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

In the Matter of	)	
	)	CS Docket No. 97-80
Great Plains Television, Inc.	)	
	)	
Petition for Waiver of Section 76.1204(a)(1)	)	CSR-7212-Z
	)	
Implementation of Section 304 of the Telecommunications Act of 1996	)	
	)	
Commercial Availability of Navigation Devices	)	
	)	

Comments of the Consumer Electronics Association
on Great Plains Television, Inc.
Petition for Waiver of 47 C.F.R. § 76.1204(a)(1)

June 14, 2007

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The Consumer Electronics Association ("CEA") submits these comments in response to the request for waiver of Section 76.1204(a)(1) of the Commission's rules by Great Plains Cable Television, Inc ("Great Plains"). The request by Great Plains comes just *one month* before cable operators' obligation to rely on the same separable security interface relied on by competitive device manufacturers will, after nine years and two postponements, finally take effect. As with many other recent waiver petitioners, Great Plains seeks to create an extenuating circumstance by making a request at the eleventh hour, after the cable industry has exhausted its postponements of, and court challenges to, the "common reliance" rule of Section 76.1204(a)(1). Great Plains should not be rewarded for brinksmanship.

The common reliance rule is intended to carry out Congress's instructions to create competition in video navigation devices available at retail.[1] But implementation of the rule has been postponed so long that operators like Great Plains now depend on the product decisions of a single vendor. A waiver of the common reliance rule will not give Petitioners any additional influence over monopoly vendors. The delay in implementing Section 76.1204(a)(1), and the ensuing avalanche of waiver requests, has only added to the monopoly power of incumbent providers, the exact scenario that common reliance should have prevented.

It is CEA's position that the common reliance rule applies to "refurbished" set-top boxes when they are redeployed to subscribers.[2] Exempting "refurbished" boxes generally would ensure that security-integrated, noncompliant set-top boxes will, rather than being phased out as they become obsolete, remain deployed on a grand scale for many years to come. Therefore, any consideration by the Commission of this factor should be limited to the basis cited by Great Plains[3] that the boxes in question are no longer being manufactured, *if* supported by additional evidence provided by the petitioner that any secondary market for such boxes exists and can exist only on a *de minimis* basis. Otherwise, Great Plains states no grounds for waiver under Section 629(c) of the Telecommunications Act or under any of the Commission's regulations pertaining to navigation devices. Instead, Great Plains merely claims that its continued operation of combined cable and satellite ("HITS") service over security-integrated, nonportable

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[1] *See* 47 U.S.C. § 549 (2006 & West 2007).
[2] *See* CS Docket No. 97-80, CSR-7109-Z, *Comments of the Consumer Electronics Association on the NPG Cable, Inc. Petition for Waiver of* 47 C.F.R. § 1204(a)(1), at 1-2 (Mar. 12, 2007).
[3] *Commercial Availability of Navigation Devices,* CS Docket 97-80, CSR 7212-Z, Great Plains Cable Television, Inc., Petition for Waiver of 47 C.F.R. § 76.1204(a)(1) at 4 (May 9, 2007) ("Great Plains Petition").

devices, is in the "public interest." The Commission has never granted a waiver of Section 76.1204(a)(1) on such vague terms and should not now do so. Indeed, the Commission has refused waivers requested on rural "public interest" grounds when an operator already passes the majority of its customer base with digital services.[4]

To the extent the Commission may find any special circumstances for Great Plains based on financial hardship, it should bear in mind too many or too liberal exceptions would serve to ratify the nullification of FCC regulations by larger MSOs and their vendors. Hence, the Commission should do so only in the larger context of addressing the need for a competitive, national, interoperable navigation device market, and to the extent it grants any waivers, should impose forward-looking obligations to assure compliance and the achievement of a national competitive market in "2-way" navigation devices.

In addition, as waivers must be time-limited, Great Plains's open-ended request for a waiver lasting until Great Plains chooses to upgrade its systems does not satisfy the criteria for a waiver.[5] The Commission should impose firm sunset dates on any waivers rather than allowing them to be tied to petitioners' business decisions, or arbitrary dates that will lead to perpetual requests for renewal of the waiver.

In summary, the Commission need not sacrifice Congress's goal of competition in navigation devices in order to promote rural accessibility – this is not a binary choice. Therefore, the Commission should continue to keep the veritable flood of waiver requests from swallowing the rule itself, and where waivers are granted, they should be

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[4] *Commercial Availability of Navigation Devices*, CS Docket 97-80, CSR-7049-Z, Memorandum Opinion and Order at 7 ¶ 15 (rel, May 4, 2007) ("[W]e do not believe that Congress intended for us to interpret this narrowly tailored exception in such a lenient manner.").

[5] Great Plains Petition at 3.

conditioned on commitments to promote a national market for competitive navigation devices.

Respectfully submitted,

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Dated: June 14, 2007

CERTIFICATE OF SERVICE

I do hereby certify that on June 14, 2007 I caused a true and correct copy of the foregoing Comments of the Consumer Electronics Association on the Petition for Waiver of 47 C.F.R. § 76.1204(a)(1) by Great Plains Cable Television, Inc. to be served via overnight mail on the following:

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/s/ LaClaudia Dyson
LaClaudia Dyson