meets each of the following requirements:

- (1) The device has no LCD screen, but rather utilizes a screen that is designed to optimize reading.
- (2) The device has no camera.
- (3) The device is not offered or shipped to consumers with built-in ACS client applications and the device manufacturer does not develop ACS applications for its respective device, but the device may be offered or shipped to consumers with a browser and social media applications.
- (4) The device is marketed to consumers as a reading device and promotional material about the device does not tout the capability to access ACS.²²

Devices that qualify as class E-Readers under this narrow multi-part definition are “niche” items that simply cannot have ACS use as their primary purpose.

While the existence of a browser may mean that a device is capable of accessing ACS, the use of a browser to look-up a term on Wikipedia or open a URL in an e-book is not engaging

²⁰ Marc Saltzman, *E-book readers vs tablets: Which one is right for you?*, USA TODAY (Feb. 23, 2014), available at <http://www.usatoday.com/story/tech/columnist/saltzman/2014/02/23/ereaders-vs-tablets/5575963/>.

²¹ Jeremy Greenfield, *Kindle Most Popular Device For Ebooks, Beating Out iPad; Tablets On The Rise*, FORBES (Oct. 30, 2013), available at <http://www.forbes.com/sites/jeremygreenfield/2013/10/30/kindle-most-popular-device-for-ebooks-beating-out-ipad-tablets-on-the-rise/>. Consumer Reports, an organization that describes itself as “commit[ted] to helping consumers make informed decisions,” agrees that although E-readers offer other capabilities besides displaying e-books, they are designed primarily for reading. Getting started, *E-book reader buying guide*, CONSUMER REPORTS, available at <http://www.consumerreports.org/cro/e-book-readers/buying-guide.htm> (last updated May 2014); *About Us*, CONSUMER REPORTS, <http://www.consumerreports.org/cro/about-us/index.htm> (last visited Oct. 16, 2014).

²² *Waiver Order*, 29 FCC Rcd at 682-83 ¶ 15 (footnotes omitted).

in ACS. Thus, the Petition fully supports grant of the extension by showing that today's overwhelming use of the class E-Readers is for reading and not ACS.

IV. BECAUSE OF THE NARROW DEFINITION OF THE CLASS E-READERS, AN ONGOING WAIVER EXTENSION IS WARRANTED

The Commission should grant an ongoing waiver extension, as the Petition requests. The class E-Readers are so narrowly defined as niche devices that, although the size of the class may change over time, class E-Readers will almost certainly qualify for a waiver pursuant to the terms of the *Waiver Order*. Therefore, the Commission should take an ongoing oversight and monitoring role with respect to the extension, with the ability to start a proceeding to consider adjusting the waiver grant if conditions change significantly.

All parties would benefit from continuing the waiver on an ongoing basis. The public would benefit because ACS requirements would not limit the development of class E-Readers and because Commission monitoring of the waiver would continue to protect consumers. Industry, and particularly E-reader manufacturers, would benefit by avoiding costly extension request proceedings while gaining certainty about the Commission's oversight of ACS accessibility regulations. And the Commission would benefit from retaining certainty that it can limit the scope of the waiver as needed, in an administratively efficient way.

V. CONCLUSION

CEA urges the Commission to grant the ongoing waiver extension requested by the Coalition.

Respectfully submitted,

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ASSOCIATION

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