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FCC Relaxes Rules on Marketing and Importing Devices

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The FCC has adopted new rules that relax the restrictions on marketing and importing devices that require approval but have not yet received it. These new rules will allow companies to import devices before approval, and expand the opportunities to advertise and sell (but not deliver) during the preapproval period.

FCC rules have prohibited the marketing or importation of regulated devices in the US until after the devices have received the required equipment authorization. While there have been exceptions to that rule, none of the exceptions permitted the marketing of unapproved devices to the public. The new FCC rules are intended to help get products to consumers more efficiently.

The new rules provide that up to 12,000 regulated devices can be imported for presale activity if those devices:

1. Are subject to a certification application that has been submitted to a Telecommunication Certification Body
2. Include an externally visible temporary label prohibiting display to consumers, operation and delivery of the device before certification is granted
3. Remain under legal ownership of the device manufacturer, developer, importer or ultimate consignee, or their designated customs broker

This process does not apply to devices that are subject only to the Supplier's Declaration of Conformity rules, such as computers and computer peripherals, because there is no approval process for those devices once testing is completed.

The FCC also revised an existing exception to expand limited marketing and conditional sales to consumers of certain radio frequency (RF) devices before equipment authorization. The existing exception allows conditional sales contracts between manufacturers and wholesalers or retailers if delivery is contingent upon compliance with the applicable equipment authorization and technical requirements. The FCC's new rules expand this exception to permit conditional sales, and advertisements for such sales, to other entities, including consumers, provided that both these conditions are met:

1. The prospective buyer is advised at the time of marketing that delivery of the device is conditional upon the seller obtaining equipment authorization
2. The seller includes a prominent disclosure that the equipment is subject to the FCC's equipment authorization rules and delivery is conditioned upon receipt of the equipment authorization

The FCC also now permits manufacturers to include the anticipated FCC ID on a device if that ID is obscured by a temporary label until the FCC approves the device.

Even under the new rules, however, devices that have not yet received an equipment authorization can't be delivered to consumers, although they can be distributed to wholesalers or retailers. In addition, permitted presale activities under the revised rules do not allow the display, operation or delivery of unauthorized devices to any end users. Finally, both the importation and marketing rules require the manufacturer or importer to retrieve any devices that have been distributed if they don't receive equipment authorization.

These changes promise to get devices into the hands of consumers faster. Please contact the lawyers in Cooley's Communications group if you have questions about these new rules.

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