

**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)	
)	
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 Coalition of E-Reader Manufacturers¹ (“Coalition”) hereby submits these Reply Comments in support of the Coalition’s Petition for Extension of Waiver (“Extension Petition”) dated September 24, 2015. The record in this proceeding demonstrates the following: e-readers remain single-purpose non-ACS devices, grant of the Extension Petition is consistent with the public interest, and extension of the waiver should be granted on an ongoing basis. The Consumer Electronics Association (“CEA”) has endorsed this conclusion, observing that grant of the Extension Petition on an ongoing basis “will advance the CVAA’s careful approach of balancing the twin goals of preserving technology innovation and promoting accessibility for people with disabilities.”² Only one set of comments was filed in opposition to the Extension Petition, by the National Federation of the Blind, American Council of the Blind, and American

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

² Comments of the Consumer Electronics Association, CG Docket No. 10-213, at 2 (Oct. 28, 2015) (“CEA Comments”).

Foundation for the Blind (collectively, “NFB”); however, the Bureau has previously considered each of NFB’s arguments and found them insufficient to justify denial of a waiver. In its recent filing, NFB brings no new evidence to the instant question. Based on its precedent and pursuant to the reasoning and evidence set forth by the Coalition, the Bureau should grant promptly the Extension Petition.

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

The Extension Petition provides updated marketing materials, consumer reviews, and industry data regarding consumer usage, all of which demonstrate that ACS has not become a primary purpose of e-readers in the months since the previous extension. As noted by CEA, “the record evidence, now based on almost two years of experience since the [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.”³

As the Bureau has found, the central question under the waiver standard is whether ACS has become a primary purpose of e-readers. The Extension Petition clearly establishes that ACS has not become a primary purpose of e-readers. Though NFB claims that the Commission should focus instead on the reading capability of the device and “whether that is inconsistent with the public interest,”⁴ the Commission has rejected this attempt to shift the focus away from whether the primary purpose of the device is ACS. Specifically, the Bureau concluded that “accessing ACS is not a primary or co-primary purpose of basic e-readers at this time, but rather

³ *Id.* at 4.

⁴ Comments of the National Federation of the Blind, American Council of the Blind, and American Foundation for the Blind, CG Docket No. 10-213, at 1 (Oct. 28, 2015).

serves an incidental purpose on these devices.”⁵ This conclusion is grounded further in the additional evidence provided in the Extension Petition.

II. THE RECORD DEMONSTRATES THAT GRANT OF THE EXTENSION PETITION SERVES THE PUBLIC INTEREST

The Extension Petition establishes that a further extension of the waiver is consistent with the public interest by promoting technological innovation, encouraging the growth of the “Internet of Things,” advancing the availability of e-readers as single-purpose reading devices, and recognizing the wide availability of e-books on a range of accessible devices. CEA agrees, stating that “the waiver helps make sure that [e-readers] can evolve technologically, consistent with the intent of the CVAA.”⁶ As the Coalition has documented previously, failure to grant the waiver could result in a significant redesign of e-reader devices that would fundamentally alter the single-purpose nature of the devices, which is a factor the Commission needs to consider.⁷ Grant of the waiver also is consistent with the Commission’s efforts to encourage the Internet of Things,⁸ since it will affirm that devices that have browsers but are not primarily used for ACS will not be subject to regulation, as Congress intended.⁹

⁵ See Reply Comments of the Coalition of E-Reader Manufacturers, CG Docket No. 10-213, at 2–4 (Nov. 5, 2014) (incorporated herein); *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; 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*, 30 FCC Rcd. 396, ¶ 24 (2015) (“2015 Order”).

⁶ CEA Comments at 5.

⁷ See, e.g., Petition for Extension of Waiver, Coalition of E-Reader Manufacturers, CG Docket No. 10-213, at 8 (Sept. 24, 2015) (noting the “fundamental changes to e-readers’ hardware and software that would be required for e-readers to fully address the ACS accessibility rules,” including changes that would “inevitably increase e-readers’ cost, weight, size and complexity.”).

⁸ See *In the Matter of Use of Spectrum Bands Above 24 GHz for Mobile Radio Servs.*, 29 FCC Rcd. 13020, 13023, ¶7 (2014).

⁹ See 47 U.S.C. § 716 (authorizing waivers for devices capable of accessing ACS but primarily designed for other purposes).

NFB argues that the availability of free e-reading apps on a variety of accessible platforms creates a financial burden for users with disabilities, 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. Assuming that such a point is appropriately part of the Commission's inquiry,¹⁰ this is another argument that the Bureau has already rejected, and NFB brings no new evidence. NFB has again cherry-picked from a much wider range of devices in either category, ignoring the low-cost, fully accessible devices discussed in the Extension Petition and elsewhere in the record.¹¹ As the Bureau observed earlier this year, "the record shows that a selection of reasonably priced alternatives now exist to allow reading access on portable devices, further suggesting that the waiver extension would not be inconsistent with the public interest."¹² This is even truer today, with tablets such as Amazon's 7-Inch Fire tablet offering consumers options that cost the same or less than e-readers.

III. THE RECORD DEMONSTRATES THAT AN ONGOING WAIVER IS JUSTIFIED

The Extension Petition establishes that extending the waiver on an ongoing basis is warranted. This position is supported by CEA, which argues that "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."¹³ Notably,

¹⁰ The NFB and other consumer groups focus here, as they have in the past, on the reading aspect of these devices, but the Commission's authority under the CVAA extends only to "advanced communications services," 47 U.S.C. §716, a term which does not include reading.

¹¹ See, e.g., Extension Petition at 8 (discussing Amazon's new \$49.99 Fire tablet, which is fully accessible and includes a fully accessible reading application and costs the same or less than any e-reader).

¹² 2015 Order at ¶ 27 ("We are persuaded that the decreasing prices on and the increased availability of these tablets and smartphones—many of which have been introduced into the market since the issuance of the initial waiver—lessens the negative impact on consumers who are unable to access reading features on basic e-readers.").

¹³ CEA Comments at 6.

NFB offers no justification for a limited extension of the type previously granted by the Bureau.

The Bureau should therefore grant the extension on an ongoing basis.

* * *

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**

By: 

Gerard J. Waldron
Paul Swain
COVINGTON & BURLING LLP
One CityCenter
850 Tenth Street, NW
Washington, DC 20001-4956
(202) 662-6000

*Counsel for Coalition of E-Reader
Manufacturers*

November 9, 2015