

February 11, 2020

BY ELECTRONIC FILING

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: *Allowing Earlier Equipment Marketing and Importation Opportunities, ET Docket No. 20-382; Petition to Expand Marketing Opportunities for Innovative Technologies, RM-11857*

The Telecommunications Industry Association (“TIA”), together with the Association of Home Appliance Manufacturers, Engine, The Internet Association, INCOMPAS, the Rural & Agriculture Council of America, and TechFreedom (collectively, the “Joint Commenters”) support the Federal Communications Commission’s (“FCC’s” or “Commission’s”) proposals to expand opportunities for marketing and importing innovative technologies in the United States.¹ These innovative technologies have never been more important to the nation’s health, schooling, and economy. With this proceeding, the Commission can speed the time it takes to get innovative devices into consumers’ hands through targeted reforms to its equipment marketing and importation rules. Importantly, the Commission can pursue these actions without weakening or altering its existing safeguards, which protect against safety risks to consumers and harmful interference.

The Joint Commenters are global manufacturers and vendors of information and communications technology (“ICT”) equipment and services and of home appliances, organizations representing such manufacturers and vendors, and users and consumers of such equipment. Many of the Joint Commenters design and manufacture 5G, Wi-Fi, small cell technologies, and IoT smart devices and appliances *inter alia*, and thus must meet the Commission’s equipment authorization and importation regulations. Devices that incorporate these technologies and others subject to the FCC’s equipment authorization rules are especially important now when Americans are learning, working, and receiving medical care remotely during the current global health crisis.

ICT equipment and devices, including those that require FCC equipment authorization, will continue to be important as America recovers from COVID-19. Many innovations that have enabled telehealth and remote work during the pandemic are likely to become permanent. Along with other Commission efforts to support connectivity and broadband adoption, this proceeding

¹ *Allowing Earlier Equipment Marketing and Importation Opportunities; Petition to Expand Marketing Opportunities for Innovative Technologies*, Notice of Proposed Rulemaking, 35 FCC Rcd 14458 (2020) (“NPRM”).

provides an opportunity to facilitate innovative ICT equipment, which goes hand-in-hand with connectivity.

The Joint Commenters commend the Commission for expeditiously initiating a rulemaking in response to the broadly supported Consumer Technology Association Petition and wanted to address several questions raised in this docket.²

First, allowing conditional sales to consumers will offer many public interest benefits and promote America's global leadership on 5G, affording manufacturers an earlier opportunity to gather more accurate information about consumers' intent to purchase and thereby demonstrate demand to potential funders. The ability to make presales will enable better product and supply chain planning, which is increasingly important as technology evolves more rapidly, and even more critical during this unprecedented period. Specifically, the Commission should ensure presales are available for the broadest set of radiofrequency devices, as defined in Part 2 of the FCC's rules.

The Joint Commenters agree that sellers should be required to inform consumers during presales that they are placing an order for a device that is not yet authorized and will not be delivered until authorization is obtained.³ The Joint Commenters also do not object to requiring the retention of records to be made available to FCC staff upon request.⁴ The record retention period should be aligned with (and not exceed) existing retention policies and procedures, such as those related to financial audits. The Commission should not, however, impose an affirmative reporting requirement, which would introduce unnecessary paperwork and red tape, both for sellers and for Commission staff.

Second, permitting the importation of devices for pre-marketing activity will also ultimately benefit American consumers and the U.S. economy by increasing overall speed to market, giving manufacturers more flexibility in structuring their supply chains, and enabling devices to be on physical display for consumers to touch and demo immediately upon authorization. The Joint Commenters agree that the Commission should impose safeguards with this new importation condition as well. For example, the number of permissible imported pre-certification devices should be limited; however, the 4,000-device limit proposed in the *NPRM*⁵ is too low and should be increased to at least 12,000 to better reflect the number of U.S. retailers

² Consumer Technology Association, Petition for Rulemaking or, in the Alternative, Waiver to Expand Marketing Opportunities for Innovative Technologies, RM-11857 (filed June 2, 2020); *see also* Letter from Comp. Tech. Indus. Assoc., Engine, INCOMPAS, Internet Assoc., Info. Tech. Indus. Council, TechFreedom, and Telecomms. Indus. Assoc., to Marlene H. Dortch, Secretary, FCC, RM-11857 (July 9, 2020); Letter from Amazon.com, AT&T Servs., Ericsson, Google, Intel, Microsoft, Nokia, Qualcomm, Samsung Elecs. Am., Sony Elecs., Sharp Home Elecs. Co. of Am., T-Mobile USA, & Verizon, to Marlene H. Dortch, Secretary, FCC, RM-118571 (July 31, 2020); Letter from Joel L. Thayer, Counsel for Lincoln Network, to Marlene H. Dortch, Secretary, FCC, RM-11857 (filed July 6, 2020); Comments of Samsung Electronics America, Inc., RM-11857 (filed July 9, 2020); Comments of TechFreedom, RM-11857 (filed July 9, 2020); Comments of TIA, RM-11857 (filed July 9, 2020).

³ *See Notice* ¶ 20; *id.* App. A.

⁴ *Id.* ¶ 23.

⁵ *Id.* App. A.

that would benefit from pre-authorization delivery of devices. In addition, labels should be consistent with the existing labeling practices for electronic labels and small devices, which have a proven track record of effectiveness and are well understood by entities in the shipping and distribution chain. Alternatively, manufacturers should be permitted to provide a separate notice with device packaging that explains they should not be opened or displayed prior to authorization. Finally, the Commission should consider expanding the window prior to certification within which devices may be imported to at least 60-90 days. It is not unreasonable for a device to be in the FCC's Pre-Approval Guidance dialogue process for 120 or 180 days, so a larger window would account for longer lead times, while still ensuring that an importer has a reasonable basis to believe the device will be certified.

Finally, the Joint Commenters note that existing FCC rules, as well as those of other federal and state agencies, have ongoing and well-developed enforcement processes to account for any "bad actors." Accordingly, the Commission can take the steps outlined in the *NPRM* to directly further the FCC's and Administration's priorities of deploying innovative technologies to consumers without risk of consumer harm or interference.

Joint Commenters urge the Commission to promptly adopt the proposals in the *NPRM*, as discussed herein, to bring the benefits of expanded marketing opportunities to the U.S. marketplace.

Respectfully submitted,

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