

Brownstein | Hyatt
Farber | Schreck

April 5, 2012

Mark Mathews
Attorney at Law
303.223.1179 tel
303.223.0979 fax
mmathews@bhfs.com

VIA ELECTRONIC MAIL: expartecommunications@hq.doe.gov

Ms. Celia Sher
Office of Assistant General Counsel for Legislation and Regulatory Law
Office of General Counsel
Department of Energy
1000 Independence Ave, SW
Washington, DC 20585-0121

Re: **Memorandum Memorializing Ex Parte Communication**
Docket No. EERE-2010-BT-DET-0040
Satellite Television Industry Meeting Regarding DOE Set-Top Box Rulemaking

On April 3, 2012 at 11:00 AM, representatives of the U.S. satellite television industry, listed below, met with the DOE officials, listed below, at the Forestall Building to discuss matters of concern to the U.S. satellite television industry regarding the pending DOE rulemaking to establish energy conservation standards on set-top boxes (STBs) under title III of the Energy Policy and Conservation Act of 1974, as amended.

The purpose of the meeting was for the representatives of the U.S. satellite television industry to further elaborate on the comments submitted to DOE on March 15, 2012, under DOE's Request for Information, # 2011-NOA-0067 - *Energy Conservation Program: Test Procedure and Energy Conservation Standard for Set-Top Boxes and Network Equipment*. The following points were discussed by the attending representatives:

- DOE was asked whether a final DOE determination on whether STBs were a "covered product" under Title III of EPCA would be made prior to issuing a Notice of Public Rulemaking ("NOPR"). DOE responded that a final DOE determination would be made prior to issuance of a final rule if it indeed issued such a rule.
- Industry representatives emphasized to DOE that a regulation imposing a "deep sleep" mode was infeasible due to the need for constant communication between a satellite and a STB and the long start-up time required from a "deep sleep" mode. The point was also made that mandating this mode through regulation could cause serious competitive harm to industry.
- Industry representatives elaborated on the history of energy efficiency improvements in the satellite MVPD industry and its success in meeting the ENERGYSTAR standards. Representatives questioned whether there was a need for energy efficiency standards for satellite STBs given these efficiencies.
- Industry representatives expressed concern that regulations could easily stifle innovation in light of the fast-pace of technological development in the industry. DOE responded by stating it was sensitive to this issue, and further stated that it needed to carefully develop information about the

industry to ensure that any promulgated regulations appropriately characterize categories of products and account for new technological development.

- Finally, industry representatives stated that any regulation promulgated should recognize the energy characterization of the "whole home" MVPD system using thin clients within the home, rather than concentrating on the energy characteristics of specific STB units.

The meeting was adjourned at 12:00 noon.

Meeting Participants:

Satellite Industry Participants:

Mark Mathews,
Brownstein Hyatt Farber Schreck
Gary Langille,
EchoStar LLC
Jeff Blum,
DISH Network LLC
Jessica Straus,
DISH Network LLC
Andrew Reinsdorf,
DIRECTV LLC
Steve Dulac,
DIRECTV LLC
John Herrick (by telephone),
Brownstein Hyatt Farber Schreck

DOE Participants:

Jeremy Domm,
Project Manager, EERE Buildings Program
Celia Sher,
Office of General Counsel
Ashley Armstrong,
EE-2j, EERE Buildings Program

Respectively submitted,



Mark Mathews
Brownstein Hyatt Farber Schreck