

Before the
Federal Communications Commission
Washington, DC

In re

Petition to Expand Marketing
Opportunities for Innovative Technologies

CG RM-11857

**COMMENTS OF THE COMPUTER & COMMUNICATIONS INDUSTRY
ASSOCIATION**

The Computer & Communications Industry Association (“CCIA”) respectfully submits these comments in support of the above-referenced petition for rulemaking.¹ CCIA represents large, medium, and small technology companies, including computer hardware and software, electronic commerce, telecommunications, and Internet products and services.

I. Introduction

CCIA’s broad membership of companies spans different sectors of the technology industry but is united in the desire to advance wireless technology; therefore, CCIA supports policies that will increase competition and accelerate consumers’ access to new devices in the technology sector. The changes to Section 2.803 and Section 2.1204 of the Commission’s rules outlined in the Petition to Expand Marketing Opportunities for Innovative Technologies (“the petition”)² would improve the ability of technology companies to innovate on behalf of consumers and compete in the global technology marketplace. Recent events including the COVID-19 pandemic have demonstrated how crucial technology and connectivity are to Americans’ ability to live, learn, and work. The U.S. government should promote policies that allow our nation’s innovators to provide new and useful Internet-connected devices and services to consumers as quickly

¹ CCIA represents large, medium, and small technology companies. Our members employ more than

² Petition to Expand Marketing Opportunities for Innovative Technologies, CG RM-11857, (filed June 2, 2020).

as possible, particularly given the increased need for Americans to work and learn from their homes.

The Commission has also recognized the need to promote the development and deployment of fifth generation (“5G”) wireless networks.³ Chairman Ajit Pai has noted that modernizing outdated regulations will be essential for delivering the benefits of 5G services to American consumers. As wireless broadband providers deploy 5G networks, consumers will benefit from innovative new devices coming to market that utilize the new increased speed and capacity of these new networks. The unnecessarily burdensome restrictions around the marketing, pre-sale, and importation of devices prior to FCC equipment authorization are exactly the type of outdated regulations that the Commission should modernize in order to help promote the future of 5G networks.

The Commission can modernize these burdensome restrictions without causing any harm to consumers. The FCC and the Federal Trade Commission (“FTC”) each have authority to protect consumers from any potential harm of pre-sale, marketing, or importation of these devices prior to authorization. State attorneys general are also active in enforcing consumer protection laws that would safeguard against potential harms. While there would be no harm to consumers in modernizing these rules, there would be great benefit to companies that make innovative connected devices.

II. Modernizing These Rules Would Advance 5G Innovation for American Consumers

Through Chairman Pai’s 5G FAST Plan, the Commission has demonstrated that advancing the development and deployment of 5G wireless networks is a top priority. Chairman Pai has called U.S. leadership in 5G technology “a national imperative for economic growth and competitiveness.”⁴ Commissioner Jessica Rosenworcel has described 5G networks as “the essential infrastructure for the next generation of digital technologies,” which will “power autonomous vehicles, foster advances in robotics, and expand the potential for machine learning and the possibilities of artificial intelligence.”⁵

³ FCC, *The FCC’s 5G FAST Plan*, <https://www.fcc.gov/5G>.

⁴ Ajit Pai, Chairman, FCC, Remarks at White House 5G Summit, Washington, DC (Sept. 28, 2018), <https://docs.fcc.gov/public/attachments/DOC-354323A1.pdf>.

⁵ Jessica Rosenworcel, Commissioner, FCC, Remarks at Center for Strategic and International Studies, Washington, DC (Feb. 6, 2019), <https://docs.fcc.gov/public/attachments/DOC-356095A1.pdf>.

The White House has recognized the importance of U.S. leadership in 5G technologies as well. In the National Strategy to Secure 5G of the United States of America, President Donald Trump noted that 5G networks will “enable tens of billions of new devices to harness the power of the Internet, transforming the way we live, work, learn, and communicate.”⁶

5G wireless networks will not be able to deliver the full range of potential benefits to consumers without innovative new devices that can fully utilize the increased speed and bandwidth of these powerful new networks. American leadership in 5G technology will require not only building the infrastructure for these networks, but also fostering a regulatory environment that allows technology companies and device manufacturers to bring 5G-enabled products quickly to consumers. The ongoing COVID-19 pandemic has shown that Americans rely on fast reliable networks for their most essential activities including working remotely, online learning, telemedicine, and ordering groceries. A majority of Americans say the Internet has been essential to them during the pandemic,⁷ and 93% of Americans say that an Internet outage during the pandemic would be a problem for their daily lives.⁸ Now that Americans have moved more of their lives online, a trend that may not be transitory, the Commission needs to promote policies that ensure fast and reliable networks, including advancing 5G technologies.

Modernizing outdated regulations is one component of the Commission’s 5G FAST Plan.⁹ The Commission has shown its willingness to begin this process through efforts like the recent 5G Upgrade Order, which modernizes regulations to accelerate building 5G infrastructure.¹⁰ In order to ensure that Americans can realize the benefits of 5G networks and technology more quickly, the Commission should modernize the rules

⁶ President Donald Trump, National Strategy to Secure 5G of the United States of America (March 2020), <https://www.whitehouse.gov/wp-content/uploads/2020/03/National-Strategy-5G-Final.pdf>.

⁷ Emily Vogel, *53% of Americans Say the Internet Has Been Essential During the COVID-19 Outbreak*, Pew Research, (April 30, 2020), <https://www.pewresearch.org/internet/2020/04/30/53-of-americans-say-the-internet-has-been-essential-during-the-covid-19-outbreak/>.

⁸ Monica Anderson, *Americans Turn to Technology During COVID-19 Outbreak, Say an Outage Would Be a Problem*, Pew Research, (March 31, 2020) <https://www.pewresearch.org/fact-tank/2020/03/31/americans-turn-to-technology-during-covid-19-outbreak-say-an-outage-would-be-a-problem/>.

⁹ FCC, *The FCC’s 5G FAST Plan*, <https://www.fcc.gov/5G>.

¹⁰ *Accelerating Deployment of 5G Wireless Infrastructure*, WT Docket No. 19-250, Declaratory Ruling and Notice of Proposed Rulemaking (2019) <https://docs.fcc.gov/public/attachments/DOC-364455A1.pdf>.

against marketing, presale, and importation of devices before FCC equipment authorization. By modifying Section 2.803(c)(2)(i) of the Commission’s rules and deleting Section 2.803(c)(2)(ii), or waiving both of these sections, to allow for conditional sales of devices prior to authorization, the Commission can help streamline the regulatory process to get innovative devices into the hands of consumers more quickly. The Commission should also revise Section 2.1204(a) to allow for the importation of radiofrequency devices to retail locations prior to authorization in order to further facilitate consumers’ access to these devices once they have been authorized. These regulatory changes would help provide consumers with innovative 5G technology more quickly, which is consistent with the Commission’s stated priorities in the 5G FAST Plan.

III. Modernizing These Rules Would Help American Companies Compete in the 5G Race

The Commission’s current restrictive rules against conditional sales, marketing, and importation of devices prior to FCC device authorization are not conducive to the competitive global technology sector. American companies dominated the 4G wireless landscape and essentially created the 4G mobile application (“app”) economy. In 2018, the app economy represented \$568 billion, and there were more than 300,000 companies active in the mobile app market in the United States.¹¹ Chairman Pai has noted that the incredible success of American companies in the 4G app landscape was a mixture of “ingenuity and investment of our private sector” and “the government’s market-friendly policies.”¹² Foreign governments and companies saw the success of American companies in the 4G ecosystem and are ready to compete for leadership in 5G.

For American technology companies to lead the world in 5G products and services as they did with 4G, the Commission needs to ensure that the US still has the correct balance of private sector ingenuity and market-friendly government policies. Although we do not yet know all the potential uses for powerful 5G networks, we know

¹¹ Deloitte, *The App Economy in the United States: A Review of the Mobile App Market and Its Contribution to the United States Economy* (Aug. 20, 2018) https://www.ftc.gov/system/files/documents/public_comments/2018/08/ftc-2018-0048-d-0121-155299.pdf.

¹² Ajit Pai, Chairman, FCC, Remarks at the White House 5G Summit, Washington, DC (Sept. 28, 2018) <https://docs.fcc.gov/public/attachments/DOC-354323A1.pdf>.

that anticipated advancements in the Internet of things, artificial intelligence, virtual reality, and augmented reality will require new and innovative devices. Companies that create these devices are racing companies around the world to develop, market, and move these devices to consumers. The Commission's burdensome restrictions on the pre-sale, marketing, and importation of these devices slow down companies' ability to get devices into the hands of consumers once the devices have been authorized.

If the Commission modifies Section 2.803(c)(2)(i) and deletes Section 2.803(c)(ii) of its rules, or waives these sections to allow for conditional pre-sales of devices, companies would be able to gather valuable information about consumer demand for their products, which would help create a more efficient manufacturing process. This efficiency could lower prices for consumers, in addition to accelerating delivery of the devices. Furthermore, customers have come to expect pre-sales for exciting new devices. For instance, as soon as new models of Apple's iPhone have their regulatory certifications, they routinely sell out online before they arrive at brick-and-mortar stores.¹³ Allowing for pre-orders before the device obtains final certification would allow manufacturers to gain better insights about demand for devices and to adjust their supply chains accordingly. In short, modifying the Commission's rules to allow marketing and pre-sale of devices would help companies meet these consumer expectations.

The Commission can also help US technology companies compete in the global economy by modifying Section 2.1204(a) to allow for the limited importation of devices prior to authorization to prepare for retail sales, including imaging, packaging, and delivering devices to retail locations. The Commission's current rules allow for limited importation of devices prior to authorization for purposes including trade shows, testing, compliance evaluations, product development, and suitability for marketing.¹⁴ Allowing importation of devices prior to authorization to prepare for marketing and display at retail locations is consistent with these policies. As new and innovative devices come to market, consumers often want to see those devices in person. The more innovative the device, the less familiar consumers may be with the device. When companies are unable to import devices to these retail locations prior to authorization, delays can occur, which

¹³ See Chris Smith, *Tons of Sources Now Say that the iPhone 11 Preorders are Crushing It*, BGR (Sept. 17, 2019) <https://bgr.com/2019/09/17/iphone-11-preorders-vs-iphone-xs-sales-improved-significantly/>.

¹⁴ 47 C.F.R. §2.1204(a)(3),(4).

can slow sales. Removing this outdated restriction will further help U.S. companies accelerate the process of moving innovative products to market.

IV. These Rule Modifications Will Not Cause Harm to Consumers

The Commission can make these rule modifications while still protecting consumers and fulfilling the Commission's duties to protect against harm from radiofrequency emissions. The rule modifications proposed in the petition would not allow devices to be shipped to consumers prior to FCC authorization. Although some devices would be shipped to retail locations for pre-sale activities under the petition's proposed modifications, these devices would not be displayed prior to FCC authorization, and they would not be operated without FCC authorization, unless a limited exception applied. As Commissioner Michael O'Rielly noted in a recent blog post, the supposed harms that these restrictions were meant to address seem out of date in our current marketplace, where consumers can conditionally buy products on Kickstarter or pre-order a Tesla that does not exist yet.¹⁵

If the Commission is concerned that bad actors will abuse these rule modifications to illegally deliver devices to consumers or operate the devices prior to authorization, the Commission has the authority to bring enforcement actions against such actors.¹⁶ Similarly, if the Commission is concerned that a company may defraud customers who participate in pre-sales of devices prior to FCC authorization, the FTC has broad authority to enforce against unfair or deceptive acts.¹⁷ Furthermore, most states have consumer protection laws that empower both state attorneys general and consumers to bring actions against deceptive practices.

V. Conclusion

Because of the potential benefits to American consumers and U.S. businesses in modernizing these outdated regulations, CCIA supports the petition for rulemaking and urges the Commission to make the proposed modifications. As American consumers

¹⁵ Michael O'Rielly, Commissioner, FCC, *Kickstarting the FCC's Product Marketing and Import Rules* (June 2, 2020) <https://www.fcc.gov/news-events/blog/2020/06/02/kickstarting-fccs-product-marketing-import-rules>.

¹⁶ 47 C.F.R. §1.80.

¹⁷ Federal Trade Commission Act §5.

increasingly rely on technology and connectivity, it is crucial that regulations allow companies to move innovative products to market as quickly and efficiently as possible.

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Respectfully Submitted,

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