

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

**COMMENTS OF
THE CONSUMER ELECTRONICS ASSOCIATION**

The Consumer Electronics Association (“CEA”)¹ hereby submits these comments in support of the petition filed by the National Cable & Telecommunications Association (“NCTA”) seeking waiver of the Commission’s rules mandating access to advanced communications services (“ACS”) and equipment² for people with disabilities (the “NCTA Petition”).³ CEA urges the Commission to grant NCTA’s time-limited waiver request for “cable

¹ 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 \$195 billion in annual factory sales and employ tens of thousands of people.

² See *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”).

³ National Cable & Telecommunications Association Petition for Waiver, CG Docket Nos. 10-213, 10-145, WT Docket No. 96-198 (filed June 1, 2012) (“NCTA Petition”); see *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, Public Notice, DA 12-984 (CGB 2012).

operator-supplied set-top boxes,” as defined in the NCTA Petition,⁴ that are manufactured prior to July 1, 2016. Such action would be consistent with the statutory criteria set forth in Section 716(h) of the Communications Act of 1934, as amended (the “Act”), and the waiver standard set forth in Section 14.5 of the Commission’s rules (the “ACS waiver standard”), because cable operator-supplied set-top boxes, as explained in the NCTA Petition, are used by consumers primarily to access video programming and not ACS. Moreover, grant of NCTA’s proposed waiver would satisfy the Commission’s general waiver standard, as set forth in Section 1.3 of the Commission’s rules,⁵ because the waiver would further the public interest by promoting continued technological innovation, as well as greater predictability and certainty for cable operators and set-top box manufacturers.

CEA has filed a similar petition for waiver of the ACS rules (the “CEA Petition”) for two classes of devices: Internet Protocol (“IP”)-enabled television sets (“TVs”) and IP-enabled digital video players (“DVPs”) (“IP-DVPs”) 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.⁶ CEA believes that the Commission should grant the NCTA Petition and the CEA Petition as quickly as possible and for the same reasons.

Under the ACS waiver standard, the Commission may waive the ACS rules for a distinct class of equipment that is capable of accessing ACS but designed primarily for a purpose other

⁴ *See id.* at 4 & n. 5.

⁵ *See* 47 C.F.R. § 1.3; *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).

⁶ CEA Petition for Waiver, CG Docket Nos. 10-213 and 10-145, WT Docket No. 96-198 (filed Mar. 22, 2012).

than accessing ACS.⁷ As stated in the NCTA Petition, the “primary function” of cable operator-supplied set-top boxes “is the reception, conversion, and presentation of video signals delivered by the cable system.”⁸ This statement is supported by marketing materials cited in the NCTA Petition, which demonstrate persuasively that cable operator-supplied set-top boxes are marketed primarily for non-ACS purposes.⁹

Additionally, like the CEA Petition, NCTA’s waiver request is time-limited; the waiver would apply only to cable operator-supplied set-top boxes manufactured prior to July 1, 2016. As stated in the NCTA Petition, the length of the proposed waiver is intended to apply only to set-top boxes that have already been manufactured, as well as those that are currently being manufactured or developed, for the lifecycle of each device.¹⁰ This three-year period is less than the six-year development, manufacturing, and deployment cycle for each device.¹¹ Pursuant to the lifecycle approach taken in the *ACS Order*,¹² subsequent generations of cable operator-supplied set-top boxes would not be covered by the proposed waiver.¹³

Finally, NCTA has shown that the proposed waiver will serve the public interest by fostering technological innovation, stimulating greater competition and investment in innovative technologies, and facilitating the efficient use of Commission resources.¹⁴ Thus, granting

⁷ See 47 C.F.R. § 14.5.

⁸ NCTA Petition at 5; *see id.* at 5–7.

⁹ *See id.* at 6.

¹⁰ *See id.* at 4–5.

¹¹ *See id.* at 4.

¹² See *ACS Order*, 26 FCC Rcd at 14639–40 ¶ 194.

¹³ See NCTA Petition at 5.

¹⁴ *See id.* at 7–10.

NCTA's proposed waiver would be consistent with Congress's goals, as expressed in the legislative history of the CVAA.¹⁵

For all of the foregoing reasons, and to promote the CVAA's public interest goal of balancing increased ACS accessibility with manufacturers' and service providers' ability to continue to innovate for the benefit of all consumers, the Commission should grant NCTA's waiver request, as well as the similar CEA Petition, as expeditiously as possible.

Respectfully submitted,

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¹⁵ See 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).