

Jesús G. Román
Assistant General Counsel



2535 W. Hillcrest Dr., CAM21LB
Newbury Park, CA 91320
Phone: (805) 499-6832
Fax: (805) 498-5617
jesus.g.roman@verizon.com

May 9, 2013

VIA ELECTRONIC MAIL

California Energy Commission
Dockets Office, MS-4
Re: Docket No. 12-AAER-2
1516 Ninth Street
Sacramento, CA 95814-5512

California Energy Commission DOCKETED 12-AAER-2
TN # 70712 MAY 09 2013

RE: Docket No. 12-AAER-2

Attached please find the COMMENTS OF VERIZON CALIFORNIA INC. in Docket No. 12-AAER-2.

Should you have questions, please do not hesitate to contact me.

Very truly yours,

A handwritten signature in black ink that reads "Jesús G. Román".

Jesús G. Román

Attachment

**STATE OF CALIFORNIA
ENERGY RESOURCES CONSERVATION
AND DEVELOPMENT COMMISSION**

2012 Rulemaking on)	
Appliance Efficiency Regulations)	Docket No. 12-AAER-2
)	Order 12-0314-16
_____)	

COMMENTS OF VERIZON CALIFORNIA INC.

Jesús G. Román
Verizon California Inc.
2535 West Hillcrest Dr.
Newbury Park, CA 91320
Tel: (805) 499-6832
Fax: (805) 498-5617
jesus.g.roman@verizon.com

Attorney for Verizon

May 9, 2013

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INTRODUCTION

In light of industry-wide efforts now underway to reduce the energy consumption of traditional set-top boxes and the industry's continued innovation in platforms to deliver video programming, the California Energy Commission (CEC) should not move forward at this time with any proceedings that could lead to the regulation of set-top box energy consumption.¹ Such efforts by CEC are unnecessary and could be counterproductive by forestalling innovation in energy-efficient methods of delivering video programming to consumers. In addition, state regulation of set-top boxes is preempted by the Communications Act of 1934, and the Department of Energy (DOE) is considering energy-consumption standards. At the least, the CEC should defer to DOE's ultimate decision on this matter for two reasons: (1) the DOE's standards would preempt any standards adopted by the CEC and (2), to the extent not preempted, the CEC could prompt the creation of an unworkable patchwork of 50 different state standards, that would complicate manufacturing and drive up consumer prices.

Verizon is committed to providing its customers with innovative, energy-efficient products, including set-top boxes.² Accordingly, Verizon, like many other Multichannel Video Programming Distributors (MVPDs), is participating in a voluntary industry initiative to reduce the energy consumption of set-top boxes in conjunction with the Environmental Protection Agency's (EPA) ENERGY STAR® program and is also developing video distribution platforms that use less energy than the traditional set-top box. These efforts are resulting in substantial energy savings for consumers of Verizon FiOS TV and other MVPD services. Moreover, if the

¹ While this rulemaking relates to a varied set of appliances, Verizon's interests and comments are specific to set-top boxes. Nevertheless, Verizon's comments may be applicable to other consumer electronics.

² Verizon is a member of the Consumer Electronics Association (CEA), and supports the separately filed comments of CEA in this proceeding.

voluntary industry initiative is allowed to continue as envisioned, that effort will result in significant reductions in the energy consumption of traditional set-top boxes and successor equipment. This industry initiative and the marketplace trends vitiate any premise of need for an energy conservation standards program for set-top boxes, as apparently contemplated by CEC.³

In this proceeding, the CEC proposes to adopt a test procedure to measure the energy consumption of consumer electronics, including set-top boxes. The Invitation for Comments covers possible energy conservation standards for set-top boxes.⁴ The CEC should stand down from embarking on this new regulatory program for set-top boxes because the industry's own voluntary efforts and the rapidly-changing marketplace for this equipment are resulting in substantial reduction in energy consumption by set-top boxes, benefiting consumers. Nothing in the Warren-Alquist Act⁵ requires the CEC to focus on set-top boxes. If CEC is unwilling to change its focus in this proceeding, it should at least postpone adopting energy conservation standards for set-top boxes until the voluntary industry effort described herein has had a chance to demonstrate substantial levels of energy savings, which would make a separate CEC program unnecessary. Observing the results of the substantial voluntary efforts embarked on by industry, as well as the short-term technological evolution in this vibrant area, would allow the CEC to make a more informed decision about the costs and benefits of a mandated regulatory approach.

³ See California Energy Commission, "Invitation To Participate in The Development of Appliance Energy Efficiency Measures, (March 25, 2013).

⁴ *Id.*

⁵ Cal. Public Resources Code Section 25000 et seq.

DISCUSSION

I. IN LIGHT OF FEDERAL PREEMPTION AND THE DOE PROCEEDING ON SET-TOP BOXES, THE CEC SHOULD NOT CONTINUE THIS PROCEEDING.

CEC regulation of set-top boxes is preempted by the Communications Act of 1934.

Avoiding a patchwork of state regulations for set-top boxes was the rationale for Congress' amendment of Section 624(e) of the Act in 1996 to forestall adoption of state regulations for cable subscriber equipment.⁶ That provision now states: "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." 47 U.S.C. § 544(e). Imposing California-specific energy consumption standards for set-top boxes would clearly condition or restrict a cable system's use of "any type of subscriber equipment," and would directly conflict with this statute and the Federal Communications Commission's implementing regulations (47 C.F.R. § 76.605 Note 6).

Moreover, the DOE is currently considering energy-consumption standards for set-top boxes.⁷ The CEC should terminate this proceeding as it related to set-top boxes, or at least suspend it pending the DOE's ultimate decision on this matter for two reasons: (1) the DOE's standards would preempt any standards adopted by the CEC⁸ and (2) if not otherwise preempted, the CEC could prompt the eventual creation of 50 different state standards, complicating manufacturing and driving up consumer prices. Such a result would be contrary to the statutory

⁶ *Implementation of Cable Act Reform Provisions of the Telecommunications Act of 1996*, 14 FCC Rcd 5296, ¶ 126 (1999), quoting H.R. Rep. 204(1), 104th Cong., 1st Sess. 110 (1995) ("The Committee finds that the patchwork of regulations that would result from a locality-by-locality approach is particularly inappropriate in today's intensely dynamic technological environment."), *aff'd on recon.*, 17 FCC Rcd 7609 (2002).

⁷ Department of Energy, "Energy Conservation Program: Test Procedure for Set-Top Boxes," Notice of Proposed Rulemaking, 78 Fed. Reg. 5076 (Jan. 23, 2013) ("NOPR"), Docket No. EERE-2012-BT-TP-0046. *See also*, 77 Fed. Reg. 4698 (January 31, 2012), Docket EERE-2011-BT-NOA-0067.

⁸ See 42 USC § 6297 (establishing "rule[s] of preemption for energy conservation standards" and over "testing and labeling requirements").

mandate that CEC standards “shall not result in any added total costs for consumers.”⁹

Accordingly, the CEC should defer to federal regulation of set-top boxes, and remove this equipment category from consideration in this proceeding.

II. THE MVPD INDUSTRY IS ALREADY IMPLEMENTING INITIATIVES THAT RESULT IN SUBSTANTIAL ENERGY CONSERVATION, AND SO REGULATION IS UNNECESSARY AND COUNTERPRODUCTIVE.

Participants in the MVPD marketplace already are implementing energy efficiency initiatives and new products that are resulting in substantial energy savings for consumers and consumer equipment. Because of the rapid evolution of set-top boxes, tomorrow’s marketplace for set-top boxes may look nothing like today’s, making any CEC regulations adopted as a result of this phase of the rulemaking obsolete or ineffectual.

A. MVPDs Are Procuring More Energy Efficient STBs.

A dozen providers of video programming services and two major manufacturers of set-top boxes have entered a Voluntary Agreement for ongoing improvements to the energy efficiency of set-top boxes distributed to consumers of MVPD services.¹⁰ The video service providers represent over 90 per cent of all MVPD subscribers in the United States, most of whom use set-top boxes provided by the company. This framework has been designed to produce energy savings for consumers on an ambitious schedule, while also preserving flexibility for additional pro-consumer innovation in video delivery equipment. This approach fits well the dynamic and evolving video programming marketplace.

⁹ Cal. Pub. Res. Code § 25402(c)(1) (“The standards adopted or revised pursuant to this subdivision shall not result in any added total costs for consumers over the designed life of the appliances concerned.”).

¹⁰ See NCTA Press Release, “Set-Top Box Energy Conservation Agreement Expected to Save U.S. Consumers \$1.5 Billion Annually” (Dec. 5, 2012), <http://www.ncta.com/news-and-events/media-room/article/2453>.

Pursuant to this Voluntary Agreement, the service providers have committed to support and encourage development of set-top boxes designed to minimize energy consumption. The Voluntary Agreement requires that after December 31, 2013, 90 percent of all new set-top boxes purchased and deployed by the individual service providers will meet the efficiency standards established by the EPA's ENERGY STAR® Version 3.0.¹¹

This Voluntary Agreement has been praised by members of Congress because it achieves national policy goals without governmental mandates. For example, Rep. Ed Markey recently commended the Voluntary Agreement, noting: "In the rapidly changing telecommunications space, this strong industry-led efficiency agreement can deliver meaningful near-term energy savings while laying a foundation for future innovation and efficiency improvements. I am pleased that the industry has taken this step in the absence of congressional action to address energy efficiency in this important area and encourage it to continue exploring new ways to make even greater strides in the future as technology evolves."¹²

Similarly, Senator Dianne Feinstein commended the industry, stating: "Last year, I asked the [MVPD] industry to utilize more efficient equipment, and I am very pleased they have taken the first step to accomplish that. I would like to congratulate the 15 companies that joined today's agreement, which will save consumers billions of dollars in reduced electricity bills."¹³

The Voluntary Agreement and other industry initiatives eliminate any need for a separate CEC regulatory program to encourage development of energy conservation for set-top boxes.

¹¹ See EPA, "ENERGY STAR® Program Requirements for Set-top Box Service Providers" (eff. Sept. 1, 2011), http://www.energystar.gov/ia/partners/prod_development/revisions/downloads/settop_boxes/STB_Version_3_Program_Requirements_Service_Provider.pdf?e7cf-bba1.

¹² Rep. Ed Markey Press Release, "End of Republican War on Energy Efficiency?" (Feb. 26, 2013), <http://markey.house.gov/press-release/markey-end-republican-war-energy-efficiency>.

¹³ Sen. Dianne Feinstein Press Release, "Feinstein Applauds Agreement on Energy Efficient Set-Top Boxes" (Dec. 6, 2012), <http://www.feinstein.senate.gov/public/index.cfm/press-releases?ID=cc4566d0-92af-4e18-b012-36549d6f090f>.

Indeed, the CEC is required to perform a cost-benefit analysis of adoption of any standards and within that analysis it must consider “alternative approaches”¹⁴ to regulations. Deference to the Voluntary Agreement is an acceptable alternative approach because a self-regulatory program is in place to achieve the same goals and bring the same benefits to consumers without intervention by CEC.

Standards adopted by the CEC here could well undermine these industry efforts to develop more efficient set-top boxes or other more energy-efficient methods for delivering video programming. First, the still evolving ENERGY STAR® standards have already proven effective in the set-top box market. Verizon, like the other members of the Voluntary Agreement, has actively participated in the rollout of ENERGY STAR® set-top boxes for its MVPD service. In the past two years, Verizon has purchased several million set-top boxes for FiOS TV that complied with ENERGY STAR® standards. For the next five years after December 31, 2013, Verizon and the MVPD members of the Voluntary Agreement have committed to purchase 90% ENERGY STAR® Version 3.0 compliant set-top boxes, which is projected to result in an annual residential energy savings of \$1.5 billion.¹⁵

Importantly, the industry efforts described above are taking place *now*. At its current course and speed, the set-top box manufacturing and distribution industry will evolve toward even greater efficiencies by the time the CEC concludes this phase of the proceeding—unless doubts about compliance with CEC’s regulations interfere and thwart industry evolution.

Such self-regulatory efforts frequently achieve policy goals much faster and more effectively than regulatory programs. But if the CEC adopts unnecessary standards for set-top

¹⁴ Cal. Pub. Res. Code §25402(c)(1) (“When determining cost-effectiveness, the commission shall consider . . . alternative approaches and their associated costs.”).

¹⁵ NCTA Press Release, “Set-Top Box Energy Conservation Agreement Expected to Save U.S. Consumers \$1.5 Billion Annually” (Dec. 5, 2012), <http://www.ncta.com/news-and-events/media-room/article/2453>.

boxes despite the MVPD industry's Voluntary Agreement, the CEC will demonstrate a disregard for any such voluntary efforts, thereby discouraging the MVPD industry and other industries from initiating their own energy savings programs. Such action is counterproductive to the ultimate goal of realizing energy conservation for the public good.

Rather than adopting its own regulatory program, the CEC should rely on the continued performance improvements in set-top boxes through the industry's Voluntary Agreement. The ENERGY STAR® program has been designed to keep up with rapid changes in the set-top box market by taking into account new features and changes in technology and settings, and updating the test procedure every two years. For example, the current ENERGY STAR® Version 3.0 specification became effective on September 1, 2011, and Version 4.1 is in development now.¹⁶ Given ENERGY STAR®'s currency and attention to market changes, CEC should rely on the Voluntary Agreement to achieve the goals of any regulatory regime under the Warren-Alquist Act.¹⁷

B. MVPDs Are Offering Consumers More Energy Efficient Methods to Access Video Programming.

In just the past three years, the equipment that consumers use to watch video programming in the home has substantially changed, moving away from the traditional set-top box that is the subject of this phase of the rulemaking. While three years ago, almost every in-home TV required a set-top box to receive MVPD programming, today more products using less energy are rapidly replacing the stand-alone set-top box for in-home video viewing. These

¹⁶ See, e.g., Letter from Katharine Kaplan, Manager ENERGY STAR® Product Development and Program Administration to Set-top Box Equipment Manufacturer, Service Provider or Other Interested Party (Mar. 18, 2013) (describing proposed revisions to set-top box test methods for Version 4.1), available at <http://energystar.gov/products/specs/sites/products/files/Draft%201%20Version%204%201%20STB%20Cover%20Letter.pdf>.

¹⁷ Cal. Public Resources Code Section 25000 et seq.

newer products reduce energy consumption in the home, and release consumers from reliance on set-top boxes altogether.

Verizon is at the forefront of these developments with its FiOS TV service. Verizon is deploying various solutions for access to FiOS TV without the need for a traditional set-top box at every TV or viewing platform. For example:

- Verizon will soon roll out the Verizon Media Server that allows subscribers to rely on a single home media server to communicate with up to five IP clients attached to other TVs throughout the home.¹⁸ The IP clients use significantly less energy than a standard set-top box, producing an overall reduction in home energy usage.
- For several years, Verizon has offered a whole-home digital video recorder (DVR) service, which enables a standard set-top box in one room to access the recordings on a DVR in a different room.¹⁹ This arrangement reduces the need for subscribers to use multiple DVRs in the home, thereby saving energy.
- Verizon is also delivering FiOS TV programming to consumer equipment without a set-top box, including via Xbox game consoles and to tablets and iPads through its FiOS TV application.²⁰

The result of these initiatives is that the number of FiOS TV subscribers accessing their video service without a traditional set-top box is increasing,²¹ indicating a significant reduction in set-top box usage, because the viewing screen does not rely on a set-top box. All indications are that the use of non-set-top box viewing platforms is likely to trend upward, decreasing reliance on and energy consumption of the traditional set-top box for FiOS TV subscribers.

¹⁸ Verizon Press Release, “Verizon and Motorola Partner on Next-Gen FiOS TV Media Server” (Jan. 7, 2013), available at <http://newscenter.verizon.com/residential/news-articles/2013-01-verizon-motorola-fios-tv-media-server-ces/>.

¹⁹ See <http://www22.verizon.com/home/fios-tv/#equipment> (FiOS TV multi-room DVR details).

²⁰ Verizon Press Release, “75 Live FiOS TV Channels Now Available on Xbox 360” (Dec. 18, 2012), <http://newscenter.verizon.com/residential/news-articles/2012-12-fios-tv-xbox/>.

²¹ “Future Multi-Functional Set-Top Boxes Expected to Combine Cable TV and Gaming Functions in One Unit,” *Communications Daily* (Mar. 7, 2013) (quoting Maitreyi Krishnaswamy, director of interactive video services for Verizon’s FiOS TV group, that “more than 30 percent of FiOS users have migrated to ‘other consumption devices as their primary device’”).

Like Verizon, other participants in the MVPD industry are also implementing alternative video platforms solutions, which will reduce reliance on the traditional set-top boxes nationwide. For example, the industry is developing home networking solutions, such as the Digital Living Network Alliance (DLNA), that allow multiple consumer devices, including multi-branded devices, in the home to share recordable cable content without a separate set-top box.²² The primary set-top box can share content with TVs, game consoles, PCs and mobile devices across the home network without installing additional set-top boxes.²³

The MVPD industry is also delivering video programming directly to more products without a set-top box. Consumers can now access video programming through game consoles, mobile tablets, and personal computers. These “TV Everywhere” applications require no set-top box at all.²⁴ In addition, Samsung, LG Electronics and other manufacturers are offering consumers “Smart TVs” that allow access to multiple MVPD services over the Internet, again without any set-top box or even a networked connection to a set-top box.²⁵

As yet another means to deliver video programming, many MVPDs are deploying cloud-based video services, including video services that use Internet delivery. For example, at the 2013 Consumer Electronics Show, Cisco Systems announced development of its “Videoscape

²² See <http://www.dlna.org/consumer-home/The-Possibilities>.

²³ See, e.g., W. Greenwald, “TiVo Mini Puts Multi-Room DVR and Apps in \$99 Box,” PCMag.com (Mar. 11, 2013). The TiVo Mini, a small square box, “lets users watch TV, recorded video, and online content through a connected TiVo DVR located in another room.”

²⁴ See, e.g., FCC, *Annual Assessment of the Status of Competition in the Market for Delivery of Video Programming*, MB Dkt. No. 07-269, FCC 12-81, ¶ 96 (July 20, 2012), available at http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC-12-81A1.pdf.

²⁵ See, e.g., “LG Electronics and Verizon Collaborate to Offer FiOS TV App on LG’s Smart TV Platform” (Jan. 11, 2012), <http://www.prnewswire.com/news-releases/lg-electronics-and-verizon-collaborate-to-offer-fios-tv-app-on-lgs-smart-tv-platform-137086198.html>.

Unity” TV Platform that includes “cloud-driven video recording with capture and storage in the cloud instead of the end device.”²⁶

The end result of these efforts is that consumers are increasingly using viewing platforms that do not require a traditional set-top box and the number of set-top boxes required in the home is dropping. These trends in the marketplace will result in substantial energy savings for consumers. By the time the CEC regulatory regime contemplated here takes effect, the stand-alone set-top box may represent a smaller percentage of consumer devices used to access video programming services, undermining CEC assumptions of any need to regulate overall energy savings by requiring more energy efficient set-top boxes.

Moreover, given the rapid change and innovation for viewing platforms available to consumers, the pendency of regulation of energy consumption by set-top boxes could deter MVPD industry participants from collaborating with manufacturers to develop even more energy efficient methods for delivering video programming. Instead of devoting time and financial resources to improvements in set-top box technology, as described above, industry participants will be forced to turn their efforts toward a set of standards and regulatory compliance with those standards, including evaluating how new products would be treated under the CEC regulatory program.

Other providers, or potential providers, of consumer video services may be reluctant to fully enter the MVPD market with not only the DOE’s complex regulations and standards pending for set-top boxes, potentially inconsistent standards from the CEC and perhaps those of other states that follow CEC’s lead, not knowing whether a new panoply of federal and state regulations would apply or even can be applied to products they wish to use as home video

²⁶ Cisco Press Release, “Cisco Introduces ‘Videoscape Unity’ TV Platform to Enable Advanced Multiscreen Video and TV Services” (Jan 7, 2013), <http://newsroom.cisco.com/press-release-content?type=webcontent&articleID=1122217>.

viewing equipment. That, in turn, stifles innovation among existing providers. While state standards inconsistent with DOE standards would be preempted, even the threat of state regulatory action could impose a barrier to innovation if there were doubt as to the extent of the preemptive effect of federal standards. Putting barriers in place for new entrants would inhibit the current innovative MVPD marketplace, potentially decreasing industry-driven solutions for achieving energy efficiency, a result that harms consumers rather than benefits them, and undermining any justification for CEC adopting standards in the first place.

III. IF A SET OF STANDARDS IS NECESSARY, THE CEC SHOULD ADOPT BY REFERENCE THE FINAL VERSION OF CEA-2043 FOR ENERGY CONSUMPTION OF SET-TOP BOXES.

If the CEC determines that it must adopt a test procedure for set-top boxes, it should simply adopt the final version of the industry consensus standard CEA-2043. This standard is already being used in the ENERGY STAR® program and other programs that publish ratings for set-top boxes.²⁷

For any set-top box regulatory program, adoption of CEA-2043 is the most reasonable course of action. CEA-2043 is near final and is available as a consensus-based standard for this purpose, representing the input and expertise of the MVPD, consumer equipment and set-top box manufacturing industries.²⁸

²⁷ The ENERGY STAR® program is already harmonizing its test procedure with CEA-2043 and DOE's NOPR. *See* Letter from Katharine Kaplan, *supra* note 16.

²⁸ CEA is accredited as a standards-making body by the American National Standards Institute (ANSI).

IV. STANDARDS FOR SET-TOP BOXES SHOULD EXCLUDE NETWORK EQUIPMENT.

While the CEC has asked about the “operational state” of network equipment,²⁹ Verizon urges the CEC to exclude from consideration network equipment, such as optical network terminals (ONTs) and other equipment such as broadband home routers. The ONTs deployed by Verizon with its FiOS TV and other FiOS services receive the optical signals that transport consumers’ video, voice and data services over the fiber network and convert them into electrical signals that are compatible with consumers’ home wiring and consumer electronic equipment. This equipment is an integral part of Verizon’s fiber-optic network that is used for all of the services carried over that network. The ONTs do not bear any resemblance, functional or otherwise, to the set-top boxes that are CEC’s focus.

Likewise, CEC should forego any efforts to incorporate ONTs or other devices, such as broadband home routers, within any regulatory program for home video programming viewing platforms, except to the extent that such equipment is dedicated exclusively to delivery of a provider’s video programming service. For example, the broadband home routers provided by Verizon to its FiOS customers should be excluded from any regulation. These devices may facilitate the delivery of video services to set-top boxes or other devices within the home, but they also facilitate other services that a consumer orders, such as Wi-Fi access to a Verizon customer’s Internet access service. These multi-purpose devices are not set-top boxes in the traditional sense. Indeed, a FiOS subscriber may have a home router installed without taking any video services at all. Accordingly, ONTs and other in-home equipment should be exempt from any regulations for set-top boxes unless directly related to video programming viewing platforms.

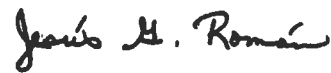
²⁹ Invitation to Participate, Set-top Boxes and Network Equipment, *supra*, Slide 9.

CONCLUSION

For the reasons set forth above, Verizon urges CEC to terminate or suspend this phase of the proceeding without adopting regulations or a test procedure for set-top boxes, but, if it moves forward, to adopt by reference the final version of CEA-2043 for any CEC-based test procedure. In the event the CEC does not terminate this proceeding, Verizon recommends that CEC postpone further activity and/or adoption of energy consumption standards to observe first the results of the voluntary industry initiatives described herein and the results of the DOE's proceeding.

May 9, 2013

Respectfully submitted,



Jesús G. Román
Attorney for Verizon
2535 W. Hillcrest Drive, CAM21LB
Newbury Park, CA 91320
Telephone: (805) 499-6832
Facsimile: (805) 498-5617
jesus.g.roman@verizon.com

CERTIFICATE OF SERVICE

I hereby certify that: I am over the age of eighteen years and not a party to the within entitled action; my business address is 2535 W. Hillcrest Dr., CAM21LB, Newbury Park, CA; I have this day served a copy of the foregoing **COMMENTS OF VERIZON CALIFORNIA INC.**, by electronic mail to docket@energy.ca.gov.

I declare under penalty of perjury that the foregoing is true and correct.
Executed this 9th day of May, 2013 at Newbury Park, California.


JACQUE LOPEZ

Docket No. 12-AAER-2