



September 4, 2015

Brian Butler  
Office of Engineering and Technology  
Federal Communications Commission  
445 12th Street SW  
Washington, D.C. 20554

Reference: ET Docket No. 15-170; RM-11673; FCC 15-92

Dear Mr. Butler,

These comments are submitted on behalf of the Express Association of America (EAA) in response to the referenced FCC proposed rule regarding evaluation and approval of RF devices. EAA members are DHL, Federal Express, TNT and UPS, the four largest express delivery service providers in the world, providing fast and reliable service to the U.S. and more than 220 other countries and territories. These four EAA member companies have estimated annual revenues in excess of \$200 billion, employ more than 1.1 million people, utilize more than 1700 aircraft, and deliver more than 30 million packages each day.

EAA agrees with the elimination of the requirement to file FCC Form 740 (Import Declaration) at the time of entry, as discussed in Paragraph 69. Initially, the purpose of Form 740 was to provide information in order to prevent unauthorized radio frequency (RF) devices from entering U.S. commerce. As RF devices are increasingly incorporated into a myriad of consumer goods, the burden on FCC to create tariff flags encompassing the scope of products for which FCC reporting is required by the trade has grown, and the collection of FCC Form 740 data for all potentially regulated products has become not only nearly impossible, but yields few enforcement benefits for the FCC.

While the notice of proposed rulemaking states that much of the information on the Form 740 is already filed with CBP as part of the entry process, we'd like to point out that apart from the FCC conditions in Part II on the form, certain fields in Part 1 are not normally collected by CBP, such as the device model/type name or number, the trade name, the FCC ID, or the description of equipment. EAA proposes that FCC not require CBP to collect FCC-specific data elements in Part 1 when reporting of FCC Form 740 data is discontinued.

1. The language in the proposed new rule in Section 2.1203(a) reads:

*"No radio frequency device may be imported into the Customs territory of the United States unless the importer or ultimate consignee, or their designated customs broker, determines that the device meets one of the conditions of entry set out in this section."*

*"(c) Whoever makes a determination pursuant to Section 2.1203(a) must provide, upon request made within one year of the date of entry, documentation on how an imported radio frequency device was determined to be in compliance with Commission requirements."*

While we generally support this proposed change to eliminate reporting of the Form 740 data at time of import, we disagree that an importer's designated customs broker should be one of the parties who have an obligation to make a determination "that the device meets one of the conditions set out in this section" nor provide, upon request, supporting documentation for that determination [Section 2.1203(c)]. Although customs brokers play an important role in facilitating the entry of goods into the U.S., they do not have the necessary knowledge of the product's design or manufacture to render such a judgment. EAA recommends that the wording 'or their designated customs broker' be struck from the proposed rule.

2. Under the same section of the proposed rule [2.1203(a)], the Commission intends, among other things, to require (1) that the "importer of record" – often, a customs broker in both the land border and courier environments – "determines that the device meets one of the conditions of entry set out in this section" and; (2) that the party "who makes a determination...must provide...documentation on how an imported radio frequency device was determined to be in compliance with Commission requirements".

EAA recommends the Commission remove the obligation on a customs broker acting as the importer of record (IOR) to determine device compliance because: (1) the proposal creates a "compliance" loophole that de-incentivizes the real parties-of-interest from ensuring the compliance of their products; and (2) numerous other agencies do not require customs brokers to demonstrate that the manufacturer or importer has determined that a product is in compliance with relevant product safety standards. Therefore, the obligation to demonstrate compliance with FCC standards should continue to fall, where it belongs, on manufacturers and importers. If these parties fail to execute these determinations they jeopardize consumer safety. A customs broker operating as an IOR is not in a position to make the required certification.

If the Commission requires the IOR-customs broker to determine compliance, the real parties-of-interest, e.g., the foreign manufacturer or the U.S. seller/marketer, will no longer have responsibility to determine that the imported product is compliant. In fact, bad actors that currently evade the Commission's requirements may start seeking out

customs brokers that act as IOR more frequently in order to evade their own legal obligations.

For these reasons, the proposed rule, as written, has unintended negative consequences for consumer safety. EAA respectfully requests that the Commission consider these problems and require the party with the knowledge and power to make their products safe the party responsible for certifying compliance with U.S. law.

For further information or to answer any questions, please contact Michael Mullen at [michael.mullen@expressamerica.org](mailto:michael.mullen@expressamerica.org) or 703 759-0369.