

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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)
Request for Comment) CG Docket No. 10-213
Petition for Class Waiver of Commission's Rules for)
Access to Advanced Communications Services and)
Equipment by People with Disabilities)

**REPLY COMMENTS
OF THE CONSUMER ELECTRONICS ASSOCIATION
REGARDING PETITION FOR WAIVER**

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I. INTRODUCTION AND SUMMARY

The Consumer Electronics Association (“CEA”) hereby submits its reply comments in support of its petition for waiver (“CEA Waiver Petition”)¹ of the Commission’s rules for Advanced Communications Services (“ACS”) (the “ACS rules”)² as those rules apply to two classes of equipment. Specifically, CEA requests that the Commission waive the ACS rules for two classes of equipment:

- IP-TVs, defined as those Internet Protocol (“IP”)-enabled television sets (“TVs”) that allow consumers to access and use ACS, but are designed primarily to display video content (principally full-length, professional-quality video programming) rather than to provide access to ACS; and
- IP-DVPs, defined as those IP-enabled digital video players (“DVPs”) that allow consumers to access and use ACS, but are designed primarily to display video content

¹ Consumer Electronics Association (“CEA”) Petition for Waiver, CG Docket Nos. 10-213 & 10-145, WT Docket No. 96-198 (filed Mar. 22, 2012) (“CEA Waiver Petition”).

² The Commission adopted the ACS rules in *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*, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 14557 (2011) (“ACS Order”).

(principally full-length, professional-quality video programming) rather than to provide access to ACS.³

CEA requests that the waiver for these two classes cover all IP-TV and IP-DVP models first manufactured⁴ prior to July 1, 2016.⁵

The record in this proceeding⁶ demonstrates, contrary to some claims,⁷ that the requested waiver (a) fully satisfies the waiver requirements of Section 716 of the Communications Act of 1934, as amended (the “Act”),⁸ and Sections 14.5 (the ACS waiver standard) and 1.3 (the general waiver standard) of the rules,⁹ and (b) serves the public interest by fostering continuing

³ See CEA Waiver Petition at 1–3.

⁴ CEA urges the Commission to provide greater certainty to manufacturers by interpreting the date “first manufactured” as the equivalent of the date a product is “introduced into the market.” See CEA Waiver Petition at 2 n.3 (citing *ACS Order*, 26 FCC Rcd at 14639–40 ¶ 194).

⁵ See CEA Waiver Petition at 2. CEA requests that the class waiver extend to all IP-TV and IP-DVP models first manufactured before July 1, 2016, so that the requested waiver would extend less than three years beyond the expiration of the phase-in period for the ACS rules (*i.e.*, October 8, 2013), consistent with the product lifecycle of the typical IP-TV and IP-DVP. See *id.* at 2 n.4

⁶ See, *e.g.*, Comments of the National Cable & Telecommunications Association (“NCTA”), CG Docket Nos. 10-213 & 10-145, WT Docket No. 96-198 (filed June 14, 2012) (“NCTA Comments”); Comments of Panasonic Corp. of North America (“Panasonic”) Supporting CEA, CG Docket No. 10-213 (filed June 14, 2012) (“Panasonic Comments”).

⁷ See, *e.g.*, Opposition of Telecommunications for the Deaf and Hard of Hearing, Inc. et al. (the “Groups”) to Petition for Waiver by CEA, CG Docket No. 10-213 (filed June 14, 2012) (“Groups Opposition” or “Opposition”); Comments of the Missouri Council of the Blind (“MCB”), CG Docket No. 10-213 (filed June 14, 2012) (“MCB Comments”); Reply Comments of the American Council of the Blind (“ACB”), CG Docket Nos. 10-213 & 10-145, WT Docket No. 96-198 (filed June 22, 2012) (“ACB Reply Comments”); Comments of Brian J. Coppola, CG Docket No. 10-213 (filed June 13, 2012) (“Coppola Comments”); Comments of Walter Newsome, CG Docket No. 10-213 (filed June 14, 2012) (“Newsome Comments”).

⁸ Section 716 was added to the Act by the Twenty-First Century Communications and Video Accessibility Act of 2010 (“CVAA”), Pub. L. No. 111-260, 124 Stat. 2751 (enacted Oct. 8, 2010). See also An Act to make technical corrections in the Twenty-First Century Communications and Video Accessibility Act of 2010 and the amendments made by that Act, Pub. L. No. 111-265, 124 Stat. 2795 (enacted Oct. 8, 2010).

⁹ See 47 C.F.R. §§ 1.3, 14.5. See also *Northeast Cellular Tel. Co., L.P. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990); *WAIT Radio v. FCC*, 418 F.2d 1153, 1157 (D.C. Cir. 1969).

innovation in the design and production of IP-TVs and IP-DVPs, while having a minimal impact on consumers.

Specifically, the record shows that IP-TVs and IP-DVPs are designed primarily for delivering video content from traditional linear broadcast and non-broadcast channels and Internet sources, not ACS; the term of the requested waiver is consistent with the requirements of the *ACS Order*; and the classes of equipment that constitute IP-TVs and IP-DVPs as defined in the CEA Waiver Petition are specifically, and sufficiently, defined therein. No commenter has demonstrated otherwise, and the Commission should therefore waive the ACS rules for IP-TVs and IP-DVPs for the short period of time requested in the CEA Waiver Petition.

II. GRANT OF THE REQUESTED WAIVER WILL ADVANCE THE PUBLIC INTEREST

The record confirms that grant of the CEA Waiver Petition will serve the public interest by advancing the innovative development of IP-TVs and IP-DVPs.¹⁰ Conversely, if the requested temporary waiver is not granted, development of ACS on IP-TVs and IP-DVPs will suffer. Thus, the costs to the public of withholding the requested waiver are high.¹¹

As Panasonic explains, manufacturers of IP-TVs and IP-DVPs are continually seeking to innovate by introducing and offering a variety of applications (“apps”) and features on their IP-connected devices, attempting to determine the types of apps that will best serve consumers in a

¹⁰ *See, e.g.*, NCTA Comments at 1, 3; Panasonic Comments at 8–11.

¹¹ As a general matter, although some commenters oppose CEA’s waiver request on a variety of grounds, they do not discuss with specificity the potential public policy effects of granting the waiver request. Having reviewed the comments filed in this proceeding, CEA now believes that it may be useful to the Commission to consider in more detail the costs associated with applying the ACS accessibility rules immediately to IP-TVs and IP-DVPs. To help clarify these issues, CEA may supplement the record in the proceeding with a more detailed analysis on the public policy effects of the requested waiver, which would be submitted in this docket as soon as possible.

highly competitive marketplace.¹² Therefore, in the short term, the additional costs and complexity of complying with the ACS regulations are likely to chill manufacturers' incentives to include these features as part of their IP-TVs and IP-DVPs.¹³ CEA has requested a temporary waiver for precisely the period in which IP-TVs and IP-DVPs will be developing and gaining market presence. Manufacturers need this time to innovate, without additional costs that could skew what manufacturers are able to offer and/or what consumers are willing to buy.¹⁴ As NCTA explains, the requested waiver would be consistent with Congress's intent in the CVAA "that the Commission use the waiver provision to balance increased ACS accessibility with the ability of providers and manufacturers to innovate in their development and offering of new services to consumers."¹⁵

The Groups' Opposition argues that, based on the projected market penetration of IP-TVs, the requested waiver should be denied because "steps [must] 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."¹⁶ However, the projections on which the Opposition relies for this claim are, in fact,

¹² See Panasonic Comments at 8. While most of these apps and features for IP-TVs and IP-DVPs focus on the delivery of video programming and entertainment to consumers, some of these apps may be means of providing ACS. See *id.* at 5–6, 8.

¹³ See *id.* at 8–9.

¹⁴ Thus, contrary to ACB's unsupported speculation, IP-TV and IP-DVP manufacturers are still gauging "market demand" for these features, which is challenging given that "[m]arket conditions are changing rapidly." ACB Reply Comments at 7; see also *id.* at 6.

¹⁵ NCTA Comments at 3 & n.11 (citing H.R. REP. NO. 111-563, at 26 (2010) ("[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.")); see also S. REP. NO. 111-386, at 8 (2010).

¹⁶ Groups Opposition at 3.

completely consistent with the reality that IP-TVs and IP-DVPs have only just begun to gain measurable market penetration in the United States.¹⁷ They thus underscore the arguments in favor of the CEA Waiver Request and do not serve as a rational basis for rejecting the requested waiver.

Similarly, there can be no viable claim that entities other than manufacturers have made substantial progress in the accessibility of ACS services over devices such as IP-TVs or IP-DVPs. While the MCB suggests that the Royal National Institute of Blind Persons (“RNIB”) in the United Kingdom has done work in this area that is relevant,¹⁸ a review of that organization’s website shows that its public activities do not apply to ACS provided over IP-TVs and IP-DVPs.¹⁹ Instead, the website focuses on audio description of on-screen information such as program guides in menus, as featured by a single line of televisions and several set top boxes. However, the RNIB does not identify any ACS components of these devices or any accessibility solutions for such components.²⁰ Thus, waiver opponents again underscore a key element of the CEA Waiver Request: the complexities in developing and implementing ACS accessibility solutions in devices primarily intended for another purpose.²¹

¹⁷ As stated in the CEA Waiver Petition, CEA expects that only about 27% of all TVs shipped to dealers in 2012 will be capable of connecting to the Internet. *See* CEA Waiver Petition at 4 n.17. The Opposition does not even attempt to refute the accuracy of this projection.

¹⁸ *See* MCB Comments at 1; *see also* ACB Reply Comments at 7.

¹⁹ *See RNIB – supporting blind and partially sighted people*, RNIB, <http://www.rnib.org.uk/Pages/Home.aspx> (last visited June 19, 2012).

²⁰ *See, e.g., Accessible TV Devices*, RNIB, http://www.rnib.org.uk/livingwithsightloss/tvradiofilm/television/Pages/accessible_tv.aspx (last visited June 19, 2012).

²¹ *See* ACB Comments at 7.

Opponents of the waiver also fail to consider whether having immediate access to ACS in IP-TVs and IP-DVPs is critical, given the availability and use of substitute products that actually are intended for ACS.²² For example, as Panasonic explains, grant of the requested waiver for IP-TVs and IP-DVPs is unlikely to limit the accessibility of ACS for consumers who are viewing video programming using IP-TVs or IP-DVPs because of the widespread use of “second screens.”²³ Consumers already are extensively using smartphones and tablets, which contain numerous ACS features, while they view TV – that is, while they watch video programming displayed via IP-TVs and IP-DVPs.²⁴ These “second screens” are subject to the accessibility rules for ACS and thus will be available to persons with disabilities.²⁵ Panasonic accurately notes that this use of “second screens” means that grant of the CEA Waiver Petition will “not frustrate” the purpose of the CVAA or the ACS rules.²⁶

In this regard, the Opposition’s claim that IP-TVs and IP-DVPs “resemble smartphones more and more”²⁷ is not credible, especially because the IP-TVs and IP-DVPs that are the subject of the waiver request are not designed to provide mobile communications like smartphones. As noted above, consumer use of smartphones and tablets as “second screens” for communicating while watching TV indicates that, if anything, smartphone use complements, rather than replaces, the viewing of video programming on IP-TVs. Although smartphones are capable of

²² See, e.g., Groups Opposition at 4–5; ACB Reply Comments at 7.

²³ See Panasonic Comments at 7–8, 11.

²⁴ See Randall Stross, *The Second Screen, Trying to Complement the First*, The New York Times (Mar. 3, 2012), available at <http://www.nytimes.com/2012/03/04/business/apps-let-you-supplement-the-tv-show-youre-watching.html>.

²⁵ See *ACS Order*, 26 FCC Rcd at 14595 ¶ 93; see also Panasonic Comments at 11.

²⁶ *Id.*

²⁷ Groups Opposition at 4–5.

receiving and displaying video content, they remain communications devices used for voice calls, text messaging or short message service (“SMS”), e-mail, and social networking. In contrast, the IP-TVs and IP-DVPs for which CEA seeks a waiver of the ACS rules have, by definition, a primary purpose of delivering video programming to consumers.

Finally, grant of the requested waiver will help ensure that manufacturers will not remove ACS features from their IP-TVs and IP-DVPs in the very short-term.²⁸ Implementing the ACS rules for the limited ACS features of IP-TVs and IP-DVPs will result in significant burdens and costs for manufacturers without benefiting consumers with disabilities.²⁹ To avoid such unnecessary costs, manufacturers are considering whether simply to leave ACS features and functions out of IP-TVs and IP-DVPs. Such a result would not promote technological innovation or the accessibility of ACS features, contrary to the intent of Congress as expressed in the CVAA.

III. THE CEA WAIVER PETITION SATISFIES THE APPLICABLE WAIVER STANDARDS

A. The Record Demonstrates That, Consistent with the Waiver Rule, IP-TVs and IP-DVPs Are Designed Primarily for Delivering Video Content, Not ACS

Consistent with the requirements of the ACS waiver rule, the record shows that neither IP-TVs nor IP-DVPs are primarily designed or marketed to use ACS, although they are enabled

²⁸ See Panasonic Comments at 9–10; CEA Petition at 12, 18.

²⁹ Two individuals oppose the CEA Waiver Petition on general grounds. See Coppola Comments and Newsome Comments. CEA believes that the narrowly tailored nature of the waiver requested, which applies only to ACS services that are not the primary purpose of the IP-TVs and IP-DVPs, and the limited term of the waiver obviate the concerns expressed by these parties. Moreover, grant of the requested waiver is far preferable to the potential removal of ACS apps or features from IP-TVs or IP-DVPs.

for Internet connectivity and “capable of accessing” ACS.³⁰ The primary purpose of the IP-TVs and IP-DVPs for which CEA seeks this waiver is the rendering and/or display of video content, principally full-length, professional quality video programming from traditional linear broadcast and non-broadcast channels, as well as Internet sources. The overwhelming bulk of the functionality on IP-TVs and IP-DVPs cannot conceivably be classified as ACS.³¹

Panasonic agrees and describes in detail how its IP-TVs and IP-DVPs are designed primarily to deliver video content.³² These IP-TVs and IP-DVPs “are designed for displaying and delivering high-quality video content, whether ... delivered over the Internet or through more traditional means.”³³ As the CEA Waiver Petition states, by enabling consumers to access video content from the Internet and from traditional linear broadcast and non-broadcast channels on a single device, manufacturers are facilitating the achievement of the public policy goals of the Commission’s National Broadband Plan.³⁴

In addition, although the *ACS Order* notes that “equipment and services may have multiple primary, or co-primary purposes,”³⁵ that is not the case for IP-TVs and IP-DVPs. ACS features on these devices are clearly peripheral in nature, and the fact that TV-watching

³⁰ See 47 C.F.R. § 14.5 (providing that the Commission may, “[o]n its own motion or in response to a petition,” waive the ACS requirements for a class of equipment used to provide or access ACS that “[i]s capable of accessing [ACS]” and “[i]s designed for multiple purposes, but is designed primarily for purposes other than using ACS”).

³¹ See ACB Reply Comments at 7. ACB fails to identify any specific ACS feature of IP-TVs or IP-DVPs as a primary purpose of those devices. *See id.*

³² See Panasonic Comments at 4–6.

³³ *See id.* at 5.

³⁴ See CEA Waiver Petition at 11 (citing FCC, *Connecting America: The National Broadband Plan* at 51 (Mar. 16, 2010); *Video Device Competition*, Notice of Inquiry, 25 FCC Rcd 4275, 4294–95 (2010) (Statement of Chairman Julius Genachowski)).

³⁵ *ACS Order*, 26 FCC Rcd at 14635 ¶ 184; *see* Opposition at 4.

consumers access ACS services through “second screens” reinforces the reality that IP-TVs and IP-DVPs are designed primarily to deliver video content.³⁶

Finally, both legally and practically, the Groups are incorrect regarding manufacturers’ marketing of the devices that would be subject to the waiver.³⁷ As a legal matter, neither the CVAA nor the waiver rules require that manufacturers refrain from marketing ACS apps or features in order to qualify for a waiver. More practically, the CEA Waiver Petition and the Panasonic comments demonstrate that IP-TVs and IP-DVPs are marketed primarily as products that may enhance the user’s television viewing experience.³⁸ As Panasonic notes, its IP-TVs and IP-DVPs are “intended primarily to provide an outstanding TV experience displaying video” and are marketed as such, even though it and other companies market products as having numerous capabilities beyond their primary purpose of delivering video and entertainment content to consumers.³⁹ This is consistent with the popularity among purchasers of Panasonic IP-TVs of video-related apps, such as Netflix, YouTube, Amazon Video, and Hulu™ Plus, as showcased on Panasonic’s website.⁴⁰ Similarly, the CEA Waiver Petition lists popular apps for IP-TVs produced by other manufacturers, as well as statements made by manufacturers in marketing

³⁶ See Panasonic Comments at 7–8.

³⁷ See Groups Opposition at 5 (asserting that the ACS features of IP-TVs and IP-DVPs are “prominently” included in the marketing materials for these products); see also ACB Reply Comments at 7.

³⁸ See CEA Waiver Petition at 8–9, 15; Panasonic Comments at 6. Panasonic Comments at 10 & n.15.

³⁹ *Id.* at 6.

⁴⁰ See *id.*

materials for IP-TVs and IP-DVPs, all of which demonstrate that the primary purpose of IP-TVs and IP-DVPs is to deliver video programming.⁴¹

B. The Length of the Waiver Sought for IP-TVs and IP-DVPs Is Consistent with the *ACS Order* and Should Not Be Limited As Requested in the Opposition

The Opposition's request that any waiver be limited to a year from the date of grant is completely arbitrary and therefore unwarranted.⁴² It ignores the Commission's explicit holding that the term of an ACS waiver should be based on the length of covered products' lifecycles. The *ACS Order* holds that all products and services covered by a class waiver and introduced into the market during the period the class waiver is in effect will be subject to the waiver for the duration of the life for those particular products and services.⁴³ Thus, the Commission wisely decided that it would not take a one-size-fits-all approach when determining the length of the waiver period for a class of ACS equipment. Instead the term of class waivers is to be determined on a case-by-case basis, based on the lifecycle of the covered products.

The length of the requested waiver for IP-TVs and IP-DVPs is properly based on this lifecycle approach.⁴⁴ The CEA Waiver Petition establishes that the typical product lifecycle for IP-TVs and IP-DVPs is three years, and then seeks a waiver for all models of equipment that meet the relevant class definitions and that are first manufactured prior to July 1, 2016.⁴⁵ As a

⁴¹ See CEA Waiver Petition at 8–10, 15–16.

⁴² See Groups Opposition at 6.

⁴³ *ACS Order*, 26 FCC Rcd at 14640 ¶ 194.

⁴⁴ See *id.* Thus, ACB's concerns about the proposed length of the requested waiver are unfounded. See ACB Reply Comments at 7.

⁴⁵ See CEA Waiver Petition at 7–8, 13–14.

result, the requested waiver would extend for a period that is actually *less than* three years after October 8, 2013, the end of the phase-in period for the ACS rules.⁴⁶

Pursuant to the *ACS Order*, because CEA is not requesting a class waiver for multiple generations of products, CEA is required only to demonstrate why a class waiver is warranted in the first instance.⁴⁷ Moreover, the Commission should reject the Groups' suggestion that, assuming a class waiver for IP-TVs or IP-DVPs of no more than a year, the waiver recipients should then bear the burden of showing why the waiver should extend through the end of the product lifecycle.⁴⁸ The *ACS Order* provides no basis for such a requirement.⁴⁹

The brief interval – until July 1, 2016 – requested for the waiver also is consistent with manufacturers' implementation of future accessibility regulations under the CVAA. As Panasonic explains, the short interval for the waiver requested by CEA would coordinate well with manufacturers' compliance with regulations still to be adopted governing user interfaces and navigation.⁵⁰

C. Each Class of Equipment Covered by the Requested Waiver – IP-TVs and IP-DVPs – Is Sufficiently, and Specifically, Defined in the Petition

Contrary to the Opposition's claims,⁵¹ the classes of equipment specified in the CEA Waiver petition are carefully and narrowly defined,⁵² and the scope of CEA's waiver request is

⁴⁶ See *id.* at 7, 13.

⁴⁷ See *ACS Order*, 26 FCC Rcd at 14639–40 ¶¶ 193–95.

⁴⁸ See Groups Opposition at 6.

⁴⁹ See *ACS Order*, 26 FCC Rcd at 14639–40 ¶¶ 193–94.

⁵⁰ See Panasonic Comments at 10 (citing CVAA § 204.).

⁵¹ See Groups Opposition at 5–6.

⁵² See CEA Waiver Petition at 5–6, 12–13.

reasonable and permissible under the CVAA and the Commission's rules.⁵³ The CVAA permits waivers of the ACS rules for any class of ACS or ACS equipment that "is capable of accessing [ACS]" and "is designed for multiple purposes, but is designed primarily for purposes other than using [ACS]."⁵⁴

As defined in the CEA Waiver Petition, and supported by the record, IP-TVs and IP-DVPs each constitute a class of equipment that is capable of accessing ACS but is designed primarily for delivering video content, principally full-length, professional-quality video programming.⁵⁵ Thus, IP-TVs consist of digital TVs that can be connected to the Internet. The class is not meant to include smartphones, tablets, personal computers, or other general purpose computing platforms. Similarly, IP-DVPs include Internet-enabled Blu-ray DiscTM and DVD players, digital video recorders ("DVRs") (e.g., boxes used primarily for pay television service), and other similar digital video players, as well as players for streaming video.⁵⁶ Further, devices that are not designed and marketed primarily to display video content are specifically excluded from each of the respective covered classes of equipment.⁵⁷

The Groups' assertion that some IP-TVs include webcams, or pre-installed Facebook, Skype, and apps with video conferencing capabilities, misses the point.⁵⁸ As the CEA Waiver

⁵³ *See id.* at 5–10, 12–16.

⁵⁴ CVAA § 104(a) (codified at 47 U.S.C. § 617(h)(1)).

⁵⁵ *See* CEA Waiver Petition at 5–6, 12–13.

⁵⁶ *See id.* at 13.

⁵⁷ Contrary to the Opposition, there is no need for the Commission to establish a separate process for the public to file complaints about the application of the waiver to a particular model of equipment. *See* Groups Opposition at 6. The current process for filing complaints for alleged violations of the ACS rules is sufficient to address any concerns about the application of the waiver, in the event that the waiver is granted, as it should be.

⁵⁸ *See id.* at 2.

Petition demonstrates, the primary purpose of IP-TVs, as well as IP-DVPs, is the delivery of video content from both traditional linear broadcast and non-broadcast channels and Internet sources.⁵⁹ Additional features may support incidental uses of these devices, but do not alter their primary non-ACS purpose.

IV. CONCLUSION

Consistent with Section 716 of the Act and the Commission's rules, CEA requests that the Commission expeditiously grant the requested waiver for IP-TVs and IP-DVPs as set forth in the CEA Waiver Petition.

Respectfully submitted,

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⁵⁹ See CEA Waiver Petition at 8–10, 15–16.