

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: February 1, 2016

Released: February 1, 2016

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 indefinite 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 indefinitely extend the waiver, previously granted on January 28, 2014, and extended on January 28, 2015.1 Commencing three years from the release date of this Order, we will conduct a review of the status and accessibility of ACS provided on the class of e-readers subject to the waiver.

II. BACKGROUND

2. In 2010, Congress enacted the Twenty-First Century Communications and Video Accessibility Act (CVAA)2 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."3 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

1 This extension is retroactive to January 28, 2016, the expiration date of the prior extension of the waiver.

2 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).

3 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).

individuals with disabilities, unless it is not achievable to do so.<sup>4</sup> In 2011, the Commission adopted rules to implement the ACS provisions of section 716 of the Act.<sup>5</sup> The Commission also adopted rules to implement the recordkeeping and enforcement provisions of section 717 of the Act,<sup>6</sup> which apply to entities that are subject to section 716.<sup>7</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>8</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>9</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>10</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>11</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>12</sup> Furthermore, the following factors may be relevant to a primary purpose waiver determination: whether the ACS functionality is designed to

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<sup>4</sup> 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 CFR § 14.10(c).

<sup>5</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*, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 14557 (2011) (*ACS Report and Order*). See also 47 CFR §§ 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, paras. 105-13; see also 47 CFR § 14.20.

<sup>6</sup> 47 U.S.C. § 618; 47 CFR §§ 14.30-14.52.

<sup>7</sup> 47 U.S.C. § 617. See *ACS Report and Order*, 26 FCC Rcd at 14650-77, paras. 219-78.

<sup>8</sup> 47 U.S.C. § 617(h)(1); see also *ACS Report and Order*, 26 FCC Rcd at 14634, para. 181; 47 CFR § 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, paras. 19, 197.

<sup>9</sup> *ACS Report and Order*, 26 FCC Rcd at 14635, para. 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 CFR § 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, para. 181 (quoting House Report at 26; Senate Report at 8).

<sup>10</sup> *ACS Report and Order*, 26 FCC Rcd at 14634-35, paras. 182, 183, 185; see also 47 CFR § 14.5(a)(2).

<sup>11</sup> *ACS Report and Order*, 26 FCC Rcd at 14635, para. 185 (footnote omitted).

<sup>12</sup> *Id.* at 14635, para. 183.

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 examination of waivers for similar products or services.<sup>13</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>14</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>15</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>16</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>17</sup> Substantial upgrades are considered new products or services for the purpose of this waiver analysis.<sup>18</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>19</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>20</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>21</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>22</sup>

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<sup>13</sup> *Id.* at 14636, para. 186.

<sup>14</sup> *Id.* at 14637, para. 188 (citing 47 CFR § 1.3; *Northeast Cellular Telephone Co., L.P. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990)).

<sup>15</sup> *Id.* at 14638-39, para. 192; *see also* 47 CFR § 14.5(c).

<sup>16</sup> *ACS Report and Order*, 26 FCC Rcd at 14639, para. 193; *see also* 47 CFR § 14.5(b).

<sup>17</sup> *ACS Report and Order*, 26 FCC Rcd at 14639-40, para. 194; *see also* 47 CFR § 14.5(c)(2).

<sup>18</sup> *ACS Report and Order*, 26 FCC Rcd at 14639, para. 192; *see also id.* at 14609, para. 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>19</sup> *Id.* at 14640, para. 195.

<sup>20</sup> *Id.* at 14640, para. 194; *see also* 47 CFR § 14.5(c)(2).

<sup>21</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, para. 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, para. 5 (CGB 2012) (*CEA/NCTA/ESA Waiver Order*).

<sup>22</sup> *ACS Report and Order*, 26 FCC Rcd at 14640, para. 194; *see also* 47 CFR § 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>23</sup> and pursuant to its delegated authority,<sup>24</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>25</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>26</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>27</sup> Accordingly, the Bureau granted a waiver to the class of basic e-readers for one year, until January 28, 2015.<sup>28</sup>

9. *E-Reader Waiver Extension Order*. On January 28, 2015, in response to a request filed by the Coalition for extension of the class waiver<sup>29</sup> and pursuant to delegated authority,<sup>30</sup> the Bureau extended for one year, until January 28, 2016, the waiver previously granted for the class of basic e-readers that the Bureau determined were not designed primarily or co-primarily for ACS.<sup>31</sup> The Bureau reaffirmed the class as defined in the *E-Reader Waiver Order*,<sup>32</sup> and found that since the grant of the

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<sup>23</sup> Petition for Waiver, CG Docket No. 10-213 (filed May 16, 2013). The Coalition consists of Amazon.com, Inc. (Amazon), Kobo, Inc. (Kobo), and Sony Electronics Inc. (Sony).

<sup>24</sup> See *ACS Report and Order*, 26 FCC Rcd at 14566, 14640-41, paras. 19, 197.

<sup>25</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*, Order, 29 FCC Rcd 674, 686, para. 18 (CGB 2014) (*E-Reader Waiver Order*).

<sup>26</sup> *Id.* at 683, para. 15.

<sup>27</sup> *Id.* at 689, para. 23.

<sup>28</sup> *Id.* at 691, para. 25.

<sup>29</sup> Coalition of E-Reader Manufacturers Petition for Extension of Waiver, CG Docket No. 10-213 (filed Sept. 4, 2014).

<sup>30</sup> See *ACS Report and Order*, 26 FCC Rcd at 14566, 14640-41, paras. 19, 197. Hereon in, we refer to the *E-Reader Waiver Order* and the *E-Reader Waiver Extension Order* collectively as the prior *E-Reader Waiver Orders*.

<sup>31</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*, Order, 30 FCC Rcd 396, 404, para. 18 (CGB 2015) (*E-Reader Waiver Extension Order*).

<sup>32</sup> *E-Reader Waiver Extension Order*, 30 FCC Rcd at 405, para. 19; see also *E-Reader Waiver Order*, 29 FCC Rcd at 682-83, para. 15.

initial waiver, the primary purpose of basic e-readers has not changed. As a result, the Bureau concluded that the class remained eligible for a waiver under sections 716(h)(1)(A) and (B) of the Act and section 14.5(a) of the Commission's rules.<sup>33</sup> Although the Coalition again requested an indefinite waiver, the Bureau ruled that given how rapidly changes in e-reader and ACS technologies take place, it remained difficult to predict the extent to which e-readers that fall within the class definition would evolve to include greater ACS capabilities in the future, consumer use of ACS capabilities on these devices would increase, and whether ACS might become a co-primary purpose.<sup>34</sup> Additionally, the Bureau found it difficult to predict the extent to which new accessibility solutions for ACS would be developed to facilitate the inclusion of accessibility features on basic e-readers.<sup>35</sup> Accordingly, the Bureau extended the waiver to the class of basic e-readers for one year, until January 28, 2016.<sup>36</sup>

### III. THE COALITION PETITION

10. On September 24, 2015, the Coalition filed a request for an extension of the class waiver granted in the *E-Reader Waiver Order* and extended in the *E-Reader Waiver Extension Order*.<sup>37</sup> The Bureau placed the Coalition Petition on Public Notice for comment on October 7, 2015.<sup>38</sup>

11. 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>39</sup> The Coalition states that since the extension of the waiver was granted in January 2015, accessing text-based works (i.e., reading) has remained the single purpose, and that ACS is not a primary or co-primary purpose, of these devices.<sup>40</sup> In support, the Coalition first explains that, since the Bureau granted the waiver extension, 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 without interruption or distraction from ACS functions.<sup>41</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>42</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

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<sup>33</sup> *E-Reader Waiver Extension Order*, 30 FCC Rcd at 405, para. 21; see also 47 U.S.C. § 617(h)(1)(A)-(B); 47 CFR § 14.5(a).

<sup>34</sup> *E-Reader Waiver Extension Order*, 30 FCC Rcd at 410, para. 29.

<sup>35</sup> *Id.*

<sup>36</sup> *Id.* at 404, para. 18.

<sup>37</sup> Coalition of E-Reader Manufacturers Petition for Extension of Waiver, CG Docket No. 10-213 (filed Sept. 24, 2015).

<sup>38</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*, 30 FCC Rcd 10886 (CGB 2015).

<sup>39</sup> Coalition Petition at 2.

<sup>40</sup> *Id.* at 2; see also *id.* at 4 (stating that in the months since the extension was granted, these devices have remained "single-purpose devices dedicated to reading that are not designed, marketed or used for ACS.").

<sup>41</sup> *Id.* at 5 (stating that recent online advertising materials for the Kindle Paperwhite "state that the device is 'purpose-built for reading, and creates a sanctuary so you can lose yourself in a book . . . [u]nlike tablets and phones, Kindle doesn't distract you with social media, emails, and text messages'" and that marketing materials for Kobo e-readers "highlight the fact that users can '[g]et lost in reading, not technology'" (footnotes omitted)).

<sup>42</sup> *Id.* at 5-6 (referencing a review in The Verge discussing the Kindle Paperwhite's "'one job' of undistracted reading," adding that "it's a single-use gadget that achieves its single-use quite well" *Amazon Kindle Paperwhite (2015) Review*, THE VERGE, <http://www.theverge.com/2015/6/23/8830663/amazon-kindle-paperwhite-review-2015> (last visited Dec. 30, 2015)).

for ACS.<sup>43</sup> Finally, the Coalition reports updated industry data that, they claim, continues to indicate only a very small percentage of basic e-reader users (only three percent) launch their browsers to either access ACS from their e-readers or for other purposes.<sup>44</sup>

12. The Coalition asserts that extending the waiver would serve the public interest in several ways.<sup>45</sup> First, the Coalition states that the waiver is “consistent with Congress’s goal in creating the waiver provision: to promote technological innovation by excluding devices ‘designed primarily for purposes other than using [ACS].’”<sup>46</sup> In this regard, the Coalition argues that regulating “single-purpose devices as though they were multi-purpose devices, will impact technology design and the utility of these devices.”<sup>47</sup> Second, the Coalition claims that if the waiver is not extended, manufacturers will 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 and thermostats.<sup>48</sup> Third, the Coalition contends that extending the waiver “advances the availability of e-readers as single-purpose” or niche devices.<sup>49</sup> The Coalition suggests that this would no longer be the case if it were required to make fundamental changes to e-readers that would be necessary to make the ACS features accessible on these devices, as these “would inevitably increase e-readers’ cost, weight, size, and complexity.”<sup>50</sup> Fourth, the Coalition points to “the widespread availability of e-books and technology made available by Coalition members and other companies – including tablets, smartphones, and e-reading apps with screen-reading capabilities” that can provide alternatives for people who are blind or visually impaired.<sup>51</sup> According to the Coalition, readers who are blind or visually impaired now can “access millions of titles, including new books as they are published, on devices at price points thought impossible just a few years ago.”<sup>52</sup> As an example, the Coalition points to a new Amazon tablet, with full support for both ACS and reading accessibility for \$49.99, which, they report, is a lower price than any e-reader offered by the Coalition.<sup>53</sup>

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<sup>43</sup> See Coalition Petition at 2; Letter from Gerard J. Waldron, Counsel for the Coalition to Marlene H. Dortch, Secretary, FCC (December 4, 2015) at 1 (Coalition Dec. 4, 2015 *Ex Parte*).

<sup>44</sup> Coalition Petition at 6-7. See also Coalition Dec. 4, 2015 *Ex Parte* at 1. The Coalition reports that a random sample of 315,868 active e-reader devices over a one-week period from July 13, 2015, to July 20, 2015, found that 3% of the users of these devices had launched their browsers for any purpose. Coalition Petition at 6. According to the Coalition, the average time the browser was left open was less than five minutes per session. *Id.* 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 over 40% 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.* From this assumption, the Coalition estimates that, “at most, only 1.8% of all sample users may have launched the browser for ACS-related purposes.” *Id.* at 6-7 (emphasis in original). The Coalition also reports that since 2011, web browsing outside of the Kindle Store and Wikipedia has been discontinued for Amazon Kindles when the user is traveling outside of the United States. Letter from Gerard J. Waldron, Counsel for the Coalition to Marlene H. Dortch, Secretary, FCC (December 23, 2015) at 1 (Coalition Dec. 23, 2015 *Ex Parte*).

<sup>45</sup> Coalition Petition at 7.

<sup>46</sup> *Id.*

<sup>47</sup> *Id.*

<sup>48</sup> *Id.*

<sup>49</sup> *Id.* at 8.

<sup>50</sup> *Id.*

<sup>51</sup> *Id.*

<sup>52</sup> *Id.*

<sup>53</sup> *Id.*

13. 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 prior *E-Reader Waiver Orders* “excludes devices with ACS apps, devices marketed for ACS, and devices that have technological features that are indicative of a non-reading purpose.”<sup>54</sup> It adds that the evidence gathered in this proceeding indicates that the design and use of basic e-readers “continue to diverge from tablets, smartphones, and other ACS devices,” suggesting that it is “very unlikely” that ACS will become a primary purpose of basic e-readers.<sup>55</sup> The Coalition concludes that granting an ongoing waiver would benefit the Commission by reducing administrative costs, benefit e-reader manufacturers by avoiding costly extension request proceedings, benefit industry by creating certainty, benefit individuals with disabilities by encouraging continued investment in reading accessibility on low-cost devices, 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>56</sup>

14. The National Federation of the Blind (NFB), the American Council of the Blind (ACB), and the American Foundation for the Blind (AFB) (collectively Joint Opponents) filed a joint opposition to the Coalition Petition.<sup>57</sup> These organizations dispute the Coalition’s claim that such extension would be consistent with the public interest.<sup>58</sup> The Joint Opponents instead argue 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>59</sup> The Joint Opponents 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 technology, or rejecting all technological options.<sup>60</sup> The Joint Opponents 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>61</sup> They 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>62</sup>

15. The Consumer Technology Association (CTA, formerly the Consumer Electronics Association) supports the Coalition Petition.<sup>63</sup> CTA argues that the primary purpose and reading-focused

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<sup>54</sup> *Id.* at 9-10; *see also id.* at 2 (noting that this stringent definition ensures that future e-reader devices will not be subject to the waiver if they have ACS features with a co-primary purpose).

<sup>55</sup> *Id.* at 10.

<sup>56</sup> *Id.* at 10-11.

<sup>57</sup> *See* NFB, ACB, and AFB Opposition to Petition for Waiver Extension by Coalition of E-Reader Manufacturers (Oct. 28, 2015) (Joint Opposition).

<sup>58</sup> *Id.* at 1-2, 10.

<sup>59</sup> *Id.* at 2-6. The Joint Opponents 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 2-3. These parties 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. *Id.* at 3-5.

<sup>60</sup> *Id.* at 6-8.

<sup>61</sup> *Id.* at 8-10 (citing House Report at 26); *see also ACS Report and Order*, 26 FCC Red at 14634, para. 181 (quoting House Report at 26; Senate Report at 8).

<sup>62</sup> Joint Opposition at 8-10.

<sup>63</sup> *See* Consumer Electronics Association Comments Supporting the E-Reader Petition for Extension of Waiver (Oct. 28, 2015) (CTA Comments).

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>64</sup> It supports granting an ongoing extension of the waiver because the Commission's earlier concerns that "class E-Readers would have increasing ACS capability and ACS would become a co-primary purpose of class devices – has not been borne out by experience."<sup>65</sup> CTA instead suggests that the Commission take an "oversight and monitoring role" with respect to an ongoing extension, "with the ability to start a proceeding to consider adjusting the waiver grant if conditions change significantly."<sup>66</sup>

16. In its reply, the Coalition reiterates many of the points made in its Petition.<sup>67</sup> For example, the Coalition states that the Commission has already rejected the consumers' suggestion to focus the Commission's determination on the accessibility of the e-readers' reading capability, rather than "whether the primary purpose of the device is ACS."<sup>68</sup> The Coalition further claims that the suggestion that consumers would suffer a financial burden if required to obtain alternative devices to use free e-reading apps ignores the availability of low-cost, fully accessible alternatives discussed in the record.<sup>69</sup>

#### IV. DISCUSSION

17. We grant the Coalition's request for an indefinite waiver from the Commission's ACS rules for the narrow class of basic e-readers defined in the prior *E-Reader Waiver Orders*.<sup>70</sup> As discussed below, the record demonstrates that for close to three years – since the Coalition first requested relief from the ACS requirements for its basic e-readers – the class of basic e-readers defined by the Commission has continued to be a niche product with the single primary purpose of reading. The record further supports a finding that e-readers within the class have browsers with limited functionality that, for the most part, are used to support the reading function. Notwithstanding the ongoing nature of this waiver, the Bureau will monitor the continued merits of the waiver, and will be informed in part by a report which shall be submitted by the Coalition after three years. If, based on this report, as well as other information that comes to the Bureau's attention through complaints, investigations or other means, conditions change such that ACS becomes a primary or co-primary purpose of basic e-readers as defined herein, the Bureau will re-open this proceeding to make any appropriate adjustments to the waiver, or if warranted, terminate the waiver.<sup>71</sup> In this regard, as discussed in more detail below, we require that the Coalition submit, three years after the release of this Order, a report on the design, marketing, and use of the class of basic e-readers as defined by this order, so that the Bureau has the information needed to make this determination.

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<sup>64</sup> *Id.* at 4-5; *see also* Coalition Petition at 4-5 (stating "[i]n the months since the extension was granted, the facts regarding e-reader design have not changed . . . ACS continues to be available only through the e-reader browser . . . to facilitate reading-related uses, such as viewing hyperlinks inserted into e-books and periodicals, looking up information in an online dictionary or other online information sources like Wikipedia or accessing W-Fi to download e-books").

<sup>65</sup> *Id.* at 6 (citing *E-Reader Waiver Extension Order*, 30 FCC Rcd at 410, para. 29; *E-Reader Waiver Order*, 29 FCC Rcd at 690, para. 24).

<sup>66</sup> *Id.*

<sup>67</sup> Reply Comments of the Coalition of E-Reader Manufacturers at 2 (Nov. 9, 2015) (Coalition Reply Comments).

<sup>68</sup> *Id.* at 2; *see also* Joint Opposition at 2-6.

<sup>69</sup> Coalition Reply Comments at 4; *see also* Coalition Petition at 8; Joint Opposition at 2-4.

<sup>70</sup> *E-Reader Waiver Order*, 29 FCC Rcd at 683, para. 15; *E-Reader Waiver Extension Order*, 30 FCC Rcd at 405, para. 19.

<sup>71</sup> *See* CTA Comments at 6; Coalition Reply Comments at 4.



### A. Extension of the Waiver

18. 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>72</sup> For purposes of the extension of this class waiver, we continue to define the class of basic e-readers as the Bureau defined this class in the prior *E-Reader Waiver Orders*,<sup>73</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.

19. 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>74</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 – e.g., 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>75</sup> Moreover, we are persuaded that the e-readers’ design for a long battery life – a principle feature marketed for and used on these devices – make these more suited to reading than for ACS. Specifically, the Coalition explains that “power is typically drawn from the e-reader battery only when the user turns a page and refreshes the device’s E-ink display,” which enables a long battery life.<sup>76</sup> In contrast, text-to-speech, which would be used to have conversations over ACS, would require these devices to continuously use power to emit audio, thereby shortening the battery life.<sup>77</sup> This and other design features discussed herein continue to support a finding that basic e-readers are not designed for ACS at this time.

20. 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

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<sup>72</sup> See 47 CFR § 14.5(b); see also *ACS Report and Order*, 26 FCC Rcd at 14639, para. 193.

<sup>73</sup> See *E-Reader Waiver Order*, 29 FCC Rcd at 693, para. 15 (defining the class of basic e-readers); *E-Reader Waiver Extension Order*, 30 FCC Rcd at 405, para. 19 (continuing the same definition used in the *E-Reader Waiver Order*).

<sup>74</sup> *E-Reader Waiver Order*, 29 FCC Rcd at 683, ¶ 16; see also *E-Reader Waiver Extension Order*, 30 FCC Rcd at 405, para. 21 (concluding that the primary purpose of basic e-readers has not changed).

<sup>75</sup> See *E-Reader Waiver Order*, 29 FCC Rcd at 683, para. 16 (footnotes omitted); *E-Reader Waiver Extension Order*, 30 FCC Rcd at 406, para. 22. 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 para. 11, *supra*; Coalition Petition at 2; Coalition Dec. 4, 2015 *Ex Parte* at 1.

<sup>76</sup> Coalition Dec. 4, 2015 *Ex parte* at 1.

<sup>77</sup> See *id.* at 1.

service.”<sup>78</sup> Both the record in this proceeding<sup>79</sup> and the Bureau’s independent review of the manufacturer marketing materials for these devices support a finding that their primary purpose continues to be for reading, rather than for ACS. Specifically, information provided on the product listings for basic e-readers, such as the Kindle Paperwhite and Kobo Glo HD, continue to focus primarily on ways to facilitate reading on these devices.<sup>80</sup> 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, Twitter, and Goodreads, rather than on having conversations about books.<sup>81</sup> The lack of advertising and marketing about ACS supports our finding that basic e-readers are not designed for ACS.

21. Finally, we consider the extent to which basic e-readers are used for ACS. Although the Coalition acknowledges that some ACS continues to be available through the e-reader browser,<sup>82</sup> it points to recent industry data demonstrating that only three percent of users launch their e-reader browsers for any purpose.<sup>83</sup> Such results are consistent with data acquired through a similar study conducted by the

<sup>78</sup> *E-Reader Waiver Order*, 29 FCC Rcd at 685, para. 18 (citing *ACS Report and Order*, 26 FCC Rcd at 14635, para. 185; *CEA/NCTA/ESA Waiver Order*, 27 FCC Rcd at 12987, para. 35); *E-Reader Waiver Extension Order*, 30 FCC Rcd at 406, para. 23 (same).

<sup>79</sup> See Coalition Petition at 5-6.

<sup>80</sup> For example, the Amazon website states: “By design, Kindle Paperwhite is purpose-built for reading and creates a sanctuary so you can lose yourself in a book. Unlike tablets and phones, Kindle doesn’t distract you with social media, emails, and text messages.” Amazon.com, Kindle Paperwhite, [http://www.amazon.com/Kindle-Paperwhite-High-Resolution-Display-Built/dp/B00OQVZDJM/ref=dp\\_ob\\_title\\_def](http://www.amazon.com/Kindle-Paperwhite-High-Resolution-Display-Built/dp/B00OQVZDJM/ref=dp_ob_title_def) (last visited January 14, 2016). The website also states: “Unlike reflective tablet and smartphone screens, Kindle Paperwhite reads like paper.” “Lighter than a paperback, comfortably hold Kindle Paperwhite in one hand for those times when you can’t put the book down . . . Kindle Paperwhite won’t leave you tethered to an outlet. A single charge can last up to six weeks (based on a half hour of reading per day with wireless turned off and the light setting at ten) . . . Kindle Paperwhite guides light toward the surface of the display with its built-in front light—unlike back-lit tablets that shine in your eyes—so you can read comfortably for hours without eyestrain. Adjust your screen’s brightness for great reading in any light . . . Reads like a book . . . Enjoy text that reads like the printed page. All fonts have been hand-tuned at the pixel level for maximum readability . . . With Page Flip, you can skim page-by-page, scan by chapter, or skip to the end for a sneak peek without losing your place.” *Id.* Although the website also lists features of the Kindle Paperwhite that go “beyond a book,” *id.* (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), none of these features include any mention of ACS capabilities. Similarly, the Kobo website states that the “Kobo Glo HD is the perfect complement to the reading experience you know and love when you want added comfort, convenience and portability. Enjoy the comfort of the clearest, most book-like 6” HD Carta E Ink touchscreen with customizable fonts, sizes and margins. Read in direct sunlight with the anti-glare screen, or in complete darkness with the built-in adjustable ComfortLight. Kobo Glo HD is lighter than a hardcover book and lets you store thousands of eBooks. Take your entire library with you wherever you go and easily access new books from a catalog of over 4 million, anytime. Read an entire eBook on a single charge with up to 2 months of battery life and enjoy the freedom of leaving your charger behind.” Kobo.com, Kobo Glo HD Description, <https://us.kobobooks.com/products/kobo-glo-hd> (footnote omitted) (last visited Jan. 14, 2016).

<sup>81</sup> See, e.g., Amazon.com, Kindle Paperwhite, [http://www.amazon.com/Kindle-Paperwhite-High-Resolution-Display-Built/dp/B00OQVZDJM/ref=dp\\_ob\\_title\\_def](http://www.amazon.com/Kindle-Paperwhite-High-Resolution-Display-Built/dp/B00OQVZDJM/ref=dp_ob_title_def) (last visited January 14, 2016) (noting the ability to “[s]hare highlighted sections and meaningful quotes on Facebook, Twitter, and Goodreads, and see passages frequently highlighted by other Kindle readers”).

<sup>82</sup> See Coalition Comments at 4.

<sup>83</sup> See para. 11, n.44 *supra*; Coalition Petition at 6; Coalition Dec. 4, 2015 *Ex Parte* at 1. The Coalition argues that the number of consumers using the browser to access ACS “likely is well below 1.8 percent” based on the amount of time the browser is used and the point from which the browser is accessed on the device. Coalition Petition at 6-7; see also n.44, *supra*.

Coalition in 2014, revealing this figure to be just over four percent,<sup>84</sup> and before that, a study conducted in 2012 and 2013, which found that only (approximately) seven percent of users had launched their e-reader browsers for any purpose.<sup>85</sup> The results of these various studies, which demonstrate a steady decline in the use of basic e-reader browsers for any purpose over the past three years, confirm that such ACS usage on these devices consistently has been negligible, and that ACS is not a primary or co-primary purpose of basic e-readers.<sup>86</sup>

22. For all of the above reasons, we conclude that since issuance of the prior *E-Reader Waiver Orders*, the design, marketing, and general use of basic e-readers continues to be for reading text-based digital works. Accordingly we find that accessing ACS is not a primary or co-primary purpose of basic e-readers, but rather serves an incidental purpose on these devices,<sup>87</sup> and as a result, this class of e-readers remains 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>88</sup>

23. We next consider whether the Coalition has demonstrated good cause to extend the waiver of the rules for the class of basic e-readers, and whether an extension of the waiver would not be inconsistent with the public interest.<sup>89</sup> As an initial matter, we continue to acknowledge the critical purpose of the CVAA to ensure that Americans with disabilities have the capability to use ACS to communicate with other individuals.<sup>90</sup> We recognize the importance of ensuring that the benefits of technological advances become available to people with disabilities as these continue to evolve and change the way our nation communicates.<sup>91</sup> Although innovative communications technologies can significantly improve our daily lives, these can only be useful to people with disabilities to the extent they are made accessible to and usable by these individuals.<sup>92</sup> Finally, we remain dedicated to ensuring that

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<sup>84</sup> See *E-Reader Waiver Extension Order*, 30 FCC Rcd at 400, para. 10, n.37.

<sup>85</sup> See *E-Reader Waiver Order*, 29 FCC Rcd at 678, para. 8, n.42.

<sup>86</sup> See *ACS Report and Order*, 26 FCC Rcd at 14635, para. 183 (market research and usage trends may be considered to determine whether the equipment is designed primarily for purposes other than ACS).

<sup>87</sup> See Senate Report at 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”). Given our determination that ACS is not a primary or co-primary purpose of basic e-reader devices, we do not find it necessary to decide whether incorporating ACS accessibility into basic e-readers at this time would require manufacturers to make fundamental changes to the basic e-reader devices' hardware and software, such that these would erode the distinction between basic e-readers and tablets. See Coalition Petition at 8-9; Coalition Reply Comments at 7.

<sup>88</sup> 47 U.S.C. § 617(h)(1)(A)-(B); 47 CFR § 14.5(a).

<sup>89</sup> See 47 CFR § 1.3 (stating in part: “The provisions of this chapter may be suspended, revoked, amended, or waived for good cause shown. . . .”); see also *ACS Report and Order*, 26 FCC Rcd at 14637, ¶ 188.

<sup>90</sup> See *E-Reader Waiver Order*, 29 FCC Rcd at 686, para. 19; *E-Reader Waiver Extension Order*, 30 FCC Rcd at 408, para. 26.

<sup>91</sup> *Technology Transitions et al.*, GN Docket No. 13-5 et al., Order, Report and Order, and Further Notice of Proposed Rulemaking, Proposal for Ongoing Data Initiative, 29 FCC Rcd 1433, 1450, para. 52 (2014).

<sup>92</sup> *Id.*, 29 FCC Rcd at 1479, para. 138 (noting that although technology transitions hold promise for bringing about innovative services, applications, and devices, if the needs of people with disabilities are not considered as these transitions take place, the “new technologies have the potential for negative impacts”). See also Senate Report at 1-2; House Report at 19 (each of which noted that while new communications technologies “have profoundly altered our everyday lives . . . allowing mobile access to the Internet and a diverse menu of applications and services,” prior to the CVAA there was a failure to make the extraordinary benefits of such technological advances accessible to individuals with disabilities).

consumers who are blind or visually impaired can access text-based digital works and are sensitive to the consequent harm that the denial of such access can pose to individuals with such disabilities.<sup>93</sup>

24. We are persuaded, however, that while accessing ACS is not a primary or co-primary purpose of basic e-readers, a wide selection of reasonably priced portable communication devices, including tablets and smartphones, as well as free reading apps that can be downloaded to these devices and are usable with screen readers, are now available for people who are blind or visually impaired to access both ACS and reading functions. Most notably, we find 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 such devices and applications.<sup>94</sup> For example, Amazon points to a tablet that became available during the past year for \$49.99, which it reports is priced significantly lower than in previous years,<sup>95</sup> and lower than all of the e-readers offered by the Coalition.<sup>96</sup> Amazon explains that in addition to providing ACS and reading access, this device offers "both increased font size options for individuals with low vision and a full-screen magnification feature, as well as new, better screen-reading technology, Voice View," which provides consumers with features and customizable settings to make it easier for people who are blind to navigate and figure out how words are spelled.<sup>97</sup>

25. While we acknowledge that there may be some benefits to basic e-readers that cannot be duplicated by other devices,<sup>98</sup> we are persuaded that the increased availability of these reasonably priced alternatives – many of which have been introduced into the market since the issuance of the initial waiver – significantly lessens the negative impact on consumers who are unable to access reading features on

<sup>93</sup> See *E-Reader Waiver Order*, 29 FCC Rcd at 686-87, para. 19; *E-Reader Waiver Extension Order*, 30 FCC Rcd at 409, para. 27.

<sup>94</sup> See Coalition Petition at 8-9 (discussing the "widespread availability of e-books and technology made available by Coalition members and other companies--including tablets, smartphones, and e-reading apps with screen-reading capabilities" and that "blind and visually impaired readers today can instantly access millions of titles, including new books as they are published, on devices at price points thought impossible just a few years ago"). 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, para. 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 CVAA's requirements to ensure that advanced communications services and the equipment used for these services are accessible to people with disabilities"). In addition, Amazon recently introduced the Amazon Echo, a sound system and voice assistant, which, among other things, can read aloud a book purchased from the Kindle Store. See *engadget*, Amazon Echo can read your Kindle books aloud upon request, <http://www.engadget.com/2016/01/16/amazon-echo-can-read-your-kindle-books-aloud-on-request/> (last visited Jan. 22, 2016); Amazon.com, Amazon Echo, [http://www.amazon.com/gp/product/B00X4WHP5E/ref=ods\\_xs\\_ae\\_shurl?tag=googhydr-20&hvadid=68272153763&hvpos=1t1&hvexid=&hvnetw=g&hvrnd=13254589570620866818&hvpone=&hvptwo=&hvmqt=b&hvdev=c&ref=pd\\_sl\\_9t8jranrxe\\_b](http://www.amazon.com/gp/product/B00X4WHP5E/ref=ods_xs_ae_shurl?tag=googhydr-20&hvadid=68272153763&hvpos=1t1&hvexid=&hvnetw=g&hvrnd=13254589570620866818&hvpone=&hvptwo=&hvmqt=b&hvdev=c&ref=pd_sl_9t8jranrxe_b) (last visited Jan. 22, 2016).

<sup>95</sup> Coalition Dec. 4, 2015 *Ex Parte* at 1.

<sup>96</sup> Coalition Petition at 8.

<sup>97</sup> *Id.* at 8-9. Amazon goes on to explain that VoiceView was tested with both ACS and reading applications. *Id.*; see also Amazon.com, Fire, [http://www.amazon.com/gp/product/B00TSUGXKE/ref=sv\\_devicesubnav\\_1](http://www.amazon.com/gp/product/B00TSUGXKE/ref=sv_devicesubnav_1) (providing information and specifications for an Amazon Fire tablet priced at \$49.99) (last visited January 14, 2016); Amazon.com, Accessibility for Fire, <http://www.amazon.com/gp/feature.html?docId=1000632481> (discussing accessibility features and functions of the Amazon Fire tablet) (last visited January 14, 2016).

<sup>98</sup> See Joint Opposition at 4-5 (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).

basic e-readers.<sup>99</sup> Additionally, the ability of consumers to purchase these ACS-capable mobile devices, together with 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, and is therefore not inconsistent with the public interest.<sup>100</sup> We affirmatively recognize the public interest benefits of preserving basic e-readers as a niche product that is devoted to accessing text-based digital works, given the wide availability of these accessible alternatives for ACS.<sup>101</sup>

## B. Duration of Waiver

26. The Coalition urges the Commission to grant an ongoing waiver for the class of basic e-readers. Given the record before us, which reflects the experiences of nearly three years, we agree that an indefinite waiver for basic e-readers is appropriate at this time for several reasons.<sup>102</sup>

27. First, based on the record, we believe that it is unlikely that the current trend for basic e-readers to remain a niche market – i.e., one that does not converge with the market of multi-functioned devices – is likely to reverse itself in the near future. When the Bureau adopted the prior *E-Reader Waiver Orders*, it said it was difficult to predict the extent to which e-readers that then fell into the protected class would evolve to include greater ACS capabilities, whether consumer use of the ACS capabilities on these devices would increase, and whether ACS would develop into a primary or co-primary purpose on basic e-readers.<sup>103</sup> Out of concern that consumers with disabilities might be harmed by the denial of access to ACS if these contingencies occurred, the Bureau found that extending the waiver for basic e-readers on an ongoing basis would be contrary to the public interest.<sup>104</sup> As a consequence, and because the Commission determined the lifecycle of the class of basic e-readers to be one year, the Bureau granted a one-year waiver in 2014, and again in 2015.<sup>105</sup>

28. For nearly three years, the Bureau has had the opportunity to observe the development of the basic e-reader market, and to gather an extensive record that documents the technological

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<sup>99</sup> Coalition Petition at 8-9; Coalition Dec 4, 2015 *Ex Parte* at 1-2. An independent review of the manufacturer marketing materials shows that Amazon line of Fire tablets are priced at \$49.99, \$99.99, \$149.99, and \$229.99. See Amazon.com, Fire, [http://www.amazon.com/gp/product/B00TSUGXKE/ref=sv\\_devicesubnav\\_1](http://www.amazon.com/gp/product/B00TSUGXKE/ref=sv_devicesubnav_1) (last visited Jan. 14, 2016). In contrast, the Kindle e-readers are priced at \$79.99, \$119.99, \$199.99. See Amazon.com, Kindle, [http://www.amazon.com/gp/product/B00I15SB16/ref=sv\\_devicesubnav\\_3](http://www.amazon.com/gp/product/B00I15SB16/ref=sv_devicesubnav_3) (last visited Jan. 14, 2016).

<sup>100</sup> See *E-Reader Waiver Order*, 29 FCC Rcd at 687, para. 19; *E-Reader Extension Order*, 30 FCC Rcd at 408-09, para. 26.

<sup>101</sup> See *E-Reader Waiver Order*, 29 FCC Rcd at 686-87, paras. 19-20; *E-Reader Waiver Extension Order*, 30 FCC Rcd at 408-09, para. 25-26; Coalition Petition at 8-9. However, we disagree with the Coalition that extension of the waiver is necessary to promote technological innovation. See Coalition Petition at 7; para. 12, *supra*. In many instances, mandates for accessibility have encouraged, rather than deterred, innovative design – not only for people with disabilities, but for the general public. For example, closed captioning was designed to make television accessible to people who are deaf and hard of hearing, but is now widely used in noisy locations, such as restaurants, bars and exercise facilities. Similarly, talking caller ID systems, created to enable people who are blind to hear the identities of incoming telephone callers, are used by sighted people as well when they are not in the immediate vicinity of the telephone. See *CEA/NCTA/ESA Waiver Order*, 27 FCC Rcd at 12992, para. 40 and n.184.

<sup>102</sup> We note that the Joint Opponents oppose any extension of the waiver and thus do not address the question of the length of the waiver.

<sup>103</sup> *E-Reader Waiver Order*, 29 FCC Rcd at 689-90, para. 24; *E-Reader Waiver Extension Order*, 30 FCC Rcd at 410, para. 29.

<sup>104</sup> *E-Reader Waiver Order*, 29 FCC Rcd at 690, para. 24; *E-Reader Waiver Extension Order*, 30 FCC Rcd at 410, para. 29.

<sup>105</sup> *E-Reader Waiver Order*, 29 FCC Rcd at 690-91, para. 25; *E-Reader Waiver Extension Order*, 30 FCC Rcd at 410-11, para. 30.

development, marketing, and consumer use trends of these devices.<sup>106</sup> Based on this comprehensive record, we agree with the Coalition that the design, marketing and use of basic e-readers have continued to trend away from ACS becoming a primary or co-primary purpose of these devices.<sup>107</sup> Indeed, there has been no evidence that ACS functionality has been designed into these devices to any greater extent than there was at the time that the Coalition filed its May 2013 petition, nor is there any evidence that ACS has been advertised to consumers as a reason to purchase these devices. Additionally, as discussed above, over this same period, the extremely low consumer use of ACS on these devices appears to be declining.<sup>108</sup> For these reasons, we agree with the Coalition that any expectations that basic e-readers and multi-functioned tablets will soon converge in a manner that would result in greater ACS capabilities or usage on these devices are, for the present time, unfounded.<sup>109</sup> Even if such convergence were eventually to take place, we conclude, based on the record, that the trend for basic e-readers and tablets to remain two separate categories of devices is not likely to reverse itself in the next few years.

29. Second, to the extent that such convergence occurs sooner than expected, we nevertheless believe that the class definition for basic e-readers is sufficiently specific to ensure that any e-readers adapted to include ACS as a primary or co-primary purpose would automatically fall out of the class protected by this waiver order.<sup>110</sup> Stated otherwise, we agree with the Coalition that, as defined, the class of covered e-readers “bakes in” limitations that are necessary to ensure that devices that *should* be covered by the ACS rules *will* be covered if designed and marketed by the e-reader industry for ACS use.<sup>111</sup> In this manner, as noted by to the Coalition, the “tight definition” of the devices subject to the waiver ensures that future devices with increased use of ACS will be subject to our requirements for accessible ACS equipment.<sup>112</sup>

30. Finally, we find that the substantial growth in the availability of reasonably priced and accessible portable communication devices and apps over the past few years, which can provide people who are blind or visually impaired with an array of devices that support accessible ACS functions for the foreseeable future,<sup>113</sup> is consistent with, and fulfills the purpose of the CVAA to ensure that Americans with disabilities have the capability to use ACS to communicate with other individuals.<sup>114</sup> As noted above, repeatedly, the Commission has expressed its commitment to ensuring that people with disabilities have access to innovative communications technologies as these continue to evolve. The plethora of accessible ACS options available now and in the foreseeable future gives us confidence that, even with an ongoing waiver for the narrow class of basic e-readers, the advanced communications needs of this community will be met in accordance with this Commission policy and Congressional intent.

31. Notwithstanding these findings, given the extraordinarily rapid pace of technological advancements over the past decade, we believe that it would be advisable to keep a careful watch on the evolution of basic e-readers, and therefore agree with CTA that we should take an “oversight and

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<sup>106</sup> See paras. 19-22, *supra*; see also *ACS Report and Order*, 26 FC Rcd at 14634-35, paras. 182, 183, 185; 47 CFR § 14.5(a)(2).

<sup>107</sup> See paras. 19-22, *supra*; Coalition Petition at 10.

<sup>108</sup> See para. 21, *supra*; Coalition Petition at 6-7.

<sup>109</sup> See Coalition Dec. 4, 2015 *Ex Parte* at 2 (claiming that, “contrary to prior expectations, the categories [of basic e-readers and tablets] are *not* converging”) (emphasis in original).

<sup>110</sup> See para. 18, *supra*; Coalition Petition at 9-10; Coalition Dec. 4, 2015 *Ex Parte* at 2-3; CTA Comments at 4-5.

<sup>111</sup> See Coalition Petition at 10.

<sup>112</sup> *Id.*

<sup>113</sup> See paras. 24-25, *supra*; Coalition Petition at 8-9; Coalition Dec. 4, 2015 *Ex Parte* at 1-2.

<sup>114</sup> See *E-Reader Waiver Order*, 29 FCC Rcd at 686-87, para. 19; *E-Reader Waiver Extension Order*, 30 FCC Rcd at 408, para. 26; see also Senate Report at 1; House Report at 19.

monitoring role . . . with the ability to start a proceeding to consider adjusting the waiver”<sup>115</sup> if we deem this necessary to fulfill Congressional intent to ensure continued communications access by people who are blind or visually impaired.<sup>116</sup> To this end, we require that the Coalition submit a report three years after the release date of this order that includes a study of the technological development, marketing, and consumer use trends in the basic e-reader market. Such report shall further provide input on the extent to which the class definition for basic e-readers continues to remain appropriate for the purpose of excluding devices that include ACS as a primary or co-primary purpose. Finally, the report shall include information on the extent to which consumers who are blind or visually impaired continue to have a selection of reasonably priced alternatives in the market that allow for accessible ACS and reading access on portable devices.

32. Based on the information received in the above mentioned report, together with information available to the Bureau from complaints, investigations, and other sources, the Bureau will evaluate the extent to which ACS functionality is designed, advertised, and marketed to consumers, as well as the purposes for which consumers are using basic e-readers in the class covered by the waiver granted in this order. After conducting this evaluation, the Bureau may re-open this proceeding to make any appropriate adjustments to the waiver, including termination if warranted, if the Bureau determines that ACS has become a primary or co-primary purpose of these devices. The Bureau may also make a determination about the need for additional reports from the Coalition or other covered entities, if warranted.

## V. ORDERING CLAUSES

33. 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 CFR §§ 0.361, 1.3 and 14.5, this Order IS ADOPTED.

34. IT IS FURTHER ORDERED that the Coalition Petition IS GRANTED to the extent discussed above.

35. IT IS FURTHER ORDERED that the Coalition shall submit a report on basic e-readers as discussed above three years after the release date of this Order.

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

37. 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

Alison Kutler  
Acting Chief  
Consumer and Governmental Affairs Bureau

<sup>115</sup> CTA Comments at 6; *accord* Coalition Reply Comments at 4.

<sup>116</sup> *See* Senate Report at 1; House Report at 19.