

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of

Amendment of Parts 0, 1, 2, 15 and 18 of
the Commission's Rules Regarding
Authorization of Radiofrequency
Equipment

ET Docket No. 15-170

Request for the Allowance of Optional
Electronic Labeling for Wireless Devices

RM-11673

COMMENTS OF GOOGLE INC.

Megan Anne Stull
Counsel
Google Inc.
25 Massachusetts Avenue NW
Ninth Floor
Washington, DC 20001

October 9, 2015

Table of Contents

Introduction and Summary	1
Discussion	2
I. A Single Self-Approval Process Would Allow Faster Authorization of Products at Lower Expense.....	2
II. Updated Certification Procedures Should Provide the Flexibility Needed To Foster Innovation.....	4
<i>A. Proposed Changes to Modular Certification Rules Would Foster Development of New Technologies.....</i>	<i>5</i>
<i>B. Commission Rules Should Not Foreclose Use of Open Source Software.....</i>	<i>7</i>
III. More Guidance Is Needed Prior to Replacing the “Electrically Identical” Standard for Changes to Certified Equipment.....	9
IV. A “Family of Products” Category Would Introduce Efficiencies.....	11
V. The “Responsible Party” Rules Should Be Modernized.....	13
VI. Confidentiality Protections for Certification Applications Should Be Enhanced and Automated.....	14
VII. Provisional Certification Processes Would Facilitate Importation of New Devices.....	17
VIII. E-Labeling Policies Should Be Codified and Expanded.....	18
IX. The Commission Should Eliminate the Use of FCC Form 740.....	20
X. The Commission Should Permit Delivery to Customs-Bonded Warehouses or Importers’ Facilities Prior to Certification.....	21
Conclusion	22

Introduction and Summary

Google applauds the Commission's efforts to update and streamline its rules regarding evaluation, regulatory approval, and importation of radio devices.¹ As the *Notice* observes, today's digital equipment does not always "fit neatly within . . . traditional ways of classifying and approving devices."² The *Notice* is a step in the right direction to respond to the "evolution of the [radio frequency (RF)] device ecosystem."³

Many of the *Notice's* proposals would help the Commission "keep pace with the accelerating introduction of an ever-expanding breadth of devices and products into the marketplace."⁴ Specifically, the Commission should create a single, streamlined self-approval process for equipment that has a history of regulatory compliance and low risk of interference. Modular certification procedures and the "responsible party" rule should also be updated. Certification procedures for "families of products" would eliminate the need to obtain multiple certifications for nearly identical devices. Additional efficiencies could be realized by automating and expanding confidentiality processes, allowing provisional certification, and eliminating FCC Form 740 for device importation. Finally, expanding electronic

¹ *In the Matter of Amendment of Parts 0, 1, 2, 15 and 18 of the Comm'n's Rules Regarding Authorization of Radiofrequency Equip.*, Notice of Proposed Rulemaking, 30 FCC Rcd. 7725 (2015) (*Notice*).

² *Id.* ¶¶ 14, 16.

³ *Id.* ¶ 16.

⁴ *Id.* ¶ 1.

labeling (e-labeling) would lower production costs and help consumers obtain up-to-date product information more easily.

A few proposals in the *Notice*, however, should be revisited rather than implemented. The successor to the “electrically identical standard” for changes to certified devices needs further clarification. Certification procedures for software-based devices should not foreclose beneficial uses of open source software. And both manufacturers and importers should be able to use Customs-bonded warehouses, manufacturer-owned facilities, or facilities owned by manufacturer-designated importers to import uncertified devices.

Discussion

I. A Single Self-Approval Process Would Allow Faster Authorization of Products at Lower Expense.

The Commission should create a single, optional self-approval process for equipment with a “strong record of compliance and for which there is minimal risk of harmful interference.”⁵ Combining current Declaration of Conformity (DoC) and verification processes would eliminate uncertainty about which authorization procedure to use.⁶ Eliminating the obligation to use accredited laboratories for self-approval testing—which is of “only marginal utility”—would lower regulatory

⁵ *Id.* ¶ 24.

⁶ *Id.* ¶ 25 (tentatively concluding that a “single process would simplify the equipment authorization requirements and reduce confusion as to which process may apply to any given device, while continuing to adequately ensure compliance” with Commission rules).

compliance costs.”⁷ And, no longer requiring use of a specific logo could reduce labeling costs for devices currently subject to DoC procedures.⁸

The streamlined self-approval procedure, however, proposes that devices bear a paragraph-long compliance statement, which would require more space than the logo for current DoC-authorized devices.⁹ This would raise costs, especially for devices ineligible to use e-labeling. Instead, the DoC logo could be used in lieu of the compliance statement or the compliance statement could be placed in the user manual. No additional compliance statements should be required, either on the device or in the user manual, for devices that have been modified, but continue to be subject to self-approval processes.¹⁰

Manufacturers of devices eligible to use the streamlined self-approval process should retain the option to receive approval via certification.¹¹ Because many devices are made for global sale and distribution, certification from the Commission remains an “effectively international approval” that provides “great

⁷ *Id.* ¶ 26.

⁸ *Id.* ¶ 31. While not requiring the use of a specific logo would be a welcome change, the manufacturer should be permitted to use a logo in lieu of listing statements in Section 15.19(a) of the Commission’s rules on the device, especially for products not eligible for e-labeling. *Id.*

⁹ *Id.*

¹⁰ *Id.* ¶ 30, n.55 (suggesting inclusion of a statement based on language in Section 2.909(d) of the Commission’s rules, indicating that the product has been modified, and providing the identity and contact information of the entity that performed the modifications).

¹¹ *Id.* ¶ 32 (asking whether to allow devices that would be subject to new streamlined self-approval requirements to “optionally be certified”).

savings in time and money” when it can be used to satisfy technical requirements of other countries.¹²

As a transitional matter, manufacturers should have at least one year during which they can opt to use either the existing DoC and verification processes or the new, streamlined self-approval procedure. This transition period would avoid the need to revisit launch plans, reschedule testing, or revise labels and user manuals for devices already in the design and testing pipeline.

II. Updated Certification Procedures Should Provide the Flexibility Needed To Foster Innovation.

Both the design and the manufacture of RF devices are changing rapidly. Manufacture of an entire device by a single entity is no longer the norm. “Today’s RF equipment increasingly uses components manufactured by different parties, including modular transmitters.”¹³ As the Commission acknowledges, new trends are straining the limits of its existing certification rules, with numerous situations arising that are “not clearly accounted for” under its current procedures.¹⁴ Clarification of application requirements and compliance responsibilities would reduce the time and expense of obtaining authorization for new innovations.¹⁵

¹² *Id.* n.58.

¹³ *Id.* ¶ 36.

¹⁴ *Id.* ¶ 37.

¹⁵ *Id.*

A. *Proposed Changes to Modular Certification Rules Would Foster Development of New Technologies.*

Fifteen years ago, the Commission began authorizing modular transmitters to “afford relief” to manufacturers by no longer requiring a new equipment authorization “for the same transmitter when it is installed in a new device.”¹⁶ Use of modular transmitters is becoming more widespread,¹⁷ but the rules have not kept up with modular technologies.

The *Notice* contains several important proposals to open the door to new types of modular devices that can be customized to the aesthetic desires and functional needs of users. In particular, the Commission’s proposals could help to establish a clearer regulatory path for initiatives like Google’s Project Ara. This project aims to create a modular hardware ecosystem around smartphones that rivals mobile applications in the pace and level of innovation.¹⁸ Through Project Ara, users could build their own smartphone using a combination of modules that provides the mix of features they want at the time.¹⁹ Ultimately, users could purchase a pre-assembled Ara phone or configure one from available modules, and

¹⁶ *Part 15 Unlicensed Modular Transmitter Approval*, Public Notice, 15 FCC Rcd. 25415 (2000).

¹⁷ *Notice* ¶ 39 (acknowledging the “increasing reliance on modular transmitters in RF devices designed for use in licensed radio services as well as those designed to operate under. . . Part 15 rules for unlicensed devices”).

¹⁸ See Project Ara, Frequently Asked Questions, *available at* <http://www.projectara.com/faq/> (last visited Oct. 9, 2015).

¹⁹ *Id.*

later add or change modules through an Ara Module Marketplace.²⁰ Updated modular certification rules could help to get Project Ara handsets to American consumers faster.

As proposed in the *Notice*, certification should be permitted for a “host device consisting of one or more modular transmitters certified by other parties” as well as “devices that are nothing more than physical platforms . . . into which individual modular transmitter components can be inserted in an almost limitless variety of combinations.”²¹ Consistent with the *Notice’s* reference to a “form factor that includes its own RF characteristics,”²² certification should be available for host devices that incorporate non-removable transmitters or RF emitters into which one or more certified modules then can be inserted.

Applicants for certification of host devices could “provide design guidelines, interface specifications, and authentication requirements that would guarantee that a module can operate . . . only with other modules whose collective RF emissions meet” regulatory requirements.²³ Rules for these processes should accommodate new technologies and enable future innovations. For instance, applicants should be able to shape reference specifications and authentication procedures to their

²⁰ *Id.*

²¹ *Notice* ¶¶ 38, 42.

²² *Id.* ¶ 42.

²³ *Id.*

device's specific characteristics, as long as the end device complies with the performance requirements in the Commission's rules.

Finally, the guidance in KDB Publication 996369 notwithstanding, current placement of modular certification rules in Part 15 of the Commission's rules creates confusion about when devices for licensed services, including handsets, can use these processes.²⁴ As the Commission observes, current RF devices often include modular transmitters "designed for use in licensed radio services" as well as transmitters designed to operate pursuant to Part 15 rules for unlicensed devices.²⁵ Moving the modular certification rules to Part 2 (or cross-referencing them there) would alleviate uncertainty about applicability of modular certification rules to all RF devices.²⁶

B. Commission Rules Should Not Foreclose Use of Open Source Software.

Many proposals in the *Notice* would propel the device ecosystem forward. Some contemplated rule changes regarding software-based devices, however, could slow forward progress. In particular, certain proposals to protect portions of the radio spectrum could hamper use of open source software to advance important objectives in the public interest, including promotion of security and innovation and remediation of software vulnerabilities.

²⁴ See KDB Publication 996369 (which addresses certification of licensed modular transmitters).

²⁵ *Notice* ¶ 39.

²⁶ *Id.*

A key area of concern is Wi-Fi routers, which include rapidly evolving technologies and serve as a “hub” of home and small business networks. Unfortunately, not all router manufacturers have added substantial security measures, included IPv6 support, or provided for continuous improvement of performance after purchase. The open source community and academics, among others, have stepped up to fill that gap. Using open source resources generated by these parties, Wi-Fi vendors have been able to improve their existing routers by flashing firmware on them.

The proposed rules could frustrate this beneficial process. The *Notice* seeks to “minimize the potential for unauthorized modification to the software that controls the RF parameters” of a device and ensure the equipment “is not capable of operating with RF-controlling software for which it has not been approved.”²⁷ Unfortunately, the *Notice* does not specify the “well-defined measures” on which the Commission proposes to rely;²⁸ some approaches could result in manufacturers having to lock down devices like wireless routers. Field testing and fixes to improve firmware would be impeded. Inspection of equipment, timely identification of problems, and expeditious repairs to problematic code throughout the software stack would be thwarted. Moreover, improvement of Wi-Fi functionality and interoperability, as well as development of new algorithms and innovative uses of software-based devices, would be chilled.

²⁷ *Id.* ¶ 46.

²⁸ *Id.*

While the Commission's concerns about potential interference and operations outside of its rules are legitimate, they can be addressed in less restrictive ways. Limits placed on software-based devices should be tailored to ensuring that devices operate within permissible RF regulatory parameters. Router software should be allowed to be updated with third party input, for instance to plug security holes and repair flaws. Non-grantees should be permitted to engage in innovative uses of software-based devices within the scope of the Commission's rules. Such changes would allow open source code to continue playing a productive role.

III. More Guidance Is Needed Prior to Replacing the "Electrically Identical" Standard for Changes to Certified Equipment.

The Commission should revise permissive change processes to "more closely reflect the way in which RF devices are designed, manufactured and marketed."²⁹ But while the "electrically identical" standard used today may not always be "appropriate to modern radio designs" and could yield "outcomes that unnecessarily burden manufacturers and constrain design flexibilities," it has the benefit of clarity from years of use.³⁰ In creating a successor standard, adequate guidance is necessary to enable parties to determine whether they can use an existing FCC ID, must receive separate approval, or can make changes without notifying the Commission.

²⁹ *Id.* ¶ 47.

³⁰ *Id.* ¶¶ 47, 49.

In particular, the Commission should clarify that the new standard would not require prior Commission approval for changes presently considered Class I permissive changes. The Commission also should treat substitutions of like components built by different manufacturers as Class I permissive changes, provided that the substitute components do not degrade parameters in the device's certification grant. This would improve supply-chain security and lower manufacturers' costs by allowing them to source components from different vendors, which would have incentive to compete on quality and price.

The Commission also should specify which modifications currently considered to be Class II changes would continue to receive Class II treatment under the new rules. In addition, as proposed in the *Notice*, the Commission should allow Class II treatment of "changes that increase the fundamental emissions" or "cause the spurious emissions to deteriorate."³¹ The Commission should clarify, however, that only changes adversely affecting a device's compliance with RF exposure limits, lowering the device's hearing aid compatibility (HAC) rating, or causing poorer performance of any other characteristic reported to the Commission are Class II changes.³² Otherwise, modifications impacting RF exposure, HAC ratings, or other characteristics should receive Class I treatment.

³¹ *Id.*, App. A, Proposed Rule 2.1043(b)(2).

³² *Id.*

IV. A “Family of Products” Category Would Introduce Efficiencies.

Devices sharing “fundamental functional similarities” should be permitted to use the same FCC ID as a “family of products.”³³ Current rules often compel manufacturers to obtain separate certifications for different versions of essentially the same device, wasting time and money. Allowing a “group of devices that are essentially similar,” based on overall design, functionality, components, and layout to “be viewed simply as variations of a single device” would help to alleviate these burdens.³⁴ Risk of non-compliance from this approach would be minimal because each family member would be evaluated for compliance during the certification process.³⁵

Manufacturers should have considerable latitude to determine what products fall within their “family.”³⁶ To document that choice, applications should include “information about the variations in the products within a family,” specifying device similarities and whether certain components have been removed.³⁷ Full test data showing compliance with Commission rules for a designated “parent device” should accompany the certification application. For each device variation within the family, the manufacturer should need to submit only test data demonstrating that

³³ *Id.* ¶ 55.

³⁴ *Id.*

³⁵ *Id.*, App. A, Proposed Rule 2.924(b).

³⁶ *Id.*

³⁷ *Id.*

differences from the parent device do not adversely affect compliance with Commission rules.

The Commission's proposed procedures for certifying product families should provide additional flexibility in other respects as well. Proposed Rule 2.924 should allow an applicant to indicate an "intent to include and/or to develop a family of products" either in its initial certification application or in a Class II change application.³⁸ This would allow an applicant to develop a family of products whenever market demand calls for creation of additional devices with fundamental functional similarities. Permitting designation of a family of products in a Class II change request also would save resources by making it unnecessary to prepare, review, and grant new applications for certification.

In addition to these changes, the Commission should clarify the process in Proposed Rule 2.924 for adding device variations to an existing family of products. The Commission could allow new device variations as Class II changes. The applicant should be required to demonstrate why the device should be considered part of the family by explaining how the device is essentially similar to other devices and demonstrating that any differences comply with the original certification grant's terms.

³⁸ *Id.*

V. The “Responsible Party” Rules Should Be Modernized.

As with other rules, guidelines for designating the responsible party for the device should be updated to recognize that “RF devices may include components manufactured or assembled into end products by multiple parties, and be modified via software.”³⁹ Several foundational principles should apply for devices subject to modular certification. In general, the “party that creates an end product” should be “responsible for the compliance of the end product it creates.”⁴⁰ In those instances where an end user can combine certified modules and integrate them into a host device, the party responsible in the first instance for identifying any non-compliance with Commission requirements for the end device should be the entity that holds the certification for the part of the end device that primarily enables the combined operation. In many cases, this would be the grantee for the host device. For example, if a frame for a modular handset contains connectors and radios that enable the combined modules to operate together as a single device, then the frame’s manufacturer would be the party responsible in the first instance for identifying any non-compliance of the end device.

As discussed above, grants for host devices could include reference specifications and authentication procedures that help to ensure that end devices comply with the limits in the Commission’s rules. The grantee for each module, however, remains responsible for making certain that its hardware operates both

³⁹ *Id.* ¶ 59.

⁴⁰ *Id.* ¶ 61.

on the host device and, if applicable, as a standalone device, within the scope of its grant (including meeting the requirements of any reference specifications).⁴¹ To further discourage unauthorized uses of the assembled device, certification grants also could require “detailed instructions to the end user for proper installation and use of the device.”⁴²

The Commission further should “require that all parties making changes” to a device without “authorization of the original grantee of certification must obtain a new grant of certification and a new FCC ID.”⁴³ In filing for the new FCC ID, the third party should be required to “include documentation substantiating that the original grantee has given permission to the new applicant to reference its original filing.”⁴⁴ As the Commission correctly observes, this would allow the original grantee to track changes to its products and help to ensure continued compliance with Commission rules.

VI. Confidentiality Protections for Certification Applications Should Be Enhanced and Automated.

Confidentiality is key to preserving innovation and competition. Too often, applications for certification result in information about new products being released prematurely to the public. This results in competitive harm, including loss of first-mover advantages.

⁴¹ *Id.* n.126.

⁴² *Id.* ¶ 66.

⁴³ *Id.* ¶ 70.

⁴⁴ *Id.* ¶ 71.

More robust confidentiality protections for certification applications would help. At a minimum, short-term confidential treatment of the entire application, including test reports and label exhibits not presently eligible for confidential treatment, should be granted automatically for 45 days.⁴⁵ This would prevent commercially harmful “reverse engineering” from publicly available test reports or labels. For exhibits currently eligible for short-term confidential treatment (i.e., user manuals, internal photos, external photos, and test set-up photos), short-term confidential treatment should be extended automatically to 180 days. Requests for confidential treatment of these exhibits up to the present maximum of 180 days have become a routine part of certification applications, and are often granted by the Commission for the full time period. This simple, standardized approach offers more efficiencies than the 45-day confidential treatment proposal in the *Notice*,

⁴⁵ Granting short-term confidentiality automatically to all exhibits would prevent entities from discerning (or purporting to discern) device features and functionalities from examining public test reports or label data. *See, e.g.*, Quentyn Kennemer, *FCC Filing Suggests Google Could Be Working on a New Nexus Player for 2015*, Phandroid.com, Sept. 11, 2015, available at <http://phandroid.com/2015/09/11/nexus-player-android-tv-fcc-2015/> (using test report data, label design, and label location data to speculate about an upcoming device release); David Murphy, *Is This Google FCC Filing a New Version of Google Glass?*, pcmag.com, July 4, 2015, available at <http://www.pcmag.com/article2/0,2817,2487234,00.asp> (citing device descriptions and model names in test reports, as well as e-label exhibits, to surmise that an FCC certification filing was for a new version of Google Glass); John McKenzie, *Nexus 9 LTE FCC Filing Appears*, Land of Droid, Nov. 4, 2014, available at <http://www.landofdroid.com/2014/nexus-9-lte-fcc-filing-appears/> (citing to a device’s FCC ID and publicly available test reports to predict upcoming availability of an “LTE enabled 32GB HTC Nexus 9”). Whether true or false, such speculation can affect industry and consumer perceptions of the device and thus change its reception in the market.

which could be “extended with serial requests to a maximum of 180 days.”⁴⁶ As is presently the case, any short-term confidentiality would expire immediately when “sales commence and the product and its related literature can be physically examined.”⁴⁷

The Commission’s rules should be strengthened to safeguard information “not readily discoverable” upon a device’s release and that could be exposed in an application for certification.⁴⁸ All schematics, block diagrams, operational descriptions, and parts lists/tune up information should be withheld from public inspection automatically and indefinitely. As the Commission acknowledges, “[b]ecause these requests are routinely granted, continuing to require applicants to file long-term confidentiality requests for these exhibits . . . no longer serve[s] a useful purpose.”⁴⁹ Automatic long-term confidential treatment for these exhibits would reduce filing burdens and promote the Commission’s process reform goals.⁵⁰

These revisions would still allow public access to information that does not contain trade secrets. Parties could file a request pursuant to the Freedom of

⁴⁶ *Notice* ¶ 84.

⁴⁷ *Id.* ¶ 81.

⁴⁸ *Id.* ¶ 87.

⁴⁹ *Id.* ¶ 88.

⁵⁰ *Report on FCC Process Reform*, 29 FCC Rcd. 1341 at Recommendation 5.42 (2014) (*FCC Process Reform*) (“OET should explore modifying the permit application process to grant confidentiality automatically, disclosing information to the public only if the applicant explicitly permits it.”).

Information Act (FOIA) to seek information held as confidential.⁵¹ Rather than every applicant needing to justify specifically long-term confidential treatment of certain exhibits, only those applicants whose materials are subject to FOIA requests would face this burden.

VII. Provisional Certification Processes Would Facilitate Importation of New Devices.

Manufacturers struggle with importation of new technologies under the current certification rules. Because of the potential for reverse engineering and press speculation arising from certification filings, grants often are requested at the last possible moment to ensure that the “surprise” is preserved for announcement of a new device. This makes bringing newly certified devices into the country challenging. Devices need to be held at Customs-bonded facilities or foreign trade zones—at additional expense—until the FCC ID is issued. Having a sufficient supply of devices stateside to address demand after high-profile announcements at events like Google I/O or the International Consumer Electronics Show becomes a challenge. Current Commission processes often prevent manufacturers and retailers from meeting consumer demand for popular products in the first days and weeks after a launch. This can reduce overall sales of devices launched in the United States.

⁵¹ Notice ¶ 89.

A process to issue provisional grants of certification for devices meeting all certification requirements would help.⁵² While devices receiving provisional grants could not be offered for sale in the U.S. until receipt of certification, this authorization would enable “legal importation and distribution through the supply chain of devices prior to sale” and before a certification grant appears on the Commission’s website.⁵³ Devices with provisional grants should be eligible for shipment to the grantees or designated importer.

Confidentiality should be accorded to the fact of a provisional certification request. Thus, when a provisional grant of certification is issued, no record of it should be made publicly available until a corresponding permanent certification is released.

VIII. E-Labeling Policies Should Be Codified and Expanded.

The Commission should codify and extend the e-labeling guidance found in KDB 784748 and the E-LABEL Act.⁵⁴ For industry, e-labeling allows manufacturing efficiencies, reduces waste, and makes it easier to provide consumers updated information. For consumers, e-labeling is a familiar and convenient way of learning

⁵² *Notice* ¶ 92.

⁵³ *Id.*

⁵⁴ See KDB 784748, *Guidelines for Labelling and User Information for Devices Subject to Part 15 and Part 18* (2014), available at https://apps.fcc.gov/kdb/GetAttachment.html?id=gSc9BH6v7Z%2FdopMkplqCZQ%3D%3D&desc=784748%20D01%20Labelling%20Part%2015%2018%20Guidelines%20v08&tracking_number=27980 and Enhance, Labeling, Accessing, and Branding of Electronic Licenses Act of 2014, Pub. L. No. 113-197 (Nov. 26, 2014) (E-LABEL Act).

about their device that, unlike paper, is not discarded or lost.⁵⁵ Simple e-labeling rules also accord with ongoing Commission efforts to eliminate unnecessary administrative requirements.⁵⁶

For these reasons, manufacturers of RF devices with an integrated electronic display that are subject to certification or DoC procedures should be able to make required regulatory labels available within the device's menu.⁵⁷ E-labeling also should be permitted for devices without an integrated display screen, if connection to a device with a display is mandatory for use.⁵⁸ As in Canada, these devices should be allowed to "present the e-labelling information through an audio message or a host device display screen connected via physical connection, Bluetooth, Wi-Fi, etc."⁵⁹ An applicant for certification of a device without an integrated screen could include with its application a screenshot of what the electronic label would look like, as well as an exhibit detailing the steps a user would take to access the label.

⁵⁵ See E-LABEL Act at § 2(3) (explaining that "[m]any manufacturers and consumers 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.").

⁵⁶ See *FCC Process Reform* at Recommendation 5.41 ("OET should explore increased use of electronic labels (eLabel) on devices which have a display screen").

⁵⁷ *Notice* ¶ 97.

⁵⁸ Notice 2014-DRS1003, Industry Canada Certification and Engineering Bureau, Nov. 13, 2014, available at <https://www.ic.gc.ca/eic/site/ceb-bhst.nsf/eng/tt00099.html>.

⁵⁹ *Id.* For small devices without an electronic display that do not connect to devices with a display, the FCC ID should be placed in the user manual if the device is too small to accommodate the FCC ID in four-point or larger font. *Notice* ¶ 104.

Electronic display should be an option for other required regulatory information presently included in user manuals or on boxes, including guidance about remediation of potential interference and cautions against modifications that would void a device's warranty.

Prototype and test devices should be able to use e-labeling practices to exhibit required warning labels. For these devices, mandatory disclosures could be displayed every time the device reboots, ensuring that users receive frequent reminders of the devices' lack of regulatory approval and restrictions on sales.

Finally, repetition of electronically displayed information should not be required on product packaging or on a physical label placed on the device at the time of importation, marketing, and sales.⁶⁰ Such redundancy would reduce many of the benefits achieved via e-labeling. For instance, manufacturers would expend time and money on packaging materials that could not be easily reused, corrected, or updated. Such a result is antithetical to Congressional goals underlying the E-LABEL Act and should be avoided.⁶¹

IX. The Commission Should Eliminate the Use of FCC Form 740.

Eliminating FCC Form 740 would streamline importation processes without materially decreasing the information collected by the government.⁶² Rather than

⁶⁰ See Notice ¶ 99.

⁶¹ See E-LABEL Act §§2(4) (noting that the "electronic labeling option would give flexibility to manufacturers in meeting labeling requirements.").

⁶² See Notice ¶ 120 (proposing to "eliminate Section 2.1205 and delete Section 2.1203(b) to remove the Form 740 filing requirements.").

compelling importers to fill out largely duplicative forms,⁶³ U.S. Customs and Border Protection (CBP) could collect all data necessary to demonstrate compliance with both its own and the Commission's rules. To enable CBP to do this, the Commission should set forth the list of information that importers would need to submit to CBP to substantiate compliance with Commission rules, and work closely with CBP to align the agencies' regulations and information collection requirements.

X. The Commission Should Permit Delivery to Customs-Bonded Warehouses or Importers' Facilities Prior to Certification.

To "help facilitate the importation of RF devices," such devices are permitted to be stored in a Customs-bonded warehouse while "waiting for the equipment to be certified or exported to another country."⁶⁴ Even though storage at a Customs-bonded facility can add an additional step to the distribution chain, it provides means by which uncertified devices can be timely imported into the U.S. This option should be retained, particularly if the Commission fails to adopt procedures for provisional grants of certification.

Concerns about "time and expense" could be addressed without removing the option to use Customs-bonded warehouses.⁶⁵ The Commission should allow importation of uncertified devices to facilities owned by either the responsible party

⁶³ See *id.* ¶ 119 (explaining that "much of the information that was required on FCC Form 740 is currently collected by CBP in its routine information collection for all imported goods"). See also *id.* n.219 (noting that "CBP Forms 7501 (Entry Summary) and 3461 (Entry/Immediate Delivery) collect the same information as Form 740 Part I").

⁶⁴ *Id.* ¶ 122.

⁶⁵ *Id.*

or an importer contracted by the responsible party. To ensure regulatory compliance, the responsible party or its importer could be required to maintain records similar to those kept by Customs-bonded warehouses. These records could be made available to the Commission or CBP upon request. Making these changes to the rules would provide more flexible importation options for manufacturers and could stoke price competition among importers for use of warehouse facilities, which could lower importation expenses.

Conclusion

The Commission should quickly adopt many proposals in the *Notice* to keep pace with innovation. The Commission should merge DoC and verification processes into a single, streamlined self-approval process. Updates should be made to modular certification procedures and the “responsible party” rule. Certification procedures should be created for families of nearly identical devices. To promote efficiency and cost savings, the Commission should automate and expand confidentiality processes, allow provisional certification, and eliminate FCC Form 740. E-labeling options should be expanded to lower production costs and facilitate consumer access to updated product information.

At the same time, the Commission should revise several proposals in the *Notice*. More information is needed about the proposed successor to the “electrically identical” standard for changes to certified devices. The Commission should refrain from adopting overbroad prohibitions for software-based devices that could foreclose beneficial uses of open source software. Finally, importation

Comments of Google Inc.
Dkt. 15-170, RM-11673

rules should be updated to allow more efficient releases of new products to consumers.

Respectfully submitted,



Megan Anne Stull
Counsel
Google Inc.
25 Massachusetts Avenue NW
Ninth Floor
Washington, DC 20001

October 9, 2015