

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of)
)
Amendment of Parts 1, 2, 22, 24, 27, 90) WT Docket No. 10-4
and 95 of the Commission's Rules to)
Improve Wireless Coverage Through)
the Use of Signal Boosters)

To: The Commission

COMMENTS OF
VOLKSWAGEN GROUP OF AMERICA, INC.

Volkswagen Group of America, Inc. (VWGoA), on behalf of itself and its US-based subsidiaries Audi, Bentley, Lamborghini and Bugatti (unless the context necessitates otherwise, jointly referred to as VWGoA), hereby comments on certain of the issues raised in the Second Further Notice of Proposed Rulemaking, FCC 18-35, released March 23, 2018 in the above-captioned proceeding ("SFNPRM").

VWGoA is a wholly-owned subsidiary of Volkswagen AG, a leading global automobile manufacturer. Founded in 1955, VWGoA is a New Jersey corporation headquartered in Herndon, Virginia. VWGoA operates a large automotive manufacturing facility in Chattanooga, Tennessee. The US headquarters of Audi, Bentley, Bugatti and Lamborghini are co-located with VWGoA's in Herndon, Virginia. Collectively, VWGoA and its US subsidiaries are affiliated with over 1,000 independent dealers in the US and sell over 600,000 cars annually in the US market.

I. DISABLING A MALFUNCTIONING EMBEDDED SIGNAL BOOSTER.

As discussed in the SFNPRM, Audi sought and received a waiver of certain of the labeling rules in 2014. The Commission agreed with Audi that including the required consumer warning label on a signal booster (and its packaging) that was embedded in a car during the manufacturing

process at the factory, rendering it essentially inaccessible to the consumer, did not in any way advance the goal sought to be achieved by the labeling requirement. See SFNPRM at para. 26 and n.56. In 2017, a similar waiver was granted to Porsche, *id.*, and in March 2018, another similar waiver was granted to Bentley. See Letter to Jeffrey H. Olson, Counsel to Bentley UK, from Roger S. Noel, Chief, Mobility Division, Wireless Telecommunications Bureau, FCC (April 20, 2018).

As part of its waiver request, to help ensure that purchasers of an Audi equipped with an embedded booster would receive notice of their obligations under the rules, Audi proposed, and the Commission agreed, that Audi would give to each customer of a car equipped with an embedded booster a separate sheet containing the exact text of the requisite consumer warning set out in the Rules (the "Notice") at time of delivery (of course that warning already was reproduced, per the Rules, in all online and printed marketing materials, user manuals and the like). Subsequent waivers granted to Porsche, Bentley and Kathrein Automotive GmbH & Co. KG contained essentially identical requirements. See SFNPRH at para. 26-27 and nn.56, 57, 61.

In the SFNPRM, the Commission proposes an addition to the existing consumer warning. Specifically, the current consumer warning would be amended to provide "instructions for the consumer on how to disable the [booster] for the specific vehicle" in question, and that "the chosen mode [should] be one that the average consumer easily can undertake." *Id.* at para. 30 (footnote omitted).

The most immediately effective and easily implemented way to ensure that the boosters employed by VWGoA cannot operate is to not place a cell phone into the subject car's center console, which contains the wireless connection between the phone and the booster hardware. The system cannot operate without a phone being placed in the console. VWGoA can easily add to all of the relevant consumer warnings a simple explanation to the effect that, in the event of a booster malfunction, whether discovered independently by the by the consumer or as the result of notification from his wireless carrier or the Commission, no cell phone should be placed in the console and the consumer should, as soon as practicable, take the car to the dealer for appropriate service. No other mechanism need be employed.

This solution would provide VWGoA the "maximum flexibility" for addressing this issue, a goal emphasized by the Commission. Id. It avoids the technical and economic disruption that could attend other potential "solutions, " ones that might require modifications to hardware, software, wiring harnesses and the like. Moreover, this solution can be implemented in the relative near term, rather than waiting for implementation in distant model years. For example, while modifying printed user manuals and the like would have to wait for a new model year (see discussion *infra*), certain online versions of the requisite information could be updated, along with the single-page hard copy Notice given to the consumer at delivery, within 180 days of the adoption of any such requirement.

II. PRIVATE SALE OF AN EMBEDDED BOOSTER-EQUIPPED CAR

The Commission asks whether "a new signal booster registration [would] be required" for each new owner. Id. at para. 32. Under the current rules, the answer would seem to be yes, as the registration is the mechanism through which each carrier can contact the device owner in the event of a problem. Not only would the new owner's contact information be different, but his/her carrier may be different as well.

Affirmatively providing the consumer warning in the context of private sale to a third party in the secondary market may not be feasible in the absence of the new owner reaching out to a dealer. To be clear, VWGoA and its dealers already have in place procedures to give the requisite Notice (and registration data) to purchasers of a pre-owned vehicle from the dealer. As relevant here, the pre-owned delivery process essentially replicates the procedures used for a new car sale.

In the private sale context, the ability of a dealer (or manufacturer) to even have knowledge of that transaction generally turns on whether the new owner contacts a dealer of the marque in question, e.g., bringing the car in for service. The likelihood of this happening may turn on whether the subject car is still under warranty, which greatly increases the likelihood of the new owner using the dealer for service, as opposed to a private shop.

Of course, the basic warnings will always appear in the owner's manual. Moreover, presumably in the process of touting the features of a car, a potential seller will highlight the car's various

equipment options, including, where applicable, the cell booster. That, coupled with the warnings in the owner's manual, should flag the registration requirement and related information for the new owner. These factors may cause the new owner to contact a dealer to obtain the necessary registration data, assuming the seller has not retained it in some form. See, e.g., *id.* at para. 29 n.68. However, in the private sales scenario, there is no basis for imposing on a manufacturer or dealer any further obligation in this regard, beyond providing the appropriate registration data if and when contacted by the new owner, either directly or via an on-line customer portal. *Id.*

One additional way to increase the likelihood that the new third-party sale owner has access to the registration information would be to include that information in the expanded hard copy Notice, with additional instructions that the Notice be retained with the owner's manual. While it is not possible to include the information directly in the manual, as they are prepared separately and not married up with a particular car until after production of both is complete, including the information in the Notice and directing that it be retained with the manual should go a long way toward solving this problem.

III. IMPLEMENTATION OF ANY NEW RULES.

The Commission correctly points out some of the potential pitfalls in adopting regulations that become so draconian as to inhibit manufactures from offering cell boosters to their customers. *Id.* at para 33. Certainly, adding new language to the consumer warnings imposes little burden. However, particularly with regard to owner's manuals and certain promotional materials, these typically change on an annual basis and require significant production lead time. Thus, as noted above, VGA submits that the implementation deadline for any new consumer warning language be no less than 18 months after release of the Report and Order adopting same, with the exception of certain online materials and the one-page Notice; these latter items could be modified within 180 days.

As demonstrated above, the design of the VWGoA booster system is such that no changes to system hardware or software is required for compliance with the proposed rules. However, to be clear, the adoption new regulatory requirements that might force such hardware or software changes could prove economically problematic. Just adding a new data field to an existing site,

to be accessed by dealers and/or customers, can be complex. Forcing changes in the design and manufacturing process may prove to be a disincentive sufficiently large to cause manufacturers to discontinue offering boosters. In any event, particularly with respect to changes that would require new design and/or manufacturing requirements, a minimum of three years lead time for implementation should be established. To put this challenge in context, model year (MY) 2019 cars are nearly ready for production; they will be hitting the showrooms in early fall. Some MY 2020 cars are in varying stages of major or minor redesign, depending on whether that model has been designated for major changes or only detail updates. These cycles vary from model to model and from manufacturer to manufacturer, even among VWGoA's various subsidiaries.

However, VWGoA believes that no such design/manufacturing changes are warranted by the issues presented, at least with respect to its cars. As discussed above, ensuring that consumers can quickly and easily disable a malfunctioning booster embedded in a VWGoA car is simplicity itself: just don't put the phone into the console. Systems employed by other manufactures may require a more complex/costly approach, which should be imposed only where absolutely necessary.

With regard to the impact of new regulations on existing waivers, VWGoA has no objection to modifying the waivers to include the proposed expanded warnings, consistent with the time lines discussed above. However, in no case should any change requiring a hardware or software modification be made retroactive. Such changes, assuming arguendo their necessity, should be solely prospective in effect.

CONCLUSION

VWGoA requests that whatever rule changes the Commission deems it necessary to adopt, it does so consistent with the foregoing.

Respectfully submitted,
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