

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, DC 20554

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

To: The Commission

**CONSUMER ELECTRONICS ASSOCIATION  
PETITION FOR WAIVER**

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**I. INTRODUCTION AND SUMMARY**

Pursuant to 47 U.S.C. § 617(h)(1) and 47 C.F.R. §§ 1.3, 14.5, the Consumer Electronics Association (“CEA”)<sup>1</sup> respectfully requests that the Federal Communications Commission (“FCC” or “Commission”) waive the rules for Advanced Communications Services (“ACS”) adopted in the *ACS Order*<sup>2</sup> for two classes of equipment: those Internet Protocol (“IP”)-enabled

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<sup>1</sup> CEA is the principal U.S. trade association of the consumer electronics and information technologies industries. CEA’s more than 2,000 member companies lead the consumer electronics industry in the development, manufacturing and distribution of audio, video, mobile electronics, communications, information technology, multimedia and accessory products, as well as related services, that are sold through consumer channels. Ranging from giant multi-national corporations to specialty niche companies, CEA members cumulatively generate more than \$195 billion in annual factory sales and employ tens of thousands of people.

<sup>2</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*, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 14557 (2011) (“*ACS Order*”).

television sets (“TVs”) and IP-enabled digital video players (“DVPs”) that allow consumers to access and use ACS, but are designed primarily to display video content rather than to provide access to ACS. For purposes of this waiver request, CEA defines these two narrow classes as “IP-TVs” and “IP-DVPs,” respectively. CEA further requests that the class waivers cover all IP-TV and IP-DVP models first manufactured<sup>3</sup> prior to July 1, 2016.<sup>4</sup>

The requested class waivers will serve the public interest while satisfying the requirements of Section 716(h)(1) of the Communications Act, as amended (“Act”),<sup>5</sup> and Sections 14.5 (the ACS waiver standard) and 1.3 (the general waiver standard) of the Commission’s rules.<sup>6</sup> As explained herein, neither IP-TVs nor IP-DVPs are primarily designed or marketed to use ACS, although they are enabled for Internet connectivity and “capable of accessing” ACS.<sup>7</sup> The primary purpose of the IP-TVs and IP-DVPs for which this waiver is

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<sup>3</sup> For purposes of this waiver request, CEA urges the Commission to find that the date first manufactured is equivalent to the date “introduced into the market.” *See ACS Order*, 26 FCC Rcd at 14639-40 ¶ 194 (“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 and services.” (emphasis added)). This clarification would provide greater certainty to manufacturers of IP-TVs and IP-DVPs as they determine when and for which models the requested waiver would apply.

<sup>4</sup> Consistent with the lifecycle (as that term is defined by the Commission, *infra* note 29 and associated text) of the typical IP-TV and IP-DVP, the requested class waivers would extend for less than three years beyond the expiration of the phase-in period for the ACS rules, *i.e.*, October 8, 2013. *See ACS Order*, 26 FCC Rcd at 14601-02 ¶ 107.

<sup>5</sup> *See* 47 U.S.C. § 617(h)(1).

<sup>6</sup> *See* 47 C.F.R. §§ 1.3, 14.5. *See also Northeast Cellular Tel. Co., L.P. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (“*Northeast Cellular*”); *WAIT Radio v. FCC*, 418 F.2d 1153, 1157 (D.C. Cir. 1969) (“*WAIT Radio*”).

<sup>7</sup> Through this waiver request, neither CEA nor any manufacturer concedes that any particular TV or DVP model is subject to the ACS rules, but to the extent the Commission determines that a particular TV or DVP is subject to the ACS rules, the waiver requested herein would cover any such model that meets the definition of IP-TV or IP-DVP, as set forth below. Similarly, this waiver request is not intended to alter any of CEA’s positions on the pending Further Notice of Proposed Rulemaking associated with the *ACS Order*.

requested is the rendering and/or display of video content, principally full-length, professional-quality video programming. The overwhelming bulk of the functionality on these devices, whether available through pre-installed or user-downloaded and installed applications (“apps”), cannot conceivably be classified as ACS. Requiring IP-TVs and IP-DVPs to comply with the ACS rules is unnecessary to achieve the goals of the Twenty-First Century Communications and Video Accessibility Act (“CVAA”)<sup>8</sup> or the ACS rules and would undoubtedly chill innovation.

Section 716 and the ACS rules expressly authorize the Commission to waive the ACS requirements for a class of equipment if: (i) offerings within the class are “capable of accessing” ACS and (ii) offerings within the class are “designed for multiple purposes” but are “designed primarily for purposes other than using [ACS].”<sup>9</sup> When evaluating a class waiver, the Commission must focus on the primary purpose for which the equipment class was designed and marketed.<sup>10</sup> If, as in the instant case, an equipment class has an obvious non-ACS primary purpose, the Commission should grant the requested waiver.<sup>11</sup>

In addition, the requested class waivers of IP-TVs and IP-DVPs satisfy the Commission’s general waiver standard.<sup>12</sup> Granting the requested waivers would serve the public interest by

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<sup>8</sup> Twenty-First Century Communications and Video Accessibility Act of 2010, Pub. L. No. 111-260, 124 Stat. 2751 (as codified in various sections of Title 47 of the United States Code). The law was enacted on October 8, 2010 (S. 3304, 111th Cong.). *See also* Amendment of Twenty-First Century Communications and Video Accessibility Act of 2010, Pub. L. No. 111-265, 124 Stat. 2795, also enacted on October 8, 2010, to make technical corrections to the CVAA and the CVAA’s amendments to the Communications Act of 1934.

<sup>9</sup> 47 U.S.C. § 617(h)(1); 47 C.F.R. § 14.5(a)(1).

<sup>10</sup> 47 U.S.C. § 617(h)(1)(B); 47 C.F.R. § 14.5(a)(2).

<sup>11</sup> The Commission has delegated “to the Consumer and Governmental Affairs Bureau (“Bureau”) the authority to act upon all waiver requests,” and has urged the Bureau to act promptly with the goal of “complet[ing] action on each waiver request within 180 days of public notice.” *ACS Order*, 26 FCC Rcd at 14566 ¶ 19, 14640-41 ¶ 197.

<sup>12</sup> *See id.* at 14637 ¶ 188; 47 C.F.R. § 1.3.

facilitating innovation in Internet-enabled video devices, consistent with the recommendations contained in the National Broadband Plan (“NBP”)<sup>13</sup> and the goals of the Commission regarding the integrated display of Internet video content with video programming delivered via linear broadcast and non-broadcast channels.<sup>14</sup>

The nascent marketplace for IP-TVs and IP-DVPs further confirms that granting the requested waivers serves the public interest. When enacting the ACS accessibility provisions of Section 716, Congress provided the Commission with waiver authority to help ensure the appropriate balance between accessibility and innovation.<sup>15</sup> As explained in the legislative history:

[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.<sup>16</sup>

IP-TVs and IP-DVPs are only beginning to gain measurable market penetration<sup>17</sup> and their use other than for viewing video programming is minimal at this point.<sup>18</sup> As companies are attempting to gauge consumer demand in this nascent market, CEA fears that unwarranted regulation will effectively stifle further development of this market. Granting the requested class

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<sup>13</sup> FCC, *Connecting America: The National Broadband Plan* at 51 (Mar. 16, 2010) (“NBP”).

<sup>14</sup> See, e.g., *Video Device Competition*, Notice of Inquiry, 25 FCC Rcd 4275, 4294-95, 4298-99 (2010) (Statements of Chairman Julius Genachowski and Commissioner Robert McDowell) (“*Video Device Competition NOI*”).

<sup>15</sup> See 47 U.S.C. § 617(h)(1).

<sup>16</sup> H.R. Rep. No. 111-563 at 26 (2010) (“*House Committee Report*”) (emphasis added); S. Rep. No. 111-386 at 8 (2010) (“*Senate Committee Report*”) (emphasis added).

<sup>17</sup> In 2012, CEA forecasts that approximately 27% of all TVs shipped to dealers will be capable of connecting to the Internet.

<sup>18</sup> For instance, only 2% of social media users access social media through an Internet-enabled TV. Nielsen, *State of the Media: The Social Media Report*, at 6 (3rd Quarter 2011), <http://blog.nielsen.com/nielsenwire/social/>.

waivers would help eliminate uncertainty for all stakeholders, minimize the burden of processing individual product waiver requests on industry and the Commission alike, ensure the continued development and growth of these nascent and innovative product features, and allow manufacturers sufficient time to develop and implement compliant solutions.

Consistent with the public interest and the plain language of the *ACS Order*, the Commission should waive the ACS rules for all IP-TV and IP-DVP models first manufactured prior to July 1, 2016 (*i.e.*, less than three years after the expiration of the phase-in period for the ACS rules). The waivers should exclude application of the ACS rules, including the associated recordkeeping and enforcement rules, to any and all IP-TVs and IP-DVPs.

## **II. THE COMMISSION SHOULD WAIVE THE ACS RULES FOR IP-TVs.**

IP-TVs readily meet the Commission's criteria for a class waiver. As set forth in detail below, IP-TVs warrant a class waiver under Section 716 of the Act and Section 14.5 of the Commission's rules. IP-TVs constitute a distinct class of equipment. As that class is defined herein, IP-TVs allow consumers to access and use ACS features and functionality, but IP-TVs are designed primarily to receive and display video content rather than to provide access to ACS. In addition, the requested class waiver meets the Commission's general waiver standard because requiring IP-TVs to comply with the ACS rules would inhibit innovation without meaningfully increasing ACS accessibility.

### **A. The Requested IP-TV Class Waiver Readily Satisfies the Section 716(h)(1) and Rule 14.5 Requirements.**

#### **1. IP-TVs Constitute a Defined Class of Equipment.**

IP-TVs constitute a distinct class of equipment that consists of TVs that (i) allow consumers to access and use ACS via IP and (ii) are designed primarily to receive and display

video content, principally full-length, professional-quality video programming, not ACS.<sup>19</sup>

Manufacturers of IP-TVs include, but are not limited to, LG Electronics, Inc. (“LG”),<sup>20</sup>

Mitsubishi Electric Visual Solutions America, Inc. (“Mitsubishi”),<sup>21</sup> Panasonic Corporation of

North America (“Panasonic”),<sup>22</sup> Samsung Electronics Co., Ltd. (“Samsung”),<sup>23</sup> Sharp Electronics

Corporation (“Sharp”),<sup>24</sup> Sony Corporation (“Sony”),<sup>25</sup> and Vizio, Inc. (“Vizio”).<sup>26</sup>

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<sup>19</sup> See *ACS Order*, 26 FCC Rcd at 14639 ¶ 193 (requiring the class to be “carefully defined”). CEA recognizes and acknowledges that not every “IP-enabled” TV would be covered by the requested class waiver. For instance, any device not designed and marketed primarily to display video content (principally full-length, professional-quality video programming) is excluded from the definition of IP-TVs for which this class waiver is sought.

<sup>20</sup> See, e.g., Press Release, LG, LG Unveils Future of Home Entertainment With Innovative 2012 HDTV Line (Jan. 9, 2012), <http://www.lg.com/us/press-release/lg-unveils-future-of-home-entertainment-with-innovative-2012-hdtv-line> (“LG Press Release”); LG, LG Smart TV, <http://www.lg.com/us/tv-audio-video/discoverlgtvs/smarttv/index.jsp> (last visited Mar. 19, 2012).

<sup>21</sup> See, e.g., Mitsubishi, Mitsubishi TV Features, <http://www.mitsubishi-tv.com/features> (last visited Mar. 19, 2012).

<sup>22</sup> See, e.g., Panasonic, VIERA® 42” Class ST30 Series Plasma HDTV with 3D (41.6” Diag.), <http://shop.panasonic.com/shop/model/TC-P42ST30> (last visited Mar. 19, 2012) (“Panasonic VIERA”).

<sup>23</sup> See, e.g., Press Release, Samsung, Samsung Apps Becomes Preferred Smart TV Platform for Consumer, Content Providers and Developers (Jan. 9, 2012), [http://www.samsung.com/us/news/newsPreviewRead.do?news\\_seq=20079](http://www.samsung.com/us/news/newsPreviewRead.do?news_seq=20079) (“Samsung Smart TV Press Release”).

<sup>24</sup> See, e.g., Sharp, Smart TV, <http://www.sharppusa.com/ForHome/HomeEntertainment/LCDETVs/SmartTV.aspx> (last visited Mar. 19, 2012).

<sup>25</sup> See, e.g., Sony, Sony Televisions, [http://store.sony.com/webapp/wcs/stores/servlet/CategoryDisplay?catalogId=10551&storeId=10151&langId=-1&identifier=S\\_Televisions](http://store.sony.com/webapp/wcs/stores/servlet/CategoryDisplay?catalogId=10551&storeId=10151&langId=-1&identifier=S_Televisions) (last visited Mar. 19, 2012) (“Sony Televisions”).

<sup>26</sup> See, e.g., Vizio, Vizio Internet Apps® (V.I.A.) HDTVs, <http://www.vizio.com/via-hdtvs.html> (last visited Mar. 19, 2012).

**2. The Term of the Requested Waiver Should Reflect the Typical IP-TV Product Lifecycle of About Three Years.**

The Commission should grant the requested waiver for all IP-TV models that are first manufactured prior to July 1, 2016, which is a period extending less than three years after the expiration of the ACS phase-in period.<sup>27</sup> As explained in the *ACS Order*, the Commission will generally grant a requested class waiver for a period comparable to the expected product lifecycle.<sup>28</sup> Consistent with the *ACS Order* and other Commission precedent and for purposes of this petition, the product lifecycle consists of the period of time over which a device or service is developed and brought to market, and continues until that product is no longer offered and marketed.<sup>29</sup> Although IP-TVs are relatively new in the marketplace, the typical IP-TV, like other TVs, is expected to have a product lifecycle (under the Commission’s definition) of approximately three years, comprised of a two-year development phase<sup>30</sup> plus one year, the typical period in which the given IP-TV is offered and marketed by the manufacturer.

All models of equipment that meet the IP-TV definition and are first manufactured prior to the expiration of the waiver period should be covered by the waiver for the duration of the life of that equipment.<sup>31</sup> IP-TVs will continue to evolve, but if a given model meets the IP-TV

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<sup>27</sup> See *ACS Order*, 26 FCC Rcd at 14601-02 ¶ 107.

<sup>28</sup> See *id.* at 14638-40 ¶¶ 192-94.

<sup>29</sup> See, e.g., *id.* at 14638 ¶ 191 (recognizing that the “design phase” is part of the product lifecycle); see also *Amendment of Part 15 of the Rules and Regulations with Regard to All-Channel Television Broadcast Receivers*, Memorandum Opinion and Order, 23 F.C.C.2d 793, 795-96 ¶ 6 & n.8 (1970) (“*TV Broadcast Receiver Order*”) (explaining that the product lifecycle includes the time required for design and development as well as the period of time in which the product is offered and marketed); *Amendment of Parts 2 and 15 of the Commission’s Rules to Deregulate the Equipment Authorization Requirements for Digital Devices*, Notice of Proposed Rulemaking, 10 FCC Rcd 8345, 8347 ¶ 4 (1995) (“*Equipment Authorization Deregulation NPRM*”) (recognizing that “market life” is part of the product lifecycle).

<sup>30</sup> See, e.g., *ACS Order*, 26 FCC Rcd at 14603 ¶ 110 n.268.

<sup>31</sup> See *id.* at 14639-40 ¶ 194.

definition and is first manufactured during the term of the waiver, it should be covered by the waiver for the life of the device. To be clear, CEA is not requesting that this waiver automatically renew with “multiple generations” of a product, but rather is seeking a waiver of all models of equipment that (i) meet the IP-TV definition and (ii) are first manufactured prior to the expiration of the waiver, *i.e.*, July 1, 2016.

**3. IP-TVs are Multi-Purpose But are Designed Primarily for Delivering Video Content, Not ACS.**

IP-TVs are first and foremost TVs – the primary purpose of which remains the display of video content, whether from a traditional source such as over-the-air television, linear cable or satellite, or from a video-related app such as Hulu Plus, YouTube, or Netflix, to name but a few. As discussed below, there can be no doubt that the primary purpose of IP-TVs is not ACS, thus satisfying the ACS waiver standard set forth in Section 716 of the Act and Section 14.5 of the Commission’s rules.

Although, as discussed below, IP-TVs allow consumers to access and use ACS, their primary purpose, as designed and marketed, is to passively display video content, rather than to provide ACS.<sup>32</sup> This is abundantly illustrated by the marketing materials and other statements of the manufacturers that emphasize the enhanced access to video content provided by IP-TVs. For instance, Samsung’s “roster of popular apps” for its IP-TVs focuses on video content, including “AOL HD, CNBC Real-Time, Comcast Xfinity, ESPN ScoreCenter, Hulu Plus, MLB.TV, MTV Music Meter, NBA Game Time, Netflix, NHL Gamecenter, TIME TV, The Broadway Channel, Verizon Flex View and Wall Street Journal Live.”<sup>33</sup> Similarly, in discussing its commitment to the “connected TV movement,” LG first emphasizes providing access to “premium content from

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<sup>32</sup> See 47 U.S.C. § 617(h)(1)(B); 47 C.F.R. § 14.5(a)(1)(ii).

<sup>33</sup> Samsung Smart TV Press Release, *supra* note 23.

providers like Netflix, Hulu Plus, VUDU and others” as well as expanding access to new content options such as “a one-stop-shop for 3D content (via the 3D Zone).”<sup>34</sup>

Sony’s statements regarding its IP-TVs also focus on video content. Sony emphasizes “Sony Portal,” featuring “Video Unlimited” streaming service, which includes an “on-demand catalog of over 80,000 blockbuster movies and favorite TV shows” as well as apps for Netflix, Hulu Plus, Amazon Video, and YouTube.<sup>35</sup> Moreover, Panasonic highlights that its most popular IP-TV apps are overwhelmingly video related, including Netflix, YouTube, and Amazon Video.<sup>36</sup> Similarly, Mitsubishi emphasizes “StreamTV,” which provides access to “high-def and 3D movies from VUDU.”<sup>37</sup>

In addition to their primary purpose of accessing video content, IP-TVs allow users to access and use ACS,<sup>38</sup> including various forms of VoIP and electronic messaging services.<sup>39</sup> Users are able to access these ACS features and functions through apps that are either pre-

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<sup>34</sup> LG Press Release, *supra* note 20.

<sup>35</sup> Press Release, Sony, Sony’s New Bravia® TVs Offer Something for Everyone – Starting With the Most Vivid HDTV Picture Ever (Jan. 9, 2012), [http://news.sel.sony.com/en/press\\_room/consumer/television/release/61371.html](http://news.sel.sony.com/en/press_room/consumer/television/release/61371.html).

<sup>36</sup> See, e.g., Panasonic, Viera Connect Apps Navigator – Popular Apps, [http://panasonic.net/avc/viera/global/connect\\_apps/popularapps/1/](http://panasonic.net/avc/viera/global/connect_apps/popularapps/1/) (last visited Mar. 19, 2012).

<sup>37</sup> Press Release, Mitsubishi, Mitsubishi Electric Visual Solutions America Introduces 2011 Line-Up Featuring Massive 92-Inch 3D Home Cinema TV at 3 (June 1, 2011), [http://www.mitsubishi-tv.com/asset/file/press\\_release/MEVSA-2011TelevisionLine-Up.pdf](http://www.mitsubishi-tv.com/asset/file/press_release/MEVSA-2011TelevisionLine-Up.pdf).

<sup>38</sup> See 47 U.S.C. § 617(h)(1)(A); 47 C.F.R. § 14.5(a)(1)(i).

<sup>39</sup> Whether a particular video conferencing service available through an IP-TV constitutes ACS will depend in large part on the outcome of the pending further notice, in which the Commission seeks to define “interoperable” video conferencing services. See *ACS Order*, 26 FCC Rcd at 14684-87 ¶ 301-05 (seeking further comment on the appropriate definition of “interoperable”). To the extent that video conferencing services available through an IP-TV constitute ACS, the requested waiver should apply to them as well. No IP-enabled TV has as its primary purpose the delivery of video conferencing services, whether or not “interoperable” as to be defined by the Commission.

installed or downloaded and installed by the user.<sup>40</sup> However, the vast majority of apps relate to video-content, gaming, or news and general information, which generally do not include ACS features or functions.<sup>41</sup> Therefore, the requested class waiver satisfies the requirements of Section 716 of the Act and Section 14.5 of the Commission’s rules.

**B. The Requested IP-TV Class Waiver Also Satisfies the Commission’s General Waiver Standard.**

The requested IP-TV class waiver will serve the public interest in accordance with the Commission’s general waiver standard.<sup>42</sup> Section 1.3 of the Commission’s rules provides that “[a]ny provision of the rules may be waived by the Commission on its own motion or on petition if good cause therefor is shown.”<sup>43</sup> Under its general waiver standard, “[t]he FCC may exercise its discretion to waive a rule where particular facts would make strict compliance inconsistent with the public interest,” or alternatively, where “special circumstances warrant a deviation from the general rule and such a deviation will serve the public interest.”<sup>44</sup>

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<sup>40</sup> See, e.g., LG Press Release, *supra* note 20 (enhancing “the user Web browsing experience by incorporating HTML 5 and Flash”); LG, Smart TV Limitless Content, <http://www.lg.com/us/tv-audio-video/discoverlgtvs/smarttv/limitless-content.jsp> (last visited Mar. 19, 2012) (“LG Limitless Content”) (discussing the ability to connect with friends and family through apps such as Facebook); Panasonic VIERA, *supra* note 22 (mentioning, in addition to video programming access, access to ACS-like features); Samsung Smart TV Press Release, *supra* note 23 (discussing enhanced web browser functionality and ACS-like features); Sony Televisions, *supra* note 25.

<sup>41</sup> See, e.g., Samsung, Samsung Apps, <http://www.samsung.com/us/appstore/genre.do> (last visited Mar. 19, 2012) (including video apps such as YouTube, Netflix, and Hulu Plus; gaming apps such as Blackjack Master and Brain Challenge; and news and information apps such as BBC News, AP News Ticker, USA Today, and AccuWeather).

<sup>42</sup> See *ACS Order*, 26 FCC Rcd at 14637 ¶ 188 (citing 47 C.F.R. § 1.3).

<sup>43</sup> 47 C.F.R. § 1.3.

<sup>44</sup> *Northeast Cellular*, 897 F.2d at 1166 (citation omitted). See also *WAIT Radio*, 418 F.2d at 1157 (“The agency’s discretion to proceed in difficult areas through general rules is intimately linked to the existence of a safety valve procedure for consideration of an application for exemption based on special circumstances.” (citations omitted)).

The requested waiver for IP-TVs furthers the public interest by promoting the Commission’s goal of enabling the combined viewing of traditional and Internet forms of video on a single device. As discussed above, the NBP has established the value to the public of “combining MVPD [Multichannel Video Programming Distributor] and Internet content and services” on a single device, as recognized in Chapter 4 of the NBP.<sup>45</sup> IP-TVs are addressing the challenge recognized in the NBP of combining Internet video with traditional TV viewing.<sup>46</sup> Granting the requested waivers will serve the public interest by helping ensure that the new ACS rules will not inhibit or delay such continued innovation.

Moreover, granting the requested IP-TV class waiver falls squarely within the CVAA’s public interest goal of balancing increased ACS accessibility with manufacturers’ and service providers’ ability to continue to innovate for the benefit of all consumers.<sup>47</sup> Even though IP-TVs are capable of accessing ACS, their primary purpose is so clearly the display of video content that any use in accessing ACS is incidental to that primary purpose. Thus, requiring strict compliance with the ACS rules is inconsistent with the public interest.

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<sup>45</sup> NBP at 51.

<sup>46</sup> *See id.* (“[S]everal innovators are attempting to bring Internet video to the TV. Their devices often cannot access traditional TV content that consumers value—content that is not available or difficult to access online. Without the ability to seamlessly integrate Internet video with traditional TV viewing, Internet video devices like Apple TV and Roku have struggled to gain a foothold in U.S. homes.”). Chairman Genachowski consistently has discussed the importance of integrating video content available online with video programming delivered via linear broadcast and non-broadcast channels. *See, e.g., Video Device Competition NOI*, 25 FCC Rcd at 4294-95 (Statement of Chairman Julius Genachowski).

<sup>47</sup> “[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 Order*, 26 FCC Rcd at 14634 ¶ 181 (quoting *House Committee Report* at 26 and *Senate Committee Report* at 8).

Imposing the Section 716 requirements on IP-TVs will harm the public interest by inhibiting innovation in this class of equipment without meaningfully increasing access to ACS for persons with disabilities. Without the requested class waiver, manufacturers may be forced to remove ACS features and functions from IP-TVs to avoid the expense and burden associated with Section 716 compliance. Moreover, granting the requested class waiver would help eliminate uncertainty for all stakeholders<sup>48</sup> and minimize the burden of processing individual product waiver requests on industry and the Commission alike. Accordingly, the Commission should grant the requested waiver.

### **III. THE COMMISSION SHOULD WAIVE THE ACS RULES FOR IP-DVPs.**

Like IP-TVs, IP-DVPs readily meet the criteria for a class waiver. As discussed below, IP-DVPs warrant a class waiver under Section 716 of the Act and Section 14.5 of the Commission's rules. IP-DVPs constitute a distinct class of equipment. Their primary purpose is to play back and render video content, whether from storage media such as a Blu-ray Disc™, digital video disc ("DVD"), or DVR hard drive, transmitted from a pay television service, or streamed from the Internet, even though IP-DVPs enable consumers to access and use ACS as well. In addition, the requested IP-DVP class waiver also meets the Commission's general waiver standard.

#### **A. The Requested IP-DVP Class Waiver Readily Satisfies the Section 716(h)(1) and Rule 14.5 Requirements.**

##### **1. IP-DVPs Constitute a Defined Class of Equipment.**

IP-DVPs constitute a distinct class of equipment, namely, digital video players that (i) allow consumers to access and use ACS via IP and (ii) are designed primarily for the playback

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<sup>48</sup> *See id.* at 14639 ¶ 193 (stating that the Commission will grant class waivers "when doing so would promote greater predictability and certainty for all stakeholders").

and rendering of video content, principally full-length, professional-quality video programming, not ACS.<sup>49</sup> IP-DVPs include Internet-enabled Blu-ray Disc<sup>TM</sup> and DVD players, digital video recorders (“DVRs”) (e.g., boxes used primarily for pay television service), and other similar digital video players, as well as players for streaming video.<sup>50</sup> IP-DVPs are produced by many of the same manufacturers that produce IP-TVs, including, but not limited to, LG,<sup>51</sup> Panasonic,<sup>52</sup> Samsung,<sup>53</sup> Sony,<sup>54</sup> and Vizio.<sup>55</sup>

## **2. The Term of the Requested Waiver Should Reflect the Typical IP-DVP Product Lifecycle of About Three Years.**

The Commission should grant the requested waiver for all IP-DVP models that are first manufactured prior to July 1, 2016, which is a period extending less than three years after the expiration of the ACS phase-in period.<sup>56</sup> As explained in the *ACS Order*, the Commission will

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<sup>49</sup> *See id.* at 14639 ¶ 193 (requiring that the class be “carefully defined”). CEA recognizes and acknowledges that any device not designed and marketed primarily for the playback and rendering of video content (principally full-length, professional-quality video programming) is excluded from the definition of IP-DVPs for which this class waiver is sought.

<sup>50</sup> *See, e.g.*, TiVo, TiVo Premiere, <http://www.tivo.com/products/tivo-premiere/index.html> (last visited on Mar. 19, 2012); DIRECTV, Connecting your HD DVR to the Internet, [http://support.directv.com/app/answers/detail/a\\_id/2807](http://support.directv.com/app/answers/detail/a_id/2807) (last visited Mar. 19, 2012); Vizio, Vizio Stream Player, <http://www.vizio.com/ces/streamplayer/overview> (last visited Mar. 19, 2012).

<sup>51</sup> *See, e.g.*, LG, Blu-ray Players, <http://www.lg.com/us/tv-audio-video/video/index.jsp> (last visited Mar. 19, 2012).

<sup>52</sup> *See, e.g.*, Panasonic, Smart Network Blu-ray Disc Player DMP-BD77, <http://shop.panasonic.com/shop/model/DMP-BD77> (last visited Mar. 19, 2012) (“Panasonic DMP-BD77 Blu-ray Player”).

<sup>53</sup> *See, e.g.*, Samsung, The Smart Blu-ray Experience, <http://www.samsung.com/us/topic/the-smart-blu-ray-experience> (last visited Mar. 19, 2012).

<sup>54</sup> *See, e.g.*, Sony, Smart Streaming Player, <http://store.sony.com/webapp/wcs/stores/servlet/ProductDisplay?catalogId=10551&storeId=10151&langId=-1&productId=8198552921666382666> (last visited Mar. 19, 2012) (“Sony Smart Streaming Player”).

<sup>55</sup> *See, e.g.*, Vizio, Vizio Blu-ray Player with Internet Apps, <http://www.vizio.com/home-theater-1/vbr121.html> (last visited Mar. 19, 2012).

<sup>56</sup> *See ACS Order*, 26 FCC Rcd at 14601-02 ¶ 107.

generally grant a requested class waiver for a period comparable to the expected product lifecycle.<sup>57</sup> Consistent with the *ACS Order* and other Commission precedent and for purposes of this petition, the product lifecycle consists of the period of time over which a device or service is developed, brought to market, and continues until that product is no longer offered and marketed.<sup>58</sup> Although IP-DVPs are relatively new in the marketplace, the typical IP-DVP, like the typical Blu-ray and/or DVD player, is expected to have a product lifecycle (under the Commission’s definition) of approximately three years, comprised of a two-year development phase<sup>59</sup> plus one year, the typical period in which the given IP-DVP is offered and marketed by the manufacturer.

All models of equipment that meet the IP-DVP definition and are first manufactured prior to the expiration of the waiver should be covered by the waiver for the duration of the life of that equipment.<sup>60</sup> IP-DVPs will continue to evolve, but if a given model meets the IP-DVP definition and is first manufactured during the term of the waiver, it should be covered by the waiver for the life of the device. To be clear, CEA is not requesting that this waiver automatically renew for “multiple generations” of a product, but rather is seeking a waiver of all models of equipment that (i) meet the IP-DVP definition and (ii) are first manufactured prior to the expiration of the waiver.

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<sup>57</sup> *See id.* at 14638-40 ¶¶ 192-94.

<sup>58</sup> *See, e.g., id.* at 14638 ¶ 191 (recognizing that the “design phase” is part of the product lifecycle); *see also TV Broadcast Receiver Order*, 23 F.C.C.2d at 796-96 ¶ 6 & n.8 (explaining that the product lifecycle includes the time required for design and development as well as the period of time in which the product is offered and marketed); *Equipment Authorization Deregulation NPRM*, 10 FCC Rcd at 8347 ¶ 4 (recognizing that “market life” is part of the product lifecycle).

<sup>59</sup> *See, e.g., ACS Order*, 26 FCC Rcd at 14603 ¶ 110 n.268.

<sup>60</sup> *See id.* at 14639-40 ¶ 194.

### 3. IP-DVPs are Multi-Purpose But are Designed Primarily for Delivering Video Content, Not ACS.

Similar to IP-TVs, the primary purpose of IP-DVPs is to play back and render video content, rather than to provide access to ACS.<sup>61</sup> This is most evident by the marketing materials related to the IP-DVPs, which overwhelmingly emphasize that the focus of these devices is to improve the playback and rendering of video content to the television, whether from locally stored video content (*e.g.*, a Blu-ray disc or hard drive), by way of a video streaming app such as Netflix,<sup>62</sup> or as provided by a pay television service.

In addition to their primary purpose of accessing video content, IP-DVPs are capable of providing users with access to ACS,<sup>63</sup> including various forms of VoIP and electronic messaging services.<sup>64</sup> Users are able to access ACS through apps either pre-installed or downloaded and installed by the user.<sup>65</sup> However, like IP-TVs, the Internet connectivity of IP-DVPs is primarily

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<sup>61</sup> See 47 U.S.C. § 617(h)(1)(B); 47 C.F.R. § 14.5(a)(1)(ii).

<sup>62</sup> See, *e.g.*, LG Limitless Content, *supra* note 40 (“With LG Smart TV, you’re instantly connected to hours of entertainment. In addition to your cable TV, you’re just a click away from streaming video from services like Netflix, Hulu Plus, Vudu and more. Watch exclusive live events like baseball with MLB.tv. Enjoy millions of YouTube videos.”); Panasonic DMP-BD77 Blu-ray Player, *supra* note 52 (providing access to Netflix, CinemaNow, and Vudu to enable streaming of “movies, shows and other content”); Samsung Smart Blu-ray Player, *infra* note 65 (“Samsung Smart Blu-ray Players allow you to easily search for movies, TV shows, explore Samsung apps and find many other types of new interactive content.”); Sony Smart Streaming Player, *supra* note 54 (“Enjoy instant access to thousands of hit movies, TV shows, music choices, and online videos.”).

<sup>63</sup> See 47 U.S.C. § 617(h)(1)(A); 47 C.F.R. § 14.5(a)(1)(i).

<sup>64</sup> Whether a particular video conferencing service available through an IP-DVP constitutes ACS will depend in large part on how the Commission defines “interoperable” video conferencing services. See *ACS Order*, 26 FCC Rcd at 14684-87 ¶¶ 301-05 (seeking further comment on the appropriate definition of “interoperable”). To the extent that video conferencing services available through an IP-DVP constitute ACS, the requested waiver should apply to them as well. No IP-enabled DVP has as its primary purpose the delivery of video conferencing services, whether or not “interoperable” as to be defined by the Commission.

focused on enabling and improving the playback and rendering of video content through such Internet-based services as Netflix, YouTube, and Hulu Plus,<sup>66</sup> or the delivery of video-on-demand content from a pay television service such as DIRECTV.<sup>67</sup> Therefore, the requested class waiver satisfies the requirements of Section 716 of the Act and Section 14.5 of the Commission’s rules.

**B. The Requested IP-DVP Class Waiver Also Satisfies the Commission’s General Waiver Standard.**

Like the IP-TV class waiver, the IP-DVP class waiver will serve the public interest in accordance with the Commission’s general waiver standard.<sup>68</sup> Specifically, the Commission “may exercise its discretion to waive a rule where particular facts would make strict compliance inconsistent with the public interest,” or alternatively, where “special circumstances warrant a deviation from the general rule and such a deviation will serve the public interest.”<sup>69</sup>

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<sup>65</sup> See, e.g., LG Limitless Content, *supra* note 40 (discussing the ability to connect with friends and family through apps such as Facebook); Panasonic DMP-BD77 Blu-ray Player, *supra* note 52 (providing access to an application platform which allows downloads that can provide ACS); Samsung, 3D Blu-ray Disc™ Player (BD-D7500), <http://www.samsung.com/us/video/blu-ray-dvd/BD-D7500/ZA> (last visited Mar. 19, 2012) (“Samsung Smart Blu-ray Player”); Sony, BDP-S580 – 3D Blu-ray Disc Player, <http://store.sony.com/webapp/wcs/stores/servlet/ProductDisplay?catalogId=10551&storeId=10151&langId=-1&productId=8198552921666291826> (last visited Mar. 19, 2012).

<sup>66</sup> See, e.g., Samsung, Model Guide for Samsung Apps, Blu-ray & DVD Players, BD-D7500, <http://www.samsung.com/us/appstore/samsungappscompatibilityguide/BD-D7500/ZA>; LG Limitless Content, *supra* note 40.

<sup>67</sup> See, e.g., DIRECTV, DIRECTV On Demand, [http://www.directv.com/DTVAPP/content/technology/on\\_demand](http://www.directv.com/DTVAPP/content/technology/on_demand) (last visited Mar. 19, 2012).

<sup>68</sup> See *ACS Order*, 26 FCC Rcd at 14637 ¶ 188 (citing 47 C.F.R. § 1.3). Section 1.3 of the Commission’s rules provides that “[a]ny provision of the rules may be waived by the Commission on its own motion or on petition if good cause therefor is shown.” 47 C.F.R. § 1.3.

<sup>69</sup> *Northeast Cellular*, 897 F.2d at 1166 (citation omitted). See also *WAIT Radio*, 418 F.2d at 1157 (“The agency’s discretion to proceed in difficult areas through general rules is intimately linked to the existence of a safety valve procedure for consideration of an application for exemption based on special circumstances.” (citations omitted)).

Similar to IP-TVs, requiring IP-DVPs to strictly comply with the ACS rules would be inconsistent with the public interest. Specifically, granting the requested IP-DVP class waiver will promote the Commission’s goal of enabling the combined viewing of traditional and Internet forms of video on a single device. As discussed above, the NBP has established the value to the public of “combining MVPD [Multichannel Video Programming Distributor] and Internet content and services” on a single device, as recognized in Chapter 4 of the NBP.<sup>70</sup> IP-DVPs are enabling consumers to combine Internet video with traditional TV viewing without requiring consumers to replace their existing TVs.<sup>71</sup> Granting the requested waivers will serve the public interest by helping ensure that the ACS rules will not inhibit or delay such continued innovation.

Moreover, granting the requested IP-DVP class waiver serves the public interest by providing the appropriate balance between increased ACS accessibility and manufacturers’ and service providers’ ability to continue to innovate for the benefit of all consumers.<sup>72</sup> Even though IP-DVPs allow consumers to access and use ACS, their primary purpose is so markedly the playback and rendering of video content that their use in accessing ACS is incidental to video

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<sup>70</sup> NBP at 51. *See also id.* (“[S]everal innovators are attempting to bring Internet video to the TV. Their devices often cannot access traditional TV content that consumers value - content that is not available or difficult to access online. Without the ability to seamlessly integrate Internet video with traditional TV viewing, Internet video devices like Apple TV and Roku have struggled to gain a foothold in U.S. homes.”). Chairman Genachowski consistently has discussed the importance of integrating video content available online with video programming delivered via linear broadcast and non-broadcast channels. *See, e.g., Video Device Competition NOI*, 25 FCC Rcd at 4294-95 (Statement of Chairman Julius Genachowski).

<sup>71</sup> *See, e.g., Sony Smart Streaming Player, supra* note 54.

<sup>72</sup> “[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 Order*, 26 FCC Rcd at 14634 ¶ 181 (quoting *House Committee Report* at 26 and *Senate Committee Report* at 8).

content delivery. Thus, requiring IP-DVPs to strictly comply with the ACS rules is inconsistent with the public interest.

Without a class waiver, imposing the Section 716 requirements on IP-DVPs will harm the public interest by inhibiting innovation in this class of equipment without meaningfully increasing access to ACS for persons with disabilities. Without the requested class waiver, manufacturers may be forced to remove ACS features and functions from IP-DVPs to avoid the expense and burden associated with Section 716 compliance. Moreover, granting the requested class waiver would help eliminate uncertainty for all stakeholders<sup>73</sup> and minimize the burden of processing individual product waiver requests on industry and the Commission alike.

#### IV. CONCLUSION

Consistent with Section 716 of the Act and the Commission's rules, CEA requests that the Commission grant the IP-TV and IP-DVP class waivers as set forth above.

Respectfully submitted,

CONSUMER ELECTRONICS  
ASSOCIATION

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<sup>73</sup> *See id.* at 14639 ¶ 193 (stating that the Commission will grant class waivers “when doing so would promote greater predictability and certainty for all stakeholders”).

## DECLARATION

I, Brian E. Markwalter, Senior Vice President, Research and Standards of the Consumer Electronics Association, declare under penalty of perjury that the contents of the foregoing Petition for Waiver are true and correct to the best of my knowledge and belief.

Executed on March 22, 2012.

/s/ Brian E. Markwalter  
Brian E. Markwalter, SVP  
Consumer Electronics Association