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Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of	)	
	)	
EchoStar Technologies L.L.C.'s Request for Waiver of 47 C.F.R. § 76.640(b)(4)	)	CSR-_____
	)	
Implementation of Section 304 of the Telecommunications Act of 1996: Commercial Availability of Navigation Devices	)	CS Docket No. 97-80

PETITION OF ECHOSTAR TECHNOLOGIES L.L.C.
FOR WAIVER OF 47 C.F.R. § 76.640(b)(4)

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SUMMARY

EchoStar Technologies L.L.C. ("EchoStar") seeks a waiver of the IEEE 1394 requirement with regard to its new high definition ("HD") cable set-top boxes that implement Internet Protocol ("IP") technology. EchoStar recently revealed plans to develop and offer cutting edge set-top boxes to the rental Internet Protocol television ("IPTV") and cable set-top box markets, but the current IEEE 1394 requirement presents a significant barrier to EchoStar's efforts. The Commission has the authority to waive this requirement and should do so because a waiver is both necessary and appropriate to serve the public interest, for the following reasons.

A waiver will advance Congress's goal of achieving competition and innovation in the set-top box market. Specifically, granting EchoStar's request will more effectively serve the underlying goals of the IEEE 1394 requirement, including home networking, and will improve EchoStar's ability to offer innovative HD set-top boxes with advanced features. Due to substantial innovation in the set-top box market and home networking technology since 2003, IEEE 1394 technology has become largely obsolete. In addition, IEEE 1394 technology is also more expensive than several more functional IP alternatives. Other connectors, such as Ethernet, offer superior functionality at a fraction of the cost of IEEE 1394, resulting in more functionality and lower costs to the consumer.

EchoStar is developing set-top boxes with built-in Ethernet connectors and "SlingLoaded" boxes which connect to the Internet through an embedded Ethernet connection. Including an IEEE 1394 connector in these devices would be redundant and would raise consumer costs without adding functionality. As such, the Commission's IEEE 1394 requirement is hindering innovation and development, rather than achieving the goals it was originally promulgated to achieve.

Granting EchoStar's request will produce numerous benefits, and will not harm the public interest. Indeed, EchoStar's new set-top boxes that implement IP technology will exhibit increased functionality with decreased costs and energy usage. At the same time, granting EchoStar's request will not undermine the Commission's policy goals and will in no way impede the Commission's investigation or regulation of the set-top box market. In fact, the Commission has recently proposed to relax the IEEE 1394 requirement to permit other types of equivalent or superior connectors, and has directed the Media Bureau to continue to consider requests for waiver of the IEEE 1394 requirement in the meantime.

For reasons discussed herein, EchoStar respectfully requests that the Commission waive the IEEE 1394 requirement with respect to its existing and future IP-enabled HD set-top boxes.

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REQUEST FOR WAIVER

Pursuant to Sections 1.3 and 76.7 of the Commission's rules,[1] EchoStar Technologies L.L.C. ("EchoStar") respectfully requests a waiver of the IEEE 1394 requirement in Section 76.640(b)(4) of the Commission's rules ("1394 requirement"), as applied to EchoStar's existing and future high-definition ("HD") cable set-top boxes that include an Internet Protocol ("IP") connector.[2] Grant of this waiver will serve the public interest and will promote innovation and competition in the cable set-top box market.

EchoStar has been supplying innovative set-top boxes to the satellite industry for more than 25 years, and has recently expanded to serve the IP television ("IPTV") and cable set-top box markets. EchoStar's set-top innovations include advanced digital video recorder ("DVR")

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[1] 47 C.F.R. §§ 1.3, 76.7(i) (2010). *See also infra* note 16 (discussing Sections 1.3 and 76.7 of the Commission's rules).

[2] 47 C.F.R. § 76.640(b)(4) (2010) (requiring all high-definition set-top boxes acquired by a cable operator for distribution to customers to include an IEEE 1394 interface). HD set-top boxes with an IP connector are referred to herein as "IP-enabled HD set-top boxes."

and place-shifting technology, home networking integration, multi-room and multi-tuner capabilities, and content protection functionality. Some of EchoStar's set-top boxes can even deliver third-party Internet-connected and interactive applications directly to consumers' TV screens.

In 2009, EchoStar announced plans to produce a series of innovative set-top boxes for the European and U.S. cable markets.[3] EchoStar intends to sell these boxes to cable operators and IPTV providers for lease to their subscribers. Many of these devices will be "SlingLoaded" with the groundbreaking place-shifting technology from Sling Media, which permits consumers to watch television programming from almost any multimedia platform with a broadband Internet connection. Other exciting EchoStar set-top features include home networking integration, touchpad remotes, and sophisticated remote diagnostic capabilities. EchoStar is investing significant amounts of money and effort to bring these innovations and its long-standing set-top box expertise to bear as a new competitor in the cable set-top box market.

I. GRANT OF THE REQUESTED WAIVER IS IN THE PUBLIC INTEREST.

The Commission is authorized to waive the 1394 requirement as it applies to EchoStar's IP-enabled HD set-top boxes, and doing so serves the public interest.

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[3] *See, e.g.*, Press Release, EchoStar Europe, EchoStar Europe Ready for Cable (Mar. 18, 2009) *available at* http://www.echostar.com/NewsEvents/PressReleases/PressRelease.aspx?prid={1D9B6584-4F47-46C2-8CEC-1016908ADCEF} (describing EchoStar's plans for European rollout of new set-top box technologies); Press Release, EchoStar, EchoStar Unveils World's First SlingLoaded HD DVR For Cable (Mar. 30, 2009) *available at* http://www.echostar.com/NewsEvents/PressReleases/PressRelease.aspx?prid={0BCCE5FD-F6BB-4B61-85E6-F2326F5FAB61} (relating EchoStar's introduction of cutting edge set-top box technology).

In 2002, the cable and consumer electronics industries reached an agreement on how to standardize connections between cable devices and consumer electronics such as TVs and video recorders.[4] At the time, only the IEEE 1394 standard offered the Digital Transmission Content Protection ("DTCP") functionality necessary to meet the requirements of both industries, and so the parties recommended IEEE 1394 as the appropriate technology for connecting set-top boxes to other consumer devices.[5] The Commission responded to this recommendation in 2003 and required that all HD set-top boxes include 1394 connectors in order to "provide additional functionality for home-networking and recording capability"[6] and to "ensure the connectivity" of set-top boxes as required by Section 624A of the Communications Act, as amended ("Communications Act").[7]

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[4] *See* Memorandum of Understanding Among Cable MSOs and Consumer Electronics Manufacturers, attached to Letter from Industry Representatives to Chairman Michael Powell, CS Docket No. 97-80 (filed Dec. 19, 2002) ("MOU") (detailing agreement between cable industry and consumer electronics industry). This MOU reflected an agreement between the parties that consumers should be able to record cable content on separate devices, but that such content must be digitally protected. *See* Comments of the National Cable & Telecommunications Association, CS Docket No. 97-80, at 2-3 (filed Mar. 28, 2003) (noting specifics of above agreement).

[5] *See* MOU, *supra* note 4, at 2 (detailing recommendation of IEEE 1394 standard).

[6] *Implementation of Section 304 of the Telecommunications Act of 1996; Commercial Availability of Navigation Devices; Cable One, Inc.'s Request for Waiver of Section 76.1204(a)(1) of the Commission's Rules*, CSR-8080-Z, Memorandum Opinion and Order, 24 FCC Rcd 7882, 7888 ¶ 16 (2009) ("*Cable One Order*").

[7] *Implementation of Section 304 of the Telecommunications Act of 1996; Commercial Availability of Navigation Devices; Compatibility Between Cable Systems and Consumer Electronics Equipment*, CS Docket No. 97-80, PP Docket No. 00-67, Second Report and Order and Second Further Notice of Proposed Rulemaking, 18 FCC Rcd 20885, 20896-97 ¶ 24 (2003) ("*2003 Set-Top Order*"). *See also* 47 U.S.C. § 544a (addressing consumer electronics equipment compatibility).

The Commission has general authority to waive its rules for good cause.[8] Waiver of a rule is particularly appropriate where such waiver advances, or does not undermine, the underlying purpose of the rule.[9] The Commission also has specific authority to waive its cable television service rules in Part 76 where doing so would serve the public interest.[10] The Commission has previously exercised this waiver authority with respect to certain set-top box rules.[11]

Waiver is particularly apt here, given the Commission's recent *Further Notice of Proposed Rulemaking* ("*FNPRM*") proposing to allow manufacturers to include an Ethernet connector or other interface in lieu of a 1394 interface.[12] Indeed, in the *FNPRM*, the Commission directs the Media Bureau to "act on [pending] requests for waiver of the existing

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[8] *See* 47 C.F.R § 1.3 ("Any provision of the rules may be waived by the Commission on its own motion or on petition if good cause therefore is shown.").

[9] *See WAIT Radio v. FCC*, 418 F.2d 1153, 1157 (D.C. Cir. 1969)("[A] general rule, deemed valid because its overall objectives are in the public interest, may not be in the 'public interest' if extended to an applicant who proposes a new service that will not undermine the policy, served by the rule, that has been adjudged in the public interest.").

[10] 47 C.F.R. § 76.7(i) ("The Commission, after consideration of the pleadings, may determine whether the public interest would be served by the grant, in whole or in part, or denial of the request ...").

[11] *See, e.g., Nagravision USA Request for Waiver of Section 76.1204(a)(1) of the Commission's Rules*, Memorandum Opinion and Order, 24 FCC Rcd 12242, 12246 ¶ 10 (2009) (granting waiver of Commission's integration ban for a low-cost Nagravision device); *Motorola, Inc. et al. Requests for Waiver of Section 76.1204(a)(1) of the Commission's Rules*, Memorandum Opinion and Order, 24 FCC Rcd 10939, 10944 ¶ 11 (2009) (granting waiver of Commission's integration ban for low-cost devices manufactured by Motorola, Cisco, Pace, and Thomson); *Evolution Broadband, LLC's Request for Waiver of Section 76.1204(a)(1) of the Commission's Rules; Implementation of Section 304 of the Telecommunications Act of 1996; Commercial Availability of Navigation Devices*, Memorandum Opinion and Order, 24 FCC Rcd 7890, 7897 ¶ 15 (2009) (granting waiver of Commission's integration ban for low-cost Evolution devices).

[12] *In the Matter of Implementation of Section 304 of the Telecommunications Act of 1996*, CS Docket No. 97-80, Fourth Further Notice of Proposed Rulemaking, FCC 10-61 ¶¶ 19-20 (April 21, 2010) ("FNPRM").

rule as part of its normal course of business" while the Commission moves forward with more permanent changes to the rules.[13]

As further discussed below, the 1394 requirement is obsolete and expensive, and is hindering EchoStar's efforts to enter the cable set-top box market as a new competitor. A waiver is necessary to serve the public interest.

A. Waiver Will Advance Congress's Goal of Promoting Competition and Innovation in the Set-Top Box Market.

Congress has indicated that regulation promoting competition and innovation in the set-top box marketplace is in the public interest. In Section 629 of the Communications Act, Congress directed the Commission to adopt rules to ensure the availability of set-top box equipment to consumers through retail and multichannel video programming distributors ("MVPD") channels.[14] Congress, in drafting Section 629, noted that "competition in network navigation devices and other customer premises equipment is an important national goal," and "[c]ompetition in the manufacturing and distribution of consumer devices has always led to innovation, lower prices and higher quality."[15] Protecting innovation was also an important consideration, which Congress addressed by providing additional waiver authority regarding

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[13] *Id.* at n.50.

[14] *See* Communications Act of 1934 § 629, 47 U.S.C. § 549 ("The Commission shall ... adopt regulations to assure the commercial availability, to consumers ... of converter boxes, interactive communications equipment, and other equipment used by consumers to access multichannel video programming and other services ... from manufacturers, retailers, and other vendors not affiliated with any multichannel video programming distributor. Such regulations shall not prohibit any multichannel video programming distributor from also offering converter boxes.").

[15] H.R. REP. NO. 104-204, at 112 (1995) (discussing provisions eventually adopted as Section 629 of the Communications Act).

rules adopted under Section 629.[16] Congress intended that the Commission exercise its waiver authority to "avoid actions which could have the effect of freezing or chilling the development of new technologies and services" involving set-top boxes.[17]

Thus, the Commission has clear regulatory and statutory authority to waive the 1394 requirement in cases where the public will reap benefits such as increased competition and innovation in the set-top box marketplace. This is just such a case: waiving the 1394 requirement for EchoStar's IP-enabled HD set-top boxes would further the Commission's Congressionally-endorsed goal of creating a competitive marketplace for the manufacture of set-top boxes. Specifically, a waiver would remove a significant barrier to EchoStar's participation in the U.S. IPTV and cable set-top box market by allowing EchoStar to leverage its significant set-top box manufacturing expertise, thereby promoting competition and innovation.

EchoStar has long provided innovative set-top boxes to the Direct Broadcast Satellite ("DBS") industry, but is now entering the IPTV and cable set-top box market. As a new entrant, EchoStar will be better able to offer innovative HD set-top devices with advanced features if it is not bound by the 1394 requirement. For example, as discussed above, EchoStar is preparing

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[16] *See* 47 U.S.C. § 549(c) (providing additional waiver authority). Section 629(c) authorizes the Commission to waive any rule adopted under Section 629(a) upon a showing that such a waiver is necessary to assist the development or introduction of new or improved services offered over multichannel video programming systems, technology, or products. *See* 47 U.S.C. § 549(c) (listing waiver requirements); *see also* 47 C.F.R. § 76.1207 (implementing Section 629(c) nearly verbatim). The instant request can be granted under Sections 1.3 and 76.7(i). *See* 47 C.F.R. §§ 1.3, 76.7(i) (2010) (detailing waiver procedures). However, to the extent the Commission analyzes this request under Section 629(c), a grant remains warranted because the flexibility to exclude a 1394 interface will facilitate the development and introduction of new, innovative services for customers such as place-shifting of cable content using the Sling Media platform. *See Cable One Order*, *supra* note 6, at 7888 ¶ 16 (granting Cable One's request for waiver of IEEE 1394 requirements, and concluding that "costs to consumers of imposing the IEEE 1394 output requirement would outweigh the potential benefits").

[17] H.R. REP. NO. 104-458, at 181 (1996).

cable set-top boxes with built-in Ethernet connectors. EchoStar is also developing "SlingLoaded" boxes with internal SlingBox functionality which connect to the Internet through an embedded Ethernet connection.[18] Including a superfluous 1394 connector in these devices will raise the consumer cost and hamper adoption of these innovative devices with no corresponding benefit, and effectively punish EchoStar's innovation relative to competitors who choose not to include IP interfaces offering increased functionality.

A waiver of the 1394 requirement would also speed EchoStar's entry into the cable set-top box market at a time when consumer demand is high. Many consumers today are transitioning from analog to digital cable or from standard definition to HD, and as a result, current demand for advanced set-top boxes is high. Waiving the 1394 requirement would simplify the design of EchoStar's HD set-top cable boxes, and would allow EchoStar to quickly apply its decades of experience to the design and manufacture of cable set-top box market at this critical time.

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[18] The Commission has recently asked how, in the context of set-top boxes, it can leverage the increasing popularity of video streamed over IP *into* the home to drive broadband adoption and usage. *See* Public Notice, Federal Communications Commission, GN Docket Nos. 09-47, 09-51, 09-137; CS Docket No. 97-80, Comment Sought on Video Device Innovation, DA 09-2519 (rel. Dec. 3, 2009) ("*NBP Public Notice #27*") (seeking comment on how to encourage innovation in market for video devices); *see also* Federal Communications Commission, Connecting America: the National Broadband Plan ¶ 51 (2010) ("National Broadband Plan") *available at* http://www.broadband.gov/plan/national-broadband-plan.pdf. (recommending actions with a goal of enabling consumer electronics manufacturers to more easily integrate multiple functions – including Internet video – into retail set-top boxes). EchoStar's SlingLoaded set-top boxes require home broadband Internet connectivity to stream IP video *out* of the consumer's home. Such functionality, if not hampered by expensive and unnecessary technological mandates, could spur consumer broadband adoption in a manner analogous to that being explored by the Commission.

B. Waiver Will Promote the Very Goals That the 1394 Requirement Has Failed to Achieve.

Seven years after the Commission imposed the 1394 requirement in order to "ensure connectivity," the 1394 set-top box connector is largely incompatible with the technologies most commonly used for home networking. Today's home networks generally use IP over Ethernet and WiFi connections, which the marketplace has embraced for a number of reasons. Perhaps most obviously, many consumers use an IP-based home network to share a broadband connection to the Internet. As a result, the vast majority of network-capable consumer devices (including personal computers, gaming consoles, wireless handsets, portable music players, and some set-top boxes) connect to home networks through Ethernet or WiFi. Even devices that stream video – the 1394 standard's intended purpose[19] – over a home network today use IP rather than 1394 connections. For example, even Apple, which championed the development of the 1394 technology, does not include a 1394 connector in its Apple TV streaming video device; instead, it includes both Ethernet and WiFi connectors.[20]

The Commission recognized in the *FNPRM* that IP connectors and certain other interfaces can accomplish the same goals of the 1394 requirement. Specifically, the Commission proposed modifying the existing interface requirement to allow cable operators to include any of the following on their leased HD set-top boxes: (i) an IEEE 1394 interface, (ii) an Ethernet interface, (iii) Wi-Fi connectivity, or (iv) USB 3.0. The Commission recognized that parties seeking waivers of the IEEE 1394 requirement had presented a "compelling case" that IP

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[19] See Texas Instruments Opposition to Intel's Waiver Request, CSR-8229-Z, CS Docket No. 97-80, at 2 (filed Dec. 10, 2009) ("Texas Instruments Intel Opposition").

[20] Apple TV Technical Specifications, http://www.apple.com/appletv/specs.html (last visited June 3, 2010) (detailing specifications of Apple TV product).

connectivity would "provide consumers with the functionality that the IEEE 1394 interface requirement was intended to provide, such as home networking."[21] The Commission therefore concluded that "allowing manufacturers greater choice in the specific interface they include in their set-top boxes will serve the public interest by enabling connectivity with the multitude of IP devices in consumers' homes."[22] Granting the instant waiver would serve the public interest and would be directly consistent with the Commission's tentative conclusions in the *FNPRM*.

C. Waiver Will Reduce Costs Without Sacrificing Functionality.

1394 technology is not only incompatible with existing home networks, but also expensive to implement and functionally unnecessary. Intel has estimated that the cost of a chip supporting 1394 functionality is more than $5 per unit.[23] Texas Instruments, the only recent supporter of the 1394 requirement, reports costs of about $1 per device for basic 1394 functionality.[24] In either case, the cost is significantly more than an IP-based Ethernet interface, which costs just pennies per unit.[25]

Reducing unnecessary costs is critical for a new entrant seeking to manufacture devices that provide the functions consumers want at a competitive cost. The cost of implementing a

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[21] *See* FNPRM, *supra* note 12, ¶ 19.

[22] *Id.* ¶ 20.

[23] Petition of Intel Corporation For Waiver of 47 C.F.R. § 76.640(b)(4), CSR-8229-Z, CS Docket No. 97-80, at 5 (filed Oct. 7, 2009) ("Intel Petition") (detailing expensive nature of 1394 technology from Intel's perspective).

[24] *See* Texas Instruments Intel Opposition, *supra* note 19, at 2 (detailing expensive nature of 1394 technology from Texas Instruments' perspective).

[25] *See* Intel Petition, *supra* note 23, at 5 (detailing relatively inexpensive nature of IP-based Ethernet interface); *see also Cable One Order*, *supra* note 6, at 7888 ¶ 16, n.42 (noting that "the costs to consumers of imposing the IEEE 1394 output requirement would outweigh the potential benefits" in context of that waiver request).

1394 connector is completely unnecessary because IP technologies can now provide the same critical content protection functions that only 1394 technology could provide in 2003.[26] In fact, since IP connectors are directly compatible with today's home networks, an IP-enabled set-top box provides more useful functionality than its 1394-enabled equivalent. Thus, waiver of the costly 1394 requirement will enable EchoStar, a new market entrant, to produce less expensive but better-functioning HD set-top boxes that ultimately will save consumers money.

D. Waiver Has Numerous Technical Benefits.

Eliminating the 1394 requirement would also provide a number of technical and economic benefits. A device without a 1394 connector can be made smaller or can include additional functionality without an increase in size. All other things being equal, a device without a 1394 connector would run at a lower temperature than a device with a connector, thereby extending the device's lifetime.[27] Finally, a device without a 1394 connector will use less energy than a similar device with a 1394 connector, saving consumers money.[28]

E. Waiver Will Not Harm the Public Interest or Undermine the Commission's Policy Goals.

As demonstrated above, the requested waiver will provide numerous public interest benefits. In addition, grant of the waiver would cause no public harm and would not interfere with the Commission's broader policy goals. As a primary matter, eliminating the 1394 connector will not harm consumers because all core functionality will remain. EchoStar will

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[26] *See* DTLA Home Page, http://www.dtcp.com/ (last visited June 3, 2010) (portraying cost effectiveness of IP technologies).

[27] See Advanced Digital Broadcast, Inc., Petition for Waiver of 47 C.F.R. § 76.604(b)(4), CS Docket No. 97-80, at 2 (filed Mar. 1, 2010)("Advanced Digital Petition") (detailing technical benefits of IP technology over 1394 technology).

[28] *Id.* (examining energy efficiency benefits of IP technology over 1394 technology).

provide IP connectors in virtually all its HD set-top boxes. These connectors will supplant the functions of the 1394 connector, while also empowering consumers to connect their set-top boxes to other devices and to their home networks. As noted above, the Commission recently acknowledged in the *FNPRM* that "compelling cases" have been made that an IP interface will be able to provide the same intended benefits as 1394, such as home networking.[29]

Additionally, this waiver request is independent from and will not adversely affect the Commission's broader investigation of competition in the set-top box market. EchoStar supports the Commission's review of the state of the competitive market for video devices.[30] Such proceedings provide an opportunity for the Commission to evaluate the appropriateness of its various set-top box rules to the industry as a whole. It remains appropriate and consistent with Commission precedent, however, for the Commission to independently and narrowly determine if applying the 1394 requirement to cable equipment produced by a new entrant such as EchoStar is in the public interest. Indeed, as the U.S. Court of Appeals for the D.C. Circuit has noted, a "rule, deemed valid because its overall objectives are in the public interest, may not be in the 'public interest' if extended to an applicant who proposes a new service that will not undermine the policy ... served by the rule."[31]

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[29] *See* FNPRM, *supra* note 12, at ¶ 19 (considering case for IP interface over 1394 interface).

[30] The Commission has most recently raised this issue in the context of the National Broadband Plan and resulting proceedings. *See NBP Public Notice #27*, *supra* note 18 (announcing investigation of set-top box market); *see also* National Broadband Plan, *supra* note 18, at ¶¶ 49-52 (discussing state of competition and innovation in retail set-top box market). *See generally, In the Matter of Video Device Competition, et al.*, MB Docket No. 10-91, Notice of Inquiry, FCC 10-60 (April 21, 2010) ("AllVid NOI") (proposing an 'AllVid' adapter to spur competition in the retail market for smart video devices).

[31] *WAIT Radio v. FCC*, 418 F.2d at 1157. *See also Nat'l Assoc. of Broadcasters v. FCC*, 569 F.3d 416, 426 (2009) ("[T]he Commission has authority under its rules ... to waive requirements not mandated by statute where strict compliance would not be in the public interest, so long as it
(continued on next page)

II. CONCLUSION

For the foregoing reasons, EchoStar respectfully urges the Commission to waive the 1394 requirement, as applied to cable operator deployment of existing and future EchoStar IP-enabled HD set-top boxes.

Respectfully submitted,

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articulates identifiable standards for exercising that authority."). EchoStar is not suggesting that the 1394 requirement remains valid for the industry as a whole; that issue is properly raised in the Commission's FNPRM but need not be resolved prior to consideration of this waiver request, as the FNPRM itself notes. *See* FNPRM, *supra* note 12, at ¶¶ 19-20 (considering industry wide ramifications of 1394 requirement).