

July 24, 2020

Marlene Dortch, Secretary
Federal Communications Commission
445 12th St SW
Washington, DC 20554

**RE: Petition to Expand Marketing Opportunities for Innovative Technologies
RM-11857**

The Consumer Technology Association (CTA) has petitioned the Federal Communications Commission (FCC or Commission) to modify rules governing the marketing and importation of devices prior to FCC device authorization.¹ The Information Technology and Innovation Foundation (ITIF) appreciates this opportunity to comment on this petition.² ITIF writes to add its support to CTA's petition with the belief that the limitations around conditional sales and imports prior to authorization unnecessarily slow innovation and dynamism in the consumer device space.

THE COMMISSION SHOULD MODERNIZE ITS RULES TO FACILITATE DYNAMISM IN THE WIRELESS DEVICE MARKETPLACE

The Commission's rules around marketing and importation of pre-authorized devices are quite dated. Allowing firms greater flexibility to pre-sell to consumers and permit limited importation of devices before FCC authorization would help bring these regulations in line with the pace of today's device market.

The Commission Should Allow for Conditional Consumer Sales Prior to Authorization

As several commenters have noted, the current rules governing device marketing prior to FCC authorization only allow such sales on a conditional basis to wholesalers or retailers, but not consumers.³ Pre-ordering devices, especially pre-ordering done directly by the end user, is a far more common practice today.

¹ Consumer Technology Association Petition for Rulemaking or, in the Alternative, Waiver to Expand Marketing Opportunities for Innovative Technologies, RM-11857 (June 2, 2020), https://ecfsapi.fcc.gov/file/1060263543654/CTA_Petition_to_Expand_Marketing_Opportunities_for_Innovative_Technologies.pdf.

² Founded in 2006, ITIF is an independent 501(c)(3) nonprofit, nonpartisan research and educational institute—a think tank. Its mission is to formulate, evaluate, and promote policy solutions that accelerate innovation and boost productivity to spur growth, opportunity, and progress. ITIF's goal is to provide policymakers around the world with high-quality information, analysis, and recommendations they can trust. To that end, ITIF adheres to a high standard of research integrity with an internal code of ethics grounded in analytical rigor, policy pragmatism, and independence from external direction or bias. See About ITIF: A Champion for Innovation, <https://itif.org/about>.

³ See e.g., CompTIA Comments at 2.

The wireless device market is incredibly innovative, with fast-paced development and change in new wireless offerings. Regulation should not unnecessarily slow this process. Early marketing and pre-ordering of devices by consumers allows for considerable efficiencies, allowing firms to quickly adjust production and other aspects of business plans in an incredibly dynamic market. Conditional pre-sales to consumers prior to the receipt of regulatory authorization eases the burden for direct-to-consumer businesses, which is often more efficient than distribution systems more common when these regulations were last updated.

As Commissioner O’Rielly has pointed out, the conditional sale model is quite common in the marketplace, be it Kickstarter campaigns or Tesla pre-sale reservations.⁴ Allowing for radio devices to be marketed and reserved prior to and conditional on authorization would align FCC rules with contemporary reality of the connected device market. If the device is not authorized, the sale should not go through. The Commission should modify or waive Section 2.803 to encourage a faster, smoother product launch for multiple different sales channels.⁵

The Commission Should Broaden Imports Allowed Prior to Authorization

Similarly, the Commission’s rules on the importation of radio devices could be adjusted to better reflect the dynamism of today’s market. Globalized, tightly timed supply chains face a slow-down prior to product launch when the ability to import devices prior to FCC authorization is so limited to prevent the importing of show-room display devices. Highly anticipated, in-demand radio products require significant preparation and planning prior to launch. Allowing this process to be slightly accelerated by importing devices for display can help accelerate the introduction of innovative new products.

The Commission should modify Section 2.1204 in line with CTA’s petition to allow show-room devices to be imported prior to authorization.⁶ Aligning these rules with the market of today is consistent with this administration’s efforts to clear out the regulatory underbrush of unnecessary, outdated regulations.

THE FCC SHOULD CONTINUE TO IMPROVE ITS ENFORCEMENT RESOURCES

The FCC’s product authorization process and importing of devices through customs play an important role in preventing harmful interference. Interference concerns will only increase with the ever-growing number of connected Internet of Things devices. As U.S. homes continue to incorporate more and more devices operating closely together in frequency, time, and space, it is critical that these devices are in compliance with

⁴ Michael O’Rielly, “Kickstarting the FCC’s Product Marketing & Import Rules,” FCC Blog (June 2020), <https://www.fcc.gov/news-events/blog/2020/06/02/kickstarting-fccs-product-marketing-import-rules>.

⁵ 47 C.F.R. Part 2.803.

⁶ 47 C.F.R. Part 2.1204.

FCC regulations. The Commission should consistently consider ways to shift pressure away from the post-hoc enforcement process and keep enforcement in mind as it designs its rules and spectrum plans.

To be clear, the risk from these rule modifications is quite low. Importation for wide distribution would still require authorization, products from well-established companies often go through rigorous testing prior to applying for authorization. Under no circumstances should radio devices that have not been authorized be prematurely delivered to end-users, even under the proposed modifications.

Nevertheless, there is always a risk of bad actors knowingly flouting regulations or small, unsophisticated parties unknowingly failing to comply. These concerns are amplified as the development and distribution of flexible, agile, low-cost radios becomes cheaper and faster. While the risk of non-compliant radios getting into the wild does not seem to increase with the proposed rule changes, the Commission should always keep enforcement concerns in mind when modifying its regulations.

CONCLUSION

The growing importance of 5G and Internet of Things devices to the digital economy should compel regulators to consider how rules can be updated to reflect today's dynamic market with tight product cycles without risking harm to consumers or businesses. Modernizing these conditional pre-sale and display import rules can help accelerate the adoption of cutting-edge technology. ITIF urges the Commission to adopt the changes recommended in CTA's petition.

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