

**Before the  
FEDERAL TRADE COMMISSION  
Washington, D.C. 20580**

In the Matter of

Consumer Electronics Labeling

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Project No. P094201

**COMMENTS OF MOTOROLA, INC.**

**Motorola, Inc.**  
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May 14, 2009

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**COMMENTS OF MOTOROLA, INC.**

Motorola, Inc. (“Motorola”) hereby respectfully submits these comments in response to the Commission’s advance notice of proposed rulemaking in the above-captioned proceeding.<sup>1</sup> For the reasons detailed below, the Commission should not impose labeling or other energy disclosure requirements on manufacturers of cable set-top boxes.

**I. INTRODUCTION**

Motorola welcomes this opportunity to inform the Commission about the cable set-top box business. Motorola is a leading provider of set-top boxes and other equipment to cable operators in the U.S. and abroad. We have shipped approximately 80 million digital set-top boxes to U.S. cable operators. Our set-top boxes enable the delivery of a wide range of cable services to cable customers in a secure and reliable manner.<sup>2</sup>

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<sup>1</sup> See *In the Matter of Consumer Electronics Labeling*, Advance Notice of Proposed Rulemaking, Project No. P094201, 74 Fed. Reg. 11045 (rel. Mar. 16, 2009) (“Notice”).

<sup>2</sup> Our set-top boxes range from limited-capability devices that just support the delivery of one-way, standard definition linear channels to cable customers, to devices that support high-definition, digital video recording (“DVR”), and interactive services, such as video-on-demand (“VOD”) and interactive program guides.

Motorola is also a leader in manufacturing energy-efficient set-top boxes. Motorola participates in a number of U.S. and international energy conservation standardization efforts.<sup>3</sup> We are actively involved in EPA's ENERGY STAR program for set-top boxes, and assisted in the development of the specifications for ENERGY STAR-compliant boxes.<sup>4</sup> While these specifications are relatively new,<sup>5</sup> Motorola has already built seven set-top box models that comply with the specifications,<sup>6</sup> and plans to have all new set-top box models be ENERGY STAR-compliant going forward.<sup>7</sup> Aside from the ENERGY STAR initiative, we have participated in standardization work through the Consumer Electronics Association to develop

<sup>3</sup> See Motorola Inc., 2008 Motorola Corporate Responsibility Summary Report 1-5 (2008), *available at* <http://www.motorola.com/staticfiles/Business/Corporate/US-EN/corporate-responsibility/docs/cr-2008-corporate-responsibility-report-final-1p48mb-16.pdf> (detailing efforts to cut emissions, use renewable energy, reduce the energy used by consumer products, reduce packaging, and use recycled products, and noting that "[s]ince 2005, we have reduced our carbon footprint by 20 percent, while we continue to work toward challenging reduction targets.")

<sup>4</sup> See ENERGY STAR, Set-top Box Specification, [http://www.energystar.gov/index.cfm?c=revisions.settop\\_box\\_spec](http://www.energystar.gov/index.cfm?c=revisions.settop_box_spec) (last visited May 14, 2009). We are now partners in the ENERGY STAR program. See ENERGY STAR Partner List, [http://www.energystar.gov/index.cfm?fuseaction=estar\\_partner\\_list.showPartnerResults&company\\_name=&partner\\_type\\_id=MANUFACTURER&award=&award\\_search=N&country\\_id=All&category\\_id\\_list=1%2C2%2C3%2C4%2C5%2C6%2C7%2C8&award\\_category=ALL&award\\_year=ALL&category\\_id4=SETTOP&cntry\\_code=ALL](http://www.energystar.gov/index.cfm?fuseaction=estar_partner_list.showPartnerResults&company_name=&partner_type_id=MANUFACTURER&award=&award_search=N&country_id=All&category_id_list=1%2C2%2C3%2C4%2C5%2C6%2C7%2C8&award_category=ALL&award_year=ALL&category_id4=SETTOP&cntry_code=ALL) (last visited May 14, 2009).

<sup>5</sup> The ENERGY STAR program requirements for set-top boxes were finalized on April 23, 2008. See ENERGY STAR, Set-top Boxes Specification, [http://www.energystar.gov/index.cfm?c=revisions.settop\\_box\\_spec](http://www.energystar.gov/index.cfm?c=revisions.settop_box_spec) (last visited May 14, 2009). The ENERGY STAR specifications include test procedures that yield annual energy consumption estimates. *Id.*

<sup>6</sup> See Set-top Box Qualified Product List (as of May 1, 2009), [http://www.energystar.gov/ia/products/prod\\_lists/set\\_top\\_boxes\\_prod\\_list.pdf](http://www.energystar.gov/ia/products/prod_lists/set_top_boxes_prod_list.pdf) (last visited May 14, 2009). If a Motorola product model is ENERGY STAR-compliant, we include the ENERGY STAR logo in the product documentation and on the Motorola web page for that product. See, e.g., Motorola DTA100, [http://www.motorola.com/Business/US-EN/Business+Product+and+Services/TV+Video+Distribution/Customer+Premises+Equipment+%28Set-tops%29/All-Digital+QAM+Set-tops/DTA100\\_US-EN](http://www.motorola.com/Business/US-EN/Business+Product+and+Services/TV+Video+Distribution/Customer+Premises+Equipment+%28Set-tops%29/All-Digital+QAM+Set-tops/DTA100_US-EN) (last visited May 14, 2009).

<sup>7</sup> We have already achieved dramatic gains in energy efficiency over the last decade. For example, a Motorola standard definition set-top box manufactured in 1998 consumed 22.8 watts of energy, whereas an equivalent standard definition set-top box manufactured in 2007 consumed 10.9 watts, or less than half of the 1998 equivalent box. See *supra* note 3, at 3. The newest standard definition IPTV set-top box manufactured by Motorola consumes only 5.7 watts.

appropriate testing methods to measure set-top box energy consumption,<sup>8</sup> as well as standardization work with the European Commission to develop a Code of Conduct on Energy Efficiency of Digital TV Service Systems.<sup>9</sup>

The Notice invites comment on whether the Commission should extend its Appliance Labeling Rule to cable set-top boxes and certain other categories of consumer electronics products pursuant to its authority under the Energy Independence and Security Act of 2007 (“Act”).<sup>10</sup> As the Commission specifically notes,<sup>11</sup> the Act directs the Commission *not* to apply labeling or other disclosure requirements “in any case in which the Commission determines that labeling . . . (I) is not technologically or economically feasible; or (II) is not likely to assist consumers in making purchasing decisions.”<sup>12</sup> For the reasons set forth below, the Commission should not impose such requirements on cable set-top boxes.

## **II. THE COMMISSION SHOULD NOT IMPOSE LABELING OR DISCLOSURE REQUIREMENTS ON CABLE SET-TOP BOXES.**

As an initial matter, labeling or other disclosure requirements are “not likely to assist consumers in making purchasing decisions” with respect to cable set-top boxes, and therefore may not be imposed on such products consistent with the Act. As the Commission has

<sup>8</sup> See CEA-2022 (ANSI), *Digital STB Active Power Consumption Measurement*, [http://www.ce.org/Standards/browseByCommittee\\_3373.asp](http://www.ce.org/Standards/browseByCommittee_3373.asp) (last visited May 14, 2009); CEA-2013-A (ANSI), *Digital STB Background Power Consumption*, [http://www.ce.org/Standards/browseByCommittee\\_2785.asp](http://www.ce.org/Standards/browseByCommittee_2785.asp) (last visited May 14, 2009).

<sup>9</sup> See Institute for Environment and Sustainability (EC), *Code of Conduct on Energy Efficiency of Digital TV Service Systems Version 7* (Jan 15, 2008), available at <http://re.jrc.ec.europa.eu/energyefficiency/pdf/CoC%20Digital%20TV-version%207.pdf>.

<sup>10</sup> See Notice at 15; see also *id.* at 6 (“Section 325 of the [Energy Independence and Security Act of 2007] amends [the Energy Policy and Conservation Act] to direct the Commission to prescribe labeling for televisions, personal computers, cable or satellite set-top boxes, stand-alone digital video recorder boxes, and personal computer monitors.”).

<sup>11</sup> See *id.* at 6, n.7.

<sup>12</sup> Energy Independence and Security Act of 2007, Pub. L. No. 110-140, § 325(a)(1), 121 Stat. 1492, 1595-96 (Dec. 19, 2007); see also *id.* (authorizing the Commission to promulgate rules if it “determines that labeling of, or other disclosures relating to, those products is likely to assist consumers in making purchasing decisions”).

previously explained, “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.<sup>13</sup> The Commission has further elaborated that “the detailed operating cost and energy consumption information on the label *allows consumers to compare* the total cost of competing models” and “aids consumers who are *seeking to buy* high-efficiency products that reduce energy use and thus help the environment.”<sup>14</sup> The Commission’s statements are consistent with congressional intent.<sup>15</sup>

In 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. Rather, Motorola typically sells its set-top boxes to cable operators, like Comcast or Verizon, and the operators, in turn, lease the boxes to customers for a monthly charge.<sup>16</sup> The lease model evolved in the cable industry as a way to guard against theft of cable service,<sup>17</sup> and is now used

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<sup>13</sup> Rule for Using Energy Costs and Consumption Information Used in Labeling and Advertising for Consumer Appliances Under the Energy Policy and Conservation Act, 44 Fed. Reg. 66466 (Nov. 19, 1979) (codified at 16 C.F.R. Part 305) (emphasis added); *see also* Notice at 5 (“Under the rule, appliance manufacturers must disclose specific energy use information *at the point of sale* in the form of a yellow ‘EnergyGuide’ label affixed to each unit. This information also must appear in catalogs and on Internet sites from which covered products *can be ordered.*” (emphasis added)).

<sup>14</sup> Rule Concerning Disclosures Regarding Energy Consumption and Water Use of Certain Home Appliances and Other Products Required Under the Energy Policy and Conservation Act, 72 Fed. Reg. 49948, 49951 (Aug. 29, 2007) (codified at 16 C.F.R. Part 305) (emphasis added).

<sup>15</sup> Congress first mandated the promulgation of product labeling rules as part of the Energy Policy and Conservation Act of 1975. The legislative history accompanying the statute explained that the Secretary of Commerce may promulgate labeling rules “to assist purchasers in determining which consumer products within such class have low energy use or high energy efficiency.” H.R. REP. NO. 94-340, at 97 (1975).

<sup>16</sup> To the extent the cable operator is subject to rate regulation, cable set-top boxes used to access basic cable services (which includes most categories of boxes) are rate-regulated. *See* 47 C.F.R. § 76.923.

<sup>17</sup> *See In the Matter of Implementation of Section 304 of the Telecommunications Act of 1996: Commercial Availability of Navigation Devices*, Report and Order, 13 FCC Rcd. 14775, ¶ 10 (1998) (“Equipment, however, that controls the security aspects of access to programming from cable operators and some other MVPDs has generally only been available for lease so that only those who subscribe may receive service.”).

by satellite providers as well.<sup>18</sup> In light of the fact that cable set-top boxes are primarily leased, not sold, to customers, any labeling or other disclosure requirement would not assist consumers in making purchasing decisions.<sup>19</sup> Under the plain terms of the Act, the Commission cannot impose labeling or other disclosure requirements in these circumstances.<sup>20</sup>

In addition, there are technical feasibility issues associated with labeling of cable set-top boxes. EnergyGuide labels are typically placed on large home appliances such as refrigerators and water heaters, and must be 5.25 by 7.4 inches in size.<sup>21</sup> That way, consumers can easily read the energy information for a particular product. Cable set-top boxes, in contrast, are much smaller devices; Motorola boxes, for example, generally range in size from 6 by 4 inches for

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<sup>18</sup> DIRECTV, for example, used to sell its set-top box equipment to customers at retail outlets, but now leases the equipment to customers. See DIRECTV Group Inc., Annual Report (Form 10-K) at 2, 29 (Mar. 10, 2006) (noting launch of lease program for new and existing subscribers on March 1, 2006).

<sup>19</sup> Cable customers do have the option of buying equipment at retail that includes built-in set-top box functionality. Under this retail option, the customer purchases the digital cable-ready device (typically an HDTV or HD/DVR) from the retail outlet, and then leases a security module (known as a CableCARD) from the cable operator that is inserted into the retail device and used to decrypt cable services. See *In the Matter of Implementation of Section 304 of the Telecommunications Act of 1996: Commercial Availability of Navigation Devices; Compatibility Between Cable Systems and Consumer Electronics Equipment*, Second Report and Order and Second Further Notice of Proposed Rulemaking, 18 FCC Rcd. 20885 (2003) (establishing plug-and-play rules for CableCARD-enabled retail equipment); see also 47 C.F.R. § 76.640 (establishing cable operator requirements for supporting CableCARD-enabled retail equipment and supplying customers with CableCARDS). However, according to a recent cable industry report to the Federal Communications Commission, relatively few customers have elected this retail option. “[T]here have been just over 420,000 CableCARDS deployed for use in retail devices by the ten largest incumbent cable operators.” See Letter from Neal Goldberg, NCTA, to Marlene Dortch, Secretary, FCC, CS Dkt. No. 97-80, at 1 (filed Mar. 23, 2009). In contrast, approximately 69 million leased cable set-top boxes were deployed in the U.S. at the end of 2008. See Todd Spangler, *Set-Tops Break Free*, Multichannel News, Apr. 27, 2009, available at [http://www.multichannel.com/article/210003-Cover\\_Story\\_Set\\_Tops\\_Break\\_Free.php](http://www.multichannel.com/article/210003-Cover_Story_Set_Tops_Break_Free.php).

<sup>20</sup> See Notice at n.7. To the extent that cable operators are the “consumers” for purposes of this analysis, there would still be no basis for concluding that labeling or other disclosures are likely to assist them in making their set-top box purchasing decisions. Cable operators are sophisticated buyers of cable set-top boxes; they typically tell suppliers like Motorola the features and functions that they would like built into their boxes; and, in all events, they can readily obtain information about the energy consumption of the boxes that they order from Motorola and other vendors. We include energy consumption information on the data/specification sheets for our products as well as on our web site. In short, government-mandated labels or other disclosures are unlikely to have any impact on the purchasing decisions of operators.

<sup>21</sup> See 16 C.F.R. § 305.11(a).

small converters to 17 by 13 inches for larger boxes.<sup>22</sup> It is simply not possible to fit the typical EnergyGuide label on the smaller boxes. With respect to the larger boxes, the typical EnergyGuide label could not be affixed to the box without raising potential safety issues (e.g., the label cannot block the vents on the top of the box which are necessary to dissipate heat from the device).

The Notice also asks about the possibility of placing the disclosures on the packaging for the devices.<sup>23</sup> Set-top box manufacturers like Motorola have no control over how the cable operator delivers set-top boxes to their customers. However, our understanding is that cable operators typically remove set-top boxes from the Motorola packaging in their warehouses before sending the boxes out for installation at the customer's premises. As a result, even if a label were to be affixed to the original Motorola packaging, it likely would never be seen by the end-user customer, and therefore would provide no benefit to the consumer.<sup>24</sup>

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<sup>22</sup> Compare DTA-100 Product Specification, available at [http://www.motorola.com/Business/US-EN/Business+Product+and+Services/TV+Video+Distribution/Customer+Premises+Equipment+%28Set-tops%29/All-Digital+QAM+Set-tops/DTA100\\_US-EN](http://www.motorola.com/Business/US-EN/Business+Product+and+Services/TV+Video+Distribution/Customer+Premises+Equipment+%28Set-tops%29/All-Digital+QAM+Set-tops/DTA100_US-EN), with DCH-6416 Product Specification, available at [http://www.motorola.com/Business/US-EN/Business+Product+and+Services/TV+Video+Distribution/Customer+Premises+Equipment+%28Set-tops%29/Analog-Digital+QAM+Set-tops/DCH6416\\_US-EN](http://www.motorola.com/Business/US-EN/Business+Product+and+Services/TV+Video+Distribution/Customer+Premises+Equipment+%28Set-tops%29/Analog-Digital+QAM+Set-tops/DCH6416_US-EN).

<sup>23</sup> See Notice at 16.

<sup>24</sup> There would be a similar issue if the disclosure had to be included in Motorola's user manual. Motorola ships a user manual with every set-top box it manufactures, but there is no assurance that the manual is ever seen by the end-user customer. We understand that, while there may be smaller cable operators that provide the manual to customers, the larger cable operators typically provide their own branded user and installation materials to customers when the box is installed.

**III. CONCLUSION**

For the foregoing reasons, Motorola respectfully urges the Commission not to impose labeling or other disclosure requirements on manufacturers of cable set-top boxes.

Respectfully submitted,

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