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November 29, 2013

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

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

Dear Ms. Dortch:

On November 26, 2013, Emmett O’Keefe and Eric Grouse of Amazon.com, Inc., Jim Morgan of Sony Electronics Inc., and the undersigned met with Karen Peltz Strauss, Rosaline Crawford, Eliot Greenwald, Elaine Gardner, and Caitlin Vogus of the Consumer and Government Affairs Bureau. Messrs. Grouse and Kahn participated by telephone. The purpose of the meeting was to discuss the Petition for Waiver (the “Petition”) of the Commission’s rules governing equipment used to access advanced communications services (“ACS”) filed May 16, 2013 by the Coalition of E-Reader Manufacturers (“Coalition”). The Coalition urged the Bureau to grant the Petition based on the record which overwhelmingly supports the waiver request. The parties also addressed some issues the Bureau had identified as under consideration. The parties then discussed issues outside of the waiver and the CVAA.¹

I. CVAA AND THE PETITION

Review of Justification for Waiver. The CVAA and the Commission’s rules provide the Commission with authority to grant waivers of the ACS accessibility requirements for classes of equipment that are “designed primarily for purposes other than using” ACS.² Both the Senate and House Reports explained that a primary purpose waiver is appropriate for “a device designed for a purpose unrelated to accessing advanced communications [that] might also provide, on an incidental basis, access to such services.”³

The Coalition has established that e-readers are designed primarily for accessing text-based digital works (*i.e.*, reading), and not for ACS. This focused design is manifested in hardware and software features that maximize the quality of the user experience in accessing

¹ The parties made available a Kobo Glo, Kobo Touch, Kobo Aura HD, and Kindle Paperwhite for staff use.

² 47 U.S.C. § 617(h)(1); 47 C.F.R. § 14.5(a)(1).

³ H.R. Rep. No. 111-563, at 26 (2010) (“House Report”); S. Rep. No. 111-386, at 8 (2010).

text-based digital works, including glare-reducing screens, low-power consumption with long battery life, and features designed to make reading and acquiring electronic publications easy.⁴ The Coalition also has shown that ACS is *not* an intended feature of e-readers at all. E-readers do not contain any applications for ACS.⁵ The only way users can potentially access ACS is through the rudimentary browsers included on e-readers.⁶ These browsers are included and designed for ancillary uses such as consulting Wikipedia.⁷ E-readers lack features common to multi-purpose devices that facilitate ACS use, such as ACS apps, cameras, built-in email clients, and screens with fast refresh rates for interaction and video.⁸ In contrast, devices like IPTVs and gaming consoles that already received primary purpose waivers possess a number of these features.⁹ The Petition cited reviewers recommending e-readers precisely because they are good for reading and lack distractions from e-mail present on tablets and other devices.¹⁰

In considering whether to grant a waiver, the Commission considers “[w]hether and how the advanced communications functions or features are advertised, announced, or marketed.”¹¹ The Coalition has demonstrated that e-readers are not marketed for ACS at all.¹² Nothing in the record disputes this assertion. In fact, the principal filing opposing the Coalition’s Petition concedes the point that e-readers are not marketed for ACS.¹³ In that regard, the evidence supporting the e-reader waiver is substantially stronger than what the Commission considered in previous waiver grants, some of which cover devices that advertise the ACS functionality.¹⁴ The facts on marketing provide a solid basis on their own to grant the Petition and that element is built into the class definition of e-readers.¹⁵

⁴ See Petition at 4.

⁵ See *id.* at 7.

⁶ See *id.*; Reply Comments of the Coalition of E-Reader Manufacturers at 5 (“Coalition Reply”).

⁷ See Petition at 7.

⁸ See *id.* at 6.

⁹ 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, CEA, NCTA, ESA, Petitions for Class Waivers 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 12987 (2012).

¹⁰ See Petition at 8.

¹¹ 47 C.F.R. § 14.5(a)(2)(ii).

¹² See Petition at 7.

¹³ See Coalition Reply at 3 (citing National Federation of the Blind, et al., Opposition to Petition for Waiver by Coalition of E-Reader Manufacturers, at 12 (Sept. 3, 2013)).

¹⁴ See Coalition *Ex Parte* Submission (Sept. 20, 2013) at 2.

¹⁵ Coalition *Ex Parte* Letter Supplementing the Coalition Petition (July 17, 2013) at 1-2.

The Coalition sets forth e-readers as a carefully defined class that share common defining characteristics, as required by the Commission's rules.¹⁶ The Coalition's narrow class definition excludes any devices marketed for ACS or that contain ACS apps, even though other classes of equipment that have received waivers previously are marketed for ACS and contain at least some ACS apps or features embedded in the user experience.¹⁷ Finally, the Coalition has shown that a waiver serves the public interest by encouraging production of innovative single-purpose devices designed for non-ACS purposes and enjoyed by millions.¹⁸ The CVAA ensures that individuals with disabilities will have many affordable and accessible options on devices well-suited to ACS such as smartphones, computers, and tablets, including low-cost tablets made by Coalition members.

Discussion of E-Reader Issues Identified for Further Consideration. The Coalition then addressed a number of issues that were identified in the October 22, 2013 *Order*.¹⁹ First, the Coalition discussed whether the ACS functionality in e-readers is designed to be operable outside of other functions or aids other functions. While the browser is designed to aid other functions, for instance by allowing users to consult Wikipedia, the ability to use ACS is merely a byproduct of the presence of a browser. In contrast to some devices that already received waivers, e-readers are not designed for ACS use at all, whether in aid of reading or otherwise. This is reflected in the fact that e-readers are not marketed for ACS. It also is reflected in the fact that Coalition members create elegant and intuitive interfaces for reading, while browsers are not easy to find and employ because they are not intended for extended or regular use.

To support that point, the parties discussed actual consumer experience. The parties explained that one Coalition member examined anonymous random samples of active e-reader devices (covering three model types) over a period of one week in November 2012 or October

¹⁶ See 47 C.F.R. § 14.5(b); Petition at 2-3; Coalition *Ex Parte* Letter Supplementing the Coalition Petition (July 17, 2013) at 1-2.

¹⁷ See Coalition *Ex Parte* Submission (Sept. 20, 2013) at 2-3.

¹⁸ 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.”); Reply Comments of the Internet Association at 3 (“The Internet Association asks the Commission to grant the waiver request and also to make clear to all parties that the scope of ACS is limited by law”); Reply Comments of the Consumer Electronics Association at 1-2 (“The Commission should continue to adhere to Congress’s directive to balance the need to ensure access by individuals with disabilities to new technologies and services with the need to preserve service providers’ and manufacturers’ continued ability to innovate for the benefit of all consumers. CEA urges the Commission to continue to use the waiver process to maintain this balance and grant the petition”).

¹⁹ 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, Coalition of E-Reader Manufacturers Petition for Class 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*, Order, DA 13-2039, at ¶ 8 (Oct. 22, 2013).

2013, depending on device (total sample size of more than 120,000 devices), and found that less than seven percent of the users had launched the browser *for any purpose*. Thus, over ninety-percent of users in the sample did not even launch the browser during the sample period, a fact that severely undermines any claim that use of the browser, let alone ACS, is a “co-primary” purpose. Of course, the Coalition members do not know what websites the users who accessed the browser visited, so we cannot ascertain what fraction of the less than seven percent of users who accessed the browser at all might have used ACS. However, the samples further showed that users who launched the browser left it open for an average time of between 45 seconds and three minutes per session. This usage pattern is consistent with brief look ups on Wikipedia, visiting links from within books, or other reading-related uses, not with regular use for ACS.

The parties then discussed the impact that removal of the ACS feature would have on an e-reader’s primary purpose. The Coalition explained that removing the browser, and thus all ACS functionality, would not impact the primary purpose of the device at all. Users could continue to read and acquire text-based digital works because e-readers do not depend upon a browser for either function. Some e-readers have pre-installed dictionaries, and additional ancillary features could be added if the browser were not present. That removal of a browser or ACS capability would not impair reading clearly establishes that the browser is either incidental to, or irrelevant to, the primary purpose of the device.

The Coalition then discussed waivers for similar products and the appropriate duration of the waiver, if granted. 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 ineligible for waiver. A stringent, fact-specific, case-by-case analysis is thus “baked in” to the class definition itself. The Coalition explained that this approach, which was used for digital cameras, is warranted for e-readers, since the class definition distinguishes these devices from other devices that received “primary purpose” ACS waivers. First, many of those other classes of devices contained at least some ACS apps or features and in some cases openly advertised that capability, in contrast to e-readers. Second, although the Commission granted time-limited waivers in other cases due to the possibility of convergence, if an e-reader converges with multi-purpose devices, then the device in question will graduate out of the class. Finally, a time-limited waiver simply is not necessary or appropriate for devices with ancillary browsers that are clearly not marketed or designed for ACS and would be excluded from the class if they were to be designed or marketed for ACS.

II. ISSUES OUTSIDE OF THE PETITION

Contrast Between Tablets and E-Readers. Lastly, the parties, recognizing that achievability is not a permitted consideration of the primary purpose waiver analysis, discussed the distinction between tablets, with their multi-purpose uses including ACS, and single-purpose e-readers. Unlike tablets, e-readers lack color LCD screens, screens with fast refresh rates

sufficient for interactive use, cameras, high-capacity storage, higher-powered CPUs and GPUs, and in most cases audio output.²⁰ Some lack touch interface, and many lack multi-touch gesture support. The parties explained that to make e-readers accessible for ACS, e-reader operating systems that prioritize battery life may have to be reengineered to incorporate features and functions found on tablets. Slow screen refresh rates and lack of a touch interface or multi-touch gesture support on e-readers may not adequately support accessibility features like accessibility gestures and Explore by Touch, so the entire e-reader display and user interface functionality may need revision. In short, the changes needed to make e-readers accessible essentially would convert them to tablets. That would harm the millions of consumers who want e-readers designed for an optimal reading experience with features like screens that resist glare and prevent eye strain, extremely long battery life, and a reading-centered interface. The parties reiterated that e-readers pre-dated tablets but after tablets were introduced the industry focused e-readers even more on the primary purpose of reading, for instance by removing audio because consumers who want multimedia chose tablets. Requiring fundamental changes to e-reader's design so that they echo the functionality of tablets is undesirable and contrary to established Commission policy.²¹

Coalition members stated that they are committed to ACS accessibility, and noted that those Coalition members who also offer tablets are making accessible tablets; as a result, consumers have a range of options for accessible ACS.²² For instance, Amazon added many accessibility features to its newest line of Kindle Fire tablets that address a wide range of varying user needs. Specifically, Amazon added support for enhanced accessibility features like Explore by Touch, which permits users to employ accessibility gestures to navigate item-by-item and by touch; a Screen Reader with adjustable reading speed; support for peripheral braille displays; a Screen Magnifier for users with low vision; and support for Bluetooth keyboard navigation.²³ In

²⁰ See Petition at 6.

²¹ The Commission has recognized that “if the inclusion of an accessibility feature in a product or service results in a fundamental alteration of that product or service, then it is *per se* not achievable to include that accessibility function.” *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, 14610 (2011). The House Report similarly states that “if the inclusion of a feature in a product or service results in a fundamental alteration of that service or product, it is *per se* not achievable to include that feature.” House Report at 24-25. While the achievability and primary purpose waiver analyses differ and should not be combined, these statements demonstrate that Congress and the Commission recognize that requiring a fundamental alteration is not in the public interest or consistent with the CVAA.

²² Coalition members that manufacture tablets dedicate significant resources to accessibility and employ industry leaders in that space.

²³ For a complete list of features, please visit <http://www.amazon.com/kindle/accessibility>. For a user guide to the accessibility features on our new Kindle Fire HDX tablets, please visit <http://www.amazon.com/gp/help/customer/display.html?nodeId=201303820>.

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designing accessibility features, Coalition members work closely with consumers with disabilities and representative organizations.²⁴

Finally, although not relevant to the “primary purpose” analysis or ACS, the Coalition reiterated that its members have invested heavily in making available free applications that provide the same publications that are available to the owners of e-readers (and sometimes more) on a wide range of accessible tablets, smartphones, PCs and other devices.²⁵

* * *

In sum, the proposed waiver is narrow; consistent with the purposes of the CVAA, the Commission’s rules, and class waivers granted to date; and is fully supported by the record. Accordingly, the Coalition urges the Commission promptly to grant the e-reader class waiver.

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
Ms. Caitlin Vogus

²⁴ For instance, the Royal National Institute of Blind People (RNIB) in the United Kingdom performed testing of accessibility features on the latest generation Kindle Fire and the Kindle for iOS app. The RNIB recently labeled the latest-generation Kindle Fire “a real breakthrough” for people with sight loss. RNIB’s Director of Solutions, Neil Heslop, said, “[w]e’re really pleased that Amazon are taking accessibility so seriously and that they have taken so much of our feedback on board in this new range of Kindle Fire devices, resulting in benefits to blind and partially sighted people globally.” RNIB, *New tablets from Amazon are 'breakthrough' for people with sight loss* (Oct. 18, 2013), <http://www.rnib.org.uk/aboutus/mediacentre/mediareleases/mediareleases2013/Pages/pressrelease18Oct2013.aspx>.

²⁵ See Petition at 11. AppleVis, a community-powered website for blind and low-vision users of Apple devices, recently announced that the Kindle for iOS app was elected to its “iOS App Hall of Fame,” which highlights apps that are “fully accessible to blind and low vision users.” AppleVis, *Announcing the Newest Inductees into the AppleVis iOS App Hall of Fame* (Aug. 11, 2013), <http://www.applevis.com/blog/advocacy/announcing-newest-inductees-applevis-ios-app-hall-fame-0>.