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ACT | The App Association Statement on DOJ Antitrust Division Withdrawal from 2013 Policy Statement on SEPs and FRAND Commitments

(WASHINGTON, DC) December 7, 2018- Today, ACT | The App Association released a statement from president Morgan Reed regarding remarks by U.S. Assistant Attorney General Makan Delrahim regarding the Antitrust Division's withdrawal from the 2013 Policy Statement on Remedies for Standards-Essential Patents (SEP) Subject to Voluntary F/RAND (Fair, reasonable, and non-discriminatory) Commitments.

"Assistant Attorney General Delrahim's remarks today are extremely troubling and threaten to undermine the historic role international standards have played in promoting innovation and interoperability. Withdrawing from the 2013 Policy Statement disregards the thoughtful and deliberate multi-agency approach to standardization, patents, and competition developed through extensive consultations with the diverse range of public and private sector stakeholders affected by the policy. It also ignores the strong (and growing) body of precedent developed across federal circuits, all of which affirm the need to uphold FRAND licensing commitments to maintain competition and innovation. These licensing commitments discourage abusive tactics, such as improperly using injunctions, to assert pressure on would-be innovators that utilize standards to compete.

"Standard-setting organization (SSO) commitments are not compulsory by any means. They are voluntarily entered into by participants who seek to develop interoperable technologies. These standards advance competition by evening playing fields for licensees of all sizes so that SEP holders cannot abuse their dominant position and discriminate against licensees that utilize open and consensus standards to innovate throughout the value chain.

"Innovation is not an island. Innovators need a community, such as SSOs, for collaboration, support, and inspiration, ultimately benefiting consumers who enjoy increased access to cutting-edge products and services at lower costs. Nowhere is this dynamic more present than in the internet of things (IoT) and app industry. Stepping back from global norms of competition and consumer protection, such as the 2013 Policy Guidance, favors only a select handful of large multinational companies that increasingly rely on SEP licensing for revenue and threatens the development of future standards as well as the benefits American consumers are poised to realize as a result."

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About the App Association: ACT | The App Association represents more than 5,000 app makers and connected device companies in the mobile economy. Organization members leverage the connectivity of smart devices to create innovative solutions that make our lives better. ACT | The App Association is the leading industry resource on market strategy, regulated industries, privacy, and security.