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Proposal

Additional submitted attachment is included below.

**BEFORE THE
CALIFORNIA ENERGY COMMISSION**

In the matter of:

Phase 2 Appliance Efficiency Regulations &
Roadmaps

Docket No. 17-AAER-11
Set-Top Boxes

Docket No. 17-AAER-12
Low-Power Mode & Power Factor

PROPOSAL BY

**THE CALIFORNIA CABLE & TELECOMMUNICATIONS ASSOCIATION,
NCTA – THE INTERNET & TELEVISION ASSOCIATION, AND
THE CONSUMER TECHNOLOGY ASSOCIATION**

The California Cable & Telecommunications Association (“CCTA”),¹ NCTA – The Internet & Television Association,² and the Consumer Technology Association (“CTA”)³ (together, the “Associations”) respectfully submit this proposal in response to the Commission’s Invitation to Submit Proposals in the above-referenced dockets.

The Associations propose that the Commission defer further consideration of any roadmap toward regulation of set-top boxes or small network equipment pending completion of negotiations to renew the Voluntary Agreements. These landmark agreements have been accomplishing the objectives of the Warren-Alquist Act and promoting the interests of consumers in California and nationwide successfully, as described in the Associations’ comments submitted on June 16, 2017.

Subsequent to the Associations’ comments, the independent auditor of both of the Voluntary Agreements, D+R International, released its latest annual reports. These reports re-confirmed the effectiveness of the Agreements at delivering energy efficiency better than could

¹ CCTA is the nation’s largest state cable television association, with its members serving more than 5 million video subscribers, 6.4 million broadband subscribers, and 3.4 million competitive telephone service subscribers. The cable industry has invested more than \$36 billion in California since 1996 to build interactive broadband networks that are available to 98 percent of all California households. The cable industry in California employs more than 65,000 people, contributes \$850 million in taxes and fees, and supports more than 212,000 workers in California alone.

² NCTA is the principal trade association for the U.S. cable industry, representing cable operators serving approximately 85 percent of the nation’s cable television households, more than 200 cable program networks, and others associated with the cable industry.

³ The Consumer Technology Association (CTA)TM is the trade association representing the \$321 billion U.S. consumer technology industry, which supports more than 15 million U.S. jobs. CTA’s membership includes more than 2,200 companies, 80 percent of which are small businesses and startups.

traditional regulation. D+R found that the set-top box agreement has now saved consumers more than \$2 billion, in large part by a 40% decrease in the energy used by DVRs. These savings in California alone translate into a savings of more than 2 TWh (nearly half of which occurred in 2016 alone), based on California's approximate one-eighth share of the market. D+R also reported that small network equipment became more energy-efficient even as consumers demanded increasingly robust equipment to support higher-speed services, increased Wi-Fi capacity within their homes, and Internet of Things (IoT) devices. D+R's reports, along with supporting information about the energy usage and characteristics of every new model deployed by the Voluntary Agreement signatories, are readily available at www.energy-efficiency.us. The availability of the extensive information from these reports and on this public website makes any separate roadmap or tracking unnecessary.

In June, the parties to the set-top box agreement, including the Natural Resources Defense Council (NRDC) and the American Council for an Energy-Efficient Economy (ACEEE), notified the Commission in a joint letter that they are working to extend the Agreement beyond its current expiration date. Since that time, the parties have been actively working to complete deliberations, which now also encompass discussions regarding small network equipment. The continuation of the Voluntary Agreements will assure ongoing public access to comprehensive information about the energy usage and characteristics of set-top boxes. There is no need for duplicative reporting under a separate regulatory roadmap.

In addition, as the Associations explained in their prior comments, the U.S. Supreme Court, Congress, and the Federal Communications Commission have all made clear that states are preempted by federal law from regulating the energy consumption of cable set-top boxes. This preemption extends to small network equipment used with cable systems. Congress made clear that "No state or franchising authority may prohibit, condition or restrict a cable system's use of *any type of subscriber equipment* or any transmission technology."⁴ The FCC has consistently applied this law to preempt state regulation of cable subscriber equipment and technology.⁵ Since, as a matter of law, the Commission is preempted from imposing technical limits on set-top boxes or small network equipment used by a cable system, it cannot adopt a roadmap toward regulations that it ultimately lacks authority to impose.

The Associations and our members appreciate the Commission's interest in encouraging energy-efficient equipment and we would be pleased to discuss or provide updates on the ongoing efforts to renew the Voluntary Agreements. In the meantime, however, the Commission

⁴ 47 U.S.C. § 544(e) (emphasis added). *See also* 47 U.S.C. § 556(c) ("Except as provided in section 557 of this title, any provision of law of any State, political subdivision, or agency thereof, or franchising authority, or any provision of any franchise granted by such authority, which is inconsistent with this chapter shall be deemed to be preempted and superseded.").

⁵ *See, e.g., Implementation of Cable Act Reform Provisions of the Telecommunications Act of 1996*, Report and Order, CS Docket No. 96-85, 14 FCC Rcd 5296 at ¶¶ 131-32 ("uniformity of technical standards ... is essential to prevent the inefficiency and confusion that threatened the cable industry during the period when local authorities ... could set stricter standards than those promulgated by the Commission."); *In Re Committee on Science, Technology and Energy of the New Hampshire House of Representatives and Town of Chapel Hill, North Carolina*, Memorandum Report and Order, CSR-4291-Z, 11 FCC Rcd 10250, 10251 at ¶ 2 (1996).

should not take action with respect to set-top boxes or small network equipment pending the conclusion of efforts to renew the Voluntary Agreements.

Respectfully submitted,

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