Consumer Electronics Retailers Coalition
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October 21, 2009

The Honorable Karen Douglas, Chair
California Energy Commission
Docket No. 09-AAER-1C
Docket Office
1516 Ninth Street, MS-25
Sacramento, CA 95814-5512

RE: Docket No. 09-AAER-1C: CERC and CRA Comments on CEC's Proposed Rulemaking on Television Efficiency Standards

Dear Chairman Douglas and Commissioners:

The Consumer Electronics Retailers Coalition (CERC) is a public policy organization consisting of the major retailers of consumer electronics products including Amazon.com, Best Buy, K-Mart, RadioShack, Sears, Target, Wal-Mart, and the leading industry trade associations – National Retail Federation (NRF) and Retail Industry Leaders Association (RILA).

The California Retailers Association (CRA) is a trade association representing major California department stores, mass merchandisers, supermarkets, chain drug and convenience stores, and specialty retailers such as auto, book and home improvement stores. Our members have more than 9,000 stores in California and account for more than $100 billion in sales annually.

On behalf of CERC and CRA, we appreciate having the opportunity to submit additional comments regarding the California Energy Commission's (CEC) staff proposal that would impose an arbitrary energy use limit on televisions.

CERC and CRA members are all fully committed to improving energy efficiency. Indeed, we see improving energy efficiency as making good sense as well as being a major market opportunity. Our members have worked tirelessly to offer consumers a wide choice of ENERGY STAR qualified electronic products and appliances.
We wish to be very clear. It is our professional judgment that should the draft CEC regulations banning the sale of up to 30% of currently available television sets, as presently recommended by the staff, become effective, retail jobs will be lost in

California and economic activity will decline. There are proven alternatives that would produce lasting and meaningful energy savings that better respect the present, fragile, economic environment.

California already effectively makes it uniquely expensive for its citizens to buy TVs. On January 1, 2009, California increased the Advance Recovery Fees (ARF) for recycling of electronics, adding as much as $25 to the cost of buying a new TV. In the recently completed transition to Digital Television, any such increment was considered highly significant for many consumers nationally, and billions of dollars were devoted to helping consumers absorb such costs. The proposed regulations would now constrict supply in California. Combined with California's recovery fees, the inevitable result will be to push value-oriented consumers to do their shopping in other states, or on-line – an industry and consumer alternative that continues to grow in this recession and one that cannot be regulated from California.

Indeed, internet and e-commerce sales are estimated to grow from $3 trillion in 2010 to $4 trillion in 2012, according to a recent University of Tennessee study. It should be noted that the same study analyzed the revenue loss to states from these sales. It was estimated that California will lose approximately $35.2 billion by 2012 in sales tax revenues from internet-only sales.

While there have been some mixed but hopeful signs of an economic upturn it is worth noting were we have been as retailers of all stripes head into the crucial holiday sales season. "Over all, the retailing industry posted a sales decline of about 2 percent last Christmas season, the weakest performance since the late 1960s, when the Commerce Department began tracking holiday sales figures." according to the New York Times (Oct. 2, 2009).

Several reports published in the last few weeks, including surveys by Nielsen and Deloitte, forecast no change in holiday sales from last year to this year. Any economic upturn has yet to filter through to retail sales, which is closely tied to the unemployment rate which has increased throughout the year, now nearing 10% nationally.

The Draft Regulations Ignore Secondary Effects and Unintended Consequences

It is neither wise nor possible for California to attempt to engineer the progression of consumer choices in a market as dynamic as that of digital electronics. New generations of products, such as digital TV receivers with a variety of interfaces and uses, cannot be simply compared to the small format, single-purpose analog TVs that they are replacing. The consequences of trying to do so may be profound. For example, when, to serve a valid, pressing, national interest in recovering spectrum for national security and other purposes, a changeover to digital TV transmission was mandated, it was necessary for the Federal Government to subsidize the distribution of almost 35 million converter boxes, at a cost exceeding $1.5 billion.

The TVs that required these converter boxes would have been phased out of homes in due course anyway. The conversion mandate, though necessary, had consequences, the responsibility for which had to be accepted by the Federal government. For California now to mandate the characteristics of TV receivers will also have consequences, in this case unforeseeable, for which California has not suggested that it can or will take the responsibility.

The draft regulations assume that consumer decision-making can be channeled as if their product and shopping choices were confined to those available in the cathode ray, analog TV era. The digital era, however, gives California consumers the ability to make choices that nullify attempts to mandate their behavior. The result will be outcomes that are less efficient, both environmentally and economically, than an incentive regime that takes modern consumer choices into account.

The DTV transition is important in another context worth noting. The energy consumption comparisons of analog cathode ray tube TVs to early flat panel TVs cited by CEC staff and press reports fails to take into account the energy consumption of the converter box when the analog TV is used to receive over the air signals.

Consumers Will Frustrate Mandated Product Choices. Consumers will find ways to obtain the blend of product features that they desire. If, due to artificially constraining mandates on integrated DTV receivers, consumers cannot find the features they want, they will look for them in additional products that, cumulatively, could make their homes less energy-efficient. For example, if a mandate reduces the power available to drive integrated audio speakers, or to support an on-board DVD or Blu-Ray player, consumers will likely buy additional, power-consuming devices instead of relying on an integrated solution. These choices could have the effect not only of nullifying any power savings from the mandate, but also of creating more consumer “boxes” that ultimately will have to be recycled.

Conversely, the draft regulations fail to take into account that the purchase of a high performance television may trigger a replacement cycle in which older, less efficient auxiliary components are integrated into the display, or replaced by more efficient modern products. Given the number of areas in which new products and services will become available, the unintended consequences of a mandate may be profound. Incentive regimes, targeted to known issues, are likely to be much less dangerous and much more efficient in having the intended consequence.

Consumers Will Frustrate Mandated Shopping Choices. Similarly, mandates based on analog era assumptions about shopping behaviors and alternatives are also likely to be counter-productive. First, they cannot account for consumers’ electronic and physical mobility. No California regulation can erect a commercial iron curtain around the state against products purchased on-line, by telephone, or in neighboring states out. Unlike automobiles, electronics products do not require regular service or warranty visits to dealers, seldom require any service at all, and very frequently are bought on-line even when a stocking retailer is only blocks away.

Market research has shown that most people shopping for a new digital television due extensive research on-line before visiting any store. The larger a TV receiver is, the greater the likelihood that, even if purchased in a store, it will be delivered to a customer's home rather than taken away in the shopper's car. Consumers are increasingly accustomed to receiving shipped products, from daily shipments from Netflix to larger products from other retailers. Modern shoppers will also drive miles to find and save on major purchases. Any savings assumed by the draft regulations need to be weighed against and discounted by on-line, phone and out of state purchases.

Unintended consequences are not trivial. Industry analysis has shown that store closures and retail job losses would likely follow in the wake of these regulations. A mandate that effectively removes only 10 percent of TVs from store shelves would, according to CEA's conservative estimates, cost the state of California $44 million in lost tax revenue, 5,000 lost jobs, and the closure of 180 storefront retailers. Economic disruption, lost sales and lost jobs does not advance the cause of energy efficiency. If anything, it disrupts the prosperity needed to feed the natural replacement cycle of older, less efficient products with newer more energy efficient TVs and consumer products.

Any new regulations need to pay more respect to changes in products, and in the market, that should already be evident. Some of the most inefficient TVs are being phased out through normal product life-cycles. The first generation of virtually any new consumer electronics technology is less efficient than future generations. Inflexible mandates could most threaten interests that Californians regard as vital. For example, limitations that affect the introduction of 3-D TV will be felt most deeply by California entertainment and technology companies.

A National Standard Offers a National Solution to Maximize Energy Efficiency and Minimize Economic Impacts

CERC supports the development of federal television efficiency standards to achieve the greenhouse gas emission reduction goals suggested by the CEC as well as the Obama Administration. A federal standard would lessen the logistical complexities, market dislocations and regional economic variables that would inevitably result from the proposed CEC standard.

We appreciate the argument that regulatory efforts such as the CEC's can help prompt action at the federal level but they can also frustrate progress. There is a more productive path to adopt national standards and incentives. This would achieve at least as much if not more of the energy savings for California as what is suggested under CEC's proposed regulations without the economic harm to Californians that would result from the CEC attempting to regulate TVs on its own.

Standard national regulations would also work to eliminate the majority of leakage caused by the purchase of non-compliant TVs through internet and out of state sales.

CERC would respectfully recommend the following to help achieve energy savings, GHG reductions and uniform TV energy efficiency standards:

1. CEC working with retailers, manufacturers and other stakeholders on a federal regime requiring the U.S. Department of Energy to adopt uniform national energy efficiency standards for televisions;

2. If the CEC does adopt the proposed regulations, inclusion of a sunset provision keyed to future federal action on TV's, and

3. CEC should postpone the Tier 1 and Tier 2 compliance dates by a minimum of six months, from January 1 to July 1, to realistically align with standard product manufacturing cycles and to reduce burdens on retailers in the meantime.

   To ignore these well-established cycles would be extremely burdensome to retailers in terms of financial resources and manpower.

Incentives and Education are Better, Proven, Alternatives

ENERGY STAR is an example of a program that respects, rather than frustrates, consumer choice. Combined with appropriate incentives, consumer education offers positive consequences and minimizes unintended ones.

Consumer education works. On a CEC organized conference call with staff; CERC suggested that the state proceed with its energy standard with all deliberate speed; but rather than act via mandate, should instead publish the list of those TVs that would not meet the California recommended standard. Retailers have no objection to CEC, once there is a consensus behind its research outcomes, to turning its data toward a meaningful educational effort.

The ENERGY STAR program is an American success story. Indeed, as a result of the swift marketplace adoption of the latest ENERGY STAR Version 3.0 specifications, a new and more stringent ENERGY STAR specification is now in the works. The proposed new ENERGY STAR standard is more stringent and energy efficient than either the current ENERGY STAR TV specification or the current Consortium for Energy Efficiency (CEE) Tier 2 standard (which represents a 15 percent more stringent level than the current ENERGY STAR TV specification).

Televisions today are far more energy efficient than televisions of the past. As consumers convert from analog to digital television, this upgrade cycle will continue to yield energy savings at a state and national level through ENERGY STAR. Voluntary programs like ENERGYSTAR produce savings and save jobs precisely because they are voluntary and help the consumer make an informed buying decision. A separate California program could only degrade the ENERGY STAR brand in California.

Incentives work. A number of CERC and CRA members are participating in TV and applicant incentive programs that reward consumers for choosing energy efficient products. Our members report that in California, the incentives program has exceeded industry, utility and government expectations. These incentives are a win-win proposition for all involved. An incentive effort focused on the installed base of TV's can have a significant impact on energy use. Proper TV calibration can improve picture performance and energy consumption.[1] Energy savings of 10-20% from calibration are not at all uncommon.[2] Incentives to assist consumers purchase calibration services or tools would certainly yield energy savings.

Support the Federal Trade Commission's (FTC) EnergyGuide program. It provides consumers with comparative information on product energy consumption. EnergyGuide has proven to be an excellent educational tool for many appliances, and we support the FTC's efforts to extend this national program to televisions. Therefore, the CEC should eliminate California-only product labeling requirements.

A number of initiatives could drive consumer adoption of green products and green lifestyles, without resorting to inflexible and arbitrary mandates. These would protect or create California jobs and economic activity. CERC has, in previous filings, recommended:

- Encourage consumers to use aftermarket products like smart power strips and smart home technologies, which help consumers to manage and optimize power consumption throughout the home.
- Press utilities to adopt smart grid technologies that can give consumers the option to manage their energy usage all the way to the outlet level.
- Look to adopt additional tax and electric rate incentives to encourage consumers to purchase ENERGY STAR qualified products.
- In major procurements, ensure that the state government only purchases energy efficient products, and properly disposes of obsolete equipment.

California-specific Mandates Disrupt Brick and Mortar Retailers and Retailing in the State.

[1] An April 2008 *New York Times* story demonstrated the value of calibration -- *see* http://www.nytimes.com/2008/04/10/technology/personaltech/10basics.html?_r=2&em&ex=1208059200&en=984bec05851e5cb9&ei=5070&oref=slogin.

[2] The *New York Times* story reported on an actual service call; noting – "The customer's TV was well out of whack … overcompensating with blue and was making green and red work harder to create the picture. The result was an HDTV that wasn't reproducing an accurate image and was using up almost 50 percent more energy than usual."

The timetables contemplated by the draft regulation fail to account for manufacturer and retail product cycles and consumer marketing. The result, if these regulations are enacted, will be uncertainty and confusion, to the detriment of all:

- The draft regulations do not account for the fact that retailers receive new products generally from May to August.

- The regulations do not account for the fact that retail stocks include product received over varying time periods. An arbitrary effective date that covers sales of products already in inventory imposes needless expense in inefficiency in searching out inventory that was lawfully received and stocked, and presages unintended violations whose only real world consequences will be wastes of administrative and enforcement resources, and further increasing the cost of any electronics retailer doing business in the state of California.

Thank you for the opportunity to submit these additional comments on behalf of CERC and CRA and we look forward to working constructively with the CEC and other stakeholders in the coming months.

Sincerely,

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