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September 20, 2013

Ms. Marlene Dortch
Secretary
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, D.C. 20554

Re: *Ex parte meeting -- CG No. 10-213*

Dear Ms. Dortch:

On September 18, 2013, Emmett O’Keefe of Amazon.com, Inc., Jim Morgan of Sony Electronics Inc., and the undersigned met in person with Karen Peltz Strauss, Rosaline Crawford, Eliot Greenwald and Elaine Gardner of the Consumer and Government Affairs Bureau. Eric Grouse of Amazon.com, Inc., and Sherry Kerr of Kobo Inc. participated by telephone. The purpose of the meeting was to discuss the Petition for Waiver of the Commission’s rules governing devices used to access advanced communications services (“ACS”) filed May 16, 2013, by the Coalition of E-Reader Manufacturers (“Coalition”).

Coalition members opened the meeting by demonstrating various e-readers to the staff. Mr. O’Keefe demonstrated a basic current-generation Kindle and a Kindle Paperwhite; Mr. Morgan demonstrated a Sony Reader; and Ms. Kerr described, and Mr. Kahn demonstrated, a Kobo Glo.¹ In each case, Coalition members showed that the devices’ interfaces are optimized for accessing text-based digital works. Coalition members also used the attached slides to illustrate the process of launching the devices’ browsers, which appear at varying points in menu hierarchies for the different devices. The parties demonstrated that while it is possible to access e-mail on e-readers through the on-device browser, the devices clearly are designed primarily for accessing text-based digital works, not for using ACS.

Consistent with this demonstration, the Coalition underscored the simple reality reflected in its petition: e-readers are single-purpose devices designed for accessing text-based digital works. E-reader sampling data indicates that a very small percentage of e-reader owners employ the browser for *any* purpose, let alone for ACS.² In contrast, browser usage is an important and

¹ A Kobo Touch and Kobo Aura HD also were available at the meeting.

² Browsing, by itself, is not ACS. *See* Reply Comments of the Internet Association at 3 (“[T]he scope of ACS is limited by law and includes only the specific activities identified by Congress, and . . . the use of a browser to engage in something other than e-mail, instant messaging, VoIP, or interoperable video conferencing is not ACS.”).

commonly used feature of tablets. That gap in how consumers use browsers on different devices demonstrates one of many fundamental differences between e-readers and tablets.

Coalition members stated that they are committed to ACS accessibility, and noted that those companies who also offer tablets are making those devices accessible; as a result, consumers have a range of options for accessible advanced communications services. In that manner, the Commission is accomplishing the goal set out by Congress to make ACS available. The Commission's grant of the instant waiver does not detract from that goal, because e-readers are primarily designed for a purpose other than ACS. The Coalition reiterated that in the waiver context, the CVAA asks the Commission to decide whether a class of devices is designed primarily for ACS.³ Under this limited inquiry, it is clear from the record that e-readers, as single-purpose non-ACS devices, should be granted a waiver.⁴

The Coalition clarified that e-readers do not contain any app that enables two-way communication. For instance, Mr. Morgan explained that Sony Reader contains Evernote, which is a cloud-based program for taking notes for one's benefit, but it is not used for sending messages. The Coalition also demonstrated that some e-readers contain social media features, such as for sharing book passages on Facebook, but as Congress found and the Commission has held, posting of content on social networking sites is not ACS. The parties also explained that e-readers pre-dated tablets but after tablets were introduced to the market, industry focused e-readers even more on the primary purpose of accessing text-based communication, for instance by removing audio because consumers who desire devices designed for multimedia use purchase tablets.

The parties next discussed the marketing of e-readers. Coalition representatives emphasized that their companies do not market their devices for ACS, and this limitation is built into the class definition. As described in the Coalition's Reply Comments, the principal filing opposing the Coalition's Petition concedes that e-readers are not marketed for ACS.⁵ In that regard, the parties explained that the facts supporting the e-reader waiver are stronger than the facts supporting the previous waivers granted by the Commission.⁶

³ See Reply Comments of the Consumer Electronics Association at 2 ("When evaluating a class waiver, the Commission must focus on the primary purpose for which the equipment class was designed and marketed.").

⁴ The Commission has acknowledged that in considering whether a waiver should be granted, it may not apply an achievability analysis since Congress crafted that tool for a different job. *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, 14637 (2011) ("We find that the achievability factors are inappropriate to consider in the context of a waiver. . . . As discussed above, our waiver analysis will examine the primary purpose or purposes for which the equipment or service is designed, consistent with the statutory language.").

⁵ Reply Comments of the Coalition of E-Reader Manufacturers at 3.

⁶ See, e.g., *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*, CEA, NCTA, ESA, *Petitions for Class Waivers* (continued...)

The parties then discussed the class definition. The Coalition worked hard to develop a narrow class definition that ensures that the waiver will apply only to e-readers that are designed for accessing text-based digital works and not to devices that are designed for ACS. For instance, Coalition members explained that presence of audio is not a part of the class definition because audio, as a conceptual matter, could be used in correlation with accessing text-based digital works with multimedia elements. Further, presence of audio is not helpful to distinguish devices designed for accessing text-based works from devices designed for ACS. In contrast, cameras are common on multi-purpose devices but would serve no function plausibly related to accessing text-based digital works. Coalition members also explained that LCD screens would not be present on any device optimized to minimize eye strain for extended-session consumption of text-based digital works. If electronic paper technology improves to the point that electronic paper-style screens are used on multi-purpose devices that include a camera, or include ACS apps, or are marketed for ACS, then the class definition ensures that those devices will not be subject to the waiver.

Finally, the parties discussed the length of the waiver. The Coalition reiterated that its proposed definition ensures that the waiver can be applied on an ongoing basis because devices that have ACS apps or are marketed for ACS will be excluded from the class. A stringent, fact-specific, case-by-case analysis is thus “baked in” to the class definition itself. The Coalition explained that this approach is warranted as to e-readers, in contrast to other devices that received “primary purpose” ACS waivers. First, such classes of devices contained at least some ACS apps or features embedded in the user experience, in contrast to e-readers.⁷ Second, although the Commission found evidence of convergence as to those other classes of devices, e-readers are single-purpose devices that have been and will continue to be distinct from tablets.⁸ The parties emphasized that if those features change, then the devices in question will graduate out of the class. The Coalition stated that e-readers are akin to digital still cameras and consumer video cameras, which recently received a waiver from the closed captioning obligations, because they are devices with a single purpose that is unrelated to the goals of the rules in question.

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, Order, 27 FCC Rcd 12970, 12987 (2012) (stating that “there is a clear trend towards marketing the ACS features and functions of gaming equipment and services”); id. at 12976 (“Although the Consumer Groups and ACB argue . . . that ACS features and functions are included in the marketing materials for [IP-DVPs and IP-TVs], . . . presently the marketing and advertising of such products focus primarily on use of these devices for video programming. . . .”) (emphasis added); id. at 12979 (stating that the “Consumer Groups” argue that set-top boxes are “marketed as multipurpose devices that include voice and video communications features”).

⁷ *Id.* at 12974 (stating that “ACS features and functions are just beginning to make their way into” IP-TVs and IP-DVPs); *id.* at 12980 (stating that “newer models [of set-top boxes] do incorporate ACS”); *id.* at 12988 (identifying the “increasing role that ACS is beginning to play in online gaming systems and services”).

⁸ *See* Reply Comments of the Digital Media Association at 2 (“The Commission should exercise its waiver authority appropriately to protect companies’ ability to offer innovative devices that meet specific non-ACS needs.”).

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Accordingly, like those single-purpose cameras, e-readers should be granted a waiver that is not time limited and relies on the criteria set forth in the record.

* * *

Please direct any questions to the undersigned.

Sincerely,



Gerard J. Waldron
Daniel Kahn
*Counsel for Amazon.com, Inc.; Kobo Inc.;
and Sony Electronics Inc.*

cc: Ms. Karen Peltz Strauss
Ms. Rosaline Crawford
Mr. Eliot Greenwald
Ms. Elaine Gardner

Attachment (Slides and Textual Description)

Showing All 22 Items

By Most Recent First

- American Gods: The Tenth Anniversary Edition: A Novel**
- The Hunger Games Suzanne Collins
- The Third Gate: A Novel Lincoln Child
- Lots of Candles, Plenty of ... Anna Quindlen
- Kindle User's Guide, 2nd Ed. Amazon
- Anathem Neal Stephenson
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- Catching Fire (The Second... Suzanne Collins
- A Dance with Dragons: ... George R.R. Martin
- Divergent Veronica Roth

Showing All 22 Items

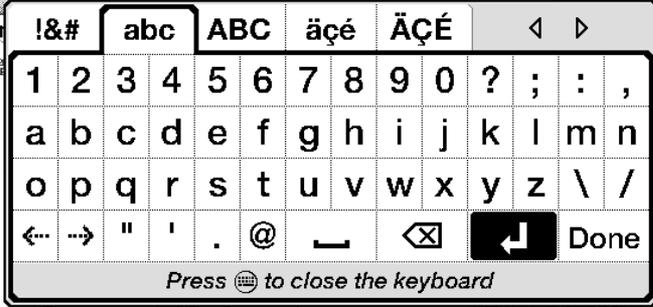
- American Gods: The Tenth Anniversary Edition: A Novel**
- The Hunger Game
- The Third Gate: A
- Lots of Candles, Pl
- Kindle User's Guid
- Anathem
- The Big Miss: My Y
- Catching Fire (The
- A Dance with Drag
- Divergent

- Shop in Kindle Store**
- Change Font Size
- View Archived Items**
- Search**
- Create New Collection**
- Sync & Check for Items**
- View Downloading Items
- Settings**
- Experimental**
- Screen Rotation**

Veronica Roth

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Grid of product recommendations including PS3 500 GB Grand Theft Auto V Bundle, Kwikset 925 Kevo Single Cylinder, Kindle Paperwhite, and Logitech Wireless Performance Mouse.



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Digital Cameras Best Sellers



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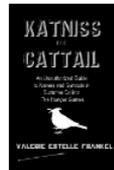
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Press to begin typing

Supplement to Attachment Providing Textual Description of Contents of Slides

All images are of the basic current-generation Kindle.

Image 1 (Slide 1): Home screen.

Image 2 (Slide 1): Drop-down menu, with “Experimental” selected.

Image 3 (Slide 2): Browser with Wikipedia typed in address bar.

Image 4 (Slide 2): Browser displaying Wikipedia.org.

Image 5 (Slide 3): Store.