

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of
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
CG Docket No. 10-213

ORDER

Adopted: January 28, 2015

Released: January 28, 2015

By the Acting Chief, Consumer and Governmental Affairs Bureau:

I. INTRODUCTION

1. In this order, the Consumer and Governmental Affairs Bureau (CGB or Bureau) of the Federal Communications Commission (FCC or Commission) grants an extension of the waiver from the Commission's advanced communications services (ACS) accessibility rules to a distinct, narrow class of e-readers. We conclude that this narrow class of e-readers, while capable of accessing ACS, continues to be designed primarily for reading text-based digital works, not for ACS. We therefore extend the waiver, previously granted on January 28, 2014, for one year, until January 28, 2016.

II. BACKGROUND

2. In 2010, Congress enacted the Twenty-First Century Communications and Video Accessibility Act (CVAA) to amend the Communications Act of 1934 (Act) "to help ensure that individuals with disabilities are able to fully utilize communications services and equipment and better access video programming." Section 716 of the Act, as added by the CVAA, requires that providers of ACS and manufacturers of equipment used for ACS make their services and products accessible to individuals with disabilities, unless it is not achievable to do so. In 2011, the Commission adopted rules

1 Pub. L. No. 111-260, 124 Stat. 2751 (2010) (as codified in various sections of 47 U.S.C.), amended by Pub. L. No. 111-265, 124 Stat. 2795 (2010) (technical corrections).

2 S. Rep. No. 111-386 at 1 (Senate Report) (2010); H.R. Rep. No. 111-563 at 19 (House Report) (2010) (noting that the communications marketplace had undergone a "fundamental transformation" since Congress adopted Section 255 of the Act in 1996). See 47 U.S.C. § 255 (requiring access to telecommunications services and equipment).

3 47 U.S.C. § 617. ACS is defined as interconnected voice over Internet protocol (VoIP) service; non-interconnected VoIP service; electronic message service, such as e-mail, instant messaging, and SMS text messaging; and interoperable video conferencing service. Id. § 153(1); 47 C.F.R. § 14.10(c).

to implement the ACS provisions of section 716 of the Act.<sup>4</sup> The Commission also adopted rules to implement the recordkeeping and enforcement provisions of section 717 of the Act,<sup>5</sup> which apply to entities that are subject to section 716.<sup>6</sup>

3. By its terms, section 716 provides that the Commission may grant waivers of the ACS requirements for multipurpose equipment or services or classes of multipurpose equipment or services that are capable of accessing ACS but are nonetheless designed primarily for purposes other than use of ACS.<sup>7</sup> In instances where equipment and services may have multiple primary or co-primary purposes, waivers may not be warranted, depending on the circumstances.<sup>8</sup>

4. In conducting a waiver analysis, the Commission's rules provide for a case-by-case examination of whether the equipment is designed to be used for ACS purposes by the general public and whether and how the ACS features or functions are advertised, announced, or marketed.<sup>9</sup> In order to make this determination, the Commission must consider "whether the ACS functionality or feature is suggested to consumers as a reason for purchasing, installing, downloading, or accessing the equipment or service."<sup>10</sup> The Commission may also consider the manufacturer's market research and the usage trends of similar equipment or services in order to determine whether a manufacturer or provider designed the equipment or service primarily for purposes other than ACS.<sup>11</sup> Furthermore, the following factors may be relevant to a primary purpose waiver determination: whether the ACS functionality is designed to be operable outside of other functions or aids other functions; the impact that the removal of the ACS feature has on the primary purpose for which the equipment or services is claimed to be designed; and an

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<sup>4</sup> *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; 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 1966; Accessible Mobile Phone Options for People who are Blind, Deaf-Blind, or Have Low Vision*, CG Docket No. 10-213, WT Docket No. 96-198, CG Docket No. 10-145, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 14557 (2011) (*ACS Report and Order*). See also 47 C.F.R. §§ 14.1-14.21. Specifically, the ACS rules apply to models or versions of products and services that are introduced into the market or upgraded on or after October 8, 2013. *ACS Report and Order*, 26 FCC Rcd at 14601-05, ¶¶ 105-13. See also 47 C.F.R. § 14.20.

<sup>5</sup> 47 U.S.C. § 618; 47 C.F.R. §§ 14.30-14.52.

<sup>6</sup> 47 U.S.C. § 617. See *ACS Report and Order*, 26 FCC Rcd at 14650-77, ¶¶ 219-78.

<sup>7</sup> 47 U.S.C. § 617(h)(1). See also *ACS Report and Order*, 26 FCC Rcd at 14634, ¶ 181; 47 C.F.R. § 14.5. The Commission delegated to CGB the authority to act upon all such waiver requests. *ACS Report and Order*, 26 FCC Rcd at 14566, 14640-41, ¶¶ 19, 197.

<sup>8</sup> *ACS Report and Order*, 26 FCC Rcd at 14635, ¶ 184 (offering as an example of equipment or services that have multiple primary or co-primary purposes, smartphones that are designed for voice communications, text messaging, e-mail, web browsing, video chat, digital video recording, mobile hotspot connectivity, and several other purposes). In other words, multipurpose equipment or services that are capable of accessing ACS and are designed primarily or co-primarily for ACS, do not qualify for a waiver under this provision. 47 U.S.C. § 617(h)(1); 47 C.F.R. § 14.5(a)(1). A product or service may have co-primary purposes when it contains multiple features and functions. Conversely, as noted in the *ACS Report and Order*, the House and Senate Reports explain that "a device designed for a purpose unrelated to accessing advanced communications might also provide, on an incidental basis, access to such services. In this case, the Commission may find that to promote technological innovation the accessibility requirements need not apply." *ACS Report and Order*, 26 FCC Rcd at 14634, ¶ 181 (quoting House Report at 26; Senate Report at 8).

<sup>9</sup> *ACS Report and Order*, 26 FCC Rcd at 14634-35, ¶¶ 182, 183, 185. See also 47 C.F.R. § 14.5(a)(2).

<sup>10</sup> *ACS Report and Order*, 26 FCC Rcd at 14635, ¶ 185 (footnote omitted).

<sup>11</sup> *Id.* at 14635, ¶ 183.

examination of waivers for similar products or services.<sup>12</sup> In addition to considering these various factors when examining a waiver request, the Commission must utilize its general waiver standard, which requires good cause to waive the rules and a showing that the particular facts of the petition make compliance with the relevant requirements inconsistent with the public interest.<sup>13</sup>

5. The Commission may entertain a waiver for equipment and services individually or as a class and may limit the time of its coverage, with or without a provision for renewal.<sup>14</sup> The Commission will exercise its authority to grant class waivers, which apply to more than one piece of equipment or more than one service, in instances in which classes are carefully defined and the equipment or services share common defining characteristics.<sup>15</sup> In addition, the Commission will examine the extent to which the petitioner has explained in detail the expected lifecycle of the equipment or services that are part of the class.<sup>16</sup> Substantial upgrades are considered new products or services for the purpose of this waiver analysis.<sup>17</sup> To the extent a petitioner seeks a class waiver for multiple generations of similar equipment and services, the Commission will examine the justification for the waiver extending through the lifecycle of each discrete generation.<sup>18</sup> The Commission also will take a careful look at industry developments to determine whether any extensions are justified.

6. All products and services covered by a class waiver that are introduced into the market while the waiver is in effect will ordinarily be subject to the waiver for the duration of the life of those particular products or services – *i.e.*, for as long as those particular products or services are sold.<sup>19</sup> For example, if a particular model covered by a class waiver were to be introduced to the public on the day before the expiration of the waiver period, then all products of that particular model that are sold from that point forward would be covered by the waiver.<sup>20</sup> For products and services already under development *after* a class waiver expires, the achievability analysis may take into consideration the developmental stage of the product and the effort and expense needed to achieve accessibility at that point in the developmental stage.<sup>21</sup>

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<sup>12</sup> *Id.* at 14636, ¶ 186.

<sup>13</sup> *Id.* at 14637, ¶ 188 (citing 47 C.F.R. § 1.3; *Northeast Cellular Telephone Co., L.P. v. FCC*, 897 F. 2d 1164, 1166 (D.C. Cir. 1990)).

<sup>14</sup> *Id.* at 14638-39, ¶ 192. *See also* 47 C.F.R. § 14.5(c).

<sup>15</sup> *ACS Report and Order*, 26 FCC Rcd at 14639, ¶ 193. *See also* 47 C.F.R. § 14.5(b).

<sup>16</sup> *ACS Report and Order*, 26 FCC Rcd at 14639-40, ¶ 194. *See also* 47 C.F.R. § 14.5(c)(2).

<sup>17</sup> *ACS Report and Order*, 26 FCC Rcd at 14639, ¶ 192. *See also id.* at 14609, ¶ 124 (“Natural opportunities to assess or reassess the achievability of accessibility may include, for example, the redesign of a product model or service, new versions of software, upgrades to existing features or functionalities, significant rebundling or unbundling of product and service packages, or any other significant modification that may require redesign.”).

<sup>18</sup> *Id.* at 14640, ¶ 195.

<sup>19</sup> *Id.* at 14640, ¶ 194. *See also* 47 C.F.R. § 14.5(c)(2).

<sup>20</sup> A new waiver would be required if a substantial upgrade is made that changes the nature of the product or service. *See ACS Report and Order*, 26 FCC Rcd at 14639, ¶ 192. *See also 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 12970, 12973, ¶ 5 (CGB 2012) (*CEA/NCTA/ESA Waiver Order*).

<sup>21</sup> *ACS Report and Order*, 26 FCC Rcd at 14640, ¶ 194. *See also* 47 C.F.R. § 14.5(c)(2).

7. *E-Reader Waiver Order*. On January 28, 2014, in response to a petition filed by a Coalition of E-Reader Manufacturers (the Coalition)<sup>22</sup> and pursuant to its delegated authority,<sup>23</sup> the Bureau granted a limited-duration waiver of the ACS accessibility rules for a defined class of basic e-readers that the Bureau determined were not designed primarily or co-primarily for ACS.<sup>24</sup> The Bureau defined this class of basic e-readers to include any mobile electronic device that is capable of accessing ACS, designed primarily for the purpose of reading text-based digital works, such as books and periodicals, and meets each of the following requirements:

- (1) The device has no LCD screen, but rather utilizes a screen that is designed to optimize reading.
- (2) The device has no camera.
- (3) The device is not offered or shipped to consumers with built-in ACS client applications and the device manufacturer does not develop ACS applications for its respective device, but the device may be offered or shipped to consumers with a browser and social media applications.
- (4) The device is marketed to consumers as a reading device and promotional material about the device does not tout the capability to access ACS.<sup>25</sup>

8. Although the Coalition requested an indefinite waiver, the Bureau found that the rapid changes in e-reader and ACS technologies and the expanding importance of ACS technologies in Americans' daily lives weighed in favor of a limited-duration waiver.<sup>26</sup> Accordingly, the Bureau granted a waiver to the class of basic e-readers for one year, until January 28, 2015.<sup>27</sup>

### III. THE COALITION PETITION

9. On September 4, 2014, the Coalition filed a request for an extension of the class waiver granted in the *E-Reader Waiver Order*.<sup>28</sup> The Bureau placed the Coalition Petition on Public Notice for comment on September 26, 2014.<sup>29</sup>

10. The Coalition requests an ongoing waiver of the accessibility requirements for equipment used for ACS for the class of basic e-readers as defined in the *E-Reader Waiver Order*.<sup>30</sup> The Coalition states that, although access to ACS is available through the basic e-reader browser,<sup>31</sup> accessing text-based

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<sup>22</sup> Petition for Waiver, CG Docket No. 10-213 (filed May 16, 2013). The Coalition consists of Amazon.com, Inc., Kobo, Inc., and Sony Electronics Inc.

<sup>23</sup> See *ACS Report and Order*, 26 FCC Rcd at 14566, 14640-41, ¶¶ 19, 197.

<sup>24</sup> *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*, CG Docket No. 10-213, Order, 29 FCC Rcd 674, 686, ¶ 18 (CGB 2014) (*E-Reader Waiver Order*).

<sup>25</sup> *Id.* at 683, ¶ 15.

<sup>26</sup> *Id.* at 689, ¶ 23.

<sup>27</sup> *Id.* at 691, ¶ 25.

<sup>28</sup> Coalition of E-Reader Manufacturers Petition for Extension of Waiver, CG Docket No. 10-213 (filed Sept. 4, 2014) (Coalition Petition).

<sup>29</sup> *Request for Comment on Petition for Extension of Class Waiver of Commission's Rules for Access to Advanced Communications Services and Equipment by People with Disabilities*, CG Docket No. 10-213, 29 FCC Rcd 11513 (CGB 2014).

<sup>30</sup> Coalition Petition at 1-2.

<sup>31</sup> *Id.* at 5.

works (*i.e.*, reading) remains the single purpose of these devices.<sup>32</sup> In support, the Coalition first explains that, since the Bureau granted the initial waiver, basic e-readers continue to be marketed for reading and not for ACS, noting that recent online advertisements focus on the basic e-readers' functions related to reading and do not mention or describe ACS functions.<sup>33</sup> Second, the Coalition claims that media reports and consumer reviews of basic e-reader devices continue to demonstrate "that the public perceives e-readers as single-purpose devices intended for reading."<sup>34</sup> According to the Coalition, some users prefer basic e-readers to other devices, such as tablets, because e-readers offer "no distractions from the reading experience."<sup>35</sup> The Coalition emphasizes that even as multipurpose devices like tablets are increasing in functionality, basic e-readers remain optimized for reading text-based digital works, not for ACS.<sup>36</sup> Finally, the Coalition reports updated industry data that, they claim, continues to indicate only a very small percentage of basic e-reader users (just over four percent) launch their browsers to either access ACS from their e-readers or for other purposes.<sup>37</sup>

11. The Coalition further asserts that extending the waiver would satisfy the Commission's general waiver standard that good cause exists and that granting a waiver would not be inconsistent with the public interest.<sup>38</sup> Specifically, it claims that if the waiver is not extended, manufacturers would be discouraged from offering browsers on devices that are not designed or primarily used for ACS, including devices being created as part of the "Internet of Things," such as smart refrigerators, thermostats, and

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<sup>32</sup> *Id.* at 3. *See also id.* at 10 (stating that since the time of the initial waiver and the Coalition Petition, "the facts concerning the design, marketing, and use of e-readers have not changed").

<sup>33</sup> *Id.* at 4 (stating that recent online advertising materials describe the Kindle Paperwhite "as 'the best device for reading,' stating that [it] is 'lightweight,' 'carries over a thousand books,' allows users to 'read day or night,' and is 'the best way to read period'" and describe the Kobo e-readers as "[t]he ultimate in readability," noting that "the devices are 'carefully crafted to deliver a superior reading experience'").

<sup>34</sup> *Id.* (referencing a USA Today column stating that "'e-readers are ideal for people who simply like to read. They're designed primarily for downloading electronic books, magazines and newspapers from a wireless store'" (quoting Marc Saltzman, *e-Book Readers vs. Tablets: Which One is Right for You?*, USA Today, Feb. 23, 2014, <http://www.usatoday.com/story/tech/columnist/saltzman/2014/02/23/ereaders-vs-tablets/5575963/>). The Coalition also directs the Commission's attention to consumer reviews of basic e-readers that emphasize the reading functions of these devices. For example, a review of the Kindle Paperwhite stated that the device is "'not a tablet, not a computer, **my Paperwhite Kindle represents books for me.**"' *Id.* at 5 (quoting *Amazon Kindle Paperwhite Second Generation Review*, Hanselman.com (Apr. 10, 2014), available at <http://www.hanselman.com/blog/AmazonKindlePaperwhiteSECONDDGENERATIONReviewPlusNewKindleSoftwareUpdate.aspx>) (emphasis in original). Similarly, a review of the Kobo Aura stated that the device did not "'offer much in the way of bells-and-whistles . . . It's not a tablet – It's about reading books.'" *Id.* (quoting Paul Stevens, *Kobo Aura: A Compact E-Reader That Packs a Punch*, The Next Web (Oct. 9, 2013), available at <http://thenextweb.com/gadgets/2013/10/09/the-kobo-aura-a-compact-e-reader-that-packs-a-punch-review/>).

<sup>35</sup> *See* Letter from Gerard J. Waldron, Counsel for Coalition of E-Reader Manufacturers to Marlene Dortch, Secretary, FCC, at 1-2 (Nov. 17, 2014) (Coalition Nov. 17, 2014 *Ex Parte*).

<sup>36</sup> *See* Coalition Petition at 7; Coalition Nov. 17, 2014 *Ex Parte* at 2.

<sup>37</sup> Coalition Petition at 5-6. *See also* Coalition Nov. 17, 2014 *Ex Parte* at 2. The Coalition reports that a random sample of 414,139 active e-reader devices over a one-week period from July 30, 2014, to August 5, 2014, found that 4.2% of the users of these devices had launched their browsers. Coalition Petition at 5-6. According to the Coalition, the average time the browser was left open was just over four minutes. *Id.* at 6. The Coalition alleges that this usage pattern "is consistent with brief look-ups on Wikipedia or visiting links within books, rather than regular use of ACS." *Id.* The Coalition also states that 41% of browser sessions were "launched from within books or from other locations within the reading interface," which, the Coalition asserts, suggests these users were not accessing ACS. *Id.* Based on the assumption that users who launch the browser directly from within books or reading applications were not using the browser for ACS, the Coalition estimates that, "at most, only 2.5% of all sample users may have launched the browser for ACS-related purposes." *Id.*

<sup>38</sup> Coalition Petition at 1 (citing 47 C.F.R. § 1.3), 7-9.

watches.<sup>39</sup> The Coalition adds that if the waiver is not extended, basic e-readers would lose their distinctiveness as products that are “optimized solely for reading.”<sup>40</sup> In this regard, the Coalition claims that the considerable hardware and software changes that would be necessary to make the ACS features accessible on these devices would increase their cost, weight, size, and complexity to such an extent that the devices would no longer be able to succeed as single purpose reading devices.<sup>41</sup> More specifically, the Coalition claims that these “fundamental changes would hamper the ability of e-readers to optimize the reading experience.”<sup>42</sup> The Coalition goes on to assert that not providing accessibility on basic e-readers would not harm consumers because of the widespread availability of accessible alternatives to basic e-readers, including tablets, smartphones, and e-reading apps with screen-reading capabilities, some of which, the Coalition states, are “below the cost of all Coalition e-reader products.”<sup>43</sup> The Coalition also notes that the price point of some of these alternatives are “significantly lower than when the waiver was first granted.”<sup>44</sup> The Coalition adds that tablets “are becoming increasingly attractive options for schools because of their competitive pricing; their additional capabilities for video, audio, and software applications; their larger display options; and their accessibility features.”<sup>45</sup>

12. Finally, to justify its request that the waiver be “ongoing,” the Coalition asserts that the narrow class definition of basic e-readers adopted in the *E-Reader Waiver Order* ensures that only devices that do not have ACS as a primary purpose will be included in the waiver.<sup>46</sup> It adds that allowing the waiver to be ongoing would benefit the Commission by reducing administrative costs, benefit e-reader manufacturers by avoiding costly extension request proceedings, benefit industry by creating certainty, and benefit the public by not imposing requirements that would limit the development of reading-optimized e-readers and other single-purpose, non-ACS devices.<sup>47</sup>

13. Various consumer organizations, educational groups, library associations, and individual consumers oppose the Coalition Petition.<sup>48</sup> Generally, these commenters maintain that ACS is a co-primary purpose of basic e-readers.<sup>49</sup> For example, the Association of Research Libraries (ARL) and the

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<sup>39</sup> *Id.* at 8.

<sup>40</sup> *Id.*

<sup>41</sup> *Id.* at 8-9.

<sup>42</sup> *Id.* at 9.

<sup>43</sup> Coalition Nov. 17, 2014 *Ex Parte* at 2; Coalition Petition at 11. The Coalition states that Amazon’s line of Fire tablets are available for as low as \$99, while two out of three e-readers from Amazon are priced above \$99. Coalition Nov. 17, 2014 *Ex Parte* at 3. In addition, the Coalition notes that accessible ACS can be used on smartphones, such as the LG L34C Optimus Fuel smartphone, which is available for “as low as \$49 and does not require the purchase of a carrier plan.” *Id.*

<sup>44</sup> Coalition Nov. 17, 2014 *Ex Parte* at 3.

<sup>45</sup> *Id.*

<sup>46</sup> Coalition Petition at 12-13.

<sup>47</sup> *Id.* at 13-14.

<sup>48</sup> See Comments of National Federation of the Blind and American Council of the Blind (Oct. 27, 2014) (NFB and ACB Comments); Comments of Association on Higher Education and Disability (Oct. 22, 2014) (AHEAD Comments); Comments of Association of Research Libraries and American Library Association (Oct. 27, 2014) (ARL and ALA Comments); Reply Comments of Association of Research Libraries and American Library Association (Nov. 5, 2014) (ARL and ALA Reply Comments); Comments of James McCabe (Jan. 5, 2015); Letter from David H. Rothman, LibraryCity.org to The Honorable Tom E. Wheeler, Chairman, FCC (Jan. 5, 2015) (Rothman *Ex Parte*); Comments of Rick McKinney (Jan. 7, 2015).

<sup>49</sup> See Letter from John G. Pare, Jr., National Federation of the Blind (NFB), and Emily Lucio, Association on Higher Education and Disability (AHEAD) to Marlene Dortch, Secretary, FCC (Nov. 20, 2014) at 1 (NFB and AHEAD *Ex Parte*).

American Library Association (ALA) assert that basic e-readers are designed and marketed for ACS because (1) they include a WebKit-based Internet browser that is capable of accessing “nearly any web page” and “leaves open a wide array of ACS capability;”<sup>50</sup> and (2) consumers are likely to interpret the Coalition’s marketing materials discussing the WebKit-based Internet browser as offering ACS capability.<sup>51</sup> Additionally, ARL and ALA dispute the Coalition’s claim that consumers do not use basic e-readers to access ACS and, in support, cite to online discussion boards, articles, and blog posts that discuss the use of basic e-readers to access the mobile version of websites that provide users with the ability to access e-mail and potentially other forms of ACS.<sup>52</sup> The National Federation of the Blind (NFB) and the Association on Higher Education and Disability (AHEAD) also challenge the Coalition’s data regarding the use of browsers on basic e-readers, stating that although it may reflect the *current* use of ACS on basic e-readers, it does not reflect the potential use of ACS by people who are blind or have vision loss.<sup>53</sup> Furthermore, they question why basic e-readers include browsers, if, as the Coalition claims, ACS is not a co-primary purpose of these devices and assert that the Coalition is “intentionally marketing around the ACS capabilities of e-readers so that the products will be eligible for a waiver.”<sup>54</sup>

14. Commenters opposed to the waiver extension also dispute the Coalition’s claim that such extension would be consistent with the public interest.<sup>55</sup> NFB and the American Council of the Blind (ACB) state that an extension of the waiver would result in a “disability tax” and a “separate but equal” standard of access that is inconsistent with the purposes of the CVAA.<sup>56</sup> Commenters also argue that the failure to make basic e-readers accessible will undermine federal nondiscrimination laws that direct educational institutions not to use e-readers or other technologies that are not accessible to people who are blind or have vision loss. This, they contend, will place schools, libraries, and other public entities in the untenable position of using inaccessible technology and risking litigation; using more expensive

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<sup>50</sup> ARL and ALA Comments at 3. ARL and ALA assert that using a browser “to post information on a social media website” should be considered evidence of ACS. *Id.* at 3. ARL and ALA also argue that “social media status updates” should be considered ACS and that basic e-readers are used for ACS because they allow users to participate in these forms of communication. ARL and ALA Reply Comments at 2-3.

<sup>51</sup> ARL and ALA Comments at 3-5; ARL and ALA Reply Comments at 4 (claiming that Amazon’s marketing for its Webkit-based browser is “alerting all consumers with any knowledge of technology to the fact that its full-featured browser can be used for a range of dedicated communications functions, including services such as Gmail, and to access social media for the purposes of doing . . . personal communication”). *See also* NFB and AHEAD *Ex Parte* at 2 (stating that “the very customers the Coalition is targeting [with advertising] interpret the marketing material to advertise ACS”).

<sup>52</sup> ARL and ALA Comments at 5-6 (noting that the basic e-reader Kindle browser “can successfully render nearly any ‘mobile-oriented’ website,” including “mobile versions of Facebook, Gmail, Google Plus, and Twitter – all sites that have been described as ‘Kindle-friendly websites’ by some users”) (quoting Etienne de L’Amour, *How to make the most of Kindle Paperwhite’s web browser*, Mystical Faction (Aug. 10, 2013), available at <http://mystical-faction.blogspot.com/2013/08/making-most-of-kindle-paperwhites-web.html>).

<sup>53</sup> NFB and AHEAD *Ex Parte* at 1.

<sup>54</sup> *Id.* at 2.

<sup>55</sup> NFB and ACB Comments at 2-8; ARL and ALA Comments at 6-8; NFB and AHEAD *Ex Parte*.

<sup>56</sup> NFB and ACB Comments at 2-5. NFB, ACB, and AHEAD note that, despite the availability of “no cost” e-reader applications that are accessible to blind users, the overall cost is higher for blind users, who must possess “a high-cost delivery system like a PC, multi-purpose tablet, or smartphone” to access those applications. *Id.* at 2. NFB and ACB also claim that most tablets are more expensive than basic e-readers, and that such devices do not provide the simplistic interface of the basic e-reader that many blind users may desire. NFB and AHEAD *Ex Parte* at 2; NFB and ACB Comments at 3-4.

technology; or rejecting all technological options.<sup>57</sup> For similar reasons, ARL and ALA assert that the only way the public interest would be served is to deny the Coalition's request because this action would increase access to ACS as well as books, magazines, articles, and other print media on basic e-readers for print-disabled users.<sup>58</sup>

15. Commenters in opposition to the Coalition's petition also claim that an extension of the waiver will not promote technological innovation, which, they state, was Congress's purpose in enacting the waiver provision.<sup>59</sup> NFB and ACB point out that earlier, discontinued e-reader models incorporated accessible features without sacrificing innovation and that the Commission should not assume that developers of other products would choose not to innovate rather than incorporate accessible features into their products.<sup>60</sup> Finally, ARL and ALA urge that if the Bureau grants the waiver, it narrow the class definition of basic e-readers to exclude devices that are offered or shipped to consumers with a built-in browser because an e-reader that is truly a single-purpose device, intended only for reading, will not include a browser.<sup>61</sup>

16. The Consumer Electronics Association (CEA) and the Internet Association support the Coalition Petition.<sup>62</sup> These commenters argue that the primary purpose and reading-focused design of basic e-readers has not changed since the initial waiver was granted and that the waiver continues to be justified because ACS is not a primary or co-primary purpose of basic e-readers.<sup>63</sup> The Internet Association also argues that extending the waiver would serve the public interest by "advancing the availability of single-purpose non-ACS devices," including devices created as part of the "Internet of Things."<sup>64</sup> CEA also supports granting the waiver for an indefinite period of time, arguing that e-readers that fall within the class definition "will almost certainly qualify for a waiver" and that an ongoing waiver

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<sup>57</sup> NFB and ACB Comments at 7-8. *See also* NFB and AHEAD *Ex Parte* at 2-3; AHEAD Comments at 1 (noting that guidance from the Department of Justice states that institutes of higher education cannot adopt inaccessible technologies); Rothman *Ex Parte* at 5.

<sup>58</sup> ARL and ALA Comments at 6-8.

<sup>59</sup> NFB and ACB Comments at 8-10 (citing House Report at 26); ARL and ALA Reply Comments at 7-8; Rothman *Ex Parte* at 2. *See also* *ACS Report and Order*, 26 FCC Rcd at 14634, ¶ 181 (quoting House Report at 26; Senate Report at 8).

<sup>60</sup> NFB and ACB Comments at 9. *See also* ARL and ALA Reply Comments at 7-8 (arguing that because basic e-readers are "an established technology" with core features that have "remained the same over several generations of products," a waiver will not foster innovation in basic e-readers); *id.* at 8 (claiming that a denial of the waiver extension will not stifle innovation in products designed as part of the Internet of Things, because it is unlikely that consumers will use such objects to engage in communication with others and the applicability of the ACS accessibility rules to such devices can be considered independently from their applicability to basic e-readers).

<sup>61</sup> ARL and ALA Comments at 8-9. *See also* NFB and AHEAD *Ex Parte* at 2 (stating that "it is unclear why browsers exist on the devices at all" if ACS is not a co-primary purpose of the device).

<sup>62</sup> *See* CEA Comments (Oct. 27, 2014); Internet Association Comments (Oct. 27, 2014). The Internet Association consists of Airbnb, Amazon, AOL, Auction.com, eBay, Etsy, Expedia, Facebook, Gilt, Google, Groupon, IAC, LinkedIn, Lyft, Monster Worldwide, Netflix, Practice Fusion, Rackspace, reddit, Salesforce.com, Sidecar, SurveyMonkey, TripAdvisor, Twitter, Uber Technologies, Inc., Yelp, Yahoo!, and Zynga. Internet Association Comments at 1, n.1.

<sup>63</sup> Internet Association Comments at 2, 3; CEA Comments at 4-5. *See also* Coalition Petition at 6 (stating "[i]n the time since the waiver was granted, e-readers' primary purpose and reading-focused design has not changed"). The Internet Association notes that the social networking applications preinstalled on basic e-readers provide only "one-to-many social sharing functionality," and urges the Bureau to reaffirm that using a browser to post information to a social media website (*e.g.*, Facebook) is not ACS. Internet Association Comments at 1-2.

<sup>64</sup> Internet Association Comments at 2-3.



would benefit the public, e-reader manufacturers, and the Commission for the reasons identified by the Coalition.<sup>65</sup>

17. In its replies to these commenters, the Coalition reiterates many of the points made in its Petition to support its position that ACS has not become a primary purpose of basic e-readers since the Bureau granted the initial waiver<sup>66</sup> and that granting such a waiver would be in the public interest.<sup>67</sup> The Coalition denies ARL and ALA's claim that it markets the ACS capabilities of basic e-readers, noting that the marketing materials cited by ARL and ALA make no mention of ACS and instead feature other, non-ACS functions, such as connecting to the Kindle store and accessing Wikipedia.<sup>68</sup> In addition, the Coalition denies that its marketing materials purposefully omit mention of the ACS capabilities of basic e-readers in an attempt to evade regulation; rather, the Coalition states, its marketing materials "do not advertise ACS capabilities for their e-readers because they are not designed for ACS."<sup>69</sup> The Coalition also insists that while some consumers may access ACS through the browsers installed on e-readers, industry data shows that "only a very small percentage of e-reader users launch the browser for any purpose, much less for ACS-related purposes."<sup>70</sup> In response to NFB and ACB's assertions that users with disabilities face a financial burden because basic e-readers are not accessible, the Coalition provides additional data on the availability of smartphones and tablets at prices that are comparable to basic e-readers.<sup>71</sup> The Coalition further maintains that extension of the waiver will encourage technological innovation by promoting the availability of e-readers as a single-purpose non-ACS device, and that "the simplicity of an e-reader is itself an innovation."<sup>72</sup> Finally, the Coalition opposes ARL and ALA's suggestion to narrow the class definition to exclude e-readers that have a built-in browser.<sup>73</sup> The Coalition states that a device that does not have a browser would not require a waiver because it would not be capable of accessing ACS.<sup>74</sup>

#### IV. DISCUSSION

18. We extend the waiver from the Commission's ACS rules for the class of basic e-readers as defined in the *E-Reader Waiver Order* until January 28, 2016. We limit the term of the waiver to one year from the expiration of the initial waiver,<sup>75</sup> rather than grant the Coalition's request for an ongoing waiver. We continue to believe that, given the evolution of e-reader and tablet technologies and the expanding role of ACS in electronic devices, granting a waiver beyond a one-year period is outweighed by the public interest and congressional intent to ensure that Americans with disabilities have access to advanced communications technologies.

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<sup>65</sup> CEA Comments at 6. *See also* Coalition Comments at 13-14.

<sup>66</sup> Reply Comments of the Coalition of E-Reader Manufacturers at 2 (Nov. 5, 2014) (Coalition Reply Comments).

<sup>67</sup> *Id.* at 5-7.

<sup>68</sup> *Id.* at 3.

<sup>69</sup> Letter from Gerard J. Waldron, Counsel for Coalition of E-Reader Manufacturers to Marlene Dortch, Secretary, FCC, at 2 (Dec. 12, 2014) (Coalition Dec. 12, 2014 *Ex Parte*).

<sup>70</sup> Coalition Reply Comments at 4.

<sup>71</sup> *Id.* at 5-6 (noting that the Fire HD 6 is available for as low as \$99 and the LG Optimus Fuel 34C smartphone is available for \$49.99, has Wi-Fi capability, and does not require the purchase of a carrier plan).

<sup>72</sup> *Id.* at 7.

<sup>73</sup> *Id.* at 8.

<sup>74</sup> *Id.*

<sup>75</sup> The initial waiver expires on January 28, 2015. *E-Reader Waiver Order*, 29 FCC Rcd at 691, ¶ 25.

### A. Extension of the Waiver

19. First, we reaffirm that the class of e-reader equipment for which the Coalition seeks a waiver is defined with sufficient specificity and that the devices in this class share enough common characteristics to be granted a class waiver under the framework of the *ACS Report and Order*.<sup>76</sup> For purposes of the extension of this class waiver, we continue to define the class of basic e-readers as we did in the *E-Reader Waiver Order*,<sup>77</sup> to include any mobile electronic device that is capable of accessing ACS, designed primarily for the purpose of reading text-based digital works, such as books and periodicals, and meets each of the following requirements:

- (1) The device has no LCD screen, but rather utilizes a screen that is designed to optimize reading.
- (2) The device has no camera.
- (3) The device is not offered or shipped to consumers with built-in ACS client applications and the device manufacturer does not develop ACS applications for its respective device, but the device may be offered or shipped to consumers with a browser and social media applications.
- (4) The device is marketed to consumers as a reading device and promotional material about the device does not tout the capability to access ACS.

20. We do not agree with ARL and ALA that the class definition should exclude devices that are offered or shipped to consumers with built-in browsers.<sup>78</sup> As the Bureau has previously determined, “the mere inclusion of web browsers on these devices . . . is not sufficient to reach a determination that ACS is a primary or co-primary purpose of these devices.”<sup>79</sup> The Coalition has identified multiple reasons for including browsers in e-readers that are unrelated to accessing ACS, such as looking up words or information on the Internet and downloading e-books.<sup>80</sup> Moreover, if the device were not to include a web browser, it would be incapable of accessing ACS, and there would be no need for a waiver.<sup>81</sup>

21. Next, we consider whether basic e-readers are designed primarily or co-primarily for ACS. The Bureau previously concluded that basic e-readers “are capable of accessing ACS, are designed for multiple purposes, and that consumers do utilize them for ACS, but, at present . . . they are designed primarily for the purpose of reading.”<sup>82</sup> Based on a review of the record, we conclude that, since the grant of the initial waiver, the primary purpose of basic e-readers has not changed and, as a result, they remain eligible for waiver under section 716(h)(1)(A) and (B) of the Act and section 14.5(a) of the Commission’s rules.<sup>83</sup>

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<sup>76</sup> See 47 C.F.R. § 14.5(b). See also *ACS Report and Order*, 26 FCC Rcd at 14639, ¶ 193.

<sup>77</sup> See *E-Reader Waiver Order*, 29 FCC Rcd at 693, ¶ 15 (defining the class of basic e-readers).

<sup>78</sup> See ARL and ALA Comments at 9. See also NFB and AHEAD *Ex Parte* at 2 (stating that “it is unclear why browsers exist on the devices at all” if ACS is not a co-primary purpose of the device).

<sup>79</sup> *E-Reader Waiver Order*, 29 FCC Rcd at 684, ¶ 17.

<sup>80</sup> Coalition Petition at 5.

<sup>81</sup> See 47 C.F.R. § 14.5(a)(1)(i) (including the capability of accessing ACS as an element of the waiver consideration); *ACS Report and Order*, 26 FCC Rcd at 14634, ¶ 181 (adopting the proposal to focus the “waiver inquiry on whether the multipurpose equipment or service has a feature or function that is capable of accessing ACS but is nonetheless designed primarily for purposes other than using ACS”).

<sup>82</sup> *E-Reader Waiver Order*, 29 FCC Rcd at 683, ¶ 16.

<sup>83</sup> 47 U.S.C. § 617(h)(1)(A)-(B); 47 C.F.R. § 14.5(a).

22. The parties to this proceeding agree that browsers included on basic e-reader devices are capable of accessing ACS.<sup>84</sup> However, the ability of these devices to access ACS is not enough to conclude that ACS is a primary or co-primary purpose of these devices.<sup>85</sup> There is no evidence in the record that the key design features of the basic e-reader that led the Bureau to previously conclude that the basic e-readers are not designed for ACS – *i.e.*, the “relatively slow refresh screen rates, the absence of apps for integrated e-mail clients, the inability . . . to display video for any purpose, including video conferencing, and the lack of high powered processors” – have changed since the initial waiver was granted.<sup>86</sup> These design features continue to support a finding that basic e-readers are not designed for ACS at this time. In addition, as we noted in the *E-Reader Waiver Order*, the fact that the browsers installed on these devices can be used to post information to social media sites is not, in itself, sufficient to reach a determination that ACS is a primary or co-primary purpose of these devices. Contrary to the assertions of some commenters,<sup>87</sup> using a browser to post information to a social media website (*e.g.*, Facebook) is not evidence of ACS. The Commission has previously found that ACS covered by the Act includes “more traditional, two-way interactive services such as text messaging, instant messaging, and electronic mail, *rather than . . . blog posts, online publishing, or messages posted on social networking websites.*”<sup>88</sup>

23. We also consider “the extent to which the ACS functionality is advertised, announced, or marketed to consumers as a reason for purchasing, installing, downloading, or accessing the equipment or service.”<sup>89</sup> Both the record in this proceeding<sup>90</sup> and an independent review of the manufacturer marketing materials for these devices support a finding that their primary purpose is for reading, rather than for ACS. Information provided on the product listings for basic e-readers, such as the Kindle E-Reader and Kobo Aura HD, continue to focus primarily on ways to facilitate reading on these devices.<sup>91</sup> Although, as

<sup>84</sup> See Coalition Petition at 5; CEA Comments at 5; NFB and ACB Comments at 3-4; ARL and ALA Comments at 3.

<sup>85</sup> *E-Reader Waiver Order*, 29 FCC Rcd at 684-85, ¶ 17.

<sup>86</sup> See *id.* at 683, ¶ 16 (footnotes omitted). As discussed above, the Coalition emphasizes that even as multipurpose devices like tablets are increasing in functionality, basic e-readers remain optimized for reading text-based digital works, not for ACS. See ¶ 10, *supra*; Coalition Petition at 7; Coalition Nov. 17, 2014 *Ex Parte* at 2.

<sup>87</sup> See, *e.g.*, See ARL and ALA Comments at 3; ARL and ALA Reply Comments at 2-3. See also ¶ 13, n.50, *supra*.

<sup>88</sup> *ACS Report and Order*, 26 FCC Rcd at 14574, ¶ 43 (quoting Senate Report at 6; House Report at 23) (emphasis added).

<sup>89</sup> *E-Reader Waiver Order*, 29 FCC Rcd at 685, ¶ 18 (citing *ACS Report and Order*, 26 FCC Rcd at 14635, ¶ 185; *CEA/NCTA/ESA Waiver Order*, 27 FCC Rcd at 12987, ¶ 35).

<sup>90</sup> See Coalition Petition at 4-5; Coalition Reply Comments at 3-4; Coalition Nov. 17, 2014 *Ex Parte* at 1-2.

<sup>91</sup> For example, the Amazon website states. “Unlike tablets, the Kindle Paperwhite is designed to deliver a superior reading experience.” Amazon.com, Kindle Paperwhite, <http://www.amazon.com/dp/B00JG8GOWU/> (last visited Dec. 11, 2014). It also states, “Kindle Paperwhite is purposely designed as a dedicated e-reader. Indulge your love of reading without interruptions like email alerts or push notifications.” Amazon.com, Kindle Paperwhite, <http://www.amazon.com/dp/B00JG8GOWU/#readers> (last visited Dec. 11, 2014). In this regard, the website states the Kindle Paperwhite “reads like paper – no annoying glare, even in bright sunlight”; is “lighter than a paperback,” allowing users to “[c]omfortably hold [it] in one hand for long reading sessions”; contains a “built-in front light . . . so you can read comfortably without eyestrain”; and requires only a single charge for up to eight weeks “based on a half hour of reading per day.” *Id.* at <http://www.amazon.com/dp/B00JG8GOWU/#readers>. The website also lists features of the Kindle Paperwhite that go “beyond a book.” *Id.* at <http://www.amazon.com/dp/B00JG8GOWU/#beyond> (noting features such as looking up words and concepts in a dictionary or Wikipedia, learning about a book before beginning reading, displaying in-line footnotes, displaying an estimate of remaining reading time, and translating book passages into another language). The lists of features do not include any mention of ACS capabilities in the Kindle Paperwhite. *Id.* Similarly, the Kobo website states that the Kobo Aura HD offers “a completely immersive reading experience and the most paper-like E-ink display,” “a

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noted by ARL and ALA, some advertisements for basic e-readers note the availability of a Webkit-based browser, the mention of such browsers does not equate to advertising the use of such browsers for ACS.<sup>92</sup> Rather, advertisements mentioning e-reader browsers generally refer to other web-based functions, such as connecting to an on-line bookstore or accessing Wikipedia.<sup>93</sup> Moreover, although some websites suggest to potential purchasers that they can use their devices to share information about books with others, these references continue to appear focused primarily on the ability to post passages to social networks such as Facebook and Goodreads, rather than on having conversations about books.<sup>94</sup> The lack of advertising and marketing about ACS further supports a finding that basic e-readers are not designed for ACS.

24. Finally, we consider the extent to which basic e-readers are used for ACS. The Coalition acknowledges that some consumers may use basic e-readers to access ACS.<sup>95</sup> However, the Coalition, in arguing against ACS as a primary or co-primary function of e-readers, points to industry data that shows that just over four percent of users launch their e-reader browsers for any purpose.<sup>96</sup> In a similar study conducted by the Coalition in 2012 and 2013, the Coalition reported that approximately seven percent of users launched their e-reader browsers for any purpose.<sup>97</sup> Declining usage of the browser for any purpose, including ACS, weighs in favor of a finding that basic e-readers are not designed for the primary purpose of ACS.<sup>98</sup> For all of the above reasons, we conclude that the current design, marketing, and general use of basic e-readers is for reading text-based digital works and that accessing ACS is not a primary or co-primary purpose of basic e-readers at this time, but rather serves an incidental purpose on these devices.<sup>99</sup>

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breakthrough front-light that's perfect for reading," the ability to "[c]ustomize your reading experience" with a selection of font styles and sizes, the ability to "enjoy up to two months of uninterrupted reading on a single charge," and "the complete print experience," including "seamless" page turns and a device that "fits perfectly in your hand, just as a hardcover does." Kobo.com, Kobo Aura HD Overview, <http://www.kobo.com/koboaurahd> (last visited Dec. 11, 2014).

<sup>92</sup> See ¶ 13, *supra*; ARL and ALA Comments at 3-5; ARL and ALA Reply Comments at 4.

<sup>93</sup> See Amazon.com, Kindle Paperwhite, <http://www.amazon.com/dp/B00JG8GOWU/> (last visited Dec. 11, 2014) ("Kindle Paperwhite's experimental web browser is based on WebKit. It's easy to find the information you're looking for right from your Kindle Paperwhite. Kindle Paperwhite enables you to connect to the Kindle Store and access Wikipedia, all over Wi-Fi."). See also Coalition Reply Comments at 3 (noting that the language cited by ARL and ALA makes no mention of ACS and "the two activities that it does mention (connection to the Kindle Store and access to Wikipedia) are two of the simple, non-ACS browsing activities").

<sup>94</sup> See Amazon.com, Kindle Paperwhite Touch Screen E-Reader with Light, <http://www.amazon.com/dp/B00JG8GOWU/#beyond> (last visited Dec. 11, 2014) (noting the ability to access Goodreads to "see what your friends are reading, share highlights, rate the books you read"); Kobo.com, Kobo Aura HD Overview, <http://www.kobo.com/koboaurahd> (last visited Dec. 11, 2014) (noting the ability to "share your . . . favourite [*sic*] passages and eBooks, to your Facebook timeline").

<sup>95</sup> See Coalition Reply Comments at 4 (stating that "the Coalition has never claimed that *no* consumers access ACS using the browsers installed on e-readers").

<sup>96</sup> See ¶ 10, *supra*; Coalition Petition at 5-6; Coalition Nov. 17, 2014 *Ex Parte* at 2. The Coalition argues that the number of consumers using the browser to access ACS is closer to 2.5 percent based on the amount of time the browser is used and the point from which the browser is accessed on the device. See n.37, *supra*; Coalition Petition at 5-6.

<sup>97</sup> See *E-Reader Waiver Order*, 39 FCC Rcd at 678, ¶ 8, n.42.

<sup>98</sup> See *ACS Report and Order*, 26 FCC Rcd at 14635, ¶ 183 (market research and usage trends may be considered to determine whether the equipment is designed primarily for purposes other than ACS).

<sup>99</sup> See Senate Report and 8; House Report at 26 (stating that "a device designed for a purpose unrelated to accessing advanced communications might also provide, on an incidental basis, access to such services"). The Coalition maintains that, in order to incorporate ACS accessibility into basic e-readers at this time, manufacturers would have

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25. Additionally, we conclude that the Coalition has demonstrated good cause to extend the waiver of the rules for the class of basic e-readers and that, at this time, an extension of the waiver would not be inconsistent with the public interest.<sup>100</sup> To begin with, we continue to recognize the Coalition's concern regarding the preservation of basic e-readers as a niche product that is devoted to accessing text-based digital works.<sup>101</sup> The Coalition's Petition emphasizes that Coalition members have chosen to design and market basic e-readers as products that serve the single purpose of reading, distinct from smartphones and tablets.<sup>102</sup>

26. We also continue to recognize and acknowledge the critical purpose of the CVAA to ensure that Americans with disabilities have the capability to use ACS to communicate with others.<sup>103</sup> As Congress explained, the benefits of modern communications technologies "have profoundly altered our everyday lives . . . allowing mobile access to the Internet and a diverse menu of applications and services."<sup>104</sup> Moreover, as Congress has stated, although many advances have improved the communications capabilities of the general public, "the extraordinary benefits of these technological advances are often still not accessible to individuals with disabilities."<sup>105</sup> We note, however, that since the Commission's rules requiring accessible ACS and equipment used with ACS went into effect in October 2013, there has been substantial growth in the availability of reasonably priced portable communication devices, including tablets and smartphones, as well as reading apps, that can be used with screen readers, and that also provide accessible ACS.<sup>106</sup> The availability of these newly accessible devices, together with

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to make fundamental changes to the devices' hardware and software that would erode the distinction between basic e-readers and tablets established by the Coalition. *See* Coalition Petition at 8-9; Coalition Reply Comments at 7. We do not find it necessary to express a judgment about the feasibility of incorporating accessibility features into basic e-readers in this Order because we base our determination that a waiver is warranted on our conclusion that ACS is not a primary or co-primary purpose of basic e-readers. For this reason, we also do not find it necessary to make a determination as to whether a waiver is necessary to preserve the basic e-reader as a niche product devoted to reading. *See* Coalition Reply Comments at 7.

<sup>100</sup> *See* 47 C.F.R. § 1.3. *See also* ACS Report and Order, 26 FCC Rcd at 14637, ¶ 188.

<sup>101</sup> *See E-Reader Waiver Order*, 29 FCC Rcd at 687, ¶ 20; Coalition Petition at 3.

<sup>102</sup> Coalition Petition at 7, 8-9. *See also* Coalition Reply Comments at 7 (asserting that, since multipurpose tablets have become more popular, the simplicity of the basic e-reader is necessary for it to remain a viable product); Coalition Nov. 17, 2014 *Ex Parte* at 1-2. While we acknowledge the interest of the Coalition to continue offering basic e-readers as simplified devices, we do not, by this acknowledgement, find it necessary to make a determination as to whether adding accessibility features would interfere with the simplicity of basic e-readers, given that we have determined ACS is not a primary or co-primary purpose of these devices.

<sup>103</sup> *See E-Reader Waiver Order*, 29 FCC Rcd at 686, ¶ 19.

<sup>104</sup> Senate Report at 1; House Report at 19.

<sup>105</sup> Senate Report at 2; House Report at 19.

<sup>106</sup> *See* Coalition Petition at 11 (stating that readers who are blind or visually impaired have access to "tablets, smartphones, and e-reading apps with screen-reading capabilities"); Coalition Reply Comments at 5-6 (citing the availability of tablets and smartphones with prices comparable to basic e-readers); Coalition Dec. 12, 2014 *Ex Parte* at 2-3 (noting the "multiple accessible devices, including tablets and smartphones, that are available at many different price points and are designed with ACS in mind," the "free e-reading apps that allow readers to access publications available on e-readers on a wide variety of accessible platforms," and recent efforts by Coalition members to "improve the accessibility of a number of their products and services"). *See also 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, Biennial Report to Congress as Required by the Twenty-First Century Communications and Video Accessibility Act of 2010, 29 FCC Rcd 11909, 11932, ¶ 41 (CGB 2014) (noting "extensive submissions illustrating a range of accessible devices, from feature phones to smartphones, for individuals with varying types of disabilities" and finding that "industry has made efforts to comply with the

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our determination that ACS is not currently a primary or co-primary purpose of basic e-readers – based in part on the scarce use of ACS on these devices to date – leads us to conclude that extending the waiver will not have a significant impact on the ability of consumers with disabilities to access ACS at this time.<sup>107</sup>

27. We also remain particularly sensitive to the need for consumers who are blind or visually impaired to access text-based digital works and the consequent harm that the denial of such access can pose to students and library patrons with such disabilities.<sup>108</sup> However, while we acknowledge that there may be some benefits to basic e-readers that cannot be duplicated by other devices,<sup>109</sup> the record shows that a selection of reasonably priced alternatives now exist to allow reading access on portable devices, further suggesting that the waiver extension would not be inconsistent with the public interest.<sup>110</sup> We are persuaded that the decreasing prices on and the increased availability of these tablets and smartphones – many of which have been introduced into the market since the issuance of the initial waiver – lessens the negative impact on consumers who are unable to access reading features on basic e-readers.<sup>111</sup>

### **B. Duration of Waiver**

28. The Coalition urges the Commission to grant an ongoing waiver for the class of basic e-readers, because it claims that the narrow definition of the class “‘bakes in’ limitations that ensure that devices that should be within the scope of regulation are within the scope of regulation.”<sup>112</sup> According to the Coalition, the record demonstrates that the class definition “is sufficiently narrow to avoid creating any ‘loopholes’” in the category of devices covered by the waiver.<sup>113</sup> In contrast, commenters opposing the Coalition Petition ask that the waiver be limited to a defined time period, if granted.<sup>114</sup> We remain concerned that a lengthy or permanent waiver might negatively impact the ability of consumers with

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CVAA’s requirements to ensure that advanced communications services and the equipment used for these services are accessible to people with disabilities”).

<sup>107</sup> See *E-Reader Waiver Order*, 29 FCC Rcd at 687, ¶ 19.

<sup>108</sup> See *id.* at 686-87, ¶ 19. See also McKinney Comments at 1; McCabe Comments at 1; Rothman *Ex Parte* at 2, 3-5.

<sup>109</sup> See NFB and ACB Comments at 4 (stating that blind consumers may wish to access ACS on basic e-readers not only because of their price, but also because of the simplicity of the device); NFB and AHEAD *Ex Parte* at 2 (stating that schools and libraries may not want to purchase tablets because they “‘have more advanced functionality than schools and libraries are looking for’”).

<sup>110</sup> We reject the Coalition’s assertion that the Bureau should not consider the accessibility of reading features of text-based digital works in determining whether a waiver would serve the public interest. Coalition Petition at 12. Although access to the reading features of text-based digital works on these devices falls outside the CVAA’s ACS accessibility mandates, the Commission’s general waiver standard, which requires good cause to waive the rules and a showing that the particular facts of the petition make compliance with the relevant requirements inconsistent with the public interest, requires the Bureau to consider the broader implications of the waiver to determine its impact on the public interest. See 47 C.F.R. § 1.3.

<sup>111</sup> Coalition Reply Comments at 5-6; Coalition Nov. 17, 2014 *Ex Parte* at 2-3. An independent review of the manufacturer marketing materials shows that Amazon line of Fire Tablets are priced at \$99, \$139, \$179, and \$379. See Amazon.com, Fire HD 6, <http://www.amazon.com/dp/B00KC6I06S#firetablet-compare> (last visited Jan. 8, 2015). In contrast, the Kindle e-readers are priced at \$79, \$119, \$199. See Amazon.com, Kindle Paperwhite, <http://www.amazon.com/dp/B00JG8GOWU/#kindle-compare> (last visited Jan. 8, 2015).

<sup>112</sup> Coalition Petition at 12.

<sup>113</sup> *Id.* at 12-13.

<sup>114</sup> See ARL and ALA Comments at 9 (urging that if the waiver is granted, it “‘be granted on the basis that the Commission will review the situation after a certain period of time passes in order to ensure that the Coalition has not substantially changed the e-readers to include even more functions that implicitly include ACS capability’”).

disabilities to access ACS in the future. As explained below, we therefore limit the duration of this waiver extension to one year.

29. We agree with ARL and ALA that e-readers are “a rapidly changing area of technology,”<sup>115</sup> and that “the way in which the public uses technology also changes rapidly over time.”<sup>116</sup> Consequently, it remains difficult to predict the extent to which e-readers that currently fall into the protected class will evolve to include ACS as a primary or co-primary purpose.<sup>117</sup> We do not agree with the Coalition that the class definition necessarily excludes those devices that should be in compliance with the ACS rules. The e-readers covered in the class definition maintain the capability to access ACS, even if ACS is not currently the primary or co-primary purpose of these devices. As such, it is possible that e-readers that fall within the class definition could include greater ACS capabilities in the future, that consumer use of the ACS capabilities on these devices could increase, and that ACS could become a co-primary purpose. As we noted in the *E-Reader Waiver Order*, “if ACS features on the next generation of these devices are featured more prominently and, for example, begin to be utilized regularly in education, employment, and as a tool of social integration, it is conceivable that mobile communication in the online e-reader environment may become a co-primary purpose of basic e-reader devices.”<sup>118</sup> Moreover, the extent to which new accessibility solutions for ACS will be developed to facilitate the inclusion of accessibility features on basic e-readers while allowing them to maintain their simplicity remains difficult to predict.<sup>119</sup> Given our continued concern about the harm to consumers with disabilities that might result from the denial of access to ACS should ACS develop into a co-primary function on these devices, we find that extending the waiver for basic e-readers on an ongoing basis would be contrary to the public interest.<sup>120</sup>

30. In defining the waiver period for the class of basic e-readers, we consider “evidence on the record, including the lifecycle of the equipment or service in the class.”<sup>121</sup> In granting the initial waiver, the Bureau found that the lifecycle of the class of basic e-readers – the time it takes for the product to be developed and initially introduced in the market – is one year.<sup>122</sup> The Coalition’s Petition does not address the lifecycle of the class of basic e-readers, and there is no evidence in the record to cause us to reconsider our previous conclusion that the lifecycle of these products is one year. Moreover, Coalition members have continued to release new generations of e-readers every year since 2010.<sup>123</sup> We believe that the spacing of these product releases provides useful guidance with respect to the time it takes for a basic e-reader to be developed and introduced in the market.<sup>124</sup> We therefore find that the lifecycle

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<sup>115</sup> *Id.* See also *E-Reader Waiver Order*, 29 FCC Rcd at 689, ¶ 23 (stating that “[s]ince their introduction into the marketplace about six years ago and even very recently, e-readers have evolved at a rapid pace, becoming sleeker, lighter, easier to read, and less expensive with larger capacities and wireless capabilities”).

<sup>116</sup> ARL and ALA Comments at 9. See also *E-Reader Waiver Order*, 29 FCC Rcd at 689, ¶ 23 (noting the “expanding importance of ACS technologies in the daily lives of all Americans”).

<sup>117</sup> See *E-Reader Waiver Order*, 29 FCC Rcd at 690, ¶ 24.

<sup>118</sup> *Id.* at 689-90, ¶ 24 (footnotes omitted).

<sup>119</sup> See *id.* at 689, ¶ 23.

<sup>120</sup> See *id.* at 690, ¶ 24 (citing *CEA/NCTA/ESA Waiver Order*, 27 FCC Rcd at 12989-90, ¶ 38).

<sup>121</sup> 47 C.F.R. § 14.5(c)(2).

<sup>122</sup> *E-Reader Waiver Order*, 29 FCC Rcd at 691, ¶ 25.

<sup>123</sup> See *id.* at 690-91, ¶ 25. See also [http://en.wikipedia.org/wiki/Amazon\\_Kindle](http://en.wikipedia.org/wiki/Amazon_Kindle) (last visited Jan. 23, 2015) (detailing Amazon releases of new generation Kindles on an annual basis); [http://en.wikipedia.org/wiki/Kobo\\_eReader](http://en.wikipedia.org/wiki/Kobo_eReader) (last visited Jan. 23, 2015) (detailing Kobo releases of e-readers on an annual basis).

<sup>124</sup> See *E-Reader Waiver Order*, 29 FCC Rcd at 691, ¶ 25.

of the class of basic e-readers is one year and, accordingly, grant a one-year extension of the waiver. We believe that limiting the waiver extension period to one year will serve the public interest by balancing the interest of the Coalition's members in preserving a unique product and the interest of consumers with disabilities to access ACS in the event that basic e-readers come to include ACS as a co-primary purpose.

31. As with the initial waiver,<sup>125</sup> during the waiver period, we will not require manufacturers of equipment covered by the waiver to comply with the obligations of section 14.20, the performance objectives of section 14.21, and the recordkeeping obligations of section 14.31 of the Commission's rules.<sup>126</sup> However, to the extent that future generations of e-readers evolve to provide ACS as one of their primary functions, we expect manufacturers of basic e-readers to consider accessible design early during the development stages of such products, so that accessible features can be incorporated when the class waiver expires on January 28, 2016.<sup>127</sup>

## V. ORDERING CLAUSES

32. Accordingly, IT IS ORDERED that, pursuant to the authority contained in sections 4(i), 4(j) and 716 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), (j) and 617, and sections 0.361, 1.3 and 14.5 of the Commission's Rules, 47 C.F.R. §§ 0.361, 1.3 and 14.5, this Order IS ADOPTED.

33. IT IS FURTHER ORDERED that the Coalition Petition IS GRANTED to the extent discussed above and IS OTHERWISE DENIED.

34. IT IS FURTHER ORDERED that this Order SHALL BE EFFECTIVE upon release.

35. To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to [fcc504@fcc.gov](mailto:fcc504@fcc.gov) or call the Consumer and Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (TTY).

FEDERAL COMMUNICATIONS COMMISSION

Kris Anne Monteith  
Acting Chief  
Consumer and Governmental Affairs Bureau

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<sup>125</sup> See *id.* at 691, ¶ 26.

<sup>126</sup> 47 C.F.R. §§ 14.20, 14.21, 14.31. The waiver of these rules also includes a waiver of the obligation to conduct an achievability analysis for the waived products during the period of the waiver. See *ACS Report and Order*, 27 FCC Rcd at 14607-19, ¶¶ 119-48. See also *CEA/NCTA/ESA Waiver Order*, 27 FCC Rcd at 12976-77, 12980, 12988-89, ¶¶ 11, 19, 36; *E-Reader Waiver Order*, 29 FCC Rcd at 691, ¶ 26, n.136.

<sup>127</sup> In other words, we continue to expect an e-reader manufacturer to conduct accessibility planning as early as possible during the design process (including achievability analysis, as necessary) during the period of the extension of the class waiver for models that the manufacturer plans to introduce after January 28, 2016, as these models would not be subject to the waiver. *E-Reader Waiver Order*, 29 FCC Rcd at 691, ¶ 26, n.137 (citing *ACS Report and Order*, 26 FCC Rcd at 14602, 14609, ¶¶ 108, 124). We also continue to recognize, however, that the achievability analysis conducted for products and services already under development at the time when the class waiver expires may take into consideration the developmental stage of those products or services and the effort and expense needed to achieve accessibility at that point in their development. *Id.* (citing *ACS Report and Order*, 26 FCC Rcd at 14640, ¶ 194; 47 C.F.R. § 14.5(c)(2)).