



November 20, 2014

Ms. Marlene Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: Ex Parte Meeting – CG Docket No. 10-213

Dear Ms. Dortch:

On November 18, 2014, representatives from the National Federation of the Blind (NFB), American Council of the Blind (ACB), Association on Higher Education and Disability (AHEAD), and the Association of Research Libraries (ARL) met with the Consumer and Governmental Affairs Bureau (CGB) of the Commission. Lauren McLarney from NFB, Melanie Brunson and Eric Bridges from ACB, Emily Lucio from AHEAD, Prue Adler from ARL, and Caile Morris, a law student at American University, attended in person. A third person from ACB attended by phone. From CGB, representatives included Karen Peltz Strauss, Deputy Bureau Chief, and Rosaline Crawford, Elliot Greenwald, Caitlin Vogus, and Greg Hlibok. The purpose of the meeting was to discuss our joint opposition to the Coalition of E-Reader Manufacturers' Petition for a Waiver Extension for basic e-readers from the advanced communication services (ACS) accessibility requirements of the Twenty-First Century Communications and Video Accessibility Act (CVAA).

The meeting began with introductions, and then NFB started the meeting by discussing how a waiver extension will harm the public interest. The CGB clarified that the CVAA calls for the Commission, when considering a waiver, to first look at whether ACS is a primary or co-primary purpose of the device and only then can public interest be considered. We maintain our position that a waiver extension will be damaging to the public interest while recognizing that the factor is, inexplicably, not a priority in the waiver analysis.

The parties in opposition to the waiver extension expressed frustration with the fact that the waiver standard explores *current* usage of ACS but not *potential* usage by people that are currently excluded because of inaccessibility. It is entirely achievable to make ACS in e-readers accessible; indeed the Coalition incorporated this very functionality in the 2011 iterations of their basic e-readers, and the disability community has been adamant about its desire to use e-readers and become customers of Coalition members. It is problematic that the possibility for ACS usage, which is high considering the aforementioned factors, does not factor into the waiver standard whatsoever. The Coalition submitted industry-driven, unverifiable data that browsers are currently opened by less than 10% of users, and we challenged the CFB to consider how that ACS usage could be altered by expanding the circle of participation to include blind people or people with other print disabilities.

It is inconsistent with the CVAA for the waiver standard to only focus on current usage; the CVAA is about expanding usage to those currently denied access. Mainstream habits can never be influenced by new users if they are perpetually excluded from mainstream access.

Parties still discussed the reported-current usage of ACS in e-readers, which is mostly done through the browser. If ACS is not the co-primary purpose of the device, as the Coalition insists, it is unclear why browsers exist on the devices at all. The CGB gave the example of a user in a hotel (where browser usage is required before Wi-Fi can be accessed) but this was the only example that was discussed.

AHEAD and ARL represent two large pieces of the Coalition's market share, or institutions of higher education and libraries, respectively. The U.S. Departments of Justice and Education have explicitly warned schools not to use inaccessible e-readers, as doing so would be discrimination against students and patrons with disabilities and therefore a violation of Titles II and III of the Americans with Disabilities Act. AHEAD and ARL expressed a shared sentiment that school and libraries want to be compliant with these obligations, but continue to look to the e-reader market because some functionality of learning management systems are supposed to be performed on those devices and because those devices match their needs. The Coalition's petition shows that they have no desire to help schools or libraries achieve this goal or offer a product that meets this demand.

However, the Coalition continues to market basic e-readers to schools and libraries knowing that the inaccessible nature of those devices put those entities at risk for litigation. CGB brought up ARL's evaluation of Coalition members' marketing materials, and ARL's assertion that the materials appeared to be advertising ACS. A closer examination of that material by CGB shows a careful exclusion of certain words and features, meaning that the advertising material does not actually advertise ACS capabilities at all. All parties noted that the Coalition seems to be intentionally marketing around the ACS capabilities of e-readers so that the products will be eligible for a waiver, an assumption that seems even more true when the very customers the Coalition is targeting interpret the marketing material to advertise ACS. The parties in opposition to the waiver explained that this felt calculated and harmful, a harm that even extends to the Coalition itself (who presumably want to stay in the e-reader business).

The parties also discussed the changing prices of multi-purpose tablets that support e-reading apps. We maintain our assertion that most tablets are more expensive than basic e-readers, therefore a tablet is not a substitute as most will result in a disability tax. However, the CGB pointed out that the tablet industry has exploded and now includes tablets that are as affordable as basic e-readers. Moreover, those tablets are presumably accessible. It was proposed that schools, libraries, and blind consumers could purchase those low-cost tablets instead of basic, inaccessible e-readers, but that proposal was ultimately rejected.

Most tablets have more advanced functionality than schools and libraries are looking for. Low-cost tablets might allow these entities to achieve compliance with the law but they do not match the entities' demand. A second proposed solution called for schools and libraries to purchase several inaccessible basic e-readers for their general population of students and patrons, and then a handful of multi-purpose tablets to provide equivalent services to students and patrons with disabilities. NFB explained that this solution is only a stop-gap to a larger problem, and will arguably still put schools and libraries at risk for litigation. "Separate but equal" is not an adequate approach to providing equality to and services for people with disabilities, and the data show that the ad-hoc accommodations model is equally damaging to the entities deploying it because it is more costly and less effective than investing in mainstream access. The only way to achieve equality for the blind

will ever truly be achieved is if the Coalition starts making accessible e-readers, or the e-reading industry is eliminated altogether. The Coalition members should not keep themselves in business by hoping that schools and libraries continue the “separate-but-equal” model; rather, the Coalition should remedy the problem in the easiest and most ethical way, which is making ACS and the reading functions of basic e-readers accessible.

The fundamental goal of the CVAA is to expand the circle of participation so that blind and low vision consumers can access the same technology and enjoy the same choices as mainstream consumers in the mainstream marketplace. The Coalition’s insistence on a waiver for basic e-readers when accessibility is entirely achievable and when it is the very thing customers are demanding is at odds with everything the CVAA purports to fix, and with basic principles of capitalism.

We appreciate the CGB’s willingness to hear our position on the waiver extension, and we urge the Commission to ultimately reject the Coalition’s request for a permanent waiver. It will be harmful to the public interest and undermine the goals of the CVAA.

Sincerely,

John G. Pare, Jr.
NATIONAL FEDERATION OF THE BLIND

Emily Lucio
ASSOCIATION ON HIGHER EDUCATION AND DISABILITY