

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 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
)	

**REPLY COMMENTS OF THE TELECOMMUNICATIONS INDUSTRY
ASSOCIATION**

The Telecommunications Industry Association (“TIA”)¹ hereby submits reply comments in support of the petition for waiver filed by the Entertainment Software Association (“ESA”) in the above-captioned proceedings.² In the Petition, ESA requests that the Federal Communications Commission’s (“Commission”) grant a waiver for game consoles, both home

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, produce, and deploy a wide variety of devices with the goal of making technology accessible to all Americans.

² Entertainment Software Association, Petition for Waiver, CG Docket No. 10-213 (March 21, 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, DA 12-760 (May 15, 2012).

and handheld, and their peripherals and integrated online networks; game distribution and online game play services; and game software of advanced communications services (“ACS”) rules the Twenty-First Century Communications and Video Accessibility Act of 2010 (the “CVAA” or the “Act”).³ We support the Petition and agree with ESA that granting the waiver request for these three classes of equipment or services, which are designed primarily for non-ACS, is consistent with the intent of the Act and is in the public interest.

TIA urges the Commission to make a determination that the primary purpose of the three classes of equipment or services raised in the Petition is not ACS. Although gaming services and products in some instances provide multiple purposes including gaming and other entertainment offerings, ESA effectively establishes that each of the three classes, are designed primarily for playing video games and not providing advanced communications.⁴ As ESA notes in its petition, a range of stakeholders support a waiver for game industry products and services.⁵ TIA members, too, manufacture the equipment at issue in the Petition, and we agree with ESA’s analysis.

We also endorse the requested waiver period proposed by ESA.⁶ As explained in the Petition, console makers have released new systems approximately every five to seven years.⁷

³ Twenty-First Century Communications and Video Accessibility Act of 2010, Pub. L. No. 111-260, 124 Stat. 2751 (2010).

⁴ See Petition at 11-17, 22-26, and 27-30.

⁵ See Petition at 3.

⁶ See Petition at 18-21, 26-27, and 31-34.

⁷ See Petition at 19.

We agree that the lifecycle for a gaming console is far lengthier than the time period between the launch of successive systems, and urge the Commission to grant the waiver for the eight year time period proposed. These systems 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 critical product components, such as microprocessors, drops. A substantial consumer benefit exists in allowing continued sale of these systems over a longer cycle, albeit with less functionality as the most advanced products being sold at the same time.

The Commission's decision in this matter is significant to the ICT industry, past those that provide gaming products and services. The determination made in response to the Petition will indicate how this new regulatory regime will be applied and enforced more generally moving forward. We encourage the Commission to fully consider the insight provided in the ESA petition that illustrates how product cycles can vary from class to class and should received unique analysis under the Commission's rules.⁸ Congress intended that the Commission promote accessibility through a flexible regulatory approach that does not inhibit innovation.⁹ TIA has long held the position that granting categorical waivers will provide manufacturers and industry participants with much-needed certainty that will spur innovation generally in new devices that may have incidental ACS, including the gaming industry.¹⁰ We urge the Commission to avoid an overly-rigid application of ACS rules to technologies that are used for non-ACS purposes (in this

⁸ *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, at ¶ 182-186 (2011) ("ACS Order"); 47 C.F.R. § 14.5(a)(2).

⁹ *See* H.R. Rep. No. 111-563 at 26 (2010).

¹⁰ *See, e.g.*, Comments of TIA, MB Docket No. 11-154 (Oct. 18, 2010) at 10.

case, gaming) and in this respect are nascent. Regulation in such a fashion would discourage investment and innovation in these products, ultimately hampering the proliferation of ACS features in them.¹¹ TIA urges the Commission to take this opportunity to set a precedent of regulatory flexibility that will encourage innovation in ACS, and to provide the designers and manufacturers much-needed regulatory certainty in the application and enforcement of ACS rules.¹²

¹¹ See, e.g., Comments of Panasonic Corporation of North America, CG Docket No. 10-213 (Jun. 14, 2012) at 9.

¹² ACS Order at ¶ 193.

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

Respectfully submitted,

Telecommunications Industry Association

By: /s/ Danielle Coffey

Danielle Coffey
Vice President, Government Affairs

Mark Uncapher
Director, Regulatory and Government Affairs

Brian Scarpelli
Manager, Government Affairs

TELECOMMUNICATIONS INDUSTRY ASSOCIATION
10 G Street N.E.
Suite 550
Washington, D.C. 20002
(202) 346-3240

June 25, 2012