

August 28, 2012

VIA ELECTRONIC FILING

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

RE: Supplement to Oppositions
CG Docket Nos. 10-213 and 10-145; WT Docket No. 96-198

Dear Ms. Dortch:

The Rehabilitation Engineering Research Center on Telecommunications Access (RERC-TA)¹ along with NAD and TDI (collectively, the “Consumer Groups”) would like to supplement our oppositions to the pending petitions for waivers from advanced communications services (“ACS”) requirements from CEA, ESA, and NCTA.² We conducted our own research into the equipment and services at issue in the pending petitions for waiver and included many examples where ACS is clearly a primary or co-primary purpose in many of the equipment and services covered by the petitioned for class waivers. These examples show that the combined effect of these petitions, if granted, will affect nearly every Internet connected piece of equipment or service in our living rooms. These classes are incredibly broad, and have not been tailored narrowly to cover only classes of equipment where ACS is not a primary or co-primary purpose. We urge the FCC to consider our examples, the ramifications of granting these waivers, and the untold number of products where ACS functionality is clearly a primary or co-primary purpose, and which would fall under these broad class waivers.

1 Background

As Consumer Groups representatives explained to FCC staff members on August 9 and documented in our notice of *ex parte* communications filed on August 13, in all three petitioned-for classes of equipment/services, we believe there are a number of equipment/services in which ACS is clearly intended as the primary or a co-primary purpose. We expressed frustration that all three petitioners have failed to provide specific examples of how ACS were utilized in their equipment or services, with detailed

¹ The contents of these comments were developed with funding from the National Institute on Disability and Rehabilitation Research, U.S. Department of Education, grants number H133E090001 (RERC on Telecommunications Access). However, those contents do not necessarily represent the policy of the Department of Education, and you should not assume endorsement by the Federal Government.

² 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*”).

explanations of why they believe their equipment or services were not designed primarily to be used for ACS purposes by the general public.

We argued that the petitioners must be required to provide this information because they 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. Failing the provision of that key information, the Commission should reject all three waiver 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 the primary or a co-primary purpose.

To provide further evidence that all three petitioned-for classes of equipment/services--as currently defined--extend over equipment/services in which ACS is clearly intended as the primary or a co-primary purpose, we now file this supplement to our waiver petition oppositions filed on June 14th and July 23rd, 2012.³

2 ACS is a Co-Primary Purpose of a Number of Games and Gaming Platforms

In-game communications have proliferated in recent years, especially among the younger generation, as an ex parte filing by Evan Spytek so eloquently demonstrates.⁴ Not only do they regularly avail themselves of in-game communications, but they also use games for the primary purpose of communicating with each other across the country and making new friends, rather than for the gameplay itself. To argue otherwise would deny the strong social and communication components of contemporary games, gaming network, and gaming hardware. Moreover, even consoles that were initially marketed as gaming machines are now fitted with ACS functionality and marketed for their communication abilities first, rather than for playing games. This constitutes strong evidence, detailed below, that the focus of gaming has shifted to encompass ACS as a co-primary purpose.

2.1 In-game communications are used to form relationships

This article discusses how a couple met, then became friends through the in-game communication feature of “World of Warcraft,” and eventually became married.

A “World of Warcraft” Wedding (February 2007), available at: <http://voices.yahoo.com/a-world-warcraft-wedding-206654.html?cat=19>

³ The Consumer Groups’ Opposition to CEA’s Petition for Waiver, CG Docket Nos. 10-213 & 10-145, WT Docket No. 96-198 (filed June 14, 2012); The Consumer Groups’ Opposition to ESA’s Petition for Waiver, CG Docket Nos. 10-213 & 10-145, WT Docket No. 96-198 (filed June 14, 2012); The RERC-TA’s Opposition to NCTA’s Petition for Waiver, CG Docket Nos. 10-213 & 10-145, WT Docket No. 96-198 (filed July, 23 2012).

⁴ Evan Spytek. Communication is Important in Videogames. Ex parte submission, CG Docket Nos. 10-213 & 10-145, WT Docket No. 96-198 (filed August 17, 2012).

Players are utilizing the ACS features of the Xbox 360 to form romantic relationships and friendships.

This article describes the first meeting of a long-distance couple that met while playing “Halo 3” in 2007 (July 2012), available at: <http://www.nationalledger.com/lifestyle-home-family/halo-couple-finally-meets-after-372589.shtml#.UCvxOhyd54c>

2.2 In-game communications are used to help players overcome social anxieties

This article discusses how the ACS functions of “World of Warcraft” helps (American) players to overcome their social anxieties

A “World of Warcraft” guild that is comprised of players with social anxieties (July 2012), available at: <http://wow.joystiq.com/2012/07/19/guild-helps-anxiety-ridden-players-get-by-with-a-little-help-fro/>

[Paranoid-Emerald Dream](#): The original “World of Warcraft” guild for players with social anxieties; based in Europe; served as inspiration for the aforementioned American counterpart.

2.3 In-game communications are used for teamwork

In-game ACS features are touted as a co-primary purpose of the game in this article.

This preview for “Guns of Icarus Online” emphasizes that in-game communication with team members will be a critical element in team success (July 2012), available at: <http://multiplayerblog.mtv.com/2012/07/19/guns-of-icarus-online-preview/>

The co-primary purpose of Diablo III is cooperative play with friends and other individuals.

This article describes Blizzard Entertainment’s emphasis on playing with friends as part of its technical requirements for “Diablo III” (July 2012), available at: <http://gamepolitics.com/2012/07/19/open-letter-blizzard-diablo-iii-community>

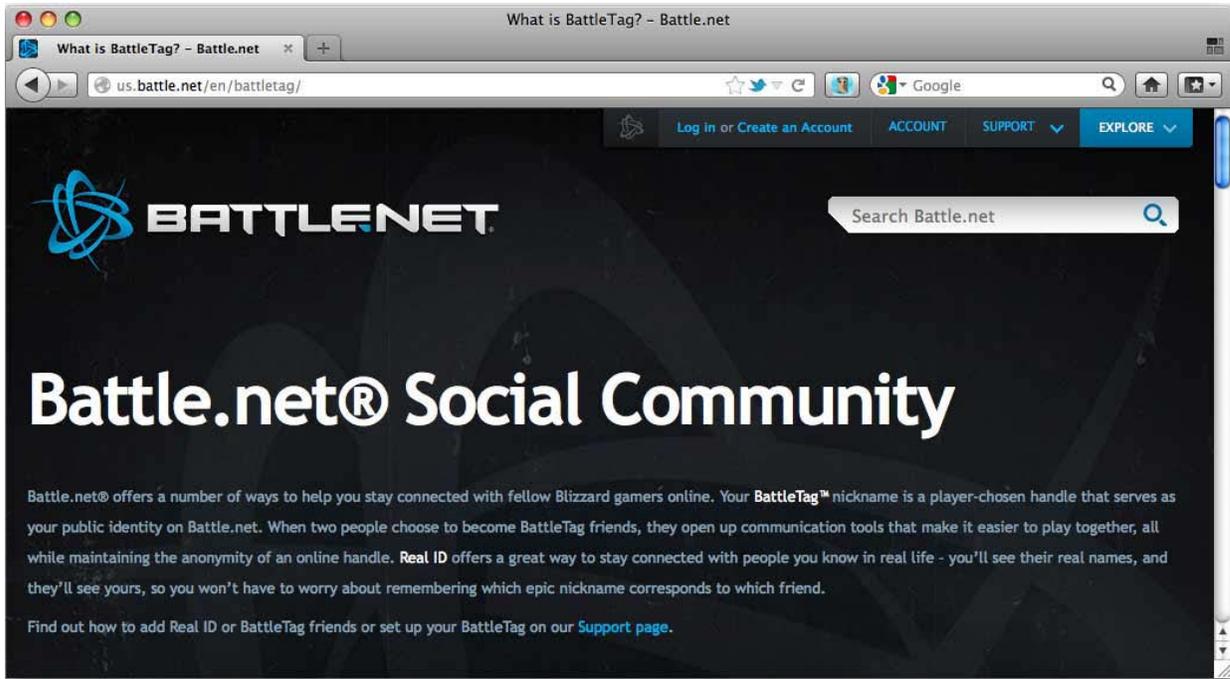
2.4 Game consoles and in-game communications are increasingly moving toward ACS functionality and marketed as such

This article from the Eve Online Wiki website explains that ACS voice-over features play an integral part in the game and does not make mention of alternative methods of in-game communication, particularly a text-based format

This article highlights the centrality of voice-based communications in the MMORPG, “EVE Online,” (November 2011) available at: http://wiki.eveonline.com/en/wiki/EVE_voice

The direction of BattleNet shows that the gaming experience has, without question, evolved to the point where ACS features are clearly a co-primary purpose of gameplay.

This description of Blizzard Entertainment’s “BattleNet” community highlights the increasingly social nature of online gaming and touts access to a wide range of “communication tools,” available at: <http://us.battle.net/en/battletag/>



Microsoft is actively advertising the Xbox 360 as an ACS device even more primarily than a gaming machine.

The website for the Xbox 360 advertises “Social” before “Games” in the navigation, and the first bullet point that shows up is “Send and receive messages.”

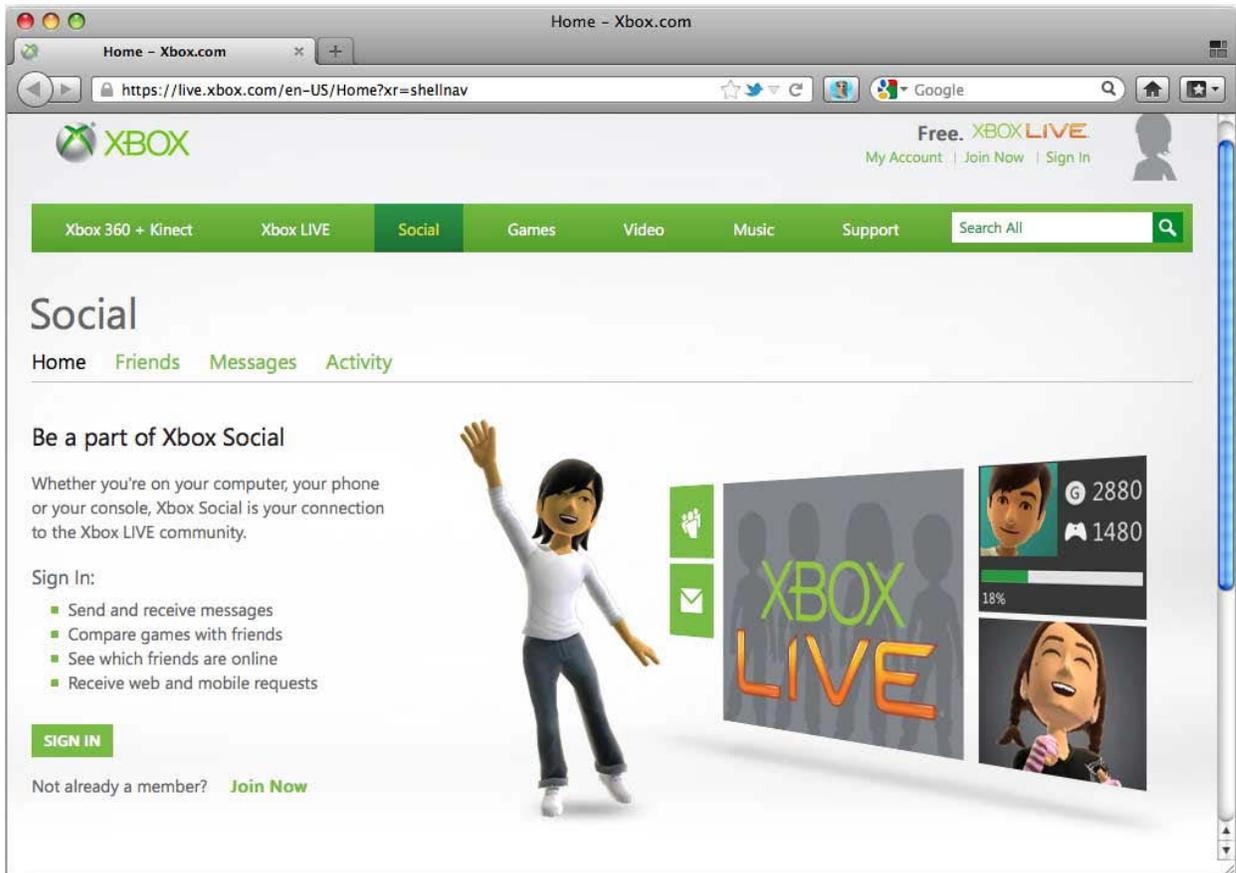


Image from <https://live.xbox.com/en-US/Home?xr=shellnav>.

The PlayStation is moving in the same direction.

<http://us.playstation.com/psn/community/>

Technical advances have enabled the Xbox 360 to become an ACS device; an example of how the Xbox 360's primary purpose has evolved from “gaming machine.”

It is already possible to integrate Facebook with Xbox 360/Xbox Live, available at: <http://support.xbox.com/en-US/apps/facebook/facebook-setup>

The PlayStation can likewise be integrated with social media.

<http://www.playstationlifestyle.net/2010/06/28/playstation-network-app-coming-to-facebook-more-ps3-integration/>

Social media integration also works with the Wii.

This Wiki website mentions that it is feasible to utilize the Nintendo Wii's built-in ACS features to download and access Facebook. http://wiki.answers.com/Q/Can_you_go_on_Facebook_with_your_Wii

This gaming community touts ACS features as a co-primary purpose for social activities.

Rockstar Games (publisher/developer of mass market titles such as *Grand Theft Auto*, *Max Payne*) has established its own in-house gaming community, "Rockstar Games Social Club," which emphasizes the social component of online gameplay, available at: <http://socialclub.rockstargames.com/>

3 ACS is a Co-Primary Purpose of a Number of Set-Top Boxes

Set-top boxes with ACS functionality are already available on the market, as documented below.

This set-top box supports ACS and is marketed as such.

Google Android 4.0 iCS Smart TV set top box 1080P HD Video Player, available at: http://www.aliexpress.com/store/product/Google-Android-4-0-iCS-Smart-TV-set-topbox-1080P-HD-Video-Player/803232_494687309.html

ACS is mentioned as a use of this set-top box.

Netgear to release broadband-connected TV set-top (September 2011), available at: <http://www.michaelsinsight.com/2011/09/netgear-to-release-broadband-connected-tv-settop.html>

Comcast is touting ACS functionality and social media integration in its set-top boxes.

Comcast Unveils New Xfinity TV Set-Top Boxes With Integrated Facebook And Intel Processors (June 14, 2011), available at: <http://www.slashgear.com/comcastunveils->

[new-xfinity-tv-set-top-boxes-with-integrated-facebook-and-intel-processors-14159375/](http://www.bestbuy.com/site/14159375/)

Best Buy prominently points out ACS features in its guide on set-top boxes, indicating that ACS is a co-primary purpose.

Smart Set-Top Boxes: What kind of content can I get? – Accessing Facebook and Twitter. Available at: <http://www.bestbuy.com/site/Electronics-Promotions/Smart+Settop+Boxes/pcmcat275100050012.c?id=pcmcat275100050012>

Comcast is partnering with Skype to bring ACS via HD video calling to TV sets/set-top boxes.

Comcast Partners With Skype To Bring HD Video Calling To Your TV (June 14, 2011). Available at: <http://www.slashgear.com/comcast-partners-with-skype-to-bring-hdvideo-calling-to-your-tv-13159104/>

4 ACS is a Co-Primary Purpose of a Number of IPTVs

There are numerous examples, documented below, that ACS functionality is already present in IPTVs and prominently marketed as a co-primary purpose.

The following article uses ACS functionality as a criterion to rank IPTVs.

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

Consumers are increasingly utilizing connected TVs to access ACS

This infographic relates to the previous point and shows that consumers are increasingly utilizing connected TVs (and the number of devices that are able to connect) to stream video content and access other features and there is clear demand for TVs with native connections, available at: <http://www.business2community.com/entertainment/infographic-we-want-our-connected-tv-0251627>

TV hardware is being designed for accessing ACS functionality.

Remote comes with QWERTY keyboard <http://www.audioholics.com/reviews/televisions/flat-panels/samsung-smart-tv-video-8000>

The next example shows that ACS providers are offering the integration of their services into the television experience, which indicates that ACS has become a primary purpose of such devices.

Skype already has various offerings for integrating their products with televisions, ranging from installing a “TV camera,” to utilizing Blu-Ray players, to televisions with native, built-in Skype products, available at: <http://www.skype.com/intl/en-us/get-skype/on-your-tv/>

Major Internet providers are already taking advantage of smart television by offering ACS features in conjunction with video and television content, which indicates that ACS is now a co-primary purpose of these products.

Yahoo! already offers a “connected TV” service, with access to widgets such as Twitter and Facebook, in conjunction with other video streaming, auction, and gaming widgets, available at: <http://connectedtv.yahoo.com/services/tv-widgets/>

Panasonic televisions are being offered with ACS features as a co-primary purpose of the device.

The description of Panasonic’s newer offerings of IPTVs indicates that their promotional materials portray the ACS features of these TVs as a co-primary purpose, available at: http://www.amazon.com/Panasonic-VIERA-TC-P42ST30-42-Inch-Plasma/dp/B004M8SBPW/ref=dp_ob_title_ce

Several 2012 Panasonic TVs already offer the ability to connect to social networks and Skype. These features are marketed to consumers:

2012 Panasonic VIERA LCD-LED HDTV Comparison Chart

Series	WT50	DT50	ET5	E50	E5	X5	U5	C5
Models:	47", 55"	47", 55"	42", 47", 55"	42", 47", 55"	32", 37", 42", 47"	24", 32"	42"	32"
HD Resolution	1080p Full HD 3D	1080p Full HD 3D	1080p Full HD 3D	1080p	1080p	720p/1080p	1080p	720p
HDMI/USB Port	4/3	4/3	4/2	4/2	4/2	3/1; 1/1	3/1	2/1
PC Input	1 SD Slot/1 PC	1 SD Slot/1 PC	1 SD Slot/1 PC	1 SD Slot/1 PC	1 SD Slot/1 PC	1 SD Slot/1 PC	1 PC	1 PC
IPS LED-LCD Panel	Clear Panel Pro	Clear Panel Pro	Clear Panel	Clear Panel	Clear Panel	LCD Panel	LCD Panel	LCD Panel
178 Degree Viewing Angle	•	•	•	•	•	•	•	•
VIERA Link	•	•	•	•	•	•	•	•
HDMI 1.4 w/ Audio Return Channel	•	•	•	•	•	•	•	•
Media Player (SD, USB, DLNA)	•	•	•	•	•	•	•	•
DLNA Capability (via LAN)	•	•	•	•	•	•	•	•
Wi-Fi Capability	Built-in Wi-Fi	Built-in Wi-Fi	Built-in Wi-Fi	Wi-Fi Ready	Wi-Fi Ready	•	•	•
Smartphone Remote Function*	•	•	•	•	•	•	•	•
VIERA Connect	•	•	•	•	•	•	•	•
Social Networking TV	•	•	•	•	•	•	•	•
E-Help	•	•	•	•	•	•	•	•
Skype Communication*	•	•	•	•	•	•	•	•
3D Real Sound	•	•	•	•	•	•	•	•
2D-3D Conversion	w/ Face Detection	•	•	•	•	•	•	•
Web Contents Smoother	•	•	•	•	•	•	•	•
1920 Backlight Scanning	•	•	•	•	•	•	•	•
24p Cinematic Playback	•	•	•	•	•	•	•	•
ISFccc	•	•	•	•	•	•	•	•
Pro Settings	•	•	•	•	•	•	•	•
VIERA Touch Pad Controller	•	•	•	•	•	•	•	•
Local Dimming	•	•	•	•	•	•	•	•
Multitask Function	•	•	•	•	•	•	•	•
360 Backlight Scanning	•	•	•	•	•	•	•	•
USB Player	•	•	•	•	•	•	•	•



Comparison chart from Amazon product page for Panasonic WT50, <http://www.amazon.com/Panasonic-VIERA-TC-L47WT50-47-Inch-LED-LCD/dp/B00752RAWW/>.

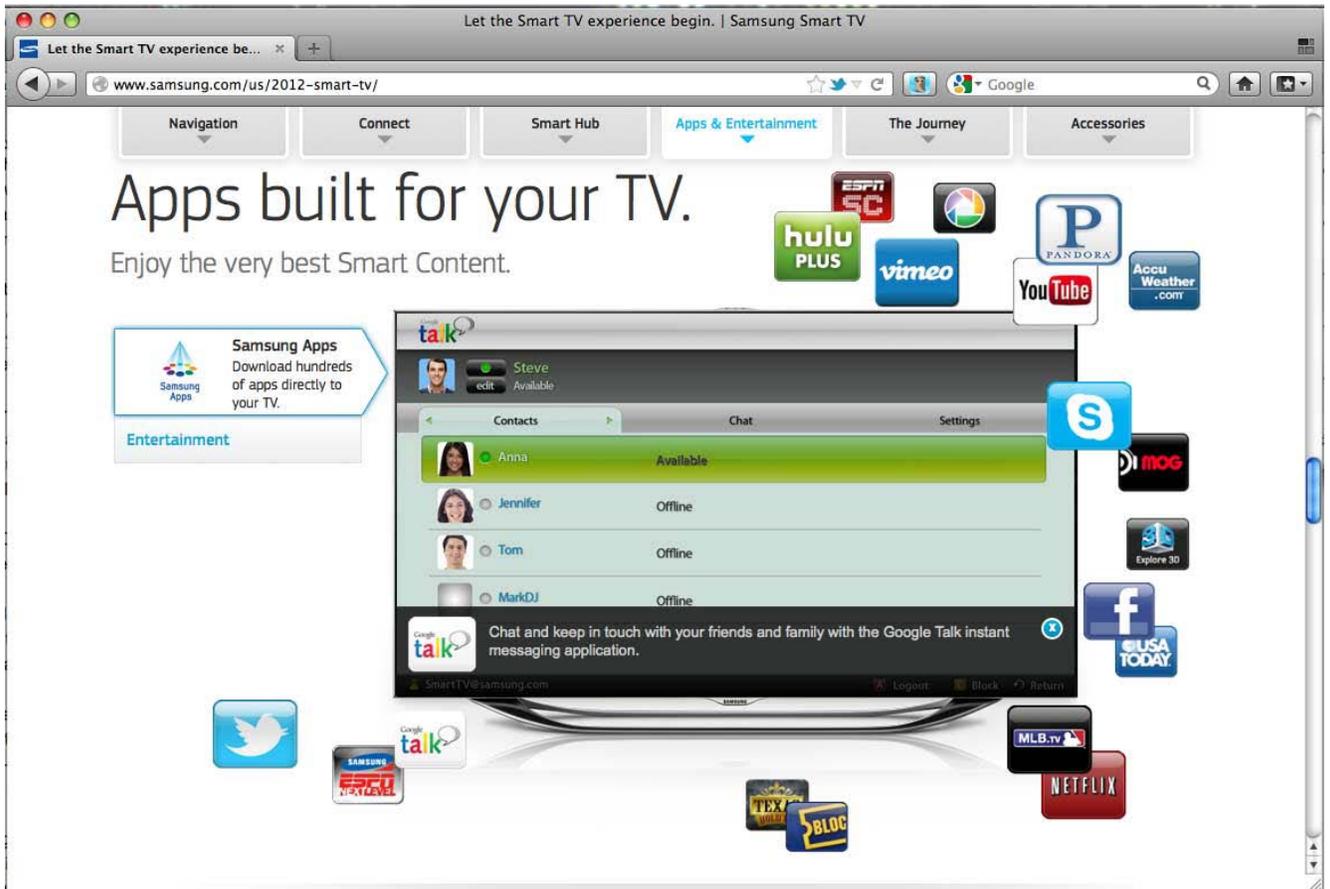
Samsung televisions are being offered with ACS features as a co-primary purpose of the device.

Some Samsung TVs are marketed with built-in cameras for video chat:



Screenshot from Samsung website, <http://www.samsung.com/us/2012-smart-tv/>.

Samsung also advertises the ability to install ACS apps as a key feature for consumers:



Screenshot from Samsung website, <http://www.samsung.com/us/2012-smart-tv/>.

Moreover, Samsung markets its IPTVs to consumers as capable of receiving updates much more frequently than the typical [X]-year product cycle, which also implies that the TV will last much longer than the typical product cycle. The company tells consumers that “[s]oon you will be able to update your Smart TV every year . . . without having to replace the whole set”:



Screenshot from Samsung website, <http://www.samsung.com/us/2012-smart-tv/>

Sony is entering the market for smart TVs and already touts ACS features as part of their advertising. Sony's Smart TV which is powered by Google TV boasts on BestBuy's website that it allows users to " Surf the Web, check e-mail, update your Facebook status or track your fantasy sports team while watching TV at the same time; no need to switch between your TV and the computer to access content."

http://www.bestbuy.com/site/Electronics+Promotions/Sony+and+Google+TV/pcmcat221100050000.c?id=pcmcat221100050000&ref=30&loc=KW-3374&s_kwcid=TC|8070|sony%20smart%20tv||S|e|15275221871&gclid=CNyNw6fyirICFcdxOgodhx4Ajg

5 Conclusion

We have demonstrated in a plethora of examples that ACS is already a primary and co-primary purpose in many pieces of equipment and services, which fall within the overly-broad petitioned-for classes of games, set-top boxes, and IPTVs. Consequently, even a temporary waiver would not just apply to hypothetical future products, but to many products that already exist in reality, and thus exclude people with disabilities from participating in telecommunications. If the industry believes that certain products or classes of products should be exempt from the ACS rules, they should provide narrowly tailored petitions for waiver that are supported by facts and details. Ultimately, the Consumer Groups believe that the primary/co-primary purpose should be the exception and not a loophole exploited to seek out a waiver for nearly every IP connected device in the living room. We have the achievability test where it may be burdensome to make these products accessible and we view this as an end run around the achievability test.

Respectfully submitted,

/s/ Christian Vogler

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