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

In the Matter of:	)	
	)	
Armstrong Utilities, Inc.	)	CS Docket No. 97-80
	)	
Request for Waiver of	)	CSR-7112-Z
47 C.F.R. § 76.1204(a)(1)	)	
	)	
To: Chief, Media Bureau	)	

Motion to Strike and Reply of Armstrong Utilities, Inc.

I. Introduction and Summary

Armstrong Utilities, Inc. ("Armstrong") moves to strike the late-filed comments filed by the Consumer Electronics Association ("CEA") in this matter.[1] CEA has not even attempted to show good cause for its tardiness in filing its Comments. In addition, CEA's arguments against Armstrong's Request for Waiver are internally inconsistent and ignore facts already in the record in this docket.

Armstrong addresses CEA's failure to show good cause to accept its late-filed comments and each of CEA's major arguments below.

II. The Commission should strike CEA's untimely Comments.

As CEA acknowledges in its Motion to Accept Late-Filed Comments,[2] its Comments were not filed timely. In fact, CEA filed its Comments a week late. Under

[1] *Comments of the Consumer Electronics Association on Armstrong Utilities, Inc.'s Petition for Waiver of 47 C.F.R. § 76.1204(a)(1)*, CS Docket No. 97-80, CSR-7112-Z (filed March 12, 2007) ("*Comments*").

[2] *Motion of the Consumer Electronics Association to Accept Late-Filed Comments and for Extension of Time to File Reply Comments*, CS Docket No. 97-80, CSR-7112-Z (filed March 12, 2007) ("*Motion to Accept Late-Filed Comments*").

Commission rules and precedent, an extension of time for a filing requires a showing of good cause. CEA's Motion to Accept Late-Filed Comments does not even address the issue of good cause for the requested extension.

A. An extension of time requires a showing of good cause. The Commission's rules and policies governing extensions are straightforward. Extensions will not be routinely granted,[3] and may only be granted upon good cause shown.[4] The Commission specifically disfavors requests for extensions of time filed on short notice.[5] When viewed in light of the Commission's rules and these well-settled policies, CEA's Motion to Accept Late-Filed Comments must be denied.

B. CEA has not shown good cause for an extension.

CEA's only explanation for the untimeliness of its comments is that "the large number of such filings spread over more than one docket led to a misunderstanding as to the comment dates."[6]

CEA's explanation not only makes no sense, it falls far short of good cause.

As an initial matter, CEA has been actively involved in this docket from the beginning. A search of the Commission's ECFS system shows that CEA has made

---

[3] 47 C.F.R. § 1.46(a).

[4] *See, e.g., In the Matter of Application by Verizon New Jersey, Inc., et al. for Authorization to Provide In-Region, InterLATA Services in New Jersey, Order*, 17 FCC Rcd. 6116 (2002) at ¶ 4.

[5] *In the Matter of Amendment of Parts 2 and 25 of Commission's Rules to Permit Operation of NGSO FSS Systems in KU-Band Frequency Range*, *Order Extending Reply Comment Period*, 16 FCC Rcd. 7070 (2001) at ¶ 3. CEA filed its *Motion to Accept Late-Filed Comments* a week after the filing deadline. In other words, CEA's request for an extension was filed on no notice, much less short notice.

[6] *Motion to Accept Late-Filed Comments* at 2.

eighty filings in this docket. Obviously, CEA has been closely monitoring this docket and cannot claim to be taken by surprise by Armstrong's Request for Waiver.

Further, Armstrong's Request for Waiver was included in the same public notice[7] as the City of San Bruno's Request for Waiver, for which CEA filed timely comments.[8] How could CEA have had a "misunderstanding as to the comment dates" for Armstrong's Request for Waiver when it clearly had no confusion regarding the City of San Bruno's? Moreover, ACA and Motorola were both able to accurately pinpoint the comment deadline and file timely comments supporting Armstrong's Request for Waiver.

In short, CEA has failed to show any credible reason why it filed its Comments in an untimely manner, much less good cause for the late filing. Consequently, the Commission must strike CEA's late-filed Comments.

III. The Commission should disregard CEA's internally inconsistent arguments and willful disregard of facts in the record in this docket.

Even if the Commission accepts CEA's late-filed Comments, it should disregard CEA's internally inconsistent arguments and willful disregard of facts in the record in this docket.

CEA first argues that "further postponement of common reliance…will undermine Congress's basic intention of creating…a true competitive market for navigation devices,"[9] and that "the ability of one vendor to effectively set the terms under which

---

[7] *Public Notice, Special Relief and Show Cause Petitions* (February 12, 2007).

[8] *Comments of the Consumer Electronics Association on the City of San Bruno Request for Waiver of 47 C.F.R. § 76.1204(a)(1)*, CS Docket No. 97-80, CSR-7116-Z (filed March 5, 2007).

[9] *Comments* at 1.

low-cost boxes can be obtained is precisely the scenario that Congress and the Commission have sought to eliminate."[10] But as CEA itself admits, smaller cable operators like Armstrong are "effectively at the mercy of the product decisions taken by the major MSOs and the unilateral dictates of entrenched vendors…"[11] In other words, CEA itself is conceding that (1) granting Armstrong's Request for Waiver will have absolutely no adverse effect on the competitive market for navigation devices, and (2) denying the request will not facilitate competitive entry. Consequently, there is absolutely no reason to deny Armstrong's Request for Waiver.

CEA next argues that "the urgency of Armstrong's request was…caused by Armstrong's inaction."[12] Again, as CEA itself acknowledges, Armstrong is far too small to influence a large manufacturer's product decisions, and had no way of controlling Motorola's October 2006 announcement that it would stop taking orders for the DCT-700. Armstrong filed its Request for Waiver within weeks of that announcement.

In its opposition to Armstrong's Request for Clarification that refurbished boxes are not included under the integration ban, CEA asserts that allowing operators to deploy refurbished boxes will reduce incentives to deploy downloadable security.[13] Again, this argument is internally inconsistent: CEA admits that Armstrong's continued deployment of integrated boxes to its small, low-income subscriber base will have absolutely no effect on the navigation device market. Further, Armstrong's deployment

---

[10] *Comments* at 2.

[11] *Id.* (emphasis added).

[12] *Comments* at 1-2.

[13] *Comments* at 2.

of refurbished boxes will not impact manufacturers' incentive to develop downloadable security.

IV. Conclusion

CEA's Comments were untimely filed. CEA has shown no cause at all for the late filing – much less good cause. Accordingly, CEA's Comments should be stricken from the record.

Moreover, CEA's Comments rely on internally inconsistent arguments and ignore facts clearly established in this docket.

Armstrong's Request for Waiver shows good cause for the requested waiver for the DCT-700. Armstrong respectfully requests that the Commission grant this waiver.

Respectfully submitted,

Nicole E. Paolini-Subramanya
Cinnamon Mueller
307 N. Michigan Avenue
Suite 1020
Chicago, IL 60601

(312) 372-3930

Attorneys for Armstrong Utilities, Inc.

March 21, 2007

CERTIFICATE OF SERVICE

I, Megan Petrulis, paralegal with the law firm of Cinnamon Mueller, certify that a true and correct copy of the *Motion to Strike and Reply of Armstrong Utilities, Inc.* was mailed to the following individuals by first class USPS mail on March 21, 2007:

Julie M. Kearney
Senior Director and Regulatory Counsel
Consumer Electronics Association
2500 Wilson Boulevard
Arlington, VA 22201

Robert S. Schwartz
Mitchell L. Stoltz
Constantine Cannon LLP
1627 Eye Street, N.W., 10th Floor
Washington, D.C. 20006

Matt Polka
American Cable Association
One Parkway Center
Suite 2121
Pittsburgh, PA 15220

Steve B. Sharkey
Director, Spectrum and Standards Strategy
Jason E. Friedrich
Assistant Director, Telecommunications Regulation
Motorola, Inc.
1455 Pennsylvania Avenue, NW
Suite 900
Washington, DC 20004

Megan Petrulis