

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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

**COMMENTS OF
THE COMPUTING TECHNOLOGY INDUSTRY ASSOCIATION**

The Computing Technology Industry Association (“CompTIA”),¹ the leading association for the global information technology (“IT”) industry, respectfully submits these comments in response to the Petition for Rulemaking or Waiver filed by the Consumer Technology Association in the above-captioned proceeding (“CTA Petition”).²

CompTIA supports the proposals made in the CTA Petition. *First*, we support the CTA proposal to modernize the pre-authorization marketing rules in light of changing consumer expectations regarding pre-orders. Moreover, the Commission should issue a waiver to make the change more quickly while the rulemaking process is pending. *Second*, we agree with CTA that the Commission should permit pre-authorization importation of a limited number of devices for certain preparatory activities related to retail sales.

¹ CompTIA supports policies that enable the information technology industry to thrive in the global marketplace. We work to promote investment and innovation, market access, robust cybersecurity solutions, commonsense privacy policies, streamlined procurement, and a skilled IT workforce. Visit <http://www.comptia.org/advocacy/> to learn more.

² Consumer Technology Association, [*Petition for Rulemaking Or, In the Alternative, Waiver to Expand Marketing Opportunities for Innovative Technologies*](#), filed June 2, 2020 in RM-11857 (“CTA Petition”).

I. THE COMMISSION SHOULD MODERNIZE ITS PRE-AUTHORIZATION MARKETING RULES TO RECOGNIZE MODERN PRE-SALES PRACTICES.

CompTIA agrees with CTA that the current rules governing pre-authorization marketing of devices are obsolete and should be modernized. The current rules permit pre-authorization sales of devices on a conditional basis – *i.e.*, sold but not delivered until authorized – but such conditional sales are permitted only to wholesalers or retailers, not consumers. As CTA notes, “[t]o the extent that the Commission resisted past efforts to expand conditional sales based on fears of pressure from consumers not sufficiently patient to receive their devices,” expectations have indeed evolved significantly since the Commission last considered the issue in 1991.³

Pre-ordering of new products is a far more common practice than it was in 1991. The general transition to e-commerce has made pre-orders much easier to facilitate for both buyers and sellers, including both directly from manufacturers and from major online retailers. Manufacturers like Apple and Samsung, to name just two companies, now regularly create significant hype around their products prior to delivery, and pre-release purchasing from major retailers like Amazon of many types of products is now very common. Conditional sales are also more common, including for projects developed based on Kickstarter funding, or for more traditional scenarios like tickets to playoff sports games that depend on a team advancing, as the CTA Petition points out.⁴ Some companies have devoted followers who fully understand that

³ CTA Petition at 7 (citing Memorandum Opinion and Order, *Revision of Part 15 of the Rules regarding the operation of radio frequency devices without an individual license*, 6 FCC Rcd 1683, 1685 ¶ 19 (“1991 Marketing Order”).

⁴ CTA Petition at 11.

there may be delays or changes to the product after an initial deposit has been placed.⁵ The Commission should update its rules as CTA suggests to account for this new reality.

Temporary waiver. The Commission should grant an immediate waiver to permit conditional pre-sales to consumers in parallel to initiating a rulemaking proceeding. The CTA Petition is styled as seeking either a rulemaking or a waiver, and granting a waiver could allow the Commission to act quickly even while the full rulemaking process may take more time. The Commission has previously granted blanket interim waivers prior to completion of a rulemaking proceeding and similar action would be appropriate here.⁶

II. THE COMMISSION SHOULD PERMIT LIMITED PRE-AUTHORIZATION IMPORTATION OF DEVICES FOR RETAIL SALES PREPARATORY ACTIVITIES.

CompTIA agrees with CTA that the Commission should expand its rules limiting pre-authorization importation of devices to encompass preparatory activities for retail sales. Under the current rule, a limited quantity of pre-approval devices may only be imported into the United States for testing and evaluation purposes and for demonstration at industry trade shows.⁷ As the CTA Petition notes, this prevents importation for purposes such as loading devices with

⁵ See, e.g., Amy Graff, [Tesla Fans Lining Up to Preorder \\$35,000 Model 3 Sight Unseen](#), SFGATE, Mar. 31, 2016.

⁶ See, e.g., Notice of Proposed Rulemaking and Interim Waiver Order, *Reform of Certain Part 61 Tariff Rules*, WC Docket No. 18-276, et al., [FCC 18-142](#) (rel. Oct. 18, 2018) (granting an interim waiver pending resolution of the rulemaking). If the Commission is reluctant to grant a blanket interim waiver, it could also indicate that it will consider and grant party-specific interim waivers on a case-by-case basis.

⁷ 47 C.F.R. §§ 2.1204(a)(3), (a)(4). The rule also contains other exceptions not relevant here, including imports solely for purposes of export, imports solely for U.S. Government use, etc. See *id.*

demonstration software for use in retail displays, and delivering limited quantities to retail locations prior to equipment authorization.⁸

The CTA Petition proposes to streamline the process while including sensible safeguards, such as requiring manufacturers to have processes in place to retrieve equipment from retailers if an authorization is denied.⁹ This change would allow consumers to more expeditiously interact with products once they are certified, and promote efficiencies so that companies do not have to undertake unusual procedures to make the preparations above for sales and displays, as required under current rules. It would reduce time-to-market while still providing the Commission with the important assurances it needs to prevent harmful interference.¹⁰ If appropriate safeguards such as those suggested by CTA are adopted, the Commission should also consider allowing a larger number of devices since more than 4,000 retail locations would likely want to receive display devices in preparation for sales.

⁸ CTA Petition at 12.

⁹ CTA Petition at 14.

¹⁰ The issues presented by the CTA Petition should be resolved promptly and without procedural delay. However, if the Commission decides to consider other issues as part of a new rulemaking addressing equipment authorization, it should consider consolidating and updating its rules for modular approval. Modular approval refers to approval of the radio module only rather than the entire device, which reduces cost and saves time compared to seeking approval for every new host device. At present, the relevant rules are found in different places, and consolidation of the modular approval rules into Part 2 of the Commission's rules would help facilitate understanding and compliance for all stakeholders. If the Commission addresses this issue, it should also seek comment on changes to the modular approval requirements – for example, the agency should consider removing the AC conducted line test requirement for modules since that will get tested in the end system.

CONCLUSION

CompTIA fully supports the CTA Petition, and we urge the Commission to act promptly in taking the actions requested in the Petition.

Sincerely,

/s/ Dileep Srihari _____

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