

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 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)	

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

I. INTRODUCTION

The Consumer Electronics Association (“CEA”)¹ supports the petition (“Petition”)² filed by the Coalition of E-Reader Manufacturers (the “Coalition”) for an ongoing extension of the waiver of the Commission’s advanced communications services (“ACS”) rules in place for the narrow class of e-readers (the “class E-Readers”) first defined in the *2014 E-Reader Waiver Order*³ and retained in the *2015 E-Reader Waiver Order*⁴ (collectively the “Waiver Orders”).

¹ The Consumer Electronics Association is the technology trade association representing the \$285 billion U.S. consumer electronics industry. More than 2,000 companies enjoy the benefits of CEA membership, including legislative and regulatory advocacy, market research, technical training and education, industry promotion, standards development, and the fostering of business and strategic relationships. CEA also owns and produces CES – The Global Stage for Innovation. All profits from CES are reinvested into CEA’s industry services.

² Petition for Extension of Waiver, Coalition of E-Reader Manufacturers, CG Docket No. 10-213 (filed Sept. 24, 2015) (“Petition”).

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*

Extension of the waiver on an ongoing basis, as the Petition requests, will satisfy the waiver requirements of the Twenty-First Century Communications and Video Accessibility Act (“CVAA”)⁵ and the ACS rules. The extension will advance the CVAA’s careful approach of balancing the twin goals of preserving technology innovation and promoting accessibility for people with disabilities.

The Petition also establishes that, consistent with the Commission’s general waiver standard,⁶ an ongoing waiver extension will be for good cause. Moreover, a waiver extension 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.⁷

II. THE REQUESTED EXTENSION SATISFIES THE WAIVER PROVISIONS OF THE CVAA AND THE RULES

Section 716 of the Communications Act and the ACS rules expressly authorize the Commission to waive the ACS requirements for a class of equipment if: (i) class offerings are

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, 677-678 ¶ 7 (CGB 2014) (“2014 E-Reader Waiver Order”).

⁴ *See 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, 30 FCC Rcd 396, 405 ¶ 19 (CGB 2015) (“2015 E-Reader Waiver Order”).*

⁵ 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). Among other things, the CVAA amended the Communications Act of 1934, 47 U.S.C. §§ 151 *et seq.* (“Communications Act”).

⁶ *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)).

⁷ *See, e.g.,* Petition at 8 (discussing announcement of a new Amazon tablet, with full support for accessibility and a fully accessible reading application, for \$49.99); Comments of the Consumer Electronics Association, CG Docket 10-213, at 6 (filed Oct. 27, 2014).

“capable of accessing” ACS, and (ii) class offerings are “designed for multiple purposes” but are “designed primarily for purposes other than using [ACS].”⁸

The *Waiver Orders* properly waived the ACS requirements for the class E-Readers pursuant to Section 716, the ACS rules, and the Commission’s general waiver authority.⁹ Most recently, the *2015 E-Reader Waiver Order* found that a waiver is justified because the class E-Readers “continue[] to be designed for reading text-based digital works, not for ACS”¹⁰ and because “basic e-readers are not designed for ACS at this time.”¹¹ Accordingly, the *2015 E-Reader Waiver Order* held that “the Coalition has demonstrated good cause to extend the waiver of the rules for the class of basic e-readers and that, at this time, an extension of the waiver would not be inconsistent with the public interest.”¹²

In considering a request for extension of a waiver, the Commission has consistently applied the same legal standards that applied in the original grant of the waiver, which as discussed, are met in this instance.¹³ For example, in 1998, the Commission indefinitely

⁸ 47 U.S.C. § 617(h)(1); 47 C.F.R. § 14.5(a)(1). *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*, Order, 27 FCC Rcd 12970, 12972-12973 ¶ 3 (CGB 2012).

⁹ *See 2014 E-Rate Waiver Order*, 29 FCC Rcd at 675-676 ¶ 3 & n.16; *2015 E-Rate Waiver Order*, 30 FCC Rcd at 397-98 ¶ 4 & n.13 and 411 ¶ 32.

¹⁰ *2015 E-Rate Waiver Order*, 30 FCC Rcd at 396 ¶ 1.

¹¹ *Id.* at 406 ¶ 22.

¹² *Id.* at 408 ¶ 25.

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) (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,

extended existing waivers of its policy governing assessment of nonrecurring reconfiguration charges after finding that this decision was consistent with the general waiver standards articulated by the Commission and the D.C. Circuit Court in *Northeast Cellular* and *WAIT Radio*.¹⁴

As the Petition shows, based on the applicable waiver standards, the Commission should grant the requested ongoing extension as soon as possible. Consistent with the *2015 E-Reader Waiver Order*, there is no evidence that ACS is a primary purpose of the class E-Readers¹⁵ and the facts of today's e-reader marketplace fully support extension of the waiver.¹⁶

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

The Petition confirms that the class E-Readers continue to be used primarily and almost exclusively for a non-ACS activity: namely, as “single-purpose reading devices.”¹⁷ To the extent that class E-Readers have web browsers, the record evidence, now based on almost two years of experience since the Consumer and Governmental Affairs Bureau first granted the waiver, indicates that e-reader web browsers are rarely launched, and that their use is inconsistent with the use of ACS, but instead consistent with brief look-ups on Wikipedia or

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*).

¹⁴ *1998 Nonrecurring Reconfiguration Charges Waiver Order*, 13 FCC Rcd at 8335-36 ¶¶ 22-23 & nn.72-73.

¹⁵ See Petition at 4-6.

¹⁶ See *id.* at 5, 8-9.

¹⁷ See *id.* at 2; see also Consumer Reports, *E-book reader buying guide*, <http://www.consumerreports.org/cro/e-book-readers/buying-guide.htm> (last updated Dec. 2014) (“**Getting started - What are e-book readers anyway?** They’re portable devices, typically with 5-to-10-inch screens, primarily designed to display the digitized versions of printed books.” (emphasis in original)).

visiting links within the books being read.¹⁸ The Petition shows that a waiver would serve the public interest by “promot[ing] technological innovation by excluding devices ‘designed primarily for purposes other than using [ACS].’”¹⁹ The waiver helps make sure that the class E-Readers can evolve technologically, consistent with the intent of the CVAA.

The definition of the class E-Readers adopted in the *Waiver Orders* 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.²⁰

The multiple parts of this definition serve as filters that narrow the capabilities of devices qualifying as class E-Readers. This filtering ensures that class E-Readers are, by the effect of the definition, “niche” devices that 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 buy a book or download a newspaper is not the use of 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.

¹⁸ See Petition at 6.

¹⁹ *Id.* at 7, citing 47 U.S.C. § 617(h)(1)(B).

²⁰ See *2015 E-Reader Waiver Order*, 30 FCC Rcd at 405 ¶ 19.

IV. THE NARROW DEFINITION OF THE CLASS E-READERS WARRANTS AN ONGOING WAIVER EXTENSION

The Commission should grant an ongoing waiver extension, as the Petition requests. The class E-Readers are so narrowly defined that, although the size of the class may change over time, class E-Readers will continue to qualify for a waiver pursuant to the terms of the *Waiver Orders*. In addition, the Commission's reasoning for limiting the duration of the E-Reader waivers – namely a concern that class E-Readers would have increasing ACS capability and ACS would become a co-primary purpose of class devices – has not been borne out by experience.²¹ The market supports and will continue to support niche class E-Readers *and* non-class, fully accessible devices.²² Therefore, the Commission should take an 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 the imposition of ACS requirements on the class E-Readers would not limit the development of these narrowly focused devices devoted to reading 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.²³ The Commission would benefit by remaining certain that it can limit the scope of the waiver if ever needed, in an administratively efficient way.

²¹ *2015 E-Reader Order*, 30 FCC Rcd at 410 ¶ 29; *2014 E-Reader Order*, 29 FCC Rcd at 690 ¶ 24.

²² *See, e.g.*, Petition at 10.

²³ *See id.* at 11.

V. CONCLUSION

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

Respectfully submitted,

CONSUMER ELECTRONICS
ASSOCIATION

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