

Seeking Relaxed Marketing Restrictions for Wireless Devices

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A Petition for Rulemaking filed by the Consumer Technology Association (“CTA”) seeks changes to the Federal Communications Commission’s (“FCC”) rules to allow for marketing and entering into conditional sales contracts prior to obtaining approval to sell a wireless device in the United States. CTA also asks for a relaxation of the FCC rules that limit the number of devices that may be imported prior to equipment approval.

Traditionally, the FCC has barred pre-approval marketing of wireless and other radiofrequency devices in order to protect consumers and other users from harmful radiation and interference. It does allow certain exceptions, such as showcasing at a trade show when there is a disclaimer that the device is not approved or entering into conditional sales contracts with wholesalers and retailers (though *not* consumers). The FCC also bars the importation of devices prior to approval, other than allowing a small number of devices imported for such purposes as product testing or trade show display.

CTA seeks a relaxation of these rules to facilitate a more efficient path to market for 5G, Internet of Things and other new technologies. In particular, CTA asks the FCC to allow: 1) pre-authorization conditional sales to consumers; 2) the advertisement of these pre-authorization sales; and 3) the importation of a larger number of devices into the U.S. prior to authorization, under certain conditions. CTA reasons that these rule changes could create more certainty for manufacturers, encouraging investment opportunities because pre-orders would provide for the ability to gauge consumer demand for potential new products. Modifying the import rule, CTA states, would allow new technologies to get into the hands of consumers more quickly once authorization is obtained. The FCC will need to weigh whether it believes that there are sufficient protections in CTA’s proposal to provide assurance that the public would be protected from non-compliant products.

Generally, rule changes such as this can take several years, but in this instance CTA already has obtained the support of at least one Commissioner, Commissioner O’Rielly, who blogged immediately after the CTA filing expressing support for the rule changes. This may mean that the item will move more quickly, although the upcoming election cycle, which may engender a change in FCC leadership, may delay FCC action. The FCC will accept public comment on CTA’s request at a date to be set.

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