Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	
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	)	CG Docket No. 10-213
	)	
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	)	

COALITION OF E-READER MANUFACTURERS PETITION FOR EXTENSION OF WAIVER

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To: Chief, Consumer and Governmental Affairs Bureau

PETITION FOR EXTENSION OF WAIVER

I. INTRODUCTION AND SUMMARY

Pursuant to 47 U.S.C. § 617(h)(1) and 47 C.F.R. §§ 1.3, 14.5, the Coalition of E-Reader Manufacturers[1] ("Coalition") hereby requests that the Bureau extend the waiver of the advanced communications services ("ACS") accessibility rules granted to the class of basic e-readers on January 28, 2014, and previously extended on January 28, 2015. Coalition members remain committed both to the accessibility of their ACS-related products and to making reading accessible to people with disabilities, and a further extension of the waiver will not harm either of these goals. Coalition members offer an increasing array of accessible, low-price point devices designed for ACS and reading and continue to innovate to increase their availability to everyone, both by lowering the prices of these devices and by continued investment in their

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

accessibility. Further, Coalition members' e-reading apps continue to be widely available at no cost on a wide variety of accessible platforms, including tablets and smartphones.

The Coalition has asked for a waiver covering e-readers before, and the Commission found that the features of the devices and the law supported granting those waivers. Specifically, on January 28, 2015, the Bureau reaffirmed its conclusion that the class of basic e-readers "continues to be designed primarily for reading text-based digital works, not for ACS" and granted a one-year extension of the waiver.[2] In the months since the extension was granted, nothing in the market or with the devices has occurred to alter that factual and legal conclusion. To the contrary, it has become clearer than ever that e-readers are single-purpose reading devices and that ACS is not a primary or "co-primary" purpose of the devices. An extension of the waiver is therefore warranted based on the facts in this petition and established precedent. Further, the stringent class definition set forth by the Bureau ensures that devices will not be subject to the waiver if ACS were to become a "co-primary" purpose. The Bureau should therefore grant the requested waiver on an ongoing basis, reserving the Commission's right to limit the scope of the waiver in the future if desired.

II. THE BUREAU SHOULD EXTEND THE WAIVER BECAUSE E-READERS REMAIN SINGLE-PURPOSE NON-ACS DEVICES

When the Bureau granted the waiver for the class of basic e-readers, it defined the class to include:

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[2] *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, CG Docket No. 10-213, DA 15-117 ¶ 1 (rel. Jan. 28, 2015) ("2015 Order"). The Coalition hereby requests that all prior filings by the Coalition in this docket, including *ex parte* letters by the Coalition, be included in the record for Commission consideration of the instant waiver request.

> [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.[3]

The Bureau took care to ensure that this stringent, multi-part definition distinguishes e-readers covered by the waiver from other devices, such as tablets and smartphones, that remain subject to the ACS accessibility rules. The Bureau noted that Coalition members were free to request extensions of the waiver, and stated that it would in each case consider whether "basic e-readers come to include ACS as a co-primary purpose" when determining whether an extension was warranted.[4]

In evaluating waiver requests under 47 C.F.R. § 14.5, the Bureau considers "[w]hether the equipment or service is designed to be used for advanced communications purposes by the general public" and "[w]hether and how the advanced communications functions or features are

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[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*, CG Docket No. 10-213, Order, DA 14-95 ¶ 7 (rel. Jan. 28, 2014) ("2014 Order").

[4] *Id.* ¶ 25.

advertised, announced, or marketed."[5] On January 28, 2015, in response to a Coalition petition, the Bureau determined that each of these factors warranted an extension of the waiver, concluding that e-readers "continue[] to be designed primarily for reading text-based digital works, not for ACS."[6] In the months since the extension was granted, e-readers have continued to remain single-purpose devices dedicated to reading that are not designed, marketed, or used for ACS.

When the Bureau initially granted the waiver, it correctly cited several key design features that support the conclusion that e-readers are not designed for ACS. In particular, the Bureau took note of e-readers' "relatively slow refresh screen rates, the absence of apps for integrated e-mail clients, the inability . . . to display video for any purpose, including video conferencing, and the lack of high powered processors."[7] In its decision extending the waiver, the Bureau observed that these design features, which help optimize the devices for reading, "continue to support a finding that basic e-readers are not designed for ACS at this time."[8] These design features are in contrast to those of multipurpose devices such as tablets and smartphones, which continue to increase in functionality.[9] In the months since the extension was granted, the facts regarding e-reader design have not changed. In particular, ACS continues to be available only through the e-reader browser, included on Coalition members' e-readers to facilitate reading-related uses, such as viewing hyperlinks inserted into e-books and periodicals, looking

[5] 47 C.F.R. § 14.5(a)(2)(i)–(ii).
[6] 2015 Order ¶ 1.
[7] 2014 Order ¶ 16.
[8] 2015 Order ¶ 22.
[9] *See id.* ¶ 22 n.86.

up information in an online dictionary or other online information sources like Wikipedia, or accessing Wi-Fi to download e-books.[10]

In its decision extending the waiver, the Bureau concluded that "the record in this proceeding and an independent review of the manufacturer marketing materials for [e-readers] support a finding that [e-readers'] primary purpose is for reading, rather than for ACS."[11] In particular, the Bureau noted that e-reader marketing materials "continue to focus primarily on ways to facilitate reading on these devices."[12] E-reader marketing materials produced in the months since the extension was granted, continue to confirm the Bureau's conclusion. For example, recent online advertising materials for the Kindle Voyage describes the device as "purposely designed as a dedicated e-reader," highlighting that users can "[i]ndulge [their] love of reading without interruptions like email alerts or push notifications."[13] Similarly, advertising materials for Kindle Paperwhite state that the device is "purpose-built for reading, and creates a sanctuary so you can lose yourself in a book. Unlike tablets and phones, Kindle doesn't distract you with social media, emails, and text messages."[14] Marketing materials for Kobo e-readers highlight the fact that users can "[g]et lost in reading, not technology."[15] Recent media reports

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[10] As the Bureau has acknowledged, "[u]sing 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." 2014 Order ¶ 17.

[11] 2015 Order ¶ 23.

[12] *Id.*

[13] *Kindle Voyage Detail Page*, AMAZON, http://www.amazon.com/Amazon-Kindle-Voyage-Special-Offers/dp/B00IOY8XWQ (last visited Sept. 23, 2015).

[14] *Kindle Paperwhite Detail Page*, AMAZON, http://www.amazon.com/dp/B00OQVZDJM/ref=kods_xs_dp_oop (last visited Sept. 23, 2015).

[15] KOBO, http://www.kobobooks.com/wifi_experience (last visited Sept. 23, 2015).

and consumer reviews continue to reflect these descriptions and demonstrate that the public perceives e-readers as single-purpose devices dedicated to reading.[16]

The Bureau also previously considered the extent to which e-readers are used for ACS and has found persuasive industry data showing very limited use of the e-reader browser, particularly in ways that would be consistent with use of ACS. Noting "the scarce use of ACS on these devices to date," the Bureau concluded in its decision extending the waiver that low "use of the browser for any purpose, including ACS, weighs in favor of a finding that basic e-readers are not designed for the primary purpose of ACS."[17] This conclusion finds support in more recent industry data regarding consumer usage of e-reader browsers, which confirms that e-readers have not become ACS devices. For example, in a random sample of active e-reader devices over a period of one week (July 13, 2015 – July 20, 2015), with a total sample size of 315,868 units of the most popular e-reader model manufactured by a Coalition member, only 3 percent of the users launched the browser *at all*, for any purpose. Critically, 97 percent of users in the sample did not even launch the browser during the sample period. The sample further showed that users who launched the browser left it open for an average time of less than five minutes per session. This short session duration is consistent with brief look-ups on Wikipedia or visiting links within books, rather than regular use of ACS. Consistent with data provided in previous Coalition filings, sample data established that over 40 percent of the browser sessions were launched from within books or from other locations within the reading interface. Based on the strong assumption that users who launched the browser directly from within books or the reading application were not using the browser for ACS, one can infer that,

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[16] *See, e.g.*, *Amazon Kindle Paperwhite (2015) Review*, THE VERGE, http://www.theverge.com/2015/6/23/8830663/amazon-kindle-paperwhite-review-2015 (last visited Sept. 23, 2015) (describing "Kindle's 'one job' of undistracted reading," stating that "it's a single-use gadget that achieves its single-use quite well").

[17] 2015 Order ¶¶ 24, 26.

at most, only 1.8 percent of all sample users may have launched the browser for ACS-related purposes. And the true percentage likely is well below 1.8 percent, because this subset includes launch of the browser to look up information on Wikipedia and other publications. This recent sample data makes it clear, as before, that ACS is not a co-primary purpose of e-readers.

III. A WAIVER EXTENSION SERVES THE PUBLIC INTEREST

Grant of the requested extension serves the public interest in several ways. *First*, it is consistent with Congress's goal in creating the waiver provision: to promote technological innovation by excluding devices "designed primarily for purposes other than using [ACS]."[18] Regulating what are, by the Bureau's strict definition, necessarily single-purpose device as though they were multi-purpose devices, will impact technology design and the utility of these devices—a utility that commentators cite as the reason these devices have survived in a marketplace flush with ACS devices.[19]

Second, denial of the waiver because of incidental access to ACS through the e-reader browser would disserve the public interest by discouraging manufacturers from offering browsers on devices that have little or nothing to do with ACS. As noted in the Coalition's previous extension request, the emergence of the "Internet of Things"—with browsers on a wide range of consumer devices unrelated to communication, such as smart refrigerators and thermostats—should not be burdened by requirements that go beyond what Congress intended.

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[18] 47 U.S.C. § 617 (h)(1)(B); *see also* 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).

[19] *See, e.g.*, Farhad Manjoo, *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 ("Amazon's e-reader hasn't merely survived, but thrived, thanks to a single-minded focus on the needs of obsessive readers.").

Third, grant of the requested extension advances the availability of e-readers as single-purpose reading devices. In its 2014 decision extending the waiver, the Bureau recognized the importance of "the preservation of basic e-readers as a niche product that is devoted to accessing text-based digital works."[20] As described in prior filings, fundamental changes to e-readers' hardware and software would be required for e-readers to fully address the ACS accessibility rules, and these changes readers would inevitably increase e-readers' cost, weight, size, and complexity.

Fourth, a grant of the requested extension is in keeping with the widespread availability of e-books and technology made available by Coalition members and other companies—including tablets, smartphones, and e-reading apps with screen-reading capabilities. Furthermore, Coalition members' innovation in this area to date means that blind and visually impaired readers today can instantly access millions of titles, including new books as they are published, on devices at price points thought impossible just a few years ago. For example, Amazon recently announced a new tablet, with full support for accessibility and a fully accessible reading application, for $49.99—a lower price than all of the e-readers offered by the Coalition.[21] That tablet includes, as do all currently-sold tablets offered by Amazon, both increased font size options for individuals with low vision and a full-screen magnification feature, as well as new, better screen-reading technology, VoiceView.[22] VoiceView includes new features and customizable settings to make navigation and discerning how words are spelled

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[20] 2015 Order ¶ 25.

[21] *See Fire Detail Page*, AMAZON, http://www.amazon.com/gp/product/B00TSUGXKE/ref=sv_devicesubnav_1 (last visited Sept. 23, 2015).

[22] *See Accessibility for Fire*, AMAZON, http://www.amazon.com/gp/feature.html?docId=1000632481 (last visited Sept. 23, 2015)

easier for individuals who are blind, and the technology was developed by a team which included blind engineering and quality assurance staff, along with consultation with and input from blind and low-vision individuals. VoiceView was specifically tested with both ACS and reading applications.[23]

The Bureau recognized the importance of this consideration when it extended the waiver previously, stating that "growth in the availability of [accessible] reasonably priced portable communication devices," along with the Bureau's "determination that ACS is not currently a primary or co-primary purpose of basic e-readers" were factors leading it to "conclude that extending the waiver will not have a significant impact on the ability of consumers with disabilities to access ACS at this time."[24]

IV. AN ONGOING EXTENSION OF THE WAIVER IS JUSTIFIED

The Bureau's definition of e-readers subject to the waiver excludes devices with ACS apps, devices marketed for ACS, and devices that have technological features that are indicative

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[23] Underlying this investment in accessibility is the fact that these platforms are better suited for delivery of accessible ACS. Unlike e-readers, multi-media devices (a) include a color LCD screen optimized for rapid refresh, as necessary for addressing the needs of low vision users to enable full-screen magnification, and (b) are specifically architected to run at lower power levels for multimedia processing (like video tasks and audio tasks, including text to speech), extending the battery life of these devices.

[24] 2015 Order ¶ 26. The Bureau also considered the accessibility of reading features of text-based digital works in its public interest analysis, noting that this weighed in favor of an extension because "the record shows that a selection of reasonably priced alternatives now exist to allow reading access on portable devices." *Id.* ¶ 27. While the Coalition agrees with the Bureau that the availability of these alternatives increases access to accessible reading materials, the Coalition continues to take the position that Congress directed the Commission to focus its public interest analysis on ACS accessibility. *See* 47 U.S.C. § 617(j) ("This section shall not be construed to require a manufacturer of equipment used for advanced communications or a provider of advanced communications services to make every feature and function of every device or service accessible for every disability."); *NAACP v. FPC*, 425 U.S. 662, 669 (1976) (stating that the Supreme Court has "consistently held that the use of the words 'public interest' in a regulatory statute is not a broad license to promote the general public welfare. Rather, the words take meaning from the purposes of the regulatory legislation.").

of a non-reading purpose.[25] As noted in the Coalition's previous filings, this stringent definition "bakes in" limitations that ensure that devices that should be within the scope of regulation are within the scope of regulation. The Bureau, however, has thus far granted only one-year extensions of the waiver, citing the one-year lifecycle of many e-readers and stating that "it is possible that e-readers that fall within the class definition could include greater ACS capability in the future, that consumer use of the ACS capabilities on these devices could increase, and that ACS could become a co-primary purpose."[26] However, all evidence in the record, including industry data collected over multiple years and discussed herein and in prior Bureau decisions and Coalition filings, indicates that the design and use of e-readers are trending in exactly the opposite direction. However, even if the changes described by the Bureau were to occur, the evidence gathered in this proceeding—which indicates that e-readers continue to diverge from tablets, smartphones, and other ACS devices, and that consumers' use of ACS through the e-reader browser continues to be scarce—demonstrates that such changes would be very unlikely to occur on a one-year timescale. Moreover, the tight definition of the devices subject to the waiver would ensure that those devices in the future would be captured by the Commission's current rules. For these reasons, the Bureau should grant an ongoing extension of the waiver that accounts for the stringent definition of e-reader and the evidence gathered in this proceeding, and in any case should extend the waiver for a period longer than one year.

Granting an extension of the waiver on an ongoing basis would benefit all parties involved in the e-reader ecosystem. The Commission would benefit from reduced administrative costs and the ability to efficiently dedicate its resources where they are most needed, while

[25] 2014 Order ¶ 7.

[26] 2015 Order ¶ 29.

retaining certainty that it can limit the scope of the waiver through the complaint and investigation process.[27] E-reader manufacturers would benefit by avoiding costly extension request proceedings. Industry would benefit by gaining certainty that adding a browser to otherwise single-purpose non-ACS devices will not automatically trigger ACS accessibility regulations. Individuals with disabilities would benefit from continued investment in reading accessibility on low-cost devices, such as tablets and smartphones, as well as free e-reading apps. Finally, the public would benefit because new design and component requirements would not limit the development of reading-optimized e-readers and other single-purpose non-ACS devices, and because vigilant complaint-based monitoring of the limited-scope waiver would remain possible.

* * *

For the reasons set forth above, and consistent with Section 716 of the Act and the Commission's rules, the Coalition requests that the Bureau grant an ongoing extension of the e-reader class waiver.

[27] As noted in prior Commission filings, these are exactly the benefits of ongoing waivers and rule-based exemptions that the Commission has identified in other accessibility contexts. *See, e.g.*, *Closed Captioning of Internet Protocol-Delivered Video Programming: Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010*, Order on Reconsideration and Further Notice of Proposed Rulemaking, 28 FCC Rcd 8785 ¶ 15 n.49 (2013) ("We find that addressing the waivers herein is the most administratively efficient approach.").

Respectfully submitted,

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