

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Allowing Earlier Equipment Marketing and Importation Opportunities	)	ET Docket No. 20-382
	)	
Petition to Expand Marketing Opportunities for Innovative Technologies	)	RM-11857
	)	

**COMMENTS OF LINCOLN NETWORK**

Lincoln Network (“Lincoln”) writes to the Federal Communications Commission (“FCC” or “Commission”) to provide its comments in the above-captioned proceeding.<sup>1</sup> Lincoln<sup>2</sup> is a non-profit organization that seeks to bridge the often-siloed discussions between policy makers in Washington, D.C. and technologists in Silicon Valley so as to advance smart policy that encourages innovation. This NPRM presents the Commission with an opportunity to update its rules so as to lower regulatory barriers to entry responsibly for innovative and, at times, nascent technologies as we discuss in more detail below.

The policy behind the current Commission’s rules on pre-approval marketing and importation is sound but the rules need to be updated to current business practices. The Commission’s rules rightfully seek to ensure that various consumer products will not generate harmful interference, cause safety risks, or defraud consumers before companies can market

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<sup>1</sup> *In the Matter of Allowing Earlier Equipment Marketing and Importation Opportunities Petition to Expand Marketing Opportunities for Innovative Technologies*, ET Docket No. 20-382 et al., Notice of Proposed Rulemaking, 35 FCC Rcd 14458 (2020) (“NPRM”).

<sup>2</sup> <https://lincolnpolicy.org/>.

them. However, as CTA notes in its petition that served as the genesis for this proceeding,<sup>3</sup> the market and the way these companies prepare their products for distribution have drastically changed, even compared to last time the Commission modified these very rules 8 years ago.<sup>4</sup> Moreover, we contend that other agencies, such as the FTC, already provide adequate checks on these devices for consumer protections, which makes the FCC's review superfluous in many regards, in Lincoln's view. Also, the suggested Commission positions articulated in the NPRM can both protect consumers and enable the emerging IoT revolution.

**I. It is Critical for the Commission to Update its Marketing Rules to Promote IoT Innovations**

Since the declaration of the COVID-19 pandemic in March 11, 2020, the average daily broadband usage has gone up an estimated 47%.<sup>5</sup> Conversely, an ancillary effect of the pandemic is an expected overall 18% drop in the development of new Internet of things ("IoT") devices.<sup>6</sup> This a concerning statistic as some of the most important IoT use cases come from connected health and connected education enterprises which are critical in these difficult times. Consumers will become ever more reliant on these technologies for the foreseeable future. It follows that we need smart, efficient policies to bring these innovative technologies to market and ones that allow innovators to respond to this ever-changing economic landscape.

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<sup>3</sup> See generally, CTA Petition for Rulemaking, CG RM-11857 (filed Jun. 2, 2020). Available at [https://ecfsapi.fcc.gov/file/1060263543654/CTA\\_Petition\\_to\\_Expand\\_Marketing\\_Opportunities\\_for\\_Innovative\\_Technologies.pdf](https://ecfsapi.fcc.gov/file/1060263543654/CTA_Petition_to_Expand_Marketing_Opportunities_for_Innovative_Technologies.pdf). ("CTA Petition").

<sup>4</sup> *Promoting Expanded Opportunities for Radio Experimentation and Market Trials under Part 5 of the Commission's Rules and Streamlining Other Related Rules; 2006 Biennial Review of Telecommunications Regulations – Part 2 Administered by the Office of Engineering and Technology (OET)*, Report and Order, 28 FCC Rcd 758, 804 ¶ 127 (2013).

<sup>5</sup> Advanced Television, *Report: Pandemic Drives Usage Up 47%* (May 5, 2020). Available at <https://advanced-television.com/2020/05/05/report-covid-19-drives-broadband-usage-up-47/>.

<sup>6</sup> Deborah Petrara, *COVID-19 Hits the IoT: 18% Drop In Net New IoT Devices In 2020*, PR Newswire (May 27, 2020, 4:30 PM). Available at <https://www.prnewswire.com/news-releases/covid-19-pandemic-hits-the-iot-18-drop-in-net-new-iot-devices-in-2020-301065298.html>

The United States' success in the race to 5G is critical and enabling the IoT ecosystem should be part of the Commission's strategy in promoting 5G. Recent FCC actions have had a considerable effect in expediting the deployment of 5G networks, either through reducing barriers to building infrastructure or through opening up key spectrum bands.<sup>7</sup> Safely and responsibly developing and marketing IoT equipment and devices is also key to a robust 5G ecosystem. The requests made in the CTA Petition provide the Commission with an effective roadmap to accomplish just that.<sup>8</sup>

At its core, this NPRM evaluates the effect its marketing and importation rules have on, among other industries, emerging-IoT technologies so as to ensure the Commission is not placing an unnecessary barrier to entry on new and innovative devices. The concern with the Commission's rules as they currently stand is that they are overly strict and often require a lengthy and, at times, unnecessary approval process.<sup>9</sup> Such delays can be fatal to nascent technologies, as CTA points out in its petition.<sup>10</sup> CTA's data demonstrate that these barriers to approval have significantly slowed many companies from bringing their innovative IoT products to market, which, in turn, slows adoption for these technologies that would otherwise enhance a consumer's 5G experience.

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<sup>7</sup> E.g., *Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment*, WT Docket No. 17-79, Second Report and Order, 33 FCC Rcd 3102 (2018); *Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment*, WT Docket No. 17-79, WC Docket No. 17-84, Declaratory Ruling and Third Report & Order, 33 FCC Rcd 9088, 9096- 100, paras. 23-28, 32 (2018); *Implementation of State and Local Governments' Obligation to Approve Certain Wireless Facility Modification Requests Under Section 6409(a) of the Spectrum Act of 2012*, WT Docket No. 19-250, RM-11849, Declaratory Ruling and Notice of Proposed Rulemaking, FCC 20-75 (rel. Jun. 10, 2020); *Auctions of Upper Microwave Flexible Use License for Next Generation Wireless Services; Notice and Filing Requirements, Minimum Opening Bids, Upfront Payments, and Other Procedures for Auctions 101 (28 GHz) and 102 (24 GHz)*, AU Docket No. 18-85, Public Notice, 33 FCC Rcd 7575 (2018); & *Expanding Flexible Use in the 3.7-4.2 GHz Band*, GN Docket No. 18-122, Report and Order and Order of Proposed Modification, 35 FCC Rcd 2343 (2020).

<sup>8</sup> See generally, CTA Petition.

<sup>9</sup> 47 C.F.R Part 2.803 & 2.1204.

<sup>10</sup> CTA Petition p. 6-8.

## **II. Other Agencies Are Better Suited to Protect Consumers Outside of the Commission’s Authorization Process**

Even without these marketing and importing rules, the Commission’s current regulatory framework is sufficient to protect against harmful interference to radio communications and to ensure public safety. This is because the Commission will still require device manufacturers to obtain Commission authorization before distributing and delivering their radiofrequency (“RF”) devices to consumers.<sup>11</sup> Even if manufacturers distributed and delivered their RF devices without proper authorization, the Commission will still be able to commence enforcement actions and issue harsh penalties against those manufacturers.<sup>12</sup> However, despite such safeguards, the Commission still seeks to expand its enforcement purview to “address any potential harms that may result from allowing conditional sales of [RF] devices to consumers.”<sup>13</sup>

Lincoln believes that the Commission’s concerns are well founded, but such an enforcement role is better suited for federal and state agencies with the authority and necessary expertise to handle consumer protection issues.<sup>14</sup> For example, the Federal Trade Commission (“FTC”) already protects U.S. consumer citizens against false and deceptive advertising, marketing, and promotions - <sup>15</sup> the same concerns that the Commission raised in the *NPRM*.<sup>16</sup> Moreover, as CTA notes, “state attorneys general are aggressive in protecting their citizens against unscrupulous sellers who take payment from their citizens but fail to deliver sold

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<sup>11</sup> NPRM, 35 FCC Rcd at 14461, para. 14; *see* 47 CFR § 2.803(b).

<sup>12</sup> *See* 47 U.S.C. § 503(b); *see also* 47 CFR § 1.80

<sup>13</sup> NPRM, 35 FCC Rcd at 14465, para. 24.

<sup>14</sup> The Commission does not have the expertise or jurisdiction over consumer protection issues. *See* 47 U.S.C. §302a(a) (The Commission is responsible for making reasonable regulations “governing the interference potential of devices which in their operation are capable of emitting radio frequency energy by radiation, conduction, or other means in sufficient degree to cause harmful interference to radio communications.”).

<sup>15</sup> *See* 15 U.S.C. § 45.

<sup>16</sup> NPRM, 35 FCC Rcd at 14465, para. 25.

products.”<sup>17</sup> It is Lincoln’s position that consumers currently have adequate remedies under the FTC and state agencies’ jurisdictions if a device manufacturer is ultimately unable to deliver RF devices due to a failure to receive Commission authorization or falsely advertises that it is guaranteed to receive Commission authorization. Accordingly, Lincoln Network believes that the Commission does not need to involve itself in consumer protection issues and any attempt to do so would be superfluous.

### **CONCLUSION**

Lincoln Network appreciates the opportunity to comment on this important proceeding and thanks the Commission in advance for considering its views as articulated above.

Respectfully submitted,

/s/ Joel Thayer

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<sup>17</sup> CTA Petition at pg. 17.