

**Before the
Federal Trade Commission
Washington, D.C. 20580**

In the Matter of)	
)	
Consumer Electronics Labeling)	Project No. P094201
)	
)	

**COMMENTS OF THE
NATIONAL CABLE & TELECOMMUNICATIONS ASSOCIATION**

The National Cable & Telecommunications Association (“NCTA”)¹ hereby submits its comments in response to the Notice of Proposed Rulemaking (“*Notice*”) issued by the Commission in the above-captioned proceeding.² In the *Notice*, the Commission proposes to require EnergyGuide labels on televisions to help consumers with their purchasing decisions.³ The Commission does *not* propose labeling and disclosure requirements for other consumer electronics equipment, including set-top boxes provided by cable and satellite video programming distributors, but it seeks further comment on whether consideration of such rules may be appropriate in the future.⁴ For the reasons stated below, the Commission’s conclusion not to propose labeling rules for set-top boxes is correct.

¹ NCTA is the principal trade association for the U.S. cable industry, representing cable operators serving more than 90 percent of the nation’s cable television households and more than 200 cable program networks. The cable industry is the nation’s largest provider of high-speed Internet service (“broadband”) after investing over \$160 billion since 1996 to build two-way interactive networks with fiber optic technology. Cable companies also provide state-of-the-art competitive voice service to over 20 million customers.

² *See In re Rule Concerning Disclosures Regarding Energy Consumption and Water Use of Certain Home Appliances and Other Products Required Under the Energy Policy and Conservation Act (“Appliance Labeling Rule”)*, Notice of Proposed Rulemaking and Public Meeting Announcement, 75 Fed. Reg. 11483 (Mar. 11, 2010) (“*Notice*”).

³ *See Notice* at 11483.

⁴ *See id.* at 11490.

As an initial matter, NCTA underscores the cable industry's strong commitment to improving the energy efficiency of its products and services. NCTA has supported the EPA's ENERGY STAR program, which is designed to promote the manufacture and use of more energy-efficient set-top boxes. We have been active in assisting with the development of the specifications for ENERGY STAR-compliant boxes. We also are now working with EPA and other stakeholders on new specifications that would adjust the energy efficiency requirements to reflect technological advancements in this area.

The cable industry has already made substantial gains in curbing the energy consumption of our set-top boxes. As Motorola explained to the Commission previously, the average energy consumption of a standard-definition set-top box has declined from 22.8 watts in 1998 to 10.9 watts in 2007,⁵ and the one-way standard-definition digital transport adapters ("DTAs") that Comcast and other operators are now deploying as a low-cost digital option for subscribers generally consume less than 6 watts of energy.⁶ We have seen similar gains with higher-end products. For example, over time the average energy consumption for set-top boxes with integrated digital video recorders ("DVRs") has declined significantly and is now approximately 30 watts.⁷ Our industry is committed to continuing to work with our vendors to improve on these gains.

The Commission initially sought comment in early 2009 on whether to require energy disclosures for certain consumer electronics equipment, including televisions, personal computers, stand-alone DVRs, personal computer monitors, and cable and satellite set-top

⁵ See Motorola Comments, Project No. P094201, at 2 n.7 (May 14, 2009) ("Motorola Comments").

⁶ See Energy Star, *Set-Top Box Qualified Product List (May 10, 2010)*, available at http://www.energystar.gov/ia/products/prod_lists/set_top_boxes_prod_list.pdf.

⁷ See *id.* (providing energy use information about several set-top models that include DVRs).

boxes.⁸ It did so pursuant to its authority under the 2007 amendments to the Energy Policy and Conservation Act (“EPCA”) to prescribe labels for televisions and certain other consumer electronics equipment.⁹ In comments submitted in response to the Commission’s March 2009 *Notice*, Motorola and CEA raised issues with extending the Appliance Labeling Rule to cable and satellite set-top boxes.¹⁰ As a result, in the current *Notice*, the Commission concluded that it “does not propose requiring energy labeling or disclosures for set-top boxes at this time.”¹¹ However, the Commission sought further comment on that issue.

The Commission was correct in concluding that labeling requirements are not warranted for cable or satellite set-top boxes. Since the purpose of the Appliance Labeling Rule is to “help consumers with their purchasing decisions,”¹² that goal will not be served by requiring labels on cable or satellite-provided set-top boxes. As commenters explained in response to the Advance Notice of Proposed Rulemaking last year, “[i]n contrast to refrigerators, dishwashers, and other products currently subject to the Appliance Labeling Rule, cable set-top boxes are generally *not* sold at retail to consumers.”¹³ Instead, set-top boxes are typically leased from cable operators and other multichannel video programming distributors (“MVPDs”), such as Comcast, Time Warner Cable, or DIRECTV. As Motorola explained: “In light of the fact that cable set-top boxes are primarily leased, not sold, to customers, any labeling or other disclosure requirement

⁸ See *In re Rule Concerning Disclosures Regarding Energy Consumption and Water Use of Certain Home Appliances and Other Products Required Under the Energy Policy and Conservation Act* (“Appliance Labeling Rule”), Advance Notice of Proposed Rulemaking, 74 Fed. Reg. 11045 (Mar. 16, 2009) (“ANPRM”).

⁹ See *id.* at 11046.

¹⁰ See *Notice* at 11490.

¹¹ *Id.* at 11484.

¹² *Id.* at 11483.

¹³ Motorola Comments at 4 (emphasis in original); see also CEA Comments, Project No. P094201, at 9 (May 14, 2009) (“[M]any set-top boxes for [MVPDs] are not sold at retail to consumers but rather provided to consumers by their MVPDs, which procure the boxes from manufacturers.”).

would not assist consumers in making purchasing decisions.”¹⁴ The Commission appears to agree with that analysis since it cites the issues raised in Motorola’s comments, among others, as a reason not to propose labeling requirements for cable or satellite set-top boxes at this time.

The Commission suggests in the *Notice* that, if MVPDs “were to disclose the energy use of the boxes they lease as part of their service, consumers could theoretically use this information *in deciding which service provider to choose.*”¹⁵ As a threshold legal matter, the statute is directed at informing consumers so they can make “purchasing decisions” about what type of *equipment* to purchase, not what type of MVPD (or other) *services* they might purchase.¹⁶ So, even if consumers took into account the energy-efficiency of set-top boxes supplied by MVPDs as part of their decisions to purchase a particular MVPD’s services, that would not appear to satisfy the statutory requirement that any FTC-mandated labeling must be likely to assist consumers in making purchasing decisions about equipment. As the Act makes clear, the labeling requirements “would *not* apply in any case in which the Commission determines that the rules would not be technologically or economically feasible *or would not be likely to assist consumers in making purchasing decisions.*”¹⁷

¹⁴ Motorola Comments at 5. Motorola also submitted that certain physical characteristics of cable set-top boxes make labeling impractical. *See id.* at 5-6.

¹⁵ *Notice* at 11490 (emphasis added).

¹⁶ The Commission has previously explained that: “The primary purpose of the [Appliance Labeling Rule] is to encourage consumers to comparison-shop for energy-efficient *household appliances*” at the point of sale. *Rule for Using Energy Costs and Consumption Information Used in Labeling and Advertising for Consumer Appliances Under the Energy Policy and Conservation Act*, Final Rule, 44 Fed. Reg. 66466 (Nov. 19, 1979) (codified at 16 C.F.R. Part 305) (emphasis added).

¹⁷ *ANPRM* at 11046, n.7 (citing 42 U.S.C. 6294(a)) (emphasis added); *see also Notice* at 11484 (noting that the EPCA amendments “give the Commission discretion to require disclosures if it identifies adequate non-DOE testing procedures *and finds that disclosures will likely assist consumers in making purchasing decisions*” (emphasis added)). If commenters concluded that disclosures and labeling of cable and satellite set-top boxes would be likely to assist consumers in making their purchasing decisions, the Commission asked those commenters to address a variety of other issues (*e.g.*, how disclosures should be made, the range of energy use among set-top boxes, and whether the ENERGY STAR test procedure for set-top boxes is an appropriate method of calculating energy consumption). Because we conclude that it is not likely that such labeling would assist
(footnote continued...)

Beyond these statutory considerations, the marketplace reality is that consumers comparison-shop among MVPDs based on an evaluation of different MVPD *service* offerings, not equipment. MVPDs are in the business of selling services to consumers – *e. g.*, basic program packages, sports, entertainment, and foreign-language tiers of programming, DVR service, premium channels, video-on-demand, interactive services, and so forth. Equipment is an integral part of delivering these services to consumers, particularly in an increasingly digital environment where content must be delivered securely over MVPD networks, and MVPDs may offer a wide range of equipment options to consumers, from one-way digital adapters, to interactive standard-definition and high-definition boxes, to high-definition DVRs. But when consumers are deciding on an MVPD provider, they are typically comparing the service offerings of the MVPDs, not the specific equipment that may be needed to access those services.

NCTA agrees that consumers may want to learn more about the energy-efficiency of set-top boxes provided by cable and satellite MVPDs. To this end, as noted above, NCTA and our member companies have worked closely over the past several years with EPA and its ENERGY STAR program focusing on technical specifications for set-top boxes that can qualify as ENERGY STAR energy-efficient boxes.¹⁸ Over time, as more set-top boxes are added to the

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consumers' purchasing decisions, we do not address those additional issues in these comments.

¹⁸ See, *e.g.*, Letter from Andy Scott, Vice President of Engineering, NCTA, to Katharine Kaplan, ENERGY STAR Product Manager, Consumer Electronics & Office Equipment, U.S. Environmental Protection Agency (Nov. 14, 2007); Letter from Andy Scott, Vice President of Engineering, NCTA, to Katharine Kaplan, ENERGY STAR Product Manager, Consumer Electronics & Office Equipment, U.S. Environmental Protection Agency (Feb. 20, 2008); Letter from Andy Scott, Vice President of Engineering, NCTA, to Katharine Kaplan, ENERGY STAR Product Manager, Consumer Electronics & Office Equipment, U.S. Environmental Protection Agency (Apr. 4, 2008); Letter from Andy Scott, Vice President of Engineering, NCTA, to Katharine Vokes, U.S. Environmental Protection Agency (Apr. 12, 2010).

ENERGY STAR program, consumers will be able to obtain information at the ENERGY STAR website about an ever-increasing number of ENERGY STAR-compliant set-top boxes.¹⁹

Finally, the pending Federal Communications Commission (“FCC”) proceeding on video devices provides another reason in support of the Commission’s decision not to impose labeling requirements on set-top boxes. The set-top box marketplace is dynamic and rapidly innovating. The simple descramblers of the 1990s have given way to sophisticated two-way digital devices that can support high-definition programming, DVR service, interactive program guides, interactive television applications, and other innovative services, such as 3-D television and Web-based applications and content. The FCC has just initiated a video device proceeding that is examining this marketplace and may result in a significant change in the types of set-top boxes that MVPDs make available to consumers.²⁰ In light of the pendency of this proceeding, which could result in new FCC requirements for cable and satellite set-top boxes and affect the energy efficiency of these and other devices in the home,²¹ and even if the Commission has the statutory authority to adopt labeling requirements for MVPD set-top boxes, it should conserve its resources and hold in abeyance any consideration of labeling for cable or satellite set-top boxes

¹⁹ See Energy Star, *Set-Top Boxes and Cable Boxes for Consumers*, at http://www.energystar.gov/index.cfm?fuseaction=find_a_product.showProductGroup&pgw_code=ST (last visited May 7, 2010).

²⁰ *In re Video Device Competition; Implementation of Section 304 of the Telecommunications Act of 1996; Commercial Availability of Navigation Devices; Compatibility Between Cable Systems and Consumer Electronics Equipment*, Notice of Inquiry, FCC 10-60, MB Docket No. 10-91, CS Docket No. 97-80, CS Docket No. 00-67 ¶ 1 (rel. Apr. 21, 2010) (seeking comment on a proposed “AllVid” adapter that MVPDs would deploy in subscribers’ homes and that would connect via a standard interface to “smart video devices” that subscribers purchase at retail).

²¹ In fact, the FCC has specifically inquired into what steps it can take “to increase economic and energy efficiencies that will allow consumers to connect fewer devices to their television display by consolidating functionality into one device.” *See id.* ¶ 40.

until the FCC concludes its proceeding and any new requirements imposed on future set-top boxes are better understood.²²

CONCLUSION

For the reasons stated above, the Commission was correct in declining to propose labeling requirements on cable and satellite set-top boxes and should conclude that further consideration of such requirements is not warranted at this time.

Respectfully submitted,

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²² This issue was discussed at the recent Commission roundtable on consumer electronic labeling. *See* Transcript, *FTC Roundtable on: Consumer Electronic Labeling*, Docket No. P094201, at 86 (Apr. 16, 2010) (explaining that set-top boxes are “an innovative space [with] perhaps changing business models” and adding that the set-top box marketplace is “a dynamic, innovative space, and that’s something we need to be mindful of”) (quoting Jason Friedrich, Senior Director, Broadband Policy, Motorola Global Government Affairs), *available at* <http://www.ftc.gov/os/comments/tvenergylabelsnpdm/100416pubmtngtranscript.pdf>.