



August 13, 2012

VIA ELECTRONIC FILING

Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

RE: Notice of *Ex Parte* Meeting
CG Docket Nos. 10-213 and 10-145; WT Docket No. 96-198

Dear Ms. Dortch:

On Thursday, August 9, 2012, Claude Stout of the Telecommunications for the Deaf and Hard of Hearing, Inc. (TDI), Dr. Christian Vogler of the Technology Access Program (TAP) at Gallaudet University, Paul Schroeder of the American Foundation for the Blind, Laura Moy of the Institute for Public Representation (IPR) at Georgetown Law, and Andrew Phillips of the National Association for the Deaf (NAD) (collectively, “the Consumer Groups”) met with Kris Monteith, Greg Hlibok, Rosaline Crawford, Eliot Greenwald, John Herzog, and Jarvis Grindstaff of the Consumer and Governmental Affairs Bureau (CGB) to discuss pending petitions for waivers from advanced communications services (“ACS”) requirements from CEA, ESA, and NCTA.¹

The Consumer Group representatives expressed concern that members of the industry may be trying to make an end-run around the achievability test by using the primary purpose test for such large categories of products and services. If waivers are granted for such large categories, such as game play, IP TVs and digital video players, and leased set top boxes, we believe that the deaf and hard of hearing community as well as blind and visually impaired community will be unable to fully utilize large classes of ACS. This clearly runs counter to the Twenty-First Century Communications and Video Accessibility Act (“CVAA”) goal of ensuring that 54 million Americans with disabilities are able to fully utilize ACS. Moreover, the petitioners have given little assurance that they ever plan to make their equipment or services accessible in the future.

The representatives addressed both procedural and substantive concerns with the waiver petitions.

¹ CEA Petition for Waiver, CG Docket Nos. 10-213 & 10-145, WT Docket No. 96-198 (filed Mar. 22, 2012) (“*CEA Petition*”); Entertainment Software Association Petition for Waiver, CG Docket No. 10-213 (filed March 21, 2012) (“*ESA Petition*”); 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*”).

Procedural

The Consumer Groups expressed our frustration that the petitions largely failed to articulate examples of how ACS were utilized in their equipment or services, with a detailed explanation of why they believe their equipment or service was not designed primarily to be used for ACS purposes by the general public. It falls to opponents of the waiver petitions to do extensive research about the relevant classes of equipment and services and their ACS components. Some of the products at issue are still in the design cycle, and we do not have enough information to adequately evaluate the extent to which ACS will be utilized. As a procedural matter, the Commission should place the burden on the petitioner to show that 1) the petitioned-for class of equipment/services actually implements or will implement ACS functionality, and 2) the class warrants a waiver because it was designed primarily for purposes other than ACS. The petitioners are the only ones situated to provide this information about their own products, which is necessary for the Commission, the Consumer Groups, and the general public to evaluate the petitions. Moreover, if some devices in the petitioned-for classes do not even have ACS features and thus do not implicate the ACS rules at all, there is no reason for the Commission to grant ACS waivers for such overbroad classes. Petitioners need to provide specific facts and details to justify the scope of their proposed waivers, and the public and the Commission should not bear the burden of filling in the blanks.

In the absence of specific examples, Consumer Group representatives urged the Commission to test actual products within the petitioned-for classes to determine whether or not ACS features represent a primary or co-primary purpose and were designed to be such. Decisions to grant waivers should not be made based solely on the vague claims made by petitioners and without independent evaluations of the products and/or design plans. If such testing is performed, several products within each respective class should be examined to account for the extensive variation in the ACS components between products.²

Substantive

The Consumer Groups argued that in all three petitioned-for classes of equipment/services, there are a number of equipment/services in which ACS is clearly intended as the primary or a co-primary purpose. There is such substantial variation in products in these very broad classes. The Commission should thus reject these petitions or require petitioners to modify their petitions to identify appropriately narrow classes that do not extend over the products in which ACS was clearly intended to be a primary or a co-primary purpose. To grant a waiver for a class including both products in which ACS is not a primary purpose and products in which it was intended to be would be an injustice to people with disabilities and unnecessarily restrict their rightful access to important communication devices.

² The ACS Order explains that classes must be carefully defined and the Commission will “examine whether petitioners have defined with specificity the class of common equipment or services with common advanced communications features and functions for which they seek a waiver...” *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 Nos. 10-213, 10-145, WT Docket No. 96-198, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 14557, 14639, ¶ 193 (2011)(ACS Order).

Consumer Groups stressed that technology and communications are quickly evolving and many manufacturers and service providers are on the cusp of bundling more and more ACS components in their products. To grant class waivers for the length of time sought by petitioners would unfairly foreclose fair considerations of equipment and services as they and the intended use of ACS components within them evolve. We have all witnessed the speed in which smartphones changed how we communicate within a very short period of time, and predict that we will soon see the same happen with IP-TVs, IP-Digital Video Players (“IP-DVPs”), set-top boxes, video game consoles, and other devices taking center stage in consumers’ living rooms.

As an example of how technology and ACS is evolving, following the meeting, Mr. Stout sent an email to those who attended the meeting containing a link to a publicly available video that illustrates the direction in which communications technology is evolving. The video, called “A Day Made of Glass... Made Possible by Corning,” illustrates uses of glass “in the near future.”³ Among the highlighted uses are the ability to send and receive instant messages through an app displayed on a touch-screen bathroom mirror and the ability to video chat through a display screen on the kitchen counter.

With regards to the ESA petition, we provided examples of games where ACS is clearly an intended primary or co-primary purpose. We discussed Second Life, which is a virtual world where people meet, communicate and interact with each other through avatars.⁴ Additionally, many games now advertise their ACS components, such as games distributed via the Steam platform.⁵ Millions of people are now using games to interact and communicate with each other and people with disabilities should not be left out.

As for the CEA and NCTA petitions, we are seeing more and more televisions, digital video players, and set top boxes designed to be used for ACS by the general public in addition to traditional television programming. For instance, many of these products now support video conferencing, web browsing, email, VoIP telephone communication and more. Our living rooms are about to undergo a major transformation, just as our telephones did with the introduction of the smartphone. It would be grossly unfair and contrary to the letter and spirit of the CVAA to deprive people with disabilities of these advances in ACS.

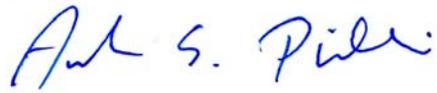
Ultimately, if petitioners feel that it is too burdensome to provide access to ACS in their equipment or services, they should make a case under the achievability test. The primary purpose test should only allow for rare exceptions to the ACS rules. To allow product makers to exploit it instead as a loophole to avoid the rules altogether would be at odds with the CVAA. We appreciated the opportunity to meet with CGB and the Disability Rights Office to discuss this important issue.

³ A Day Made of Glass... Made Possible by Corning, http://www.youtube.com/watch?v=6Cf7IL_eZ38 (last visited August 12, 2012).

⁴ What Is Second Life?, <http://secondlife.com/whatis/?lang=en> (last visited August 12, 2012) (“Second Life is a 3D world where everyone you see is a real person and every place you visit is built by people just like you.”).

⁵ Steam advertises itself as the “Ultimate Online Game Platform” and encourages people to join the Steam Community where they can “Find someone to play with, meet up with friends, connect with groups of similar interests, and host and join chats, matches, and tournaments.” Further, Steam encourages users to “Chat with your friends while gaming” such as through a microphone. See: <http://store.steampowered.com/about/>.

Respectfully submitted,

A handwritten signature in blue ink that reads "Andrew S. Phillips". The signature is written in a cursive style.

Andrew S. Phillips, Esq.
Policy Counsel

cc: Kris Monteith (CGB)
Greg Hlibok (CGB)
Rosaline Crawford (CGB)
Eliot Greenwald (CGB)
John Herzog (CGB)