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JUN 25 2008

June 23, 2008

FCC Mail Room

BY FEDEX

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: CS Dkt. 97-80; CSR-7915-Z

Dear Ms. Dortch:

Enclosed is a hard copy of the Comments of the Consumer Electronics Association on NTS Communications, Inc.'s Petition for Extension of Waiver of Section 76.1204(a)(1) electronically filed in CS Docket 97-80.

Sincerely,



Patricia O'Keefe

NTS Communications 0
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Before the
Federal Communications Commission
Washington, D.C. 20554

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In the Matter of)
)
Implementation of Section 304 of the) CS Docket No. 97-80
Telecommunications Act of 1996)
)
Commercial Availability of Navigation Devices)
)
NTS Communications, Inc.) CSR-7915-Z
)
Petition for Extension of Waiver of)
Section 76.1204(a)(1) of the Commission's Rules)
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Comments of the Consumer Electronics Association
on NTS Communications, Inc.'s Petition
for Extension of Waiver of Section 76.1204(a)(1)
(ADDENDUM)

June 23, 2008

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

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**Comments of the Consumer Electronics Association
on NTS Communications, Inc.'s Petition
for Extension of Waiver of Section 76.1204(a)(1)
(ADDENDUM)**

The Consumer Electronics Association (“CEA”) respectfully submits these comments in response to a request by NTS Communications, Inc. (“NTS”) for an extended waiver of Section 76.1204(a)(1) of the Commission’s rules.¹ That section requires multichannel video programming distributors (“MVPDs”) to make available “equipment” implementing a separable security function for use in competitive navigation devices, and by July 1, 2007, to rely on the same separable security function in their own leased navigation devices, such as set-top boxes. The Commission promulgated Section 76.1204 in 1998 and has extended the effective date of the “common reliance” requirement twice. Despite having nine years’ notice of its

¹ 47 C.F.R. § 76.1204(a)(1) (2007).

obligations under these rules, NTS requested a waiver on June 4, 2007. The Commission's Media Bureau granted a one-year waiver while instructing NTS to "work to develop and deploy a separable security solution that will allow for interoperability between its systems and consumer electronics equipment" during the year given.²

Should the Commission extend the waiver yet again, it should take care not to do so on terms that will lead to a proliferation of mutually incompatible and non-portable conditional access technologies. The navigation device rules implement Congress's clear directive to "ensure the availability" of video navigation devices from sources other than the MVPDs. As CEA has explained in Docket No. 97-80 on several occasions, a competitive market for navigation devices *cannot* exist if such devices can only operate in certain parts of the country and are not portable among MVPD systems.³ Likewise, competitive devices cannot exist if they must implement a multitude of different security technologies, based on proprietary protocols, subject to multiple royalties and mutually incompatible licensing terms. Multiple proprietary standards will carry MVPDs even farther away from Congress's goal of a competitive market.

Based on CEA's current understanding and NTS's admissions, the technology from Latens used by NTS is not nationally portable. The Latens system "uses a closed proprietary standard," is not "interoperable with other third-party IPTV set-top boxes in

² *In the Matter of Colo Telephone Co., et al.; Implementation of Section 304 of the Telecommunications Act of 1996; Commercial Availability of Navigation Devices*, Memorandum Opinion and Order, 22 FCC Rcd. 13428, 13436 (2007) ("Waiver Order").

³ *See, e.g.*, ex parte letter from Julie M. Kearney, Sr. Dir. and Regulatory Counsel, CEA to Marlene Dortch, Sec., FCC, Ex Parte Presentation, CS Dkt. 97-80, CSR-7131-Z (Apr. 24, 2007) (on the JetBroadband VA, LLC and JetBroadband WV, LLC Petition for Deferral of 47 C.F.R. § 76.1204(a)(1), CS Docket No. 97-80).

the marketplace” and “does not meet the requirement of common reliance.”⁴ The NTS petition explains why “downloadable security” as it exists today is not separable security as required by the Commission’s rules. Although “authentication and video rights are stored in the IPTV network in the middleware and digital rights management software,”⁵ this software apparently runs on proprietary hardware built into the set-top box. Thus, whether or not some components of the conditional access system are downloaded into the box, the system depends on proprietary, integrated hardware that is apparently not available to competitive entrants. This is *not* separable security as the Commission’s rules require.⁶

CEA acknowledges the effort by the Alliance for Telecommunications Industry Solutions (“ATIS”) to create a standard, based on the CableCARD, that can be used by Internet Protocol-based MVPDs. It was in recognition of this effort that the Commission granted NTS a one-year waiver through July 1, 2008.⁷ However, NTS does not cite any progress toward this goal. NTS requests a two-year waiver despite its assessment that “technical standards that would be a prerequisite to designing and implementing compliant conditional access devices for IPTV video systems are not expected to be available within the next two years.”⁸ This contradiction strongly suggests that NTS will continue to request waivers indefinitely. Operators and their suppliers will thus have nullified the Commission’s rules while entrenching multiple incompatible conditional

⁴ *In the Matter of NTS Communications, Inc. Petition for Extension of Waiver of Section 76.1204(a)(1) of the Commission’s Rules, CSR-7915-Z; Implementation of Section 304 of the Telecommunications Act of 1996: Commercial Availability of Navigation Devices*, CS Dkt. No. 97-80 at 4 (May 16, 2008) (Petition).

⁵ NTS Petition at 3-4.

⁶ See ex parte letter from Robert S. Schwartz, Of Counsel, CEA to Marlene Dortch, Sec, FCC, Notice of Ex Parte Presentation, CS Dkt. 97-80, illustration at 5 (June 20, 2008).

⁷ Waiver Order at 13436.

⁸ NTS Petition at 6.

access technologies on systems around the country – the status quo that Congress sought to eliminate in 1996.

To prevent this scenario, the Commission should make explicit that any waivers for IP-based MVPDs will be conditioned on the rapid development of a single national conditional access technology, and that absent demonstrated progress toward such a technology, waivers will not be extended and re-extended indefinitely. Otherwise, technology suppliers such as those used by NTS will have no incentive to work toward a nationally portable interface, and operators like NTS, assured of a rolling waiver, will have no incentive to ask suppliers to comply with the Commission’s rules. The Bureau and the Commission should be cautious in their response to NTS and other IPTV petitioners and should avoid undermining the competitive market in navigation devices that Congress ordered the Commission to “assure.”⁹

Respectfully submitted,

/s/ Michael Petricone

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Dated: June 23, 2008

⁹ 47 U.S.C. § 549(c).

CERTIFICATE OF SERVICE

I do hereby certify that on June 23, 2008 I caused a true and correct copy of the foregoing Comments of the Consumer Electronics Association on Requests for Waiver of 47 C.F.R. § 76.1204(a) to be served via first-class mail on the following:

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/s/ Teresa Burroughs
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