

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

In the Matter of)	
)	
Implementation of Section 716 and 717 of the Communications Act of 1934, as Enacted by the Twenty-First Century Communciations and Video Accessibility Act of 2010)	CG Docket No. 10-213
)	
Amendments to the Commission’s Rules Implementing Sections 255 and 251(a)(2) of the Communications Act of 1934, as Enacted by the Telecommunications Act of 1996)	WT Docket No. 96-198
)	
In the Matter of Accessible Mobile Phone Options for People who are Blind, Deaf- Blind, or Have Low Vision)	CG Docket No. 10-145
)	

COMMENTS OF THE TELECOMMUNICATIONS INDUSTRY ASSOCIATION

The Telecommunications Industry Association (“TIA”)¹ hereby submits comments in support of the petition for waiver filed by the National Cable & Telecommunications Association (“NCTA”) in the above-captioned proceeding.²In the Petition, NCTA requests that the Federal Communications Commission (“Commission”) grant a waiver to the recently adopted accessibility requirements for advanced

¹ TIA is the leading trade association for the information and communications technology (“ICT”) industry, representing companies that manufacture or supply the products and services used in global communications across all technology platforms. TIA represents its members on the full range of policy issues affecting the ICT industry and forges consensus on industry standards. Among their numerous lines of business, TIA member companies design and manufacture the set-top boxes at issue in this proceeding.

² National Cable & Telecommunications Association Petition for Waiver, CG Docket Nos. 10-213 and 10-145, WT Docket No. 96-198 (Jun. 1, 2012) (“Petition”); *Request for Comment Petition for Class Waiver of Commission’s Rules for Access to Advanced Communications Services and Equipment by People with Disabilities*, Public Notice, CG Docket No. 10-213, DA 12-984 (Jun. 21, 2012).

communications services (“ACS”) as applied to set-top boxes leased by cable operators to their customers that are manufactured before July 1, 2016. Under NCTA’s proposed waiver, all ACS rules would not apply to any and all cable operator-supplied set-top boxes manufactured before July 1, 2016 for the life of the device.

TIA supports the NCTA petition and we agree that cable-operator supplied set-top boxes meet the statutory criteria set forth in section 716(h),³ the ACS waiver standard set forth in section 14.5 of the Commission’s rules,⁴ and the Commission’s general public interest waiver standards set forth in section 1.3 of the Commission’s rules.⁵ We also agree that NCTA’s petition is consistent with Congress’s directive to use the waiver process to promote technological innovation.⁶

TIA urges the Commission to make a determination that cable operator supplied set-top boxes satisfy the ACS waiver standard under the statute and the Commission’s rules requiring that the waiver be applicable to a carefully defined class of devices that “share common defining characteristics.”⁷ We agree that set-top boxes are designed primarily for a purpose other than using ACS. As NCTA emphasizes, the initial inquiry set forth by the Commission in the *ACS Order* to determine whether equipment or service is designed primarily for purposes other than using ACS is “whether the equipment or service was

³ 47 U.S.C. §617(h).

⁴ 47 C.F.R. §14.5.

⁵ 47 C.F.R. §1.3.

⁶ H.R. Rep. No. 111-563, at 26 (2010) (“House Report”).

⁷ *Implementation of Sections 716 and 717 of the Communications Act of 1934, as Enacted by the Twenty-First Century Communications and Video Accessibility Act of 2010*, CG Docket Nos. 10-213, 10-145, WT Docket No. 96-198, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 14557, 14639, ¶ 193 (2011) (“ACS Order”).

designed to be used for advanced communications service purposes by the general public.”⁸ Set-top boxes, as pointed out by NCTA, are standalone devices. The primary purpose of the set-top box is to convert video signals delivered by cable systems to consumers’ homes and transmit the converted signal to customer televisions.⁹ Historically, set-top boxes supplied by cable operators have been intended solely for the purpose of receiving video signals and delivering those signals to consumers. NCTA’s review of press coverage and manufacturer literature demonstrates these devices are marketed primarily for the reception and delivery of video programming. NCTA has successfully shown that the primary purpose of the set-top box is the delivery of cable services.

Furthermore, TIA would like to emphasize that NCTA’s request is time-limited, meaning it will not apply to set-top boxes manufactured after July 1, 2016. NCTA properly presents the development cycle for set-top boxes and NCTA’s waiver request is designed to apply only to set-top boxes that already have been, or are being, manufactured today, as well as the generation of set-top boxes currently in development, for the life of each particular device.¹⁰

The time-limited waiver request is proper because manufacturers should not be held to a standard that is impossible for them to meet. The Commission should apply the rules prospectively in this instance because the CVAA regulatory structure was not in

⁸ ACS Order at ¶ 183.

⁹ See Petition at 3

¹⁰ See Petition at 4

place at the start of the current product life cycle. If the Commission were to refuse the requested waiver in this instance, there would be no record for the Commission to review in order to make a determination regarding whether manufacturers appropriately considered accessibility. Manufacturers would not have the ability to prove compliance and the Commission would not have the ability to judge compliance.

While the CVAA is the law, the waiver process was created for a reason. The waiver process is designed to outline an appropriate transition period. The Commission should use its discretion and allow for an appropriate transition period in this case to account for product life cycles. Congress intended that the Commission promote accessibility through a flexible regulatory approach that does not inhibit innovation,¹¹ and we encourage the Commission to fully consider the product cycle in this case.

TIA believes that the public interest would best be served through the Commission's granting of the waiver. As NCTA indicates, this time-limited waiver would promote technological innovation, facilitate greater investment in innovative technologies, and encourage the efficient use of Commission resources.¹² NCTA's warning that a failure to grant the waiver could stifle innovation and defeat the goals of the statute should not be ignored. In addition, it is not beneficial for the public to have these products taken off the market. Forcing a product off the market will not make the product accessible, and will completely deprive the public of realizing the product's benefits. The failure to grant the waiver would harm the public interest without

¹¹ House Report at 26.

¹² See Petition at 8.

meaningfully increasing access for persons with disabilities. Products in the ICT sector benefit from an innovation cycle in which more advanced products are introduced at a higher price point, but become more affordable to consumers over time as the cost of product components drop. A substantial consumer benefit exists in allowing continued sale of these set-top boxes over a longer cycle.

The waiver request will also advance the public interest because it will promote technological innovation by permitting cable operators to expand the collection of services it can develop and deliver to customers, without any uncertainty regarding whether the ACS rules would apply. Granting the waiver will offer providers the necessary confidence to innovate and experiment with set-top boxes as a platform for delivery of new features by removing a potential cost overhang. And, as NCTA states, to the extent that these features are successful, there would be ample time for cable operators and set-top box manufacturers to make certain that accessibility features are built into future generations of set-top boxes.¹³

¹³ See Petition at 9.

For the foregoing reasons, TIA urges the Commission to grant the petition for waiver filed by NCTA in the above-captioned proceedings.

Respectfully submitted,

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