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March 30, 1999

The Honorable William E. Kennard
Federal Communications Commission
445 12th Street, S.W.
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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

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**Re: Ex Parte Submission, Commercial Availability of Navigation
Devices, CS Docket No. 97-80**

Dear Chairman Kennard:

On March 4, 1999, the Commission received a written *ex parte* in the above-captioned proceeding, jointly filed by the Consumer Electronics Manufacturers Association (CEMA), Circuit City Stores, Inc., and the Information Technology Industry Council (ITI) (hereafter referred to as "commenters"). In that *ex parte*, the commenters revise their prior positions and recommend that the Commission "exempt analog-only navigation devices, that cannot provide access to digital transmissions or services, from the pertinent regulations in this Docket."

General Instrument Corporation (GI), a leading manufacturer of cable navigation devices – both analog and digital – supports the adoption of an analog exemption. However, as detailed in our prior written submissions in this docket, GI believes that Section 304 of the 1996 Act and sound public policy require an analog exemption applicable to *both* analog-only and "hybrid" analog/digital devices.¹ While GI continues to hold this view regarding an analog/hybrid exemption, in the interest of expediting the Commission's decision on reconsideration in this proceeding, it will not reiterate those arguments here.

While GI supports an analog exemption, GI strongly objects to suggestions by commenters to advance the date for the mandatory phase-out of integrated devices to January 1, 2001. Acceleration of the effective date for the integration ban was already suggested by CEMA in its petition for reconsideration and has been thoroughly addressed by numerous commenters, including NCTA, Ameritech New Media, GI, and the Wireless Communications Association. In its comments, GI objected not only to the date change, but pointed out that the integration ban itself is inconsistent with the provisions and purposes of Section 304, the Commission's prior rulings, the interests of consumers, and the efficiencies of the market.²

¹ See, e.g., Comments/Opposition of General Instrument Corporation in Response to Petitions for Reconsideration, filed in CS Docket No. 97-80 (September 23, 1998), at 2-7.

² See *id.* at 7-16. See also NCTA's Consolidated Reply to Oppositions to Petition for Expedited Reconsideration (October 7, 1998).

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Contrary to commenters' suggestion, a decision by the Commission on reconsideration to exempt analog-only devices from the separation requirement cannot and should not be viewed as justification for accelerating the phase-out of integrated devices. Development of separate security devices is one undertaking – *transitioning the market to those devices while phasing out integrated devices is quite another*. An analog exemption does not negate, and, in fact, is entirely unrelated to, the need for an adequate transition period to phase out integrated devices. The Commission itself recognized in its Navigation Devices Order that "[a]llotting a phase out period will minimize the impact of [the ban on integrated devices] on manufacturers and MVPDs, allowing manufacturers sufficient time to respond to equipment modifications."³ Thus, the Commission has already determined that a reasonable amount of time is required to transition the market to separated security-only devices and to phase out product lines, thereby lessening the impact on consumers and the industry. Commenters' *ex parte* provides absolutely no basis for altering this conclusion.

GI strongly urges the Commission to move forward on the petitions for reconsideration filed in this proceeding and to adopt an exemption from the retail sale rules for all analog devices, including hybrid devices. The Commission should also eliminate the unlawful, anti-consumer prohibition on integrated devices scheduled to take effect in 2005. If the Commission, on reconsideration, chooses to retain the ban on integrated devices, the Commission should reject calls to accelerate the date on which that ban takes effect.

Respectfully submitted,



Christine G. Crafton
Vice President, Government Affairs

cc: Commissioner Susan Ness
Commissioner Harold Furchtgott-Roth
Commissioner Michael Powell
Commissioner Gloria Tristani
Deborah Lathen
William Johnson
Deborah Klein
Thomas Horan
Jonathan Levy
Jon Wilkins

³ See *In the Matter of Implementation of Section 304 of the Telecommunications Act of 1996, Commercial Availability of Navigation Devices*, CS Docket No. 97-80, FCC 98-116, *Report and Order*, released June 24, 1998, at ¶ 69 (citations omitted).