

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of)
)
Amendment of Parts 0, 1, 2, 15 and 18 of the) ET Docket No. 15-170
Commission's Rules regarding Authorization of)
Radiofrequency Equipment)
)
Request for the Allowance of Optional Electronic) RM-11673
Labeling for Wireless Devices)

To: The Commission

**COMMENTS OF THE
CONSUMER ELECTRONICS ASSOCIATION**

**CONSUMER ELECTRONICS
ASSOCIATION**

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EXECUTIVE SUMMARY

CEA applauds the Commission for commencing this proceeding to fulfill the Congressional mandate to allow optional electronic labeling and to streamline and modernize the agency's equipment authorization program for radiofrequency ("RF") devices. The proposed rule changes, as modified consistent with CEA's suggestions, will benefit both consumers and the U.S. economy by ensuring that innovative new products can reach the market more quickly and with fewer regulatory obstacles.

The option of electronic labeling has the potential to reduce costly burdens and logistical challenges for manufacturers, as well as to benefit consumers, who increasingly grow more comfortable interacting with screens than with packaging. To provide more opportunities for innovation in design – a chance to provide identification and other "markings" in a more complete, attractive, user-friendly, accessible format – the Commission should provide even more labeling flexibility than proposed. For example, the electronic labeling options should be extended to RF devices without an integrated electronic screen, consistent with the rules applicable in Canada. The Commission also should expand labeling flexibility for RF devices without electronic displays.

The Commission should adopt its proposal to combine the Declaration of Conformity ("DoC") and verification equipment authorization processes into a single self-approval process for unintentional radiating equipment. The Commission, however, should consider adopting a name that will not be confused with the "Supplier's Declaration of Conformity" in Part 68 of the Commission's rules or the European Union's process of the same name, such as "Statement of Conformity." The Commission should eliminate the requirement for current DoC devices to display a label with the FCC logo, but it should allow manufacturers at their option to incorporate the logo into their labels going forward.

CEA also supports, among other things, the Commission's proposals to eliminate FCC Form 740 for imported products and to issue provisional grants of certification to allow the legal importation and distribution through the supply chain of devices prior to final certification. CEA offers suggested modifications to the Commission's proposed rule changes regarding modular approvals, devices with software-based capabilities, changes to certified equipment, families of products, identifying the responsible party (especially in the case of third party modifications to equipment), confidentiality of certification exhibits, and increasing the number of prototype devices that can be imported for trade shows.

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**COMMENTS OF THE
CONSUMER ELECTRONICS ASSOCIATION**

I. INTRODUCTION

The Consumer Electronics Association (“CEA”)¹ respectfully submits these comments in response to the above-captioned Notice of Proposed Rulemaking (“*Notice*”).² As developers and strong supporters of innovative and disruptive technologies, CEA’s members deeply appreciate the Commission’s many ongoing efforts to promote and facilitate deployment of new products and services. In particular, CEA applauds the Commission for commencing this proceeding to

¹ The Consumer Electronics Association is the technology trade association representing the \$285 billion U.S. consumer electronics industry. More than 2,000 companies enjoy the benefits of CEA membership, including legislative and regulatory advocacy, market research, technical training and education, industry promotion, standards development, and the fostering of business and strategic relationships. CEA also owns and produces CES – The Global Stage for Innovation. All profits from CES are reinvested into CEA’s industry services.

² *Amendment of Parts 0, 1, 2, 15 and 18 of the Commission’s Rules regarding Authorization of Radiofrequency Equipment*, Notice of Proposed Rulemaking, 30 FCC Rcd 7725 (2015) (“*Notice*”) (proposing to update rules governing the evaluation and approval of radiofrequency devices).

fulfill the Congressional mandate to allow optional electronic labeling³ and to streamline and modernize the agency's equipment authorization program for radiofrequency ("RF") devices. These rule changes, as modified consistent with CEA's suggestions, will benefit both consumers and the U.S. economy by ensuring that innovative new products can reach the market more quickly and with fewer regulatory obstacles.⁴ The savings in time, resources, and (with respect to labeling) paper also will help promote environmental sustainability. Meanwhile, nothing in the proposed rule changes will in any way jeopardize or compromise the awareness or safety of the American public or reduce the level of protection against potentially harmful interference.

First, as Congress recognized, the option of electronic labeling has the potential to reduce costly burdens and logistical challenges for manufacturers, as well as to benefit consumers, who increasingly grow more comfortable interacting with screens than with packaging. Consistent with the E-LABEL Act, the Administration's and the Commission's ongoing efforts to eliminate unnecessary administrative requirements, and the public interest, the Commission should act as quickly as possible to codify this option in its rules. It should make certain minor modifications to its proposed rules and also expressly permit electronic display of other required disclosures, as discussed herein.

Second, the Commission should streamline its equipment authorization program by combining its two current self-approval procedures (Verification and Declaration of Conformity)

³ Enhance Labeling, Accessing, and Branding of Electronic Licenses Act of 2014, Pub. L. No. 113-197 § 3, 128 Stat. 2055, 2055-56 (Nov. 26, 2014) ("E-LABEL Act"). *See generally* Comments of the Consumer Electronics Association, RM-11673 (filed Oct. 5, 2012) (encouraging the Commission to commence a rulemaking to allow for e-labeling).

⁴ *See* Gary Shapiro, President and CEO CEA, *Does the Government Hurt Innovation?*, Forbes (Feb. 6, 2013), <http://www.forbes.com/sites/garyshapiro/2013/02/06/does-the-government-hurt-innovation/> ("Government has a role in innovation. Ensuring that old laws and regulatory regimes do not favor old competitors and old business models over new ones best fills that role. If America is to be the land of innovation then we must start doing away with outdated laws and ensure that new ones are necessary, specific and clear.").

into a single self-approval process for unintentional radiating equipment that has a strong record of compliance and for which there is minimal risk of harmful interference. By adopting its proposal in the *Notice*, with minor modifications, the Commission can help manufacturers more clearly identify their responsibilities for products that do not require certification. Innovators that are not familiar with the FCC's equipment authorization program can be confused by the multiple self-approval procedures currently authorized under the rules. Having a single procedure for equipment that can be self-approved will make the rules more understandable and thereby promote compliance.

Finally, and, perhaps most importantly, the Commission should adopt its numerous other proposals to modernize the equipment authorization rules. The Commission's equipment rules – last updated in the 1990's – simply have not kept up with the manufacturing industry's rapid development and deployment of innovative devices.⁵ For example, hundreds of millions of radio transmitters, consumer products, and other electronic devices share the airwaves with remarkably little interference;⁶ numerous consumer devices transmit at low-power for a wide variety of uses on an unlicensed basis, such as keyless auto entry and ignition systems, garage door openers, and wireless routers for in-home networking;⁷ and wireless service providers are making enormous investments to obtain licenses to use spectrum and to construct or expand commercial

⁵ See, e.g., *Notice* ¶ 39 (proposing to codify the current practice of certified modular transmitters for licensed devices); see also *id.* ¶ 44 (noting that the Commission has received very few applications for software defined radios as the “rules appear to have discouraged many manufacturers from choosing to certify devices as [software-defined radios]”).

⁶ See, e.g., Cisco, *The Zettabyte Era: Trends and Analysis*, White Paper, at 6 (May 2015) (“The Zettabyte Era”) (estimating that in 2014, there were 6.14 devices and connections per capita in North America), http://www.cisco.com/c/en/us/solutions/collateral/service-provider/visual-networking-index-vni/VNI_Hyperconnectivity_WP.pdf.

⁷ See, e.g., Comments of the Consumer Electronics Association, ET Docket No. 15-105, at 2-5 (June 11, 2015) (noting myriad uses of devices utilizing unlicensed spectrum).

communications systems. The Commission's current rules did not contemplate this marketplace and cannot accommodate its exponential growth. Manufacturers' new products and services are delayed in initial time to market; and certain rules intended to help consumers are, in fact, counterproductive. With the new rules proposed in the *Notice*, subject to certain minor modifications discussed herein, the Commission can continue to protect consumers while also ensuring that consumers have timely access to new technologies.

II. THE FCC SHOULD PROMPTLY CODIFY THE OPTION OF ELECTRONIC LABELING, ALLOW MANUFACTURERS TO ELECTRONICALLY DISPLAY OTHER REQUIRED DISCLOSURES, AND PROVIDE ADDITIONAL LABELING FLEXIBILITY

Prompt Adoption of an E-Labeling Option Will Benefit Consumers. The Commission should adopt its labeling proposals set forth in the *Notice*, with minor modifications, to best promote the objectives of the E-LABEL Act, as well as efficiency and environmental sustainability. CEA strongly supported the legislation, which requires the Commission to allow manufacturers of RF devices the option to use electronic labeling in place of physical labels. The Commission's existing physical labeling requirements not only are burdensome and costly, but present logistical challenges for consumer electronics manufacturers.⁸ Electronic labeling, in contrast, is simpler and more cost effective. It is consistent with the consumer electronics industry's important ongoing environmental sustainability efforts and is a beneficial and innovative use of today's technology. It also is more consumer-friendly, given that consumers today are more likely to look to and interact with the screens and settings directly, rather than to

⁸ Press Release, CEA, *CEA Commends Senators for Introduction of E-LABEL Act* (July 10, 2014), <http://www.ce.org/News/News-Releases/Press-Releases/2014/CEA-Commends-Senators-for-Introduction-of-E-LABEL>.

refer to written material elsewhere.⁹ Codifying e-labeling also is consistent with the ongoing efforts of the Administration and the Commission to eliminate unnecessary and burdensome administrative requirements.¹⁰ This common-sense approach for the digital age does not sacrifice any of the Commission’s important objectives in mandating labeling of consumer products subject to the Commission’s rules.

E-Labeling Will Promote Innovation in Product Design. In addition to simplifying labeling and reducing costs, permissive digital delivery of required labeling information offers an opportunity for innovation in design – a chance to provide identification and other “markings” in a more complete, attractive, user-friendly, accessible format. For these reasons, the Commission should adopt its proposal to provide manufacturers of RF devices with an integrated electronic display the option of electronically displaying all labeling and regulatory statements required to be placed on the device. The Commission expressly should provide that e-labeling also extends to the warning labels required to be placed on prototype devices pursuant to Section 2.803(c)(iii) and 2.805(d).

The Commission Should Permit Electronic Labeling for Other Regulatory Information. Rather than limiting e-labeling only to information that the rules require to be included *as a physical label* on a device,¹¹ the Commission also should allow the option of exclusive electronic display for other required information, such as the hearing aid compatibility (“HAC”) disclosures and explanation of the HAC rating system, as well as other regulatory information required for

⁹ E-LABEL Act § 2(3), 128 Stat. at 2055 (“[C]onsumers of licensed devices in the United States would prefer to have the option to provide or receive important Commission labeling information digitally on the screen of the device, at the discretion of the user.”).

¹⁰ Improving Regulation and Regulatory Review, Exec. Order No. 13563, 76 Fed. Reg. 3821 (Jan. 21, 2011).

¹¹ Notice ¶¶ 97, 100.

other RF devices. This information currently is required to be included in user manuals or packaging inserts, but manufacturers and their carrier customers are increasingly looking for ways to reduce the amount of paper included in the box. Thus, for both cost and environmental reasons, it would be helpful to have the option of electronically displaying this regulatory information. Consumers are more likely to read screens on their devices than they are to review boilerplate in their user manuals; maximizing the e-labeling option will promote the consumer education objectives of these additional labeling rules.

The E-Labeling Option Should Be Extended to RF Devices Without an Integrated Electronic Display Screen If Such Devices Must Connect to Another Device With an Electronic Display Screen to Operate. The proposed Section 2.935 would limit electronic labeling to “[a]ny radiofrequency device with an integrated electronic display screen.”¹² The Commission should consider adopting the approach that is successfully providing needed consumer information, reducing burdens, and allowing for innovation in Canada. There, devices without an integrated display screen are allowed to present the e-labeling information through a host device display screen connected via physical or wireless connection if the connection to a device with a display is mandatory for use.¹³ As long as the RF device must be connected to an electronic display screen to operate, it should not matter if the electronic display screen is integrated into the device or not. The Commission should revise Section 2.935 to read: “Any radiofrequency device equipped with an integrated electronic display screen, or any radiofrequency device that includes at least one baseband video output and that must be connected to a display in order to operate, may display on the electronic display the FCC Identifier, any warning statements . . .”

¹² Notice App. A § 2.935.

¹³ See Industry Canada, Certification and Engineering Bureau, Notice 2014-DRS1003 (Nov. 13, 2014), [https://www.ic.gc.ca/eic/site/ceb-bhst.nsf/vwapj/Notice_2014_DRS1003.pdf/\\$file/Notice_2014_DRS1003.pdf](https://www.ic.gc.ca/eic/site/ceb-bhst.nsf/vwapj/Notice_2014_DRS1003.pdf/$file/Notice_2014_DRS1003.pdf).

Additional Physical Labeling Requirements Would Defeat the Purpose of Allowing Electronic Labeling. The Commission should be clear that utilizing an electronic label fully satisfies the existing physical labeling requirement and should not adopt any new physical labeling requirements for electronically labeled devices. Specifically, mandating that “devices displaying labeling and regulatory information electronically” place this same “information either on the product packaging or on a physical label placed on the device at the time of importation, marketing, and sales”¹⁴ would be wholly inconsistent with the intent of the E-LABEL Act to reduce, rather than increase, burdens on manufacturers. Congress did not direct the FCC to consider additional physical labeling requirements, and there is no basis for the Commission to do so.¹⁵ Indeed, requiring packaging or importation/point-of-sale labels could chill or delay manufacturers’ transition to electronic labels, which does not serve the public interest. While these requirements differ from the existing physical labeling requirements, they nevertheless are costly and burdensome (for example, requiring manufacturers to increase the amount of packaging materials they utilize,¹⁶ and to assume the risk of ordering packaging materials well in advance of product launch, when the FCC ID for the device may need to be changed in the interim). The Commission thus should decline to adopt the proposal.

¹⁴ *Notice* ¶ 99. The Commission’s proposal is consistent with current guidance under KDB Publication 784748 D02 e labeling v01. The Commission also could confirm that e-labeling does not modify any codified requirements to provide regulatory information on the packaging of a device; for example, the HAC rating of a wireless handset (where applicable) is already required to be visible on the packaging. 47 C.F.R. § 20.19(f)(1).

¹⁵ The Commission tentatively concludes that devices inside packaging and uncharged lack “the capability to digitally display required labeling and regulatory information.” *Notice* ¶ 99. This interpretation, which seemingly would apply to virtually all devices covered by the E-LABEL Act, appears to contravene the entire purpose of the statute and the permissive use of electronic labels in place of physical labels.

¹⁶ For example, a Section 15.19(a) notice alerting a consumer that a device must not cause but must accept interference will not affect consumer purchasing decisions but would take up valuable real estate on the package without a corresponding benefit.

Users of Devices Without Digital Displays Also Would Benefit from More Flexible Labeling Requirements. The Commission should further encourage innovation by permitting flexibility for RF devices not capable of electronic labeling by allowing physical label information to be placed in the user manual, on packaging, or on a removable label. First, for devices that are too small for the FCC ID to be legible and for which e-labeling is not an option, the FCC should codify its current practice under KDB Publication 784748 and allow the FCC ID to be placed in the user manual. This policy has been in effect since at least 2008 (version 06 of 784748), apparently without causing consumer or marketplace confusion. Additionally, the Commission should expand that policy to allow, but not require, placement of the required FCC ID on the device packaging or on a removable label attached to the device. In sum, to provide manufacturers needed flexibility for the wide variety of possible devices, the FCC should expand the labeling options available for all RF devices.¹⁷

III. THE COMMISSION SHOULD STREAMLINE ITS EQUIPMENT AUTHORIZATION PROGRAM BY COMBINING ITS TWO CURRENT SELF-APPROVAL PROCEDURES (VERIFICATION AND DECLARATION OF CONFORMITY) INTO ONE

The Commission should adopt its proposal to combine the Declaration of Conformity (“DoC”) and verification equipment authorization processes into a single self-approval process for unintentional radiating equipment. As the *Notice* acknowledges, while the distinction between DoC and verification once made sense, experience with devices subject to DoC processes in recent years demonstrates that the more burdensome requirements imposed under the DoC regime can be eliminated.¹⁸ With the minor modifications discussed below, adoption of the proposal for combining DoC and verification will advance the Commission’s objective of

¹⁷ *Notice* ¶ 104.

¹⁸ *See id.* ¶¶ 24-25.

eliminating requirements “that serve to increase the costs of complying with our rules and provide benefits that are of only marginal utility.”¹⁹

Specifically, rather than call the proposed unified self-approval process “Supplier’s Declaration of Conformity” (“SDoC”), the Commission should consider adopting a different name so that it is not confused with the “Supplier’s Declaration of Conformity” in either Part 68 of the Commission’s rules or the European Union’s process of the same name.²⁰ CEA respectfully suggests “Statement of Conformity” as an option that is sufficiently different from currently used nomenclature, but representative of the new unified authorization process.

The Commission should permit manufacturers to continue to self-approve new products using the existing DoC or verification procedures for one year from the effective date of new rules, if the manufacturers so choose.²¹ As acknowledged by the *Notice*, “adoption of the new self-approval process proposed to replace the DoC and verification processes may cause some manufacturers to reassess their design and production processes.”²² In addition, any device that lawfully has been self-approved using the existing DoC or verification procedures prior to the end of the transition period should be grandfathered under the current rules for the production life of the device (and would not need to meet any new labeling or administrative requirements adopted in the new rules).

The Commission should adopt its proposal to eliminate the requirement for current DoC devices to display a label with the FCC logo, but should allow manufacturers at their option to

¹⁹ *Id.* ¶ 26.

²⁰ *See id.* ¶ 27 (recognizing that both in Part 68 of the Commission’s rules and the European Union use the SDoC designation for equipment classification and authorization).

²¹ *Id.* ¶ 127.

²² *Id.*

incorporate the logo into their labels going forward.²³ To avoid waste and needless expense of re-doing labels for existing devices, companies may wish to continue to use labels with the FCC logo. Additionally, manufacturers should have the option to use the FCC logo for new devices to signify compliance with the new self-approval rules.

Eliminating the requirement to use an accredited laboratory for equipment subject to the unified self-approval process reduces the burdens on manufacturers and will facilitate speed to market.²⁴ CEA, however, opposes the proposal to require all self-approval devices to be tested for compliance and to remove the phrase “or takes the necessary steps” from currently effective Sections 2.902(a) and 2.906(a).²⁵ Reducing manufacturer self-approval flexibility in this way is inconsistent with the Commission’s “increased confidence in self-approval procedures” that underpins its other proposals to streamline the self-approval rules.²⁶ The Commission has cited no abuses or interference problems that justify eliminating manufacturer options under self-approval. To the contrary, numerical modeling should remain an option for self-approvals, as long as the manufacturer retains appropriate records that can be made available to the Commission on request.

The Commission should make clear that when products subject to self-approval are modified by third parties, the third party must include its contact and other relevant information with the modified device. Furthermore, the Commission should clarify that the original manufacturer or assembler bears no responsibility for the modified device.

²³ *Id.* ¶ 31 (proposing to eliminate the requirement for current DoC devices to display a label with the FCC logo and prohibit the logo to be used after a transition period).

²⁴ *See id.* ¶ 31.

²⁵ *Id.* ¶ 26 & n.50.

²⁶ *Id.* ¶ 26.

IV. THE COMMISSION SHOULD ADOPT ITS OTHER PROPOSED MODERNIZATION RULE CHANGES, WITH MINOR, BUT NECESSARY, MODIFICATIONS

The Commission's proposals to update several of its administrative rules governing the equipment authorization process are positive steps in making the process more transparent and efficient. Some proposals, however, merit minor adjustments to provide industry more clarity.

Modular approvals. CEA supports the Commission's proposal to relocate the rule governing certification of modular transmitters from Part 15, which covers only unlicensed device operation, to the Part 2 rules, which broadly apply to all RF devices regulated by the Commission.²⁷ As it is becoming more commonplace to incorporate multiple modular transmitters into a device, a single Part 2 rule will better account for host devices that contain both licensed and unlicensed certified modular transmitters. Consistent with this approach, CEA also supports the Commission's proposal to move the rules governing the labeling of modular devices from Part 15 to Part 2.²⁸ The Part 15 rules currently require that when a modular transmitter is installed inside a host device so that its FCC ID is not visible, the outside of the host device must display a label referring to the modular transmitter, with the result that two or more FCC IDs must be displayed.²⁹ The Commission should simplify the modular labeling rules proposal to "permit a modified label to be placed on the host device that reads 'contains FCC ID xxxyyy changed from FCC ID aaabbb.'"³⁰ Requiring the host device to be labeled with its own FCC ID should be sufficient for identification and would avoid potential confusion stemming from listing multiple FCC IDs on the same product.

²⁷ *Id.* ¶ 39.

²⁸ *Id.* ¶ 106.

²⁹ 47 C.F.R § 15.212(a)(1)(vi).

³⁰ *Notice* ¶ 106.

The Commission should amend the proposed modular approval requirement to allow for the power regulation to reside off the module. Specifically, Section 2.1042(b)(3) should be amended to read, “The modular transmitter must have its own power supply regulation, which can include the power regulation or management to be within the chip package or be fed by regulated power off the module.” In addition, given that modules will be incorporated into an end system, the requirement for AC conducted line tests under proposed Section 2.1042(b)(8) should be eliminated.

Devices with software-based capabilities. The FCC proposes to adopt measures “[t]o minimize the potential for unauthorized modification to the software that controls the RF parameters of the device.”³¹ The Commission proposes that applicants describe their security controls to prevent unauthorized parties from enabling modes of operation on uncertified frequency bands. To the extent that the *Notice* intends that manufacturers must implement a cybersecurity authentication scheme for firmware updates, the Commission should clarify that any new requirements apply only to new grants of certification. Moreover, the Commission should recognize for any devices certified under the proposed new software security rules unintended consequences may ensue:

- developing a new and secure method of distributing firmware updates to retail consumer devices would be expensive and would require significant phase-in time, thereby slowing the flow of innovative new products;
- the FCC’s security proposal would make updates to firmware more difficult, both to fix run-of-the-mill software glitches or to patch a cyber-security vulnerability that has been identified; rules that hamper the ability of manufacturers to repair software glitches in the field should not be adopted;
- other methods, like placing restrictions on the chip (hardware) rather than on firmware might make more sense as alternative ways to accomplish the Commission’s goals.

³¹ *Id.* ¶ 46.

Permissive changes to certified equipment. The Commission should streamline the provisions of Section 2.1043 governing changes to previously certified equipment. As proposed in the *Notice*, the Commission should continue to authorize modifications to certified equipment as Class I permissive changes (no prior approval required) or Class II permissive changes (prior approval required) and merge Class III changes (applicable to software-defined radios, a category being deleted) into Class II. The FCC, however, should clarify that it is not reducing the scope of modifications currently eligible for Class I permissive changes. All modifications should be considered Class I permissive changes if they do not *degrade* the device parameters normally reported in an equipment authorization application, such as frequency of operation, bandwidth of emission, fundamental transmitted power, and, if applicable, RF exposure parameters and HAC ratings.³² Changes that do not degrade performance should be considered Class I permissive changes.

Along these lines, the FCC should make explicit that substituting a component from a different manufacturer for the component used in the initial certification can be treated as a Class I permissive change, so long as it is confirmed that the substitute component results in no degradation in the factors listed above. Manufacturers require the flexibility to source components from different vendors, and providing this clarity will eliminate any concern about using multiple sources for components.

In addition, CEA proposes that any change of enclosure, component, and/or circuitry in non-RF related areas of a device be considered a Class I permissive change as long as

³² See KDB 685804 (Publication Date Apr. 9, 2007) (an update that results in reduced SAR levels constitutes a Class I permissive change), <https://apps.fcc.gov/oetcf/kdb/forms/FTSSearchResultPage.cfm?switch=P&id=26821>.

compliance with the emissions requirements is confirmed and there is no degradation in the reported RF parameters.

Family of products. The Commission should adopt its concept of a “family of products” that would be authorized under a single FCC ID.³³ Under this proposal, a group of devices that are essentially similar, based upon the overall design of the devices, their functions, components and layout, could be viewed simply as variations of a single device and could be marketed under a single FCC ID. The FCC should make clear, either in its rules or a KDB, how after initial certification a new variation can be added to the family under the same FCC ID.

Responsible party. The Commission should adopt its proposed rules regarding who is the “responsible party” under the rules in the case of changes to equipment.³⁴ The current Section 2.909(d), which allows a party that modifies a device without the consent of the original grantee to become responsible for the compliance by simply labeling the device with a statement indicating it was modified, should be deleted as proposed in the *Notice*.³⁵ Third party vendors modifying a certified device certainly should not be allowed to rely on the original grantee’s certification. Modifications undertaken without manufacturer guidance also could negatively affect the device. If a third party adds to its device a certified module under proposed Section 2.1042(b), or a limited module under proposed Section 2.1042(c), the Commission should make clear that the third party, not the original manufacturer of the module, will be held responsible for the compliance of the changed device.

³³ *Notice* ¶ 55.

³⁴ The Commission should retain the current rule that allows a manufacturer to market identical equipment under different model names without notifying the Commission.

³⁵ *Notice* ¶ 69.

Repaired and refurbished devices. CEA generally supports the *Notice's* proposal to clarify the responsibilities of third parties that repair or refurbish certified equipment.³⁶ Replacement or installation of parts such as battery packs, hard drives, memory, or enclosures that do not affect a device's compliance should not be considered modifications to a device and should be allowed by any third party without an application for certification.

CEA also agrees that a party that repairs or refurbishes certified equipment with the permission of the original grantee should not be required to obtain a new grant of certification if the equipment continues to conform to the specifications of its previously approved grant of certification. The text of proposed Section 2.909(d), however, needs further clarification that repairs or refurbishment of equipment without the permission of the original grantee always require a new certification, even if the repairs purport to conform to the specifications of the previously approved grant of certification. The party making repairs without grantee permission should become the new responsible party.

Confidentiality. CEA supports the FCC's proposals to standardize the guidelines and procedures for affording confidentiality to certain portions of equipment authorization applications.³⁷ Short-term confidentiality for certain exhibits automatically should be granted without being specifically requested by the applicant and extensions up to 180 days should be available. The FCC also should codify and make better known its practice that allows the applicant to designate the date when an application will be posted as granted. Long-term confidentiality also should be granted automatically (*i.e.* without request or specific justification) for the following types of exhibits: (1) schematics, (2) block diagrams, (3) operational

³⁶ *Id.* ¶¶ 73-74.

³⁷ *Id.* ¶¶ 84-5; 88-9.

descriptions, and (4) parts list / tune-up information. Manufacturers also should be allowed to request confidentiality for other exhibits on a case-by-case basis.

Provisional grants of certification. CEA supports the Commission’s proposal to allow a “provisional” certification grant for a device that otherwise is deemed to meet all the certification requirements but will not yet be sold to third parties.³⁸ The Commission should allow such a provisional certification to be used for legal importation and distribution through the supply chain of devices prior to sale and posting of the final certification grant on the Commission’s website. The Commission should modify Section 2.803 of the rules to authorize the importation of equipment subject to provisional grants, perhaps by amending the definition of marketing in Section 2.803(a) by deleting the reference to importation. Section 2.803 could be restricted to promotion and sale of RF devices, and the Part 2 Subpart K (Sections 2.1201 to 2.1207) rules would govern importation.

The Commission also should clarify that, although sales to end users of devices subject to provisional certification would be prohibited, shipments to the warehouse(s) of the responsible party (or the warehouse of the importer designated by the responsible party), as well as sales and deliveries to distributors and retailers would be allowed. In addition, TCBs should accord short-term confidentiality to documents eligible for such treatment until the full grant becomes effective.

Importation. The Commission should eliminate FCC Form 740, which has outlived its usefulness and thus imposes an administrative burden with no corresponding regulatory benefit. As the Commission explains, when the form was created in the 1970s fewer than 100 forms per month were submitted. The number of devices subject to importation information collection

³⁸ *Id.* ¶ 92.

today accounts for approximately 2 million records annually. Additionally, much of the information required on FCC Form 740 is currently collected by Customs and Border Protection (“CBP”) in its routine information collection for all imported goods. Form 740 also is confusing to complete, especially if the devices coming into the U.S. are subject to multiple conditions listed on the form. Moreover, CBP has no mechanism for accepting FCC Form 740 Section 321 shipments with a value not exceeding \$200; yet, the FCC rules require a Form 740 submission.

Eliminating Form 740 will reduce the administrative burdens on importing RF devices while not diminishing the FCC’s available enforcement tools to deter illegal imports. Importers should maintain their own records and make them available upon request by the FCC or CBP. The Commission also should coordinate with CBP to reduce the data it collects and otherwise to streamline the importation process, especially for those importers eligible for the trusted trader program.

Even if the Commission adopts provisional grants of certification to allow lawful importation to the warehouse of the responsible party (or the warehouse of the importer designated by the responsible party), the Commission should retain the responsible party’s option to use a bonded warehouse for any imported devices that are currently unauthorized and that have not received provisional certification approval.³⁹ This will afford manufacturers the flexibility to treat various shipments in different ways.

To simplify and clarify the import rules, CEA recommends that the Commission delete proposed Sections 2.1203(a) and (b), and revise subsection (c) to read: “The importer or ultimate consignee, or their designated customs broker must provide, upon request, made within

³⁹ See *id.* ¶ 122.

one year of the date of entry, documentation on how an imported radiofrequency device was determined to be in compliance with the import conditions set forth in Section 2.1204.”

The Commission should adopt its proposal to extend the Section 2.1204(a)(7) exception on devices imported for personal use to include devices in both licensed and unlicensed services.⁴⁰ The Commission, however, should expand the number of allowed personal devices from three to ten. The number of RF devices consumers possess for personal use has greatly increased since the threshold of three was adopted in 1991.⁴¹ As previously noted, it has been estimated that in 2014, there were 6.14 devices and connections per capita in North America.⁴² It is not unusual for an individual today to travel with a personal computer, multiple tablets, and e-readers, a cell phone for personal use and one for business use, and more. The Commission also should clarify that the personal use exception also governs prototype devices that a business traveler brings to the United States for demonstration and not for lease or sale.

Uncertified devices imported for trade shows. CEA supports the proposal to increase the number of prototype devices that can be imported for demonstration purposes at a trade show, but the Commission should raise the limit higher to better reflect CEA member uses such as large trade shows with international attendance.⁴³ Specifically, the Commission should increase the total number of uncertified devices that can be imported for trade shows from 200 to 800 for devices that are used solely in licensed services and from 10 to 800 for other products. Many types of devices that formerly operated only on licensed spectrum now also include unlicensed

⁴⁰ *Id.* ¶ 125 & n.231.

⁴¹ *Amendment of Part 2 of the Rules Concerning the Importation of Radio Frequency Devices Capable of Causing Harmful Interference*, Report and Order, 6 FCC Rcd 3296 (1991).

⁴² *See, e.g.*, The Zettabyte Era 6 (estimating that in 2014, there were 6.14 devices and connections per capita in North America).

⁴³ *Notice* ¶ 123.

Wi-Fi and Bluetooth functionality. Applying a single limit to all types of uncertified devices for trade show demonstration purposes not only will bring certainty but will foster innovation by allowing all types of prototype devices to be evaluated by more industry participants. In any event, the Commission needs to tweak its proposed rule. The text of the proposed Section 2.1204(a)(4)(i) incorporates the proposed increase for devices that are used solely in licensed services, but it neglects to include the increase for “other” products in Section 2.1204(a)(4)(ii). In both cases, the allowable number should be increased to 800.

Excluded devices. CEA believes that it is helpful to continue to exclude certain low risk devices such as musical greeting cards, clocks, hand-held calculators, and video games from complying with the importation conditions. CEA is unaware that these devices, despite their large number, have ever caused interference. In the absence of an identified problem, the Commission should refrain from adopting its proposal to eliminate the excluded devices list.⁴⁴

⁴⁴ *Id.* ¶ 124.

V. CONCLUSION

For the reasons discussed herein, CEA commends the Commission for moving forward on codifying e-labeling and for proactively seeking comment on proposals to streamline and update its administrative rules governing equipment authorization.

Respectfully submitted,

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