

September 14, 2017

Marlene H. Dortch
Secretary Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: Notice of Ex Parte Communication, ET Docket No. 15-170; FCC 15-92

Dear Ms. Dortch:

On September 12, 2017 members of the National Customs Brokers and Forwarders Association of America (NCBFAA) participated in a meeting with FCC staff.

Participants:

NCBFAA: Cindy Thomas, Tim Darst, Stuart Schmidt, Alan Klestadt, Barbara Adamson, Mike Lahar

FCC: Bruce Romano, Jamison Prime, Rashmi Doshi, Jim Szeliga, Brian Butler

The purpose of the meeting was to discuss NCBFAA's continuing concerns with the final rule.

1. Review of the role of the broker:

- The broker is a facilitator to the trade transaction.
- The broker obtains information from the importer; if the broker has indication of a PGA reporting requirement (i.e. tariff flag), it will ask its customer for that information to transmit on the customer's behalf.
- The broker doesn't have product knowledge, is not involved in product development, and doesn't have visibility into the product's supply chain.
- The rule places a burden on the broker to understand FCC compliance requirements and results in the broker incurring responsibility it shouldn't have.
- The broker has no ownership of the product.
- The broker has no access to the physical product, so can't inspect it for FCC-regulated labeling.
- The broker has no means to know whether a product is subject to FCC requirements.

In summary, the rule should recognize brokers for what they do. Instead of equating the broker with the importer and consignee, both of whom have an ownership interest in the product and are primary parties to the transaction, the rule should

characterize brokers for what they actually do, with responsibilities consistent with that role.

2. Discussion about the relationship between the broker and the importer.

a. Reviewed two types of imports – B to B and B to C

b. FCC seems to assume that brokers have relationships with all of their customers.

- For traditional freight shipments (air, ocean, rail, land border) this is largely true.
- In our experience, for courier shipments, apx. 20%-30% of customers have recurring shipments, so a relationship exists, and apx. 70%-80% of customers are one-offs with no broker relationship.
- A very high volume of international mail shipments flow into the US each day with no broker-importer relationship.
- We recommend FCC obtain shipment volume numbers directly from CBP to better evaluate the scope of shipments for which there is no broker-importer relationship.

c. The FCC staff observed that the rulemaking may not make sense if it affects only a relatively small percentage of imported shipments (in which a broker-importer relationship exists).

3. FCC asked how elimination of the 740 has affected brokers.

In the past, the broker's process was simple - the FCC 740 form signed by the importer was obtained and that data reported to FCC with the entry. With the new rule, the broker now potentially has the responsibility to make a 'determination'. A concern brokers have is that if no other party makes a 'determination', the broker may be liable as one of the parties responsible for the determination, even though the broker does not have sufficient knowledge of the product to make that determination.

4. Discussion about FCC's concern with non-compliant product entering the country.

a. Reviewed CBP's requirement for a bond for shipments valued over \$2500 for both US and foreign (non-resident) importers and that manifest clearances valued under \$800 and informals (\$800-\$2499) don't require a bond. Confirmed that CBP is the beneficiary of entry bonds and that the bond guarantees not only duty payment, but admissibility, and that there are two types of bonds – continuous (annual) and single transaction bonds.

- b. Reviewed CBP's Importer of Record requirements and 'right to make entry'.
- 5. Discussion about a trusted trader program.
 - a. An overview of FDA's VQIP program was provided.
 - b. FCC relayed interest in a trusted trader program for FCC. The trade believes a trusted trader program creates a real benefit for FCC as it allows them to focus on riskier imports.
- 6. Discussion on FCC's past enforcement of the DoC (Declaration of Conformity) requirement – FCC historically reacted to product complaints by contacting the manufacturer for their test results, etc.

Sincerely,



Mike Lahar
Co-Chairman of the NCBFAA Regulatory Affairs Committee