

**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
)	
Amendments to the Commission’s Rules Implementing Sections 255 and 251(a)(2) of the Communications Act of 1934, as Enacted by the Telecommunications Act of 1996)	WT Docket No. 96-198
)	
Accessible Mobile Phone Options for People Who Are Blind, Deaf-Blind, or Have Low Vision)	CG Docket No. 10-145
)	

REPLY COMMENTS OF NINTENDO OF AMERICA INC.

Nintendo of America Inc. (“Nintendo”) respectfully submits these reply comments in response to comments to the above-captioned Notice of Proposed Rulemaking (“Notice”).¹ Nintendo supports the efforts to increase access to advanced communications services (“ACS”) in accordance with the Twenty-First Century Communications and Video Accessibility Act of 2010 (the “CVAA”). To that end, Nintendo joins numerous commenters, including the Entertainment Software Association (“ESA”), in urging the Commission to ensure that the rules it adopts in this proceeding do not exceed the CVAA’s scope, and thereby discourage the continued innovation Congress intended to protect.

Congress did not intend the CVAA to require that every product or service with an ACS function or feature, no matter how tertiary, be made accessible.² As many comments have noted, Congress limited the scope of the CVAA to those offerings designed primarily to provide or

¹ *Implementation of Sections 716 and 717 of the Communications Act of 1934, Enacted by the Twenty-First Century Communications and Video Accessibility Act of 2010*, Notice of Proposed Rulemaking, 26 FCC Rcd 3133 (2011).

² Words+/Compusult Comments at 19.

access ACS.³ Further, the CVAA expressly provides for class waivers based on how equipment or services are designed, which may be submitted by any manufacturer, service provider, or other interested party at any time.⁴

Although some video game offerings may contain incidental ACS features, even those features are primarily intended to enhance gameplay functionality, not to serve as an independent means to communicate.⁵ Accordingly, as ESA and others have proposed,⁶ the Commission, separate and apart from any broader post-rule waiver process, should expressly exclude video game offerings, as a class, from its ACS accessibility rules. A class exclusion within the Commission's rules for video game offerings, though not specific to Nintendo, would do much to promote innovation and fulfill the intended purposes of the CVAA. Excluding the proposed class from the ACS accessibility rules would enable the Commission to focus its efforts on those offerings within the intended scope of the CVAA, reduce the number of future waiver requests that would require individual scrutiny,⁷ provide the industry with needed certainty, and reduce the risk of regulatory arbitrage, among many other benefits.⁸

In addition, the Commission should expeditiously process any waiver petitions submitted after it adopts the accessibility rules in accordance with appropriate and reasonable procedures, including those suggested by the ESA, and ensure that waivers are for a sufficient period in light

³ See, e.g., 47 U.S.C. §617(h)(1); CTIA Comments at 19; AT&T Comments at 6; CEA Comments at 17-18; TIA Comments at 13; Voice on the Net Coalition ("VoN") Comments at 7; OnStar Comments at 6; TechAmerica Comments at 5; ITIC Comments at 26.

⁴ 47 U.S.C.617(h)(1); see AT&T Comments at 6.

⁵ See Microsoft Comments at 9.

⁶ A majority of commenters have expressly singled out video game products and services as the type of offering that should be excluded from the proposed rules in light of the CVAA's language and intent, and no party has suggested that the primary purpose of video game offerings is to access ACS. See, e.g., VoN Comments at 6-7; CEA Comments at 13; NetCoalition Comments at 1, 6-7; AT&T Comments at 6-7; T-Mobile Comments at 6.

⁷ See ESA Comments at 14; CTIA Comments at 17-19; CEA Comments at 18.

⁸ See ESA Comments at 14; TechAmerica Comments at 5.

of the particular development and distribution period associated with the underlying offering(s).⁹ Nintendo also supports other efforts to limit potential disruption to consumers and the industry, including a reasonable phase-in period and the grandfathering of existing products and services.¹⁰

For the above reasons, Nintendo urges the Commission to exclude, within its final rules, the class of video game offerings as part of the current proceeding.

Respectfully submitted,

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⁹ See ESA Comments at 15-17; TIA Comments at 14; TechAmerica Comments at 5; ITIC Comments at 26; AT&T Comments at 7.

¹⁰ See Verizon Comments at 2; AT&T Comments at 3; Microsoft Comments at 15; VoN Comments at 8.