

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Petition to Expand Marketing Opportunities)	RM-11857
for Innovative Technologies)	

COMMENTS OF CTIA

CTIA¹ respectfully submits these comments in response to the Public Notice released by the Consumer and Governmental Affairs Bureau of the Federal Communications Commission (“Commission” or “FCC”) that seeks comment on the Consumer Technology Association’s (“CTA”) Petition for Rulemaking or Waiver (“Petition”) regarding the rules governing conditional sales and importation of devices.²

I. INTRODUCTION.

CTIA applauds the Commission for its continuing commitment to meeting consumer demand in the 5G marketplace. As part of those efforts, it is critical that next-generation wireless services continue to be developed and deployed to meet the unique needs of consumers now and in the years to come. As CTA explains, however, the current prohibition on conditional sales to consumers and the limited ability to import devices prior to authorization—even for

¹ CTIA – The Wireless Association® (“CTIA”) (www.ctia.org) represents the U.S. wireless communications industry and the companies throughout the mobile ecosystem that enable Americans to lead a 21st century connected life. The association’s members include wireless carriers, device manufacturers, suppliers as well as apps and content companies. CTIA vigorously advocates at all levels of government for policies that foster continued wireless innovation and investment. The association also coordinates the industry’s voluntary best practices, hosts educational events that promote the wireless industry and co-produces the industry’s leading wireless tradeshow. CTIA was founded in 1984 and is based in Washington, D.C.

² Consumer Technology Association Petition for Rulemaking or, in the Alternative, Waiver to Expand Marketing Opportunities for Innovative Technologies (filed June 2, 2020) (“CTA Petition”); *Consumer and Governmental Affairs Bureau Reference Information Center Petition for Rulemaking Filed*, Public Notice, RM-11857, Report No. 3150 (rel. June 9, 2020).

activities to ready such devices for retail display—impede innovation and delay customer access to next-generation technologies. Modifying the Commission’s dated marketing and importation rules has the potential to significantly increase consumer access to wireless services. In particular, allowing industry greater flexibility to pre-sell devices to the public prior to obtaining equipment authorization while still protecting consumers will help facilitate the rapid development and deployment of the 5G economy. In addition, permitting limited importation of devices for preparatory activities related to post-authorization retail sale with several key safeguards will expedite the delivery of innovative 5G devices to consumers. As such, the Commission should act on CTA’s Petition to expand marketing opportunities for innovative technologies by issuing an immediate waiver of Section 2.803(c)(2), while simultaneously initiating a rulemaking process to reexamine the equipment marketing and importation rules.³

³ CTIA suggests that the Commission separately address in a related proceeding several issues relating to the equipment marketing and importation rules. Specifically, the modular approval requirements for equipment authorization, which are currently contained in Section 15.212, should be consolidated into Part 2 of the Commission’s rules since these requirements are used for all equipment, not just unlicensed Part 15 devices. The Commission has recognized this through publication of transmitter module equipment authorization guides. *See, e.g.*, Transmitter Module Equipment Authorization Guide, Office of Engineering and Technology Laboratory Division (rel. Oct. 23, 2015); Frequently Asked Questions and Answers about Modules, Office of Engineering and Technology Laboratory Division (rel. Oct. 23, 2015). The Commission should also remove the A/C conducted line test requirement for modules, which is duplicative given that it gets tested as part of the transmitting system. *See* 47 C.F.R. §§ 15.207, 15.212(a)(v)). These issues are ripe for action in ET Docket No. 15-170. Of note, such action need not—and should not—delay the Commission from moving forward with the requests specifically detailed in the CTA Petition.

II. THE COMMISSION SHOULD ACT SWIFTLY ON CTA’S PETITION TO EXPAND MARKETING OPPORTUNITIES FOR INNOVATIVE TECHNOLOGIES.

A. CTIA Supports CTA’s Proposal to Modify or, in the Alternative, Waive Section 2.803(c)(2) to Promote Innovation in the 5G Marketplace.

Section 2.803(c) of the Commission’s rules prohibits the pre-sale or conditional sale of radiofrequency devices, except to wholesalers and retailers.⁴ As noted by CTA, allowing pre-orders is important to generating efficiencies and meeting business challenges.⁵ The practice also matches consumer expectations as well as common practices in the marketplace today and will allow faster deployment of new technologies such as 5G. CTIA agrees with CTA that the Commission should initiate a rulemaking to modify Section 2.803(c)(2)(i) and delete Section 2.803(c)(2)(ii).⁶ The Commission should also issue an immediate waiver of Section 2.803(c)(2) to allow for conditional sales of devices to consumers prior to receipt of regulatory authorization during the pendency of the rulemaking. This swift action by the Commission will help ensure our nation’s leadership in the emerging 5G economy and spur economic growth and job creation post COVID-19.

B. The Commission Should Expand Section 2.1204(a) to Expedite the Delivery of Innovative 5G Devices to Consumers.

Section 2.1204(a) of the Commission’s rules prevents the importation of radiofrequency devices that have not received FCC equipment authorization, with few exceptions.⁷ CTA proposes that the Commission adopt a limited exception to the import rules for the purposes of

⁴ See 47 C.F.R. § 2.803(c).

⁵ CTA Petition at 9.

⁶ See *id.* at 10-11.

⁷ See 47 C.F.R. § 2.1204(a).

device advertising and retail display preparation.⁸ Specifically, the proposed exception would permit manufacturers to import, image, package, and deliver limited quantities of radiofrequency devices to retail locations prior to receiving FCC equipment authorization. Importantly, CTA suggests a number of safeguards to ensure that devices do not cause harmful interference or otherwise fall into end users' hands prior to equipment authorization.⁹ CTIA and its member companies believe these safeguards are sufficient and consistent with previous Commission actions that provided opportunities for the public to preview radiofrequency devices without compromising the equipment authorization regime or increasing the risk of harmful interference.

C. Existing Safeguards Will Ensure the Proposed Changes Will Not Harm Consumers.

By acting on the CTA Petition and waiving Section 2.803(c)(2) during the pendency of the rulemaking, the Commission will enable innovation and speed access to market while maintaining the agency's roles in protecting against harm from radiofrequency emissions and promoting transparency in labeling. As Commissioner O'Rielly recently stated, the Commission "can thoughtfully update [its] rules to make it easier and more affordable to bring devices to

⁸ CTA Petition at 6.

⁹ *See id.* at 13-14. The proposed safeguards include: (1) only allowing manufacturers to import radiofrequency devices for which they have a reasonable basis to believe authorization will be granted within 30 days of importation; (2) devices would not be displayed or advertised at retail locations prior to equipment authorization and would have labels attached indicating the same; (3) radiofrequency devices would remain under the ownership of the device manufacturer and possession, alone, would be transferred prior to authorization; (4) manufacturers would be required to have processes in place to retrieve the equipment from retailers in the event that equipment authorization was denied; and (5) manufacturers would only be permitted to import a maximum of 4,000 devices for preparatory pre-sale activities, except with the express permission of the Chief of the Office of Engineering and Technology ("OET").

consumers while reducing investment risk without undermining any consumer protections.”¹⁰

The CTA Petition makes clear that the proposed changes would not alter the fundamental premise that devices may not be delivered to consumers until the equipment authorization process is complete.¹¹ Specifically, the CTA Petition upholds the ban under Section 2.803(b) on the delivery of radiofrequency devices to customers and device display prior to authorization.¹² In addition, the proposed changes do not disturb Section 2.805, which requires the authorization of radiofrequency devices prior to operation, unless a limited exception applies.¹³ Finally, as noted by CTA, the enforcement capabilities of the state attorneys general, the Commission, and the Federal Trade Commission will remain intact to protect customers.¹⁴

¹⁰ Commissioner Michael O’Rielly, *Kickstarting the FCC’s Product Marketing & Import Rules*, FCC BLOG (June 2, 2020), <https://www.fcc.gov/news-events/blog/2020/06/02/kickstarting-fccs-product-marketing-import-rules>.

¹¹ CTA Petition at 15.

¹² *See id.* at 16; *see also* 47 C.F.R. § 2.803(b).

¹³ *See* 47 C.F.R. § 2.805.

¹⁴ CTA Petition at 16-17.

III. CONCLUSION.

For the reasons discussed above, CTIA supports CTA's Petition to facilitate streamlined access to critical wireless services for all Americans and urges the Commission to grant CTA's requests as well as issue an immediate waiver of Section 2.803(c)(2) to enable industry to more swiftly and efficiently meet consumer and market demands.

Respectfully submitted,

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