

**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)	
)	
Petition for 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)	

To: Chief, Consumer and Governmental Affairs Bureau

REPLY COMMENTS OF THE COALITION OF E-READER MANUFACTURERS

The Petition for Extension of Waiver (“Extension Petition”) submitted by the Coalition of E-Reader Manufacturers¹ (“Coalition”) establishes that basic e-readers remain single-purpose non-ACS devices and requests an extension of the ACS waiver granted to the class of basic e-readers. Commenters opposing the Extension Petition have introduced no evidence that ACS has become a primary purpose of basic e-readers. In addition, the narrow class definition ensures that devices that do include ACS as a primary purpose will not be subject to the waiver and justifies an extension of the waiver on an ongoing basis. For the reasons explained herein, grant of the Extension Petition is consistent with the public interest.

¹ The Coalition of E-Reader Manufacturers consists of Amazon.com, Inc.; Kobo Inc.; and Sony Electronics Inc.

I. THE RECORD DEMONSTRATES THAT E-READERS REMAIN SINGLE-PURPOSE NON-ACS DEVICES

The marketing materials, consumer reviews, and industry data regarding consumer usage set forth in the Coalition’s Extension Petition demonstrate that in the months since the waiver was granted, ACS has not become a primary purpose of e-readers. To the contrary, it has become even clearer that e-readers are and will remain focused on the devices’ single primary purpose—reading—and that access to ACS remains incidental to e-reader usage. This conclusion is corroborated by the Consumer Electronics Association (“CEA”), which states that “the facts regarding [the class of basic e-readers] have not appreciably changed since the waiver grant.”²

Commenters opposing the Extension Petition either ignore the applicable waiver standard or advocate for an application of the waiver standard that is inconsistent with congressional direction and Commission precedent. The National Federation of the Blind (“NFB”) and the American Council of the Blind (“ACB”) do not address whether ACS has become a primary purpose of e-readers, because the facts do not support that claim. Instead, NFB and ACB incorrectly claim that “[t]he central piece of the waiver standard is the question of whether or not compliance with ACS requirements would be inconsistent with the public interest.”³ The Bureau has made it clear, however, that consideration of the public interest under the Commission’s general waiver standard is “[i]n addition to” the critical inquiry required under the CVAA:

² CEA Comments at 4.

³ NFB/ACB Opposition at 1.

whether a device that is “capable of accessing ACS” is “nonetheless designed primarily for purposes other than using ACS.”⁴

The Association of Research Libraries (“ARL”) and the American Library Association (“ALA”) claim that basic e-readers “are designed, marketed, and used for ACS and therefore have ACS as a primary or co-primary purpose.”⁵ To support their claim that e-readers are designed for ACS, the associations note that e-readers are *capable* of accessing ACS, but that is plainly at odds with the waiver standard set forth in the statute.⁶ To support the claim that e-readers are marketed for ACS, the library associations provide only a single citation to a paragraph from an Amazon Kindle product page.⁷ This paragraph in fact *makes no mention of ACS*, and the two activities that it does mention (connection to the Kindle Store and access to Wikipedia) are two of the simple, non-ACS browsing activities which the Bureau has previously determined (a) provide no evidence of ACS and (b) “do[] not support a finding that ACS is a

⁴ *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 674 ¶ 3 (2014) (“*Waiver Order*”). See also 47 U.S.C. § 617(h)(1) (establishing the “primary purpose” waiver standard).

⁵ ARL/ALA Opposition at 3.

⁶ See *id.* (“The combination of HTML, JavaScript, and CSS demonstrates that this basic e-reader’s browser leaves open a wide array of ACS capability.”) The “primary purpose” waiver standard is premised on the assumption that the device under examination is capable of accessing ACS. See 47 U.S.C. § 617(h)(A) (setting forth the first criterion of the “primary purpose” waiver standard—that the device “is capable of accessing an advanced communications service”).

⁷ ARL/ALA Opposition at Appendix I. The paragraph states as follows: “Kindle has an experimental web browser based on WebKit. It’s easy to find the information you’re looking for right from your Kindle. Kindle enables you to connect to the Kindle Store and access Wikipedia, all over Wi-Fi.” *Id.*

primary or co-primary purpose” of basic e-readers.⁸ Finally, to support their claim that e-readers are used for ACS, the associations cite individual mentions of consumer access to ACS using one type of e-reader, the Amazon Kindle. However, the Coalition has never claimed that *no* consumers access ACS using the browsers installed on e-readers; rather, the Coalition has provided industry data, drawn from a sample size numbering in the hundreds of thousands, which demonstrates that only a very small percentage of e-reader users launch the browser for any purpose, much less for ACS-related purposes.⁹ This evidence, which has not been rebutted, establishes conclusively that ACS is not a primary or co-primary purpose, and that access to ACS is merely incidental.¹⁰

In reviewing the Extension Petition, the Bureau must determine whether access to ACS has become a primary purpose of e-readers in the time since the waiver was granted. Because the Coalition has established that access to ACS has not become a primary purpose of e-readers and no evidence has been introduced to the contrary, the Bureau should conclude that an extension of the waiver is justified under the “primary purpose” waiver standard.¹¹

⁸ *Waiver Order* ¶ 17 (“Using a browser to post information to a social media website (e.g., Facebook), look up information on the web, access Wi-Fi, or purchase or download an e-book is not evidence of ACS; nor does it support a finding that ACS is a primary or co-primary purpose of these devices.”).

⁹ *See* Extension Petition at 5–6.

¹⁰ *See* H.R. Rep. No. 111-563 at 26 (2010) (“[A] device designed for a purpose unrelated to accessing advanced communications might also provide, on an incidental basis, access to such services. In this case, the Commission may find that to promote technological innovation the accessibility requirements need not apply.”); S. Rep. No. 111-386 at 8 (2010) (same).

¹¹ CEA Comments at 3 (“In considering a request for extension of a waiver, the Commission has consistently applied the same legal standard as applied in the original grant of the waiver.”); *see id.* at 4 (“The Petition convincingly demonstrates that there is no evidence that ACS is a primary purpose of the class E-Readers and that the facts of today’s e-reader marketplace fully support extension of the waiver.”) (footnotes omitted).

II. THE RECORD DEMONSTRATES THAT AN EXTENSION OF THE WAIVER IS CONSISTENT WITH THE PUBLIC INTEREST

The Extension Petition describes how grant of the requested extension is consistent with the public interest. For example, an extension remains consistent with Congress’s goal of promoting technological innovation, advances the availability of single-purpose non-ACS devices, and maintains the ability of e-readers to optimize the reading experience.¹² Conversely, denial of the requested extension would disserve the public interest by discouraging manufacturers from offering browsers on devices with primary purposes other than ACS.¹³ This concern is shared by the Internet Association, which notes that as the Internet of Things takes shape, industry “would benefit from the certainty that merely adding a browser does not mean that future smart, non-ACS devices will be limited by potentially product-altering, ACS accessibility regulations.”¹⁴

Commenters opposing the Extension Petition claim that denial of the waiver would better serve the public interest, but their various arguments in support of this claim miss the mark. NFB and ACB argue that the availability of free e-reading apps on a variety of accessible platforms creates a financial burden for users with disabilities by comparing the prices and product offerings of a select set of smartphones and tablets with that of a select set of basic e-reader models.¹⁵ However, these sets of devices have been cherry-picked from a much wider range of devices in either category. As an example, Amazon’s entire line of Fire tablets have

¹² See Extension Petition at 7–9.

¹³ See *id.* at 8.

¹⁴ Internet Association Comments at 3.

¹⁵ See NFB/ACB Opposition at 2–4.

been arbitrarily excluded from consideration.¹⁶ This line includes the Fire HD 6, which is available for as low as \$99 and is comparable in price to many basic e-readers.¹⁷ Additionally, NFB and ACB do not account for accessible smartphones that provide access to Coalition members' free e-reading apps and are available at prices as low as \$49.¹⁸ Thus, the examples cited by NFB and ACB are not representative of devices available today in the market.

NFB and ACB also argue that an extension of the waiver will “perpetuate the growing amount of litigation over the use of inaccessible technology by schools, libraries, and other liable entities.”¹⁹ As the Coalition explained in its Extension Petition, the scope of the CVAA and Commission authority is not boundless; Congress directed the Commission to focus its public interest inquiry on ACS accessibility.²⁰ This narrow focus means that the Bureau should not apply ACS accessibility rules to devices that do not include ACS as a primary purpose to accomplish a purpose far outside of the Commission’s jurisdiction and implicated by the Americans with Disabilities Act and the Rehabilitation Act. In other words, NFB and ACB’s argument boils down to a claim that Congress should have drafted a different statute that would have addressed their concerns. But Congress chose not to do so, and the Commission therefore must implement the statute as written.

¹⁶ *See id.* at 3 n.7 (disclosing in a footnote that “Kindle tablets are not included in the count because this hypothetical is for a consumer wishing to access Kobo titles”).

¹⁷ *See Fire HD 6 Tablet*, AMAZON, <http://www.amazon.com/Fire-HD-Display-Wi-Fi-GB/dp/B00KC6I06S> (last visited Nov. 4, 2014).

¹⁸ The LG Optimus Fuel 34C, for example, retails for \$49.99 and provides access to the Kindle Reader app. The device has Wi-Fi capability and does not require the purchase of a carrier plan.

¹⁹ NFB/ACB Opposition at 6. *See also* AHEAD Opposition at 1.

²⁰ *See* Extension Petition at 11–12.

Finally, NFB and ACB argue that Congress’s goal of promoting technological innovation “is not relevant to the products in question” because accessibility “was easy to incorporate.”²¹ This assertion is contradicted by the Extension Petition and evidence throughout the record demonstrating that the waiver promotes the availability of e-readers as a single-purpose non-ACS device, that “Commission-mandated design, feature, and component requirements would increase e-readers’ cost, weight, size, and complexity,” and that “fundamental changes to e-readers’ hardware and software would be required to bring e-readers into compliance with the ACS accessibility rules.”²² More fundamentally, the simplicity of an e-reader is itself an innovation. As noted in the Extension Petition, early e-reader models included additional capabilities.²³ As the market developed and multi-purpose tablets took hold, however, e-readers needed to be simplified to remain viable as a single-purpose device. To that end, in the time since the waiver was originally granted, Coalition members have continued to innovate by making reading even more clearly the only primary purpose of e-readers.²⁴ This conclusion has been repeatedly confirmed by consumers, who praise the fact that e-readers are single-purpose devices dedicated to reading.²⁵

²¹ NFB/ACB Opposition at 8.

²² Extension Petition at 8, 9.

²³ *See id.* at 7.

²⁴ Coalition members continue to innovate to provide customers the best possible reading experience on e-readers, which sometimes means removing features. For example, Amazon recently discontinued support for active content and games on its new entry-level Kindle and the Kindle Voyage.

²⁵ *See, e.g.,* Farhad Manjoo, *Amazon Kindle Voyage, a High-End E-Reader That Beats Hardcovers*, N.Y. TIMES (Oct. 20, 2014, 9:00 AM), http://bits.blogs.nytimes.com/2014/10/20/amazons-new-high-end-kindle-beats-hardcovers/?_r=0 (stating that “Amazon’s Kindle is a tech-industry miracle” that “hasn’t merely survived, but thrived, thanks to a single-minded focus on the needs of obsessive readers.”); Jon Kristian Coa, *Amazon Introduces Kindle Voyage with Word Wise, PagePress, and Free Cloud Storage*, POP HERALD (Sept. 18, 2014, 6:45 PM), <http://www.popherald.com/content/2014/09/3230-amazon-> (continued...)

III. THE COMMISSION SHOULD MAINTAIN THE EXISTING CLASS DEFINITION AND SHOULD GRANT THE REQUESTED EXTENSION ON AN ONGOING BASIS

The narrowly drafted definition of the class of basic e-readers “bakes in” certain limitations that ensure that devices for which ACS is a primary purpose do not fall within the class and are therefore subject to the ACS accessibility requirements. Nevertheless, ARL and ALA argue that the Bureau should substantially modify the class definition to exclude any device that includes a browser.²⁶ The purpose of this modification is unclear, since a device that did not have a browser would have no capability to provide ACS and as such no waiver would be needed. In any event, such a modification is unnecessary, since the Bureau already has affirmed that “the mere inclusion of web browsers on these devices . . . is not sufficient to reach a determination that ACS is a primary or co-primary purpose of these devices.”²⁷

ARL and ALA also argue that the duration of the waiver extension should be limited “to ensure that the Coalition has not substantially changed the e-readers to include even more functions that implicitly include ACS capability.”²⁸ As explained above, however, the narrow class definition would automatically exclude any devices introduced in the future for which ACS is a primary purpose. This feature of the class definition, along with the Commission’s ability to limit the scope of the waiver through the complaint and investigation process, counsel in favor of an ongoing waiver.

[new-kindle-voyage.html](#) (calling the recently released Kindle Voyage “the best device to date for users who care only for e-books”).

²⁶ See ARL/ALA Opposition at 8.

²⁷ Waiver Order ¶ 17.

²⁸ ARL/ALA Opposition at 9.

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For the reasons set forth above and in the Extension Petition, the Coalition requests that the Bureau grant an ongoing extension of the e-reader class waiver.

Respectfully submitted,

**COALITION OF E-READER
MANUFACTURERS**

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