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

In the Matter of:	)	
	)	
The World Company d/b/a Sunflower Broadband	)	CS Docket No. 97-80
	)	
	)	CSR-7114-Z
Request for Waiver of 47 C.F.R. § 76.1204(a)(1)	)	
	)	
	)	
To: Chief, Media Bureau	)	

Motion to Strike and Reply of The World Company d/b/a Sunflower Broadband

I. Introduction and Summary

The World Company d/b/a Sunflower Broadband ("Sunflower Broadband") 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 any event, CEA's arguments against Sunflower Broadband's Request for Waiver are internally inconsistent and ignore facts already in the record in this docket. The Commission should recognize CEA's Comments for what they are – a thinly-veiled attempt to enrich the $155 billion consumer electronics industry[2] at the price of smaller-market consumers.

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[1] *Comments of the Consumer Electronics Association on The World Company d/b/a Sunflower Broadband's Petition for Waiver of 47 C.F.R. § 76.1204(a)(1)*, CS Docket No. 97-80, CSR-7114-Z (filed March 12, 2007) ("*Comments*").

[2] *See CEA Forecasts Consumer Electronics Revenue Will Surpass $155 Billion in 2007*, viewed at http://www.ce.org/Press/CurrentNews/press_release_detail.asp?id=11220 on March 12, 2007.

Further, Sunflower Broadband notes that CEA's Comments were the only comments filed in opposition to its Request for Waiver. Other commenters strongly support Sunflower Broadband's Request for Waiver.[3]

Sunflower Broadband 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,[4] its Comments were not filed timely. In fact, CEA filed its Comments a week late. Under Commission rules and precedent, an extension of time for a filing requires a showing of good cause. Yet CEA's Motion to Accept Late-Filed Comments does not even attempt to show 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 to be routinely granted,[5] and may only be granted upon good cause shown.[6] The Commission specifically disfavors requests for extensions of time filed on short

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[3] *See Comments of Motorola, Inc.*, CS Docket No. 97-80, CSR-7114-Z (filed March 5, 2007) and *Comments of the American Cable Association in Support of Requests for Waivers of 47 C.F.R. § 76.1204(a)(1),* CS Docket No. 97-80, CSR-7114-Z (filed March 5, 2007).

[4] *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-7114-Z (filed March 12, 2007) ("*Motion to Accept Late-Filed Comments*").

[5] 47 C.F.R. § 1.46(a).

[6] *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.

notice.[7] When viewed in light of the Commission's rules and these well-settled policies, CEA's Motion to Accept Late Filed Comments must fail.

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

CEA's only explanation for the untimliness 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."[8]

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

Further, Sunflower Broadband's Request for Waiver was included in the same public notice[9] as the City of San Bruno's Request for Waiver, for which CEA filed timely comments.[10] How could CEA have had a "misunderstanding as to the comment dates" for Sunflower Broadband'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

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[7] *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.

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

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

[10] *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).

accurately pinpoint the comment deadline and file timely comments supporting Sunflower Broadband's Request for Waiver. Apparently, the comment deadline was not easily misunderstood.

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."[11] But as CEA itself admits, smaller cable operators like Sunflower Broadband are "effectively at the mercy of the product decisions taken by the major MSOs and the unilateral dictates of entrenched vendors…"[12] In other words, CEA itself is conceding that (1) granting Sunflower Broadband'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 Sunflower Broadband's Request for Waiver.

Moreover, there is no reason that CEA's members cannot enter the set-top box market to compete with Motorola and Scientific Atlanta, other than the fact that CEA's

[11] *Comments* at 1.

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

members understandably prefer the large profit margins on expensive digital TV sets to the small margins on low-cost set top boxes.

CEA makes a similar argument in its opposition to Sunflower Broadband'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] As shown above, this argument makes no sense: CEA admits that Sunflower Broadband's continued deployment of integrated boxes to its small, low-income subscriber base will have absolutely no effect on the navigation device market. Further, manufacturers hardly lack incentives to develop downloadable security. To the contrary, the market is eager to adopt downloadable security, which is inherently more flexible and less expensive than the CableCARD. Once effective downloadable security is available, Sunflower Broadband (and, undoubtedly, large numbers of other cable operators) will be glad to deploy it. Moreover, CEA's argument willfully ignores facts already on the record in this docket. As numerous commenters have shown, substantial progress has been made on a downloadable security solution.[14]

IV. Conclusion

CEA's Comments were untimely filed. Yet 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.

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[13] *Comments* at 1-2.

[14] *See, e.g., Reply Comments of the National Cable & Telecommunications Association*, CS Docket No. 97-80, CSR-7056-Z (filed December 11, 2006) at 3 and16-21.

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

When CEA's rhetoric is stripped away, the Commission is left with a behemoth trade association endorsing (1) higher prices for consumers, (2) impeding the digital transition in smaller and rural markets, and (3) saddling Sunflower Broadband with higher costs that will reduce MVPD competition. And why? To raise the price of using an analog television set so that CEA's members can sell more expensive digital TV sets to consumers. The Commission should recognize CEA's comments for what they are – an attempt to transfer money from the pockets of smaller-market and rural consumers to the multi-billion dollar consumer electronics industry. Sunflower Broadband's Request for Waiver shows good cause for the requested waiver for low-cost set top boxes. Sunflower Broadband respectfully requests that the Commission grant this waiver.

Respectfully submitted,

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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 The World Company d/b/a Sunflower Broadband* was mailed to the following individuals by first class USPS mail on March 21, 2007:

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