



Consumer Electronics Association
1919 South Eads Street
Arlington, VA
22202 USA
(866) 858-1555 toll free
(703) 907-7600 main
(703) 907-7601 fax
www.CE.org

Via Electronic Filing

July 19, 2011

Marlene H. Dortch
Secretary
Federal Communications Commission
445 Twelfth St., S.W.
Washington, DC 20554

*Re: Written Ex Parte Communication – CEA Waiver Request for Classes of TVs and
Digital Video Players Enabled for Use with the Internet
CG Docket Nos. 10-213, 10-145, WT Docket No. 96-198*

Dear Ms. Dortch:

Pursuant to Section 1.1206 of the Commission's rules,¹ the Consumer Electronics Association ("CEA")² files this *ex parte* communication in response to the Notice of Proposed Rulemaking ("NPRM") pending in the above-referenced proceedings.³ Consistent with the waiver process and criteria established in Section 716(h)(1) of the Communications Act of 1934, as amended (the "Act"),⁴ regarding accessibility of advanced communications services ("ACS"), CEA

¹ 47 C.F.R. § 1.1206.

² CEA is the principal U.S. trade association of the consumer electronics and information technologies industries. CEA's more than 2,000 member companies lead the consumer electronics industry in the development, manufacturing and distribution of audio, video, mobile electronics, communications, information technology, multimedia and accessory products, as well as related services, that are sold through consumer channels. Ranging from giant multi-national corporations to specialty niche companies, CEA members cumulatively generate more than \$186 billion in annual factory sales and employ tens of thousands of people.

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*, Notice of Proposed Rulemaking, 26 FCC Rcd 3133, 3156 ¶ 60 (2011) ("NPRM") ("Are there specific classes of services or equipment that we should consider waiving in our final rules on Section 716?").

⁴ 47 U.S.C. § 617(h)(1). This new section was added to the Act as part of the Twenty-First Century Communications and Video Accessibility Act ("CVAA").

respectfully requests that the Commission establish class waivers of the Section 716 requirements in its final rules on Section 716 for the following classes of equipment:⁵

- Television sets that are enabled for use with the Internet (“the subject TVs”); and
- Digital video players that are enabled for use with the Internet (“the subject DVPs”).⁶

Because the features and functions of the subject TVs and DVPs that could be considered ACS are incidental to the primary purpose of these products,⁷ CEA believes that these products fall outside the scope of the CVAA’s ACS provisions and that the Commission should so rule in the upcoming ACS order.⁸ However, in an abundance of caution, CEA hereby requests that the Commission grant class waivers of Section 716 for the subject TVs and DVPs should it determine that the ACS provisions of the CVAA are applicable to such devices.

The requested waivers meet all the requirements of Section 716(h)(1) and serve the public interest.⁹ In addition to the waivers requested herein, CEA supports the request of the Entertainment Software Association (“ESA”) for waiver of Section 716 for video game offerings, included in its reply comments in this proceeding.¹⁰

⁵ CEA is filing this class waiver request as a written *ex parte* communication associated with the ACS docket. In the event the Commission determines that a formal petition for waiver is required to grant a class waiver, CEA respectfully requests that the Commission treat this filing as such a petition.

⁶ The subject DVPs include Internet-enabled Blu-ray Disc™ and digital video disc (“DVD”) players, digital video recorders (“DVRs”) (*e.g.*, boxes used primarily for pay television service), and other similar digital video players, as well as Internet-adaptor boxes. *See, e.g.*, TiVo, TiVo Premiere, <http://www.tivo.com/products/tivo-premiere/index.html> (last visited on July 12, 2011); DIRECTV, Connecting your HD DVR to the Internet, http://support.directv.com/app/answers/detail/a_id/2807 (last visited July 13, 2011).

An Internet-adaptor box enables an otherwise non-Internet-enabled television to connect to the Internet for purposes such as streaming movies and other entertainment video content. *See, e.g.*, LG, ST600 - Smart TV Upgrader with Web Browsing, <http://www.lg.com/us/tv-audio-video/video/LG-lg-smart-tv-upgrader-ST600.jsp> (last visited July 6, 2011) (“LG Smart TV Upgrader”); Sony, Streaming Player with Wi-Fi, <http://store.sony.com/webapp/wcs/stores/servlet/ProductDisplay?catalogId=10551&storeId=10151&langId=-1&productId=8198552921666261253> (last visited July 8, 2011).

⁷ The experience of CEA members is that in many cases the Internet-enabling of the subject TVs and DVPs is largely provided to supplement TV viewing for a subset of the customer base.

⁸ *See, e.g.*, CEA Comments at 11-12; CEA Reply Comments at 6-7. *See also* Reply Comments of CTIA, CG Docket Nos. 10-213 & 10-145, WT Docket No. 96-168, at 16 (filed May 23, 2011) (“CTIA Reply Comments”) (“There is widespread agreement among affected industry members that the final rules will be workable only if the rules’ coverage is limited to products and services with a ‘primary purpose’ of ACS, as determined in the first instance by the provider or manufacturer.”).

⁹ *See* 47 U.S.C. § 617(h)(1).

¹⁰ *See* Reply Comments of ESA, CG Docket Nos. 10-213 & 10-145, WT Docket No. 96-168, at 9-20 (filed May 23, 2011) (“ESA Reply Comments”).

The subject classes of devices are not primarily designed or intended for ACS, although they are enabled for Internet connectivity and potentially capable of accessing ACS. The primary purpose of the subject TVs and DVPs is the delivery of video content, principally full-length, professional quality video programming.¹¹ The vast majority of features and functions on these devices that might be available through pre-installed or user downloaded and installed applications (“apps”) cannot conceivably be classified as ACS.¹²

Requiring the subject TVs and DVPs to comply with Section 716 is unnecessary to achieve the goals of the CVAA and would be inconsistent with Congress’s directive to balance the increased accessibility of ACS with manufacturers’ and service providers’ ability to continue to innovate.¹³

When enacting the ACS provisions of Section 716, Congress provided the Commission with waiver authority to enable the Commission to ensure the balance between accessibility and innovation.¹⁴ The CVAA expressly authorizes the Commission to waive the Section 716 requirements for a class of equipment if: (A) offerings within the class are capable of accessing ACS and (B) offerings within the class are designed for multiple purposes but are designed primarily for purposes other than for providing ACS.¹⁵ When evaluating a waiver request, the

¹¹ The ACS provisions of the CVAA are contained in Title I, which governs Communications Access. The video programming provisions of the CVAA are contained in Title II, and implementation of those provisions is not part of the above-referenced proceedings. This *ex parte* communication and class waiver request is related only to the CVAA Title I ACS provisions and the specific Commission proceedings referenced above.

¹² Such content, including movies, network series, and other forms of entertainment and news programming, is distinct from ACS as defined in Section 3 of the Act, which includes “interoperable video conferencing service,” a form of video conferencing among individuals.

¹³ See generally Comments of CEA, CG Docket Nos. 10-213 & 10-145, WT Docket No. 96-168 (filed Apr. 25, 2011) (“CEA Comments”); Reply Comments of CEA, CG Docket Nos. 10-213 & 10-145, WT Docket No. 96-168 (filed May 23, 2011) (“CEA Reply Comments”). To help create and maintain this critical balance, CEA and its member companies were actively involved in the legislative process to pass the CVAA, which added Section 716 and other important accessibility provisions to the Act. CEA and its members continue to engage in regulatory and standards activities relating to accessibility. See CEA Comments at 2 & n.6.

¹⁴ See 47 U.S.C. § 617(h)(1).

¹⁵ *Id.* § 617(h)(1) (“The Commission shall have the authority, on its own motion or in response to a petition by a manufacturer or provider of [ACS] or any interested party, to waive the requirements of this section . . . for any class of [ACS] equipment, . . . or for any class of such services, that -- (A) is capable of accessing an advanced communications service; and (B) is designed for multiple purposes, but is designed primarily for purposes other than using advanced communications services.”). To faithfully implement Congress’s intent, the Commission should duly exercise its waiver authority to exempt multi-purpose offerings with some ACS capabilities from the accessibility requirements where the primary purpose of the offering, as designed, is not to provide ACS. “[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.” H.R. Rep. No. 111-563, at 26 (2010) (“*House Committee Report*”); S. Rep. No. 111-386, at 8 (2010) (“*Senate Committee Report*”).

Commission must focus on the primary purpose for which the equipment class was designed.¹⁶ If, as in the instant case, an equipment class has an obvious non-ACS primary purpose, the Commission should grant the requested waiver.

In addition, grant of the requested waivers of the subject TVs and DVPs would further the public interest by facilitating innovation in Internet-enabled video devices, consistent with the recommendations contained in the National Broadband Plan (“NBP”)¹⁷ and the goals of the Commission regarding the integrated display of Internet video content with video programming delivered via linear broadcast and non-broadcast channels.¹⁸

Consistent with Congress’s intent, the plain language of the CVAA, and the public interest, the Commission should waive the requirements of Section 716 for the subject TVs and DVPs, as well as for video game offerings as requested by ESA.¹⁹ A waiver should exclude from the requirements of Section 716 all ACS features and functions that are part of the waived product.²⁰

**THE COMMISSION SHOULD WAIVE SECTION 716 FOR THE CLASS
OF TVS THAT ARE ENABLED FOR USE WITH THE INTERNET.**

The subject TVs readily meet the statutory criteria for a class waiver. As set forth in detail below, the subject TVs constitute a distinct class of equipment. The subject TVs are capable of accessing ACS features and functionality. However, the subject TVs are designed primarily to deliver video content rather than to provide ACS. In addition, the requested waiver would serve the public interest by facilitating innovation without meaningfully affecting ACS accessibility.

Defined Class. The subject TVs constitute a distinct class of equipment that is made up of those TVs that are able to connect directly to the Internet. Manufacturers of such TVs include, but are not limited to, LG Electronics, Inc. (“LG”),²¹ Panasonic Corporation (“Panasonic”),²² Samsung

¹⁶ 47 U.S.C. § 617(h)(1)(B); *see, e.g.*, ESA Reply Comments at 4-5.

¹⁷ *Connecting America: The National Broadband Plan* at 51 (Mar. 16, 2010) (“NBP”).

¹⁸ *See, e.g., Video Device Competition*, Notice of Inquiry, 25 FCC Rcd 4275, 4294-95, 4298-99 (2010) (Statements of Chairman Julius Genachowski and Commissioner Robert McDowell) (“*Video Device Competition NOP*”).

¹⁹ ESA Reply Comments at 9-20.

²⁰ *See, e.g., id.* at 6-9. In addition, the recordkeeping and enforcement provisions of Section 717 of the Act do not apply to products for which a waiver is granted pursuant to 47 U.S.C. § 617(h)(1). *See* 47 U.S.C. § 618(a).

²¹ LG, LG Smart TV, <http://www.lg.com/us/tv-audio-video/discoverlgtvs/smarttv/index.jsp> (last visited July 5, 2011).

²² Panasonic, Viera Connect, http://panasonic.net/avc/viera/us2011/viera_connect/index.html (last visited July 5, 2011).

Electronics Co., Ltd. (“Samsung”),²³ and Sony Corporation (“Sony”).²⁴ The subject TVs are available today and their share of the U.S. television marketplace is growing.²⁵

The Class Is Capable of Accessing ACS. The subject TVs are capable of providing users with access to ACS.²⁶ Users may be able to access these ACS features and functions through apps that are either pre-installed or downloaded and installed by the user.²⁷ However, the vast majority of apps relate to video-content, gaming, or news and general information, which generally do not include ACS features or functions.²⁸

The Class is Multi-Purpose But Is Designed Primarily for Delivering Video Content, Not ACS.

Although the subject TVs may be able to access some forms of ACS, their primary purpose, as designed, is to deliver video content, rather than to provide ACS. This is abundantly illustrated by the marketing materials and other statements of the manufacturers that emphasize the enhanced access to video content provided by the subject TVs. For example, in describing its “Smart TVs,” Samsung has emphasized that “[u]sers can easily search for movies, shows and videos via online services and across connected devices, browse the Web from your TV and

²³ Samsung, The Wonder of Samsung Smart TVs, <http://www.samsung.com/us/article/the-wonder-of-samsung-smart-tvs> (last visited July 5, 2011).

²⁴ Sony, Sony Internet TV, <http://store.sony.com/webapp/wcs/stores/servlet/CategoryDisplay?storeId=10151&langId=-1&catalogId=10551&categoryId=8198552921644751998&N=4294951424&Name=Internet%20Televisions> (last visited July 5, 2011).

²⁵ For example, in three months, Samsung sold 730,000 Smart TVs in North America alone. Press Release, Samsung, Samsung Smart TV Marked 2M Unit Milestone (June 16, 2011), http://www.samsung.com/sg/news/newsPreviewRead.do?news_seq=28168. “Panasonic expects to drive its IPTV sales up to 70% of its total television sales in the global market in fiscal year 2012.” Press Release, Panasonic, Panasonic to Offer New Cloud Internet Service, VIERA Connect This Spring (Jan. 6, 2011), <http://panasonic.co.jp/corp/news/official.data/data.dir/en110106-11/en110106-11.html>.

²⁶ Due to the pendency of the rulemaking, the Commission has not yet determined the precise scope of the services covered by the ACS definition. See *NPRM*, 26 FCC Rcd. at 3145-52 ¶¶ 28-47. However, some of the apps and/or features and functions available for the subject TVs and DVPs appear to include ACS based on the definitions set forth in the CVAA. See CVAA § 101 (codified as amended 47 U.S.C. § 153).

²⁷ See, e.g., Press Release, LG, LG Electronics Makes It Easy To Go Smart With New SmartTV Offerings (Jan. 5, 2011), <http://www.lg.com/us/press-release/article/lg-electronics-makes-it-easy-to-go-smart-with-new-smarttv-offerings.jsp> (describing Internet-related functionality that is accessed through a “dashboard” or a web browser); Samsung, Samsung Apps – Google Talk, <http://www.samsung.com/us/appstore/app/G00000522700> (last visited July 6, 2011) (“Google Talk for Samsung Smart TV is an instant messaging application.”); Press Release, Panasonic, Skype and Panasonic Announce Collaboration to Add Skype Software to VIERA HDTVs (Jan. 6, 2010), <http://panasonic.co.jp/corp/news/official.data/data.dir/en100106-1/en100106-1.html>.

²⁸ See, e.g., Samsung, Samsung Apps, <http://www.samsung.com/us/appstore> (last visited July 6, 2011) (including video apps such as YouTube, Netflix, and Hulu Plus; gaming apps such as Blackjack Master and Brain Challenge; and news and information apps such as BBC News, AP News Ticker, USA Today, and AccuWeather).

access a wide variety of apps”²⁹ Similarly, LG has emphasized that its Smart TV platform provides access to a wide selection of video content from numerous providers including:

- “VUDU– Allows consumers to buy or rent from an extensive catalog of more than 2,000 high-definition movies and TV titles without monthly fees or additional hardware. It also is the only online service to offer movies in 1080p.”
- “Netflix – Updated with Netflix 2.0, consumers can now stream thousands of movies without a PC.”
- “YouTube – Instantly streams millions of Web videos directly from the Internet.”
- “CinemaNow – Allows consumers to browse from the CinemaNow premium content catalog and instantly stream purchased or rented movies and popular TV shows.”
- “Hulu Plus – Subscribers have access to back seasons or full runs of some of TV’s greatest shows.”
- “Amazon Video on Demand – Allows consumers to view more than 75,000 hit movies and television shows instantly.”
- “Live Streaming Sports (multiple partners) – Pro sports fans can follow their favorite teams, stay up to date with player profiles, and stream games in HD quality.”³⁰

Sony’s statements regarding its Internet-connected TVs also focus on the delivery of video content: “From broadcast to streaming video from the Internet, Sony Internet TV offers the ability to quickly search and watch content from wherever, whenever.”³¹ Panasonic has emphasized its “popular video applications such as YouTube, Netflix and Amazon Video on Demand” as well as “the activation of professional sports apps [that] will enable owners of Panasonic’s VIERA Connect-enabled 2011 VIERA HDTVs to watch their favorite teams live or catch-up on archived games”³²

²⁹ Press Release, Samsung, Samsung Reveals Its Agenda for a Smarter Life at CES 2011 (Jan. 5, 2011), http://www.samsungces2011.com/pdf/Samsung_Lead_Release.pdf. As further evidence of video delivery as the central role of the subject TVs, Samsung and Comcast have partnered to deliver “a rich, Web-like interface, enabling simpler navigation and the ability to seamlessly search across TV, DVR recordings, and video on demand among tens of thousands of content choices.” Press Release, Comcast Corp., Samsung and Comcast Partner to Transform TV Viewing on Smart Televisions and Tablets (Jan. 6, 2011), <http://www.comcast.com/About/PressRelease/PressReleaseDetail.ashx?PRID=1031>. Similarly, Samsung has partnered with Time Warner Cable to provide an app that “will give Time Warner Cable’s subscribers access to all of their cable channels directly on Samsung smart TVs” Press Release, Samsung, Samsung And Time Warner Cable Announce Collaboration For Smart TV Service And Multi-room Solutions (Jan. 6, 2011), http://www.samsung.com/us/news/newsRead.do?news_seq=19792&page=5&gltype=localnews.

³⁰ Press Release, LG, LG Electronics Makes It Easy To Go Smart With New SmartTV Offerings (Jan. 5, 2011), <http://www.lg.com/us/press-release/article/lg-electronics-makes-it-easy-to-go-smart-with-new-smarttv-offerings.jsp>.

³¹ Press Release, Sony, Sony Redefines Home Entertainment with the World's First HDTV Powered by Google TV (Oct. 13, 2010), <http://www.sony.net/SonyInfo/News/Press/201010/10-140E/index.html>.

³² Press Release, Panasonic, Panasonic Ups Its Game In Connected TV With Activation Of Professional League Sports Apps On Its 2011 Viera Connect-Enabled HDTVs (Apr. 4, 2011),

As the above statements demonstrate, the subject TVs are first and foremost television sets – the primary purpose of which remains the delivery of video content, whether from a traditional source such as a linear cable channel or from a video-related app such as Hulu Plus, YouTube, or Netflix. There can be no doubt that the primary purpose of the subject TVs is not ACS. As discussed below, there also are great public interest benefits to granting the requested waiver. Accordingly, the Commission should grant the requested class waiver for the subject TVs in its final rules on Section 716.

THE COMMISSION SHOULD WAIVE SECTION 716 FOR DVPS THAT ARE ENABLED FOR USE WITH THE INTERNET AS A CLASS.

Like the subject TVs, the subject DVPs readily meet the criteria for a class waiver. The primary purpose of the subject DVPs is to deliver video content to individual viewers, whether from storage media such as a Blu-ray Disc™, DVD disc, or DVR hard drive, transmitted from a pay television service, or streamed from the Internet, even though such DVPs may be capable of accessing ACS as well. In addition, the requested waiver is in the public interest and would foster innovation in video content and devices without meaningfully affecting ACS accessibility.

Defined Class. The subject DVPs constitute a distinct class of equipment, namely, all digital video players that have the ability to connect to the Internet. The subject DVPs include Internet-enabled Blu-ray and DVD players, Internet-enabled DVRs, and other similar Internet-enabled digital video players as well as Internet-adaptor boxes. The subject DVPs are produced by many of the same manufacturers that produce the subject TVs, including LG,³³ Panasonic,³⁴ Samsung,³⁵ and Sony.³⁶

The Class Is Capable of Accessing ACS. The subject DVPs are capable of providing users with access to ACS.³⁷ Users may be able to access ACS through apps either pre-installed or downloaded and installed by the user.³⁸ However, like the subject TVs, the Internet connectivity

<http://www2.panasonic.com/webapp/wcs/stores/servlet/prModelDetail?storeId=11301&catalogId=13251&itemId=627505&modelNo=Content04042011051137573&surfModel=Content04042011051137573>.

³³ See, e.g., LG Smart TV Upgrader, *supra* note 6.

³⁴ See, e.g., Panasonic, 2011 Video DMP-BD75 Blu-ray Disc Player, http://www.panasonic.com/apps/match-maker/assets/pdf/bluray/PCEC3458-1_DMP-BD75.pdf (last visited July 6, 2011) (“Panasonic Blu-ray”).

³⁵ See Samsung, The Smart Blu-ray Experience, <http://www.samsung.com/us/topic/the-smart-blu-ray-experience> (last visited July 6, 2011) (“Samsung Smart Blu-ray Experience”).

³⁶ See, e.g., Sony, Sony Internet TV Blu-ray Disc Player, <http://store.sony.com/webapp/wcs/stores/servlet/CategoryDisplay?storeId=10151&langId=-1&catalogId=10551&categoryId=8198552921644751998&N=4294951424&Name=Internet%20Televisions#googleTVBox> (last visited July 6, 2011).

³⁷ See *supra* note 26.

³⁸ See, e.g., LG Smart TV Upgrader, *supra* note 6; Will Greenwald, *Panasonic Adds Skype Video and Voice Calls to New Blu-ray Players*, PCMag.com, Mar. 2, 2011, <http://www.pcmag.com/article2/0,2817,2381297,00.asp>; Press Release, Samsung, Samsung Expands Blu-

of the subject DVPs is primarily focused on enabling and improving the delivery of video content through such Internet-based services as Netflix, YouTube, and Hulu Plus,³⁹ or the delivery of video-on-demand content from a pay television service such as DIRECTV.⁴⁰

The Class is Multi-Purpose But Is Designed Primarily for Delivering Video Content, Not ACS.

Similar to the subject TVs, the primary purpose of the subject DVPs is to deliver video content, rather than to provide ACS. This is most evident by the marketing materials related to the subject DVPs, which overwhelmingly emphasize that the focus of these devices is to improve the delivery of video content to the television, whether from locally stored video content (e.g., a Blu-ray disc or hard drive), by way of a video streaming app such as Netflix,⁴¹ or as provided by a pay television service. Accordingly, the Commission should grant the requested class waiver for the subject DVPs in its final rules on Section 716.

THE REQUESTED CLASS WAIVERS ARE CONSISTENT WITH THE INTENT OF THE CVA AND THE PUBLIC INTEREST.

The requested class waivers will serve the public interest. Even though the waiver standard under Section 716(h)(1) should be considered self-contained,⁴² the requested class waivers also satisfy the Commission's general waiver requirements.⁴³

ray and Companion Box Lineup (Jan. 7, 2011),

http://www.samsung.com/us/news/newsRead.do?news_seq=19799&page=4&gltype=localnews.

³⁹ See, e.g., Samsung, Samsung Apps: Model Guide for Samsung Apps, at 12-14 (updated Nov. 2, 2010), <http://www.samsung.com/us/pdf/apps-and-product-table.pdf>; LG, Smart TV Applications, <http://lgknowledgebase.com/kb/index.php?View=entry&EntryID=6510> (last visited July 6, 2011).

⁴⁰ See, e.g., DIRECTV, DIRECTV Cinema, <http://www.directv.com/DTVAPP/content/directv/cinema> (last visited July 13, 2011).

⁴¹ See, e.g., LG Smart TV Upgrader, *supra* note 6 (“The ST600 LG Smart TV Upgrader easily connects to your current HDTV to provide instant access to streaming services such as Netflix & YouTube as well as web browsing.”); Panasonic Blu-ray, *supra* note 34 (“Netflix, Cinema Now, Vudu Compatible - Enjoy streaming movies, shows and other content.”); Samsung Smart Blu-ray Experience, *supra* note 35 (“Samsung Smart Blu-ray Players allow you to easily search for movies and explore Samsung apps. You can also connect to your favorite digital content from Netflix or Blockbuster, TV shows from Hulu Plus, videos from YouTube, music from Pandora, and social updates from Facebook or Twitter.”); Sony, Blu-ray Disc Players, http://store.sony.com/webapp/wcs/stores/servlet/CategoryDisplay?catalogId=10551&storeId=10151&langId=-1&categoryId=16192&SR=nav:electronics:tv_hm_ent:bluray:shop_compare:ss%20&ref=http%3A%2F%2Fwww.sony.com%2Findex.php#/bluray (last visited July 6, 2011) (“Rethink the possibilities of Sony Blu-ray Disc players. Select players let you wirelessly stream movies, videos and music from the largest selection of providers including Netflix, Pandora, Qriocity, Hulu Plus, YouTube and more.”).

⁴² Because Section 716(h)(1) provides specific and unique waiver criteria and does not refer to the Commission's general waiver authority, there is no need to incorporate or rely on that authority. See *NPRM*, 26 FCC Rcd at 3154 ¶ 56 (“Alternatively, we seek comment on whether we should handle waivers as we have in the normal course pursuant to Section 1.3 of the Commission's rules.”).

As an initial matter, the requested waivers for the subject TVs and DVPs will promote the Commission’s goal of enabling the combined viewing of traditional and Internet forms of video on a single device. As discussed above, the NBP has established the value to the public of “combining MVPD [Multichannel Video Programming Distributor] and Internet content and services” on a single device, as recognized in Chapter 4 of the NBP.⁴⁴ The subject TVs and DVPs are beginning to address the challenge recognized in the NBP of combining Internet video with traditional TV viewing.⁴⁵ Granting the requested waivers would help ensure that the new ACS rules will not inhibit or delay such continued innovation among the subject TVs and DVPs.⁴⁶

More fundamentally, granting the requested waivers for the subject TVs and DVPs falls squarely within the CVAA’s goal of balancing increased ACS accessibility with manufacturers’ and service providers’ ability to continue to innovate for the benefit of all consumers. Even though the subject TVs and DVPs are capable of accessing ACS, their primary purpose is so markedly the delivery of video content that their use in accessing ACS is incidental to video content delivery.

Without a waiver, imposing the Section 716 requirements on the subject TVs and DVPs will inhibit innovation in these equipment classes without meaningfully increasing access to ACS for persons with disabilities. Without the requested class waivers, manufacturers may be forced to remove the ACS features and functions from the subject TVs and DVPs to avoid the expense and burden associated with Section 716 compliance.⁴⁷ Moreover, the requested class waivers would

⁴³ Under 47 C.F.R. § 1.3, “[t]he FCC may exercise its discretion to waive a rule where particular facts would make strict compliance inconsistent with the public interest,” or alternatively, where “special circumstances warrant a deviation from the general rule and such a deviation will serve the public interest.” *Northeast Cellular Tel. Co., L.P. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990). *See also WAIT Radio v. FCC*, 418 F.2d 1153, 1157 (D.C. Cir. 1969) (“The agency’s discretion to proceed in difficult areas through general rules is intimately linked to the existence of a safety valve procedure for consideration of an application for exemption based on special circumstances.” (citations omitted)).

⁴⁴ NBP at 51.

⁴⁵ *See id.* (“[S]everal innovators are attempting to bring Internet video to the TV. Their devices often cannot access traditional TV content that consumers value—content that is not available or difficult to access online. Without the ability to seamlessly integrate Internet video with traditional TV viewing, Internet video devices like Apple TV and Roku have struggled to gain a foothold in U.S. homes.”). Chairman Genachowski consistently has discussed the importance of integrating video content available online with video programming delivered via linear broadcast and non-broadcast channels. *See, e.g., Video Device Competition NOI*, 25 FCC Rcd at 4294-95 (Statement of Chairman Julius Genachowski).

⁴⁶ *See, e.g.,* ESA Reply Comments at 8.

⁴⁷ *See, e.g.,* Comments of Microsoft Corp., CG Docket Nos. 10-213 & 10-145, WT Docket No. 96-168, at 7 (filed Apr. 25, 2011); Reply Comments of T-Mobile, CG Docket Nos. 10-213 & 10-145, WT Docket No. 96-168, at 10 (filed May 23, 2011) (“To avoid inadvertently preventing innovative services and technologies from getting to market, the Commission should be prepared to grant prospective and/or blanket waivers, particularly for service offerings where the ACS component is incidental to the primary purpose for which the service is designed.”).

