

**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	)	CG Docket No. 10-213
Twenty-First Century Communications and Video	)	
Accessibility Act of 2010	)	
	)	
Consumer Electronics Association	)	
Petition for Waiver	)	
	)	

**OPPOSITION TO PETITION FOR WAIVER  
BY CONSUMER ELECTRONICS ASSOCIATION**

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Dated: June 14, 2012

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Telecommunications for the Deaf and Hard of Hearing, Inc., National Association of the Deaf, Technology Access Program at Gallaudet University, and Trace Center at the University of Wisconsin (collectively, the “Consumer Groups”), respectfully submit this Opposition in response to the Commission’s Public Notice in the above-captioned matter.<sup>1</sup> Consumer Groups oppose the Consumer Electronics Association (“CEA”) petition for waiver from the advanced communications services (“ACS”) requirements for two classes of equipment: Internet Protocol-enabled television sets (“IPTVs”) and Internet Protocol-enabled digital video players (“IPDVPs”).<sup>2</sup> Consumer Groups urge the Commission to deny the waiver request unless the waiver period is narrowly limited, the equipment included in a particular class is specifically

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<sup>1</sup> *Request for Comment Petition for Class Waiver of Commission’s Rules for Access to Advanced Communications Services and Equipment by People with Disabilities*, CG Docket No. 10-213, DA 12-759 (rel. May 15, 2012).

<sup>2</sup> Consumer Electronics Association Petition for Waiver, CG Docket No. 10-213 (filed March 22, 2012) (“*CEA Petition*”).

defined, and a condition is provided to allow the public to file complaints about any improper application of the waiver.

**I. THE REQUESTED WAIVER WOULD BE INCONSISTENT WITH THE FUNDAMENTAL PURPOSE OF THE CVAA**

The fundamental purpose of the Twenty-First Century Communications and Video Accessibility Act of 2010” (“CVAA”)<sup>3</sup> is “to ensure that the 54 million Americans with disabilities are able to fully utilize [ACS].”<sup>4</sup> Today, IPTVs include webcams (or the ability to add-on webcams) for the purpose of video chatting with friends and family.<sup>5</sup> In addition, many IPTVs and IPDVPs pre-install or allow installation of applications that utilize ACS, such as third-party software like Facebook and Skype and those with web conferencing capabilities.<sup>6</sup> These ACS features and functionalities must be made fully accessible to users who are deaf or hard of hearing, particularly as IPTVs and IPDVPs gain market presence, to meet the fundamental goal of the CVAA. The Commission should therefore deny the CEA Petition and rigorously enforce the CVAA standards so that users with disabilities are able to attain and maintain access that is functionally equivalent to that accorded other users of IPTVs and IPDVPs, now and in years to come.

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<sup>3</sup> Twenty-First Century Communications and Video Accessibility Act of 2010, Pub. L. No. 111-260, 124 Stat. 2751 (2010) (as codified in various sections of 47 U.S.C.).

<sup>4</sup> *In the Matter of Implementation of Section 716 and 717 of the Communications Act of 1934, as Enacted by the Twenty-First Century Communications and Video Accessibility Act of 2010, 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, In the Matter of Accessible Mobile Phone Options for People who are Blind, Deaf-Blind, or Have Low Vision, Report and Order and Further Notice of Proposed Rulemaking*, 26 FCC Rcd 14557, ¶ 1 (2011) (“Order”).

<sup>5</sup> See e.g., Samsung Smart TV, available at <http://www.samsung.com/us/2012-smart-tv/>.

<sup>6</sup> See e.g., Samsung Smart TV, available at <http://www.samsung.com/us/2012-smart-tv/>; Sony Internet TV, available at <http://store.sony.com/webapp/wcs/stores/servlet/ProductDisplay?catalogId=10551&storeId=10151&langId=-1&partNumber=KDL55HX820#features>.

IPTVs and IPDVPs may have “only [begun] to gain measurable market penetration” with IPTVs specifically forecast to reach approximately 27% in 2012.<sup>7</sup> But, industry reports suggest that market penetration for IPTVs will climb to more than 75% by 2015<sup>8</sup> and that about 70% of *all* in-home video devices sold will be able to connect to the Internet by 2016.<sup>9</sup> Such projections necessitate that steps be taken now to achieve the CVAA goals and ensure users with disabilities are able to fully access ACS features and functions on IPTVs and IPDVPs, particularly as such ACS features and functions continue to expand.<sup>10</sup>

As described below, the Commission should deny the CEA Petition because CEA has failed to show that a waiver is warranted pursuant to the Commission’s primary purpose test, given that the ACS features of IPTVs and IPDPVs provide a co-primary purpose and IPTVs and IPDPVs are designed and marketed as multipurpose devices. Also, CEA has not justified the proposed waiver period. For these reasons, Consumer Groups urge the Commission to deny the request unless the waiver period is narrowly limited, the waiver class is specifically defined, and a condition is provided to allow the public to file complaints about any improper application of the waiver.

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<sup>7</sup> *CEA Petition* at p. 4.

<sup>8</sup> “Why Connected TV Is Poised to Revolutionize Entertainment,” Ronald Jacoby (citing Parks Associates) (May 11, 2011) *available at* <http://mashable.com/2011/05/11/future-connected-tv/>.

<sup>9</sup> “Internet-connected TV Sales to Surpass Game Console Sales,” Mike Robuck (citing Informa Telecoms & Media) (June 30, 2011) *available at* <http://www.cedmagazine.com/news/2011/06/report%3A-internet-connected-tv-sales-to-surpass-game-console-sales>.

<sup>10</sup> “A Venture integrating Skype Into the Family Room,” Brad Stone (Jan. 5, 2010) *available at* <http://www.nytimes.com/2010/01/05/technology/internet/05hdtv.html>.

## II. THE REQUIRED WAIVER IS IMPROPER UNDER THE “PRIMARY PURPOSE” TEST

When considering whether to grant a waiver request pursuant to Section 716(h)(1), the Commission has made clear that it will “focus [its] waiver inquiry on whether a multipurpose equipment or service has a feature or function that is capable of accessing ACS but is nonetheless designed primarily for purposes other than using ACS.”<sup>11</sup> It has adopted two factors to evaluate the primary purpose of equipment or service: (1) whether equipment or service was designed to be used for ACS purposes by the general public, including whether there are multiple, co-primary purposes, and (2) whether equipment or services is marketed for the ACS features and functions.<sup>12</sup> In addition, other factors may be considered by the Commission, such as examining the “impact of the removal of the ACS feature or function on a primary purpose for which the equipment or service is claimed to be designed.”<sup>13</sup>

CEA admits that IPTVs and IPDVPs are multi-purpose devices but argues that they are designed “primarily” for “the rendering and/or display of video content, principally full-length, professional-quality video programming” and not ACS.<sup>14</sup> To support this claim, CEA states that use of IPTVs and IPDVPs “other than for viewing video programming is minimal at this point.”<sup>15</sup> However, this argument fails to consider that “the CVAA would have little meaning” if ACS requirements could be waived for multipurpose equipment and services without an *exclusive* primary use such as the example of smartphones which is cited by the Commission.<sup>16</sup> Indeed, as IPTVs are designed to incorporate more features and functions, including ACS, they

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<sup>11</sup> *Order* at ¶ 181.

<sup>12</sup> *Id.* at ¶¶ 182-185; 47 C.F.R. § 14.5(a)(2).

<sup>13</sup> *Id.* at ¶ 186.

<sup>14</sup> *CEA Petition* at pp. 2-3, 5-6, 7-10, 12-13, 15-16.

<sup>15</sup> *Id.* at p. 4.

<sup>16</sup> *Order* at ¶ 184.

resemble smartphones more and more.<sup>17</sup> Further, ACS features and functions are prominently included in marketing materials, suggesting that IPTVs and IPDVPs are marketed for their ACS features and functions and that consumers consider ACS functionality “as a reason for purchasing, installing, downloading or accessing the equipment or service.”<sup>18</sup> The Commission should therefore determine that IPTVs and IPDVPs are multi-purpose devices and are designed and marketed as multi-purpose devices.

### III. THE SCOPE OF THE WAIVER REQUEST IS UNREASONABLE

The Commission has authority to grant class waivers when “classes are carefully defined” and when the petitioner has “defined with specificity the class of common equipment or services.”<sup>19</sup> Such authority is discretionary and does not extend to the exemption of services or equipment.<sup>20</sup> Petitioners must also explain in detail the expected lifecycle of equipment or services included in a class waiver request.<sup>21</sup>

CEA requests that the waiver cover IPTV and IPDVP models “first manufactured prior to July 1, 2016” (*i.e.*, equipment introduced into the market prior to July 1, 2016), and that such waiver cover the equipment lifecycle, which should extend less than three years beyond October 8, 2013.<sup>22</sup> CEA states the waiver would exclude IPTVs and IPDVPs that are not designed and marketed “primarily” to display video content principally full-length, professional-quality video programming.<sup>23</sup>

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<sup>17</sup> “Best internet TV platforms compared” (posted Feb. 3, 2011) *available at* <http://www.techradar.com/news/television/best-internet-tv-platforms-compared-925680>.

<sup>18</sup> *Order* at ¶ 185.

<sup>19</sup> *Id.* at ¶ 193.

<sup>20</sup> *Id.* at fn. 537.

<sup>21</sup> *Id.* at ¶ 194.

<sup>22</sup> *CEA Petition* at 2.

<sup>23</sup> *Id.* at fn. 19 and fn. 49.

The scope of CEA's waiver request is unreasonable. As Consumer Groups have explained, the Commission must ensure that accessibility is achieved in most cases and avoid the situation where accessibility is achieved only in a minority of instances.<sup>24</sup> The Commission also must make clear that it expects service providers and manufacturers to take full account of advances in technology over time, even if a particular product or service cannot reasonably be made accessible at the time it is introduced. Consumer Groups believe that, in the event a waiver is granted, its term should be no more than one (1) year. In other words, the waiver would cover those devices first manufactured or introduced to the market one (1) year from the waiver grant date. Given the pace with which products and their marketing and development change in this industry and given the expected increases in market penetration described above, the burden should be on the industry to show why further waivers should be granted.

In addition, to the extent a waiver is granted, the Commission must specifically define the equipment covered in a particular class. The waiver should not cover multiple generations of IPTVs and IPDVPs, particularly since CEA is not seeking such coverage. Further, as necessary, the Commission should clearly articulate the standard to determine whether a device is (or is not) designed and marketed to display video content principally full-length, professional-quality video programming. Consumer Groups also request that the Commission provide an effective, expeditious process for the public to file complaints about any improper application of a waiver to equipment not expressly covered.

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<sup>24</sup> See *e.g.*, Consumer Groups Comments in Response to Notice of Proposed Rulemaking, CG Docket No. 10-213, WT Docket No. 96-198, CG Docket No. 10-145, at pp. 16-17 (filed April 25, 2011).

**IV. CONCLUSION**

For the reasons set forth herein, the Consumer Groups respectfully request that the Commission deny the CEA’s waiver request with respect to IPTVs and DPVs, unless the waiver period is narrowly limited, the equipment included in a particular class is specifically defined, and a condition is provided to allow complaints to be filed about any improper application of a waiver.

Respectfully submitted,

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