

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)
)
Implementation of Sections 716 and 717 of the) CG Docket No. 10-213
Communications Act of 1934, as Enacted by the)
Twenty-First Century Communications and Video)
Accessibility Act of 2010)
)
)
)
Opposition to Coalition of E-Reader)
Manufacturers' Petition for Waiver of Sections 716)
and 717 of the Communications Act and Part 14)
of the Commission's Rules Requiring Access to)
Advanced Communications Services (ACS) and)
Equipment by People with Disabilities)

**OPPOSITION TO PETITION FOR WAIVER
BY COALITION OF E-READER MANUFACTURERS**

Marc Maurer
President
National Federation of the Blind
200 East Wells Street
Baltimore, MD 21230

Melanie Brunson
Executive Director
American Council of the Blind
2200 Wilson Boulevard, Suite 650
Arlington, VA 22201-3354

Howard Rosenblum
Chief Executive Officer
National Association of the Deaf
8630 Fenton Street, Suite 820
Silver Spring, MD 20910

Jo Anne Simon
President
Everyone Reading
71 West 23rd Street, Suite 1527
New York, NY 10010

Lindsay Jones
Executive Director of Public Policy and
Advocacy
National Council for Learning Disabilities
1101 Vermont Ave. NW, Suite 400
Washington, D.C. 20005

Colin Schwartz
Senior Associate for Policy and Advocacy
American Association of People with
Disabilities
2013 H Street NW, 5th Floor
Washington, DC 20006

Kelly Buckland
Executive Director
The National Council on Independent
Living
2013 H Street NW, 6th Floor
Washington, DC 20006

Arnt Holte
President
World Blind Union
1929 Bayview Avenue
Toronto, Ontario

George Kerscher
Secretary General
DAISY Consortium
1203 Pineview Drive
Missoula, MT 59802 USA

Dmitri Belser
Executive Director
Center for Accessible Technology
Ed Roberts Campus
3075 Adeline Street, Suite 220
Berkeley, CA 94703

Claude L. Stout
Executive Director
Telecommunications for the Deaf and Hard
of Hearing, Inc.
8630 Fenton Street, Suite 121
Silver Spring, MD 20910

Larisa Cummings
Staff Attorney
Disability Rights Education and Defense
Fund
Ed Roberts Campus
3075 Adeline Street, Suite 210
Berkeley, CA 94703

Larry Paradis
Executive Director
Disability Rights Advocates
2001 Center St., Fourth Floor
Berkeley, CA 94704

L. Scott Lissner
President
Association on Higher Education and
Disability
281 W. Lane Ave
Columbus, OH 43210

Joshua A. Miele, Ph.D.
Director
The Smith-Kettlewell Video Description
Research and Development Center
2318 Fillmore St.
San Francisco, CA 94115

Joanne Karger, J.D., Ed.D.
Research Scientist/Policy Analyst
Center for Applied Special Technology
40 Harvard Mills Square, Suite 3
Wakefield, MA 01880

Eric Buehlmann
Deputy Executive Director for Public Policy
National Disability Rights Network
900 Second Street, NE
Suite 211
Washington, DC 20002

Bryan Bashin
CEO
Lighthouse for the Blind and Visually
Impaired
214 Van Ness Avenue
San Francisco, CA 94102

Gregg C. Vanderheiden, Ph.D.
Director and Co-Principal Investigator
Rehabilitation Engineering Research Center
on Telecommunications Access
Trace R&D Center University of Wisconsin-
Madison
1550 Engineering Drive, 2107 ECB
Madison, WI 53706

Christian Vogler, Ph.D.,
Co-Principal Investigator, RERC-TA
Director, Technology Access Program
Gallaudet University
800 Florida Ave., NE, SLCC 1116
Washington, DC 20002

James R. Fruchterman
President and CEO
Beneficient Technology, Inc.
480 South California Ave., Suite 201
Palo Alto, CA 94306-1609

Robert Joondeph
Executive Director
Disability Rights Oregon
610 SW Broadway - Suite 200
Portland OR 97205

Audrey Busch
Director of Policy and Advocacy
Association of Assistive Technology Act
Programs
1101 Vermont Avenue, #400
Washington, D.C. 20005

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SUMMARY

The twenty-three undersigned organizations, which include the National Federation of the Blind, the American Council of the Blind, the American Association of People with Disabilities, the National Council for Learning Disabilities, and other national and international organizations that represent the interests of people with disabilities, oppose the Coalition of E-Reader Manufacturers' request to exempt e-readers from the accessibility requirements of the Twenty-First Century Communications and Video Accessibility Act of 2010 (CVAA).

The Coalition's Petition for Waiver is both substantively and procedurally flawed. It attempts to argue that e-readers are beyond the scope of the CVAA, asserting that advanced communication services (ACS) are not a primary purpose of e-readers. To the contrary, as explained below, because ACS facilitates reading on e-readers, ACS is a co-primary purpose. Indeed, each member of the Coalition uses its webpages to advertise its ACS as a desirable feature of its e-reader.

So, too, the Coalition's assertion that the ACS found in e-readers is incidental and rudimentary is factually groundless: E-readers have comprehensive ACS that is designed for and intentionally included in e-readers for the purpose of enhancing users' reading experience.

Similarly without support is the Coalition's extravagant claim that making ACS accessible would require upgrades and optimization that would turn e-readers into multi-purpose tablets. Making ACS accessible would do no more than turn e-readers that persons without disabilities can use for reading into e-readers that all persons – with and without disabilities -- can use for reading.

Procedurally, the petition is flawed. The Coalition proposes limitations for the class of equipment to be covered in the waiver that are not meaningful and it ignores that waivers must be time-limited to the lifecycle of this generation of e-readers.

The Coalition claims, because it must, that making ACS accessible on e-readers would harm the public and fail to benefit people with disabilities. In making this appalling claim, it chooses not to recognize that over the last five decades, beginning with the Rehabilitation Act of 1973, in one piece of legislation after another, this country has repeatedly recognized as a national normative consensus that the public interest lies in mandating equal opportunity for persons with disabilities. It is for this reason that, under the Rehabilitation Act and the ADA, e-readers cannot be deployed in the classroom unless they are accessible. Indeed, this country has supported the international effort to establish a treaty that will increase access to books for the blind.

It is in defiance of these repeated expressions of the public interest that this petition makes its stand. If the FCC were to grant this waiver it would join the Coalition in endorsing discrimination against persons with disabilities as somehow in the public interest. It is not. Indeed, it is contrary to Congress' intent in enacting the CVAA to end discrimination in communication technology.

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**OPPOSITION TO PETITION FOR WAIVER
BY COALITION OF E-READER MANUFACTURERS**

I. INTRODUCTION

On May 16, 2013, the Coalition of E-Reader Manufacturers (“the Coalition”) submitted a Petition for Waiver (“the Petition”) requesting an exemption for e-readers from accessibility requirements under the Twenty-First Century Communications and Video Accessibility Act of 2010 (CVAA). The twenty-three undersigned organizations¹, which include National Federation of the Blind, American Council of the Blind, American Association of People with Disabilities, the National Council for Learning Disabilities, and other national and international organizations that represent the interests of people with disabilities object to this request, and strongly urge the Commission to reject the Petition.

The Coalition argues that it is entitled to a waiver because CVAA accessibility requirements are intended to apply to equipment used for advanced communication services (ACS) and e-readers are in a distinct class of equipment that is only designed, marketed, and used for the primary purpose of reading. The Coalition also claims that e-readers have limited and rudimentary ACS capability, and to meet the ACS accessibility requirements would require a “fundamental altering” of the devices that would harm public interest and fail to benefit

¹ The undersigned organizations include: the National Federation of the Blind, American Council of the Blind, National Association of the Deaf, Everyone Reading, National Council for Learning Disabilities, American Association of People with Disabilities, Trace R&D Center University of Wisconsin-Madison, World Blind Union, DAISY Consortium, Center for Accessible Technology, Telecommunications for the Deaf and Hard of Hearing, Inc., National Council on Independent Living, Disability Rights Education and Defense Fund, Disability Rights Advocates, Association on Higher Education and Disability, Smith-Kettlewell Video Description Research and Development Center, Center for Applied Special Technology, National Disability Rights Network, Lighthouse for the Blind and Visually Impaired, Gallaudet University, Beneficient Technology, Inc., Association of Assistive Technology Act Programs, and Disability Rights Oregon.

individuals with disabilities.² The Coalition proposes that the waiver apply only to devices that: (1) have no LCD screen; (2) have no camera; (3) are not offered or shipped to consumers with built-in ACS client applications; and (4) are marketed to consumers as reading devices and promotional material does not advertise the capability to access ACS.³

Although we recognize that the CVAA was not intended to cover every wireless device that may have incidental ACS, the Petition should be rejected because the Coalition has failed to demonstrate that e-readers meet the three criteria used by the Commission when deciding to grant a waiver.⁴ First, e-readers are capable of accessing ACS and have many ACS features that are central to the primary use of the devices. In fact, one cannot read⁵ any content on the e-reader without using the ACS features. Without access to an Internet browser, a user cannot purchase a book from the respective manufacturer's store. ACS functionality directly affects the functionality of the non-ACS feature of reading. Accordingly, ACS is the co-primary purpose of an e-reader's design and use. Second, the Coalition falsely claims that e-readers are not marketed for their ACS functions because customers are not looking for those features in an e-reader. The Coalition cites selective quotes from consumers and review articles but fails to mention that the Coalition members tout the ACS features of their e-readers on all of the web pages devoted to those devices and in their advertising materials.

² Coalition of E-Reader Manufacturers Petition for Waiver ("Petition"). Docket No. CG 10-213, filed May 16, 2013.

³ Coalition Ex Parte Letter Supplementing the Coalition Petition ("Supplementing letter"), filed July 17, 2013.

⁴ 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, WT Docket No. 96-168, CG Docket No. 10-145, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 14557 at ¶ 16 (2011) ("ACS Report and Order").

⁵ In the Petition, the Coalition repeatedly touts "reading" as the primary purpose of e-readers

The Coalition also fails to limit its waiver request temporally based on the product lifecycle. Essentially, the Petition requests a blanket, indefinite waiver for all e-readers, contrary to the purpose of the CVAA and the Commission's express requirements for a class waiver petition.⁶ The Petition fails to meaningfully define the class of products for which it seeks a waiver. These omissions invalidate the entire request.

In addition to not meeting the Commission's criteria for a waiver, the Coalition puts forth an almost farcical argument that requiring e-readers to comply with CVAA accessibility requirements would harm the public and not benefit individuals with disabilities. Since the emergence of e-readers, blind people and other persons with print disabilities have been lobbying manufacturers to make the devices accessible, which would allow blind people and other persons with print disabilities⁷ access to books and provide the Coalition with more customers. Furthermore, the Coalition is already under intense scrutiny from the Department of Justice to make e-readers accessible because of the proliferation of their use in the classroom.⁸ At its passage, the CVAA complemented the existing legal protections for persons with disabilities under the Americans with Disabilities Act ("ADA") and the Rehabilitation Act of 1973, applying long-standing policies of inclusion to twenty-first century technology. To grant a waiver from the CVAA requirements would undermine these other statutes and buck national and international trends toward increasing access to books for the blind and other persons with print disabilities. Furthermore, granting a waiver for e-readers would create a disability tax that places

⁶ ACS Report and Order, 26 FCC Rcd 14557 at ¶ 18.

⁷ "Print disabilities" refers to people who cannot effectively read print because of a visual, physical, perceptual, developmental, cognitive, or learning disability.

⁸ U.S. Department of Justice, Civil Rights Division and U.S. Department of Education, Office of Civil Rights. "Joint 'Dear Colleague' Letter: Electronic Book Readers" 29 June 2010. Online at: <http://www2.ed.gov/about/offices/list/ocr/letters/colleague-20100629.html>, accessed August 15, 2013.

added burdens on disabled users, requiring them to purchase more sophisticated and expensive electronic devices that are accessible if they wish to read on a portable electronic device, while non-disabled people have the option to purchase e-readers at a very low cost.

II. E-READERS DO NOT MEET THE REQUIREMENTS FOR A WAIVER.

The Commission is only authorized to waive the requirements of Section 716 for any class of equipment that (A) is capable of accessing an advanced communications service; and (B) is designed primarily for purposes other than using advanced communications services. If the ACS functions are a co-primary purpose of the device or if the equipment is marketed for the ACS features and functions, the Commission may not grant a waiver.⁹ Given the Commission's waiver analysis, the Coalition's petition fails to meet any of the criteria needed for a waiver.

A. E-readers employ ACS as a co-primary purpose.

The Commission's waiver inquiry must consider whether the equipment is capable of accessing ACS. By the Coalition's own admission, e-readers can access ACS and have multiple ACS functions. Because "in instances where equipment and services may have multiple primary or co-primary purposes, [that include ACS] waivers may not be warranted,"¹⁰ the Commission must determine whether the equipment in question is designed primarily for a purpose other than accessing ACS. The Coalition argues that differences in ACS functions between e-readers and tablets illustrates that ACS is not integral to the use and functionality of e-readers. To the contrary, ACS is a critical e-reader function that facilitates the primary use of the device—reading—thereby making ACS functionality a co-primary purpose.¹¹

⁹ ACS Report and Order, 26 FCC Rcd 14557 at ¶ 179.

¹⁰ ACS Report and Order, 26 FCC Rcd 14557 at ¶ 184.

¹¹ The Commission has recognized that a device with ACS capabilities can have a co-primary purpose with a non-ACS function. For example "many smartphones appear to be designed for several purposes, including voice communications, text messaging, and e-mail, as well as web

As an initial matter, e-readers are only useful if the user can access books. On all of the devices covered by the Petition, users access books by accessing the Internet through the devices' browsers. Under § 718 of the CVAA, browsers themselves must be accessible by October 2013. The Commission has made clear that browsers are "generally subject to the requirements of § 716."¹²

In the Petition, the Coalition first states that "...these devices are not designed with ACS as an intended feature," but then contradicts itself by stating that built-in browsers are "designed to facilitate simple browsing activities directly related to reading."¹³ If reading is the primary purpose of the device, and the ACS features facilitate activities directly related to reading, then the Commission must conclude that the features are not only an "intended" use of the devices, but that they are the intended co-primary purpose. Every type of ACS found on e-readers, including Wi-Fi access, web browsing/built-in browsing, and social media is intended to enhance the user's experience with the device.

The Coalition does not dispute that the browsers on its devices are inaccessible – rather, the Coalition claims that the browsers are so incidental to the purpose of an e-reader that the use of the browser does not defeat its Petition. This is simply inaccurate. For example, to purchase books or borrow from the public library, the Sony PRST2HBC, the Kobo Glo, and the Kindle Paperwhite use Wi-Fi accessed through a browser. In addition, the Kindle Paperwhite also has 3G support so that the consumer can lend books to others, play games, and use apps -- all

browsing...access to applications...The CVAA would have little meaning if [the Commission] were to consider waiving Section 716 with respect to the e-mail and text messaging features of a smartphone on the grounds that the phone was designed in part for voice communications...both could be co-primary purposes of a wireless handset." See ACS Report and Order 26 FCC Rcd 14557 at ¶ 187.

¹² ACS Report and Order, 26 FCC Rcd 14557 at ¶ 27.

¹³ See Petition at 7.

through the browser. A Kindle Paperwhite user might utilize the built-in web browser or 3G network to quickly purchase a book or sync up to a previous purchase. That user then connects over social media with friends, and ultimately decides to loan the book to another Kindle user or share a favorite passage with a friend. All of these models have social media features to allow users to send messages and other information, which are clearly ACS functions. Kobo Glo's online marketing, for example, prominently announces: "Share to your Facebook Timeline. Get social with your reading by connecting your Kobo account to your Facebook Timeline, so it's easy to share your favorite passages with your friends and find out what they're reading. It's the latest in digital book clubs."¹⁴ Not only do all of these features enhance the experience of reading, they are fundamental to the user's ability to read in the first place. The ability to buy books with the touch of a button and share information with friends instantaneously is the fundamental difference between reading a print book and reading an electronic book.

Because e-readers clearly have access to ACS, the Coalition attempts to deemphasize the role of ACS by mischaracterizing it as "theoretical," "ancillary," or "rudimentary." Kobo's boasting of the ease with which a user can post to Facebook or Amazon's crowing over the speed at which a Kindle user can share and receive data over the 3G network could hardly be called "rudimentary," and these features are certainly not theoretical. Built-in web browsers enhance the experience of buying books and accessing book-related content, and since the Coalition is claiming that the primary purpose of e-readers is reading the very books the manufacturers are encouraging users to purchase, read, discuss, and share, this feature is not "ancillary." In addition, the Coalition falsely claims that "[e]-readers do not contain apps for ACS,"¹ even though the Kindle Paperwhite supports such applications.

¹⁴ <http://www.kobo.com/koboglo/readinglife/>, accessed August 19, 2013.

Moreover, the development of e-reader ACS functionality over the last several years undermines the Coalition's claim that ACS functions are incidental to e-reader use. The Coalition claims that the "slow refresh rates on e-readers further discourages interaction" and that these limitations "would not encourage future use for ACS." Yet, over the last several years, the Coalition members have increased the ACS capabilities in their e-readers. The 2010 Kindle DX Graphite, the 2010 Kobo Wi-Fi, and the 2010 Sony PRS-350 lack some features that their 2012 counterparts have: built-in web browsers, supports for games and apps, and/or access to social media.¹⁵ If users were truly demanding a simple, single-purpose reading device, manufacturers would have no need to improve the ACS functionality of their products and add more features each year. The evolution of ACS capabilities in e-readers shows that the ACS functionality enhances and facilitates the functionality of the non-ACS function of reading, and that the Coalition members intend for users to access these functions as part of their reading experience.

When deciding whether to grant a waiver, the Commission must look at whether the equipment is capable of accessing ACS, not how the equipment fares in comparison to multipurpose or different types of equipment that are also designed for ACS. E-readers have access to ACS and ACS is critical to the functioning of e-readers. Accordingly, a waiver is not legally available.

B. ACS features are marketed as desirable uses of an e-reader

As part of the second criterion in the waiver analysis, the Commission must examine whether the petitioners market their products as ACS devices. Although the Coalition states

¹⁵ The 2010 Sony Reader PRS-305 did come with a built-in browser.

“[t]he webpage listings for e-readers do not mention or describe any ACS features...”¹⁶ a brief examination of those webpages demonstrate that each member of the Coalition advertises the ACS features of its e-readers.

The Kindle Paperwhite webpage advertises the product as “designed with readers in mind,” allowing users to “[s]hare highlighted sections, notes, and meaningful quotes on Facebook and Twitter directly... without leaving the page, or “[t]ake a break from reading to enjoy a selection of great games and applications specially designed for Kindle.”¹⁷

Reviewers considered Kobo’s “Reading Life,” the company’s built-in social networking technology, a major selling point at the 2011 launch of Kobo Touch.¹⁸ The webpage for the Kobo Touch says a perk of being a “Kobo Reader” is that “Kobo Reading Life lets you... connect with your Facebook friends,” and “every time you reach a reading milestone, you’ll earn Reading Life awards that you can share to your Facebook Timeline. You can also share your latest reads with your Facebook friends, and discover their bookshelves and reading stats. Get to know yourself a little better and connect with friends as you read.”¹⁹

Although the Coalition warns that e-readers have “rudimentary browsers” with slow refresh rates that discourage use for ACS, the Sony e-reader headline touts that “you can also save your favorite web content to enjoy any time with the Evernote® Clearly feature.”²⁰ The only use of the “Evernote® Clearly” feature is to allow users to pull content from the web, from

¹⁶ See Petition at 7.

¹⁷ <http://www.amazon.com/gp/product/B007OZNUCE>, accessed August 16, 2013.

¹⁸ Owen, *Kobo’s New E-Reader Aims Turn Reading into a Game*, <http://paidcontent.org/2011/05/23/419-kobos-new-e-reader-aims-to-turn-reading-into-a-game/>, accessed on August 16, 2013.

¹⁹ <http://www.kobo.com/kobotouch>, accessed August 19, 2013.

²⁰ <http://store.sony.com/webapp/wcs/stores/servlet/ProductDisplay?catalogId=10551&storeId=10151&langId=-1&productId=8198552921666483313>, accessed August 19, 2013.²¹ See Petition at 7.

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the browser, for reading later. This does not sound like a feature with limitations but rather a browser designed to be fast and user-friendly and even encourage use of ACS.

Although certain common ACS features including e-mail, instant messaging, or VoIP, are not generally mentioned in the marketing of e-readers,²¹ manufacturers clearly market their products' ability to access other ACS features like social networking and use of web browsers as desirable features of the products.

III. THE PETITION FOR WAIVER IS INVALID

In addition to failing to meet the substantive waiver requirements, as discussed above, the Coalition fails to comply with the Commission's procedural requirements. First, the Commission requires that "parties filing class waiver requests must explain in detail the expected lifecycle for the equipment or services that are part of the class...the definition of the class should include the product lifecycle."²² This requirement exists so that the Commission has the opportunity to "examine the justification for the waiver extending through the lifecycle of each discrete generation" of a particular product.²³ Waivers are not indefinite.

The Coalition fails to provide any information about the expected lifecycle of e-readers, other than to say "e-readers are a well-established class of equipment that is not experiencing 'convergence' toward becoming a multipurpose device."²⁴ Simple research shows that Amazon, Sony, and Kobo have released a new generation of e-readers with increasing ACS upgrades each year since 2010, and by the Coalition's own admission "the number of manufacturers and

²² ACS Report and Order, 26 FCC Rcd 14557 at ¶¶ 18, 194.

²³ See ACS Report and Order, 26 FCC Rcd 14557 at ¶ 18.

²⁴ See Petition at 11-12.

models [of e-readers] has expanded substantially” since Sony launched the first e-reader in 2006.²⁵

By failing to provide information on the lifecycle of e-readers, the Coalition fails to provide a length of duration for its request. It appears as though the Coalition seeks a permanent waiver for e-readers in order to avoid all accessibility requirements for future iterations of these devices. The Commission should not grant a waiver for multiple generations of equipment without requiring a petitioner to provide information on the product’s lifecycle.

The Coalition’s characterization of the class of devices for which it seeks a waiver demonstrates the dangers in the Coalition’s request for an open-ended waiver. For example, the Coalition requests that the waiver apply only to devices that do not have an LCD screen²⁶, presumably because LCD screens are more commonly found in tablets and devices designed for ACS while e-readers commonly have e-ink screens. This limitation, however, is dependent upon the popularity of LCD screens, which given the rate at which technology evolves, is impossible to predict. LCD could easily become obsolete, and whatever new technology replaces LCD would be exempt from CVAA requirements under this waiver as long as the device meets the other limitations.

Furthermore, the Coalition’s request that the waiver apply only to devices that are not offered or shipped with built-in ACS client apps but that do include browsers and social media applications is equally problematic for the purpose of the CVAA. This factor initially sounds as if the Coalition wants the waiver for devices that have no ACS capability, which would be consistent with the goals of the CVAA, but the footnote to this factor shows that the Coalition crafted this categorization specifically to exempt the ACS functions that are commonly found in

²⁵ See Petition at 3.

²⁶ See Supplementing Letter at 1.

e-readers – browsers and social media applications. This “pick and choose” approach to policy is completely inconsistent with the CVAA. It would be the equivalent of a wireless handset manufacturer asking for a waiver for any smartphone that lacks video conferencing or browsing, even if the phone offered text messaging, voicemails, social media, and other types of ACS. Browsing and social media are clearly ACS functions, and the statute does not recognize particular ACS functions as more critical or fundamental for equal access than others.

If the Commission grants a waiver using the categorization the Coalition has provided, it would invite developers to create low-end devices designed with the technical specifications in the waiver (no LCD screen, no camera, including a browser and social media access, marketed as a hybrid of a tablet/e-reader) to avoid accessibility. Section 718 of the CVAA requires manufacturers and service providers to make mobile Internet browsers accessible to blind people and other persons with print disabilities partly because of persistent barriers to accessibility found in new communications technologies.²⁷ To grant the waiver under these limitations is inconsistent with the goals of the CVAA.

Finally, the waiver request is invalid, because the Coalition provided no detailed information regarding (1) the lifecycle of the equipment, (2) the time-frame for the waiver, and (3) meaningful limitations that are technology agnostic and consistent with the ACS functions covered under the CVAA.

IV. GRANTING THE WAIVER WOULD HARM THE PUBLIC

The Coalition makes the remarkable assertion that “[r]endering ACS accessible on e-readers would require fundamentally altering of devices...[and] would not yield a meaningful

²⁷ See ACS Report and Order, 26 FCC Rcd 14557 at ¶¶ 6, 7.

benefit to individuals with disabilities.”²⁸ The opposite is true: e-readers can be made accessible without a fundamental altering of the device and a waiver would harm the public by excluding print-disabled people from access to digital books and creating a disability tax for consumers with print disabilities. The disability community submits these comments to voice its unified opinion that the waiver the Coalition seeks would harm the public interest – the undersigned parties are in a better position to speak to the effects they would experience as a result of the waiver than a coalition of manufacturers who have been consistently hostile to incorporating accessible technology into their products.

The conversion from print to digital books provides a unique opportunity to expand the circle of participation for users with all disabilities. Print is inherently inaccessible to the blind and other persons with print disabilities, but accessible digital content allows people with print disabilities to transform into a mainstream user. This opportunity eliminates barriers to books, education, and communication for people with disabilities while increasing the number of eligible consumers in the marketplace. Sadly, the purveyors of digital books have missed out on this opportunity for market expansion by consistently producing inaccessible products, a trend that started with e-readers. Now, not only does the Coalition attempt to perpetuate this exclusion, but it claims that to rectify the situation would actually cause more harm than good—apparently equating their profitability with the public interest.

E-readers can be made accessible without a fundamental altering of devices, a fact evident in the fact that certain manufacturers have actually *removed* accessibility solutions from their newer generation e-readers. After repeated urgings from the National Federation of the Blind, the 2009 Kindle 2, the 2010 Kindle Keyboard, and the 2011 Kindle Touch were outfitted

²⁸ See Petition at 8

with text-to-speech functionality. However, in 2012, Amazon discontinued its efforts to provide even rudimentary accessibility when it released the Kindle Paperwhite, a device without any audio output. Neither choice, to include or exclude an accessibility feature, fundamentally altered the nature of a Kindle e-reader.

The Coalition claims that making ACS accessible on e-readers would drastically alter the weight and battery life, and undercut distinctive features like price points.²⁹ The Kindle Touch (which has accessibility features) weighs 7.8 ounces and a single charge lasts up to eight weeks.³⁰ The Kindle Paperwhite (which does not have accessibility features) weighs 7.5 ounces and a single charge also lasts up to eight weeks.³¹ Thus, the product specifications themselves demonstrate that there is no meaningful correlation between an increase in accessibility features and an increase in weight or a decrease in battery life. Removing the external speakers or headset jack and de-programming content so it cannot be read audibly did nothing to change the other desirable features of the device; rather it merely denied blind people and other persons with print disabilities access to books. The Coalition attempts to show that inaccessibility is a necessary evil when in reality it is an unjustifiable business choice.

The Coalition also claims that the devices would need to be redesigned to be optimized for ACS because the current inaccessible ACS features provide a very low-quality experience.³² Embracing accessibility would simply give print-disabled users access to this low-quality experience; web content can be made accessible regardless of whether a site is dynamic or boring, or has fast refresh rates or slow processing time. Accessibility is independent of optimization.

²⁹ See Petition at 9

³⁰ <http://www.amazon.com/Kindle-Touch-Free-Wi-Fi-Display/dp/B005890FOO>, accessed August 26, 2013.

³¹ <http://www.amazon.com/Kindle-Paperwhite-Touch-light/dp/B007OZNZG0>, accessed August 26, 2013.

³² See Petition at 8.

Granting the waiver would perpetuate the misconception that accessibility is difficult to accomplish and requires a fundamental overhaul that will render e-readers obsolete. It would also stand in sharp contrast with other preexisting legal obligations and societal trends towards equal access in the digital world. The Americans with Disabilities Act and Section 504 of the Rehabilitation Act prohibit the use of inaccessible technology in the classroom as a violation of print-disabled students' rights. Subsequent guidance issued by the Department of Justice and the Department of Education specifically directs postsecondary institutions to "refrain from requiring the use of any electronic book reader, or other similar technology, in a teaching or classroom environment as long as the device remains inaccessible to individuals who are blind or have low vision. It is unacceptable for universities to use emerging technology without insisting that this technology be accessible to all students."³³

To grant the Coalition's waiver would undermine the efforts of the Department of Justice and the Department of Education to promote the creation and use of accessible e-reader devices. The Coalition's resistance to embracing accessibility has created a barrier to the increased use of digital technology in K-12 education. A section of the Kindle Paperwhite's webpage is dedicated to "Kindle for Education and Business," saying, "the same great features that help you lose yourself in a book on Kindle translate seamlessly to the classroom, helping students learn to read or study more effectively," and touting Amazon's online free tool Whispercass. Amazon is obviously targeting K-12 school districts and postsecondary institutions as large purchasers of the Kindle Paperwhite, and yet those entities cannot take advantage of Amazon's innovations because the products are inaccessible. It would be beneficial for the company to make the product accessible in order to take full advantage of that market. It would also allow students

³³ U.S. Department of Justice, Civil Rights Division and U.S. Department of Education, Office of Civil Rights. "Joint 'Dear Colleague' Letter: Electronic Book Readers" 29 June 2010. Online at: <http://www2.ed.gov/about/offices/list/ocr/letters/colleague-20100629.html> , accessed August 15, 2013.

with print disabilities to access the same mainstream materials as their sighted peers. The CVAA is in harmony with current law, which prioritizes equal access by mandating accessibility. A waiver or exemption from the new accessibility requirement would provide a disincentive to comply with preexisting legal requirements.

Furthermore, a waiver would create a “disability tax.” The Coalition’s primary argument that its requested waiver would benefit the public interest is based on the market for low-cost e-readers. Although the manufacturers’ evolution away from previously included accessibility features included in equally low-cost earlier e-readers suggests that the Coalition’s claim is without factual basis, low-cost e-readers stripped of accessibility features would require people with print disabilities to purchase the Coalition’s higher-end products, with many more features than they would want to use, just to be able to read digital books. The Coalition notes that there are free and accessible reading apps for mobile phones, tablets, PCs and Macs,³⁴ while ignoring that these devices are more expensive than e-readers. If the Coalition got its wish, blind users other users with print disabilities would be left with two expensive choices: pay a human reader to read a print book or buy a significantly more expensive tablet, computer, or phone to have access to the free reading app. This situation puts a large burden or tax on disabled readers, while meeting accessibility requirements would put a small burden on the Coalition.

The Coalition endorses a “separate, but equal” standard of access that is inconsistent with the spirit of the CVAA. The purpose of the CVAA is to “increase the access of persons with disabilities to modern communications”³⁵ yet the Coalition’s petition purports that it is completely acceptable to deny disabled people access to modern products like e-readers as long as “high quality free alternatives” are available. Not only are these alternatives not free but, by

³⁴ See Petition at 11.

³⁵ Pub. L. No. 111-260

their very nature these alternatives are inherently different and therefore, unequal. The scenario described above (the blind users' and other users with print disabilities' two options if the waiver is granted) is an example of the digital divide that the CVAA is trying to rectify. History has shown that having two different standards of access is unacceptable and that a dual system of management fails to provide equality every single time, so we urge the Commission not to perpetuate this failed system by granting the waiver.

The Coalition's waiver would also buck international trends toward the promotion of accessible digital technology. Simultaneous to the Department of Justice and the Department of Education's review of this issue and demand for equal access for blind students and other students with print disabilities, the trend of increased access to books has gone global. International negotiators meeting under the auspices of the World Intellectual Property Organization (WIPO) adopted the Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired, or Otherwise Print Disabled, a treaty permitting the reproduction and distribution of published works in accessible formats across borders to eliminate duplication, increase efficiency, and address the "book famine" plaguing blind people and other people with print disabilities across the World.³⁶ The parties involved in the WIPO treaty are committed to increasing the availability of published works as quickly as possible, while the Coalition appears committed to inaccessibility and exclusion.

V. CONCLUSION

The creation of accessible e-readers would benefit not only people with disabilities, but the Coalition members themselves. To grant a waiver for e-readers would not only support the Coalition members in their long-standing resistance to making their products accessible, but

³⁶ http://www.wipo.int/pressroom/en/articles/2013/article_0017.html

undermine preexisting legal obligations and the trends toward accessibility demonstrated by the DOJ, the DOE, and the WIPO treaty.

For the reasons set forth above, the undersigned organizations urge the Commission to reject the waiver request from the Coalition of E-reader Manufacturers. That action is consistent with the objectives of the CVAA, the criteria for a waiver, and the best interest of the public.

Respectfully submitted,

Marc Maurer
President
NATIONAL FEDERATION OF THE BLIND
200 East Wells Street
Baltimore, MD 21230
(410) 659-9314

Melanie Brunson
Executive Director
AMERICAN COUNCIL OF THE BLIND
2200 Wilson Boulevard, Suite 650
Arlington, VA 22201-3354
(202) 467-5081

Howard Rosenblum
Chief Executive Officer
NATIONAL ASSOCIATION OF THE DEAF
8630 Fenton Street, Suite 820
Silver Spring, MD 20910
(301) 587-1788

Jo Anne Simon
President
EVERYONE READING
71 West 23rd Street, Suite 1527
New York, NY 10010
(212) 691-1930

Lindsay Jones
Executive Director of Public Policy and Advocacy

NATIONAL COUNCIL FOR LEARNING DISABILITIES
1101 Vermont Ave. NW, Suite 400
Washington, D.C. 20005
(646) 616-1257

Colin Schwartz
Senior Associate for Policy and Advocacy
AMERICAN ASSOCIATION OF PEOPLE WITH DISABILITIES
2013 H Street NW, 5th Floor
Washington, DC 20006
(202) 521-4309

Kelly Buckland
Executive Director
THE NATIONAL COUNCIL ON INDEPENDENT LIVING
2013 H Street NW, 6th Floor
Washington, DC 20006
(202) 207-0334

Arnt Holte
President
WORLD BLIND UNION
1929 Bayview Avenue
Toronto, Ontario
1 (416) 486-9698

George Kerscher
Secretary General
DAISY CONSORTIUM
1203 Pineview Drive
Missoula, MT 59802 USA
(406) 549-4687

Dmitri Belser
Executive Director
CENTER FOR ACCESSIBLE TECHNOLOGY
Ed Roberts Campus
3075 Adeline Street, Suite 220
Berkeley, CA 94703
(510) 841-3224

Claude Stout

Executive Director
TELECOMMUNICATIONS FOR THE
DEAF AND HARD OF HEARING, INC.
8630 Fenton Street, Suite 121
Silver Spring, MD 20910
(301) 563-9112

Larisa Cummings
Staff Attorney
DISABILITY RIGHTS EDUCATION AND DEFENSE FUND
Ed Roberts Campus
3075 Adeline Street, Suite 210
Berkeley, CA 94703
(510) 644-2555

Larry Paradis
Executive Director
DISABILITY RIGHTS ADVOCATES
2001 Center St., Fourth Floor
Berkeley, CA 94704
(510) 665-8644

L. Scott Lissner
President
ASSOCIATION ON HIGHER EDUCATION AND DISABILITY
281 W. Lane Ave
Columbus, OH 43210
(614) 292-6207

Joshua A. Miele, Ph.D.
Director
THE SMITH-KETTLEWELL VIDEO DESCRIPTION RESEARCH AND
DEVELOPMENT CENTER
2318 Fillmore St.
San Francisco, CA 94115
(415) 345-2113

Joanne Karger, J.D., Ed.D.
Research Scientist/Policy Analyst
CENTER FOR APPLIED SPECIAL TECHNOLOGY
40 Harvard Mills Square, Suite 3
Wakefield, MA 01880
(781) 245-2212

Eric Buehlmann

Deputy Executive Director for Public Policy
NATIONAL DISABILITY RIGHTS NETWORK
900 Second Street, NE
Suite 211
Washington, DC 20002
(202) 408-9514

Bryan Bashin
CEO
LIGHTHOUSE FOR THE BLIND AND VISUALLY IMPAIRED
214 Van Ness Avenue
San Francisco, CA 94102
(415) 694-7346

Gregg C. Vanderheiden, Ph.D.
Director and Co-Principal Investigator
REHABILITATION ENGINEERING RESEARCH CENTER ON
TELECOMMUNICATIONS ACCESS
Trace R&D Center University of Wisconsin-Madison
1550 Engineering Drive, 2107 ECB
Madison, WI 53706
(608) 262-6966

Christian Vogler, Ph.D.,
Co-Principal Investigator, RERC-TA
Director
TECHNOLOGY ACCESS PROGRAM
Gallaudet University
800 Florida Ave., NE, SLCC 1116
Washington, DC 20002
(202) 250-2795

James R. Fruchterman
President and CEO
BENEFICENT TECHNOLOGY, INC.
480 South California Ave., Suite 201
Palo Alto, CA 94306-1609
(650) 644-3400

Audrey Busch
Director of Policy and Advocacy
ASSOCIATION OF ASSISTIVE TECHNOLOGY ACT PROGRAMS
1101 Vermont Avenue, #400
Washington, D.C. 20005
(202) 349-2324

Robert Joondeph
Executive Director
DISABILITY RIGHTS OREGON
610 SW Broadway - Suite 200
Portland OR 97205
(503) 243 2081