

March 6, 2024

The Honorable Maria Cantwell  
Chair  
Senate Committee on Commerce, Science, and  
Transportation

The Honorable Frank Lucas  
Chairman  
House Committee on Science, Space, and  
Tech

The Honorable Ted Cruz  
Ranking Member  
Senate Committee on Commerce, Science, and  
Transportation

The Honorable Zoe Lofgren  
Ranking Member  
House Committee on Science, Space, and  
Tech

The Honorable Richard Durbin  
Chairman  
Senate Committee on the Judiciary

The Honorable Jim Jordan  
Chairman  
House Judiciary Committee

The Honorable Lindsey Graham  
Ranking Member  
Senate Committee on the Judiciary

The Honorable Jerrold Nadler  
Ranking Member  
House Judiciary Committee

Dear Chair Cantwell, Ranking Member Cruz, Chairman Lucas, Ranking Member Lofgren, Chair Durbin, Ranking Member Graham, Chairman Jordan, and Ranking Member Nadler,

As members of ACT | The App Association, we applaud your focus on standards and encourage you to continue your prioritization of a national strategy to advance private sector-led standards development. We also believe that the National Standards Strategy for Critical and Emerging Technologies (NSSCET) is an important framework, as companies like ours are the primary entities that rely on a strong foundation of CET standards to innovate and compete across U.S. markets and on a global stage. Federal policy must be optimized to promote robust cooperation in order to ensure that this foundation remains solid and adequately supports small company innovators, and that CET standards can be used by small businesses after they are developed. Accordingly, we urge that your committees encourage the executive branch to specifically take much-needed steps to ensure fair, reasonable, and non-discriminatory (FRAND) licensing of standard-essential patents (SEPs) as part of its NSSCET work.

The NSSCET appropriately calls for additional government investment in CET research and development, seeks to lessen barriers for the private sector to participate in standards development, promotes better cooperation with global allies to support inclusive standards governance, and prioritizes workforce development attuned to standards issues. These are admirable goals that we as App Association members support. However, each of the NSSCET's priorities will be dashed if the CET standards cannot be used by all. Amongst the range of post-CET standardization issues small businesses face, none is more impactful than ensuring that FRAND SEP licenses are available to all. In the context of NSSCET implementation and more broadly, federal government action is needed to directly address well-documented and widespread SEP licensing abuses that hinder CET standards-based innovation and unfairly prevent small businesses from leveraging CET standards at all.

SEP abuse has not been eliminated in part because bad faith SEP licensors continue to take advantage of gray areas in the law and gaps in policymakers' understanding of the conduct at issue and its attendant harms. In one common example of SEP abuse, certain SEP licensors have been known to commit to making SEP licenses available to any licensee on FRAND terms and then breaking those commitments to seek injunctions against those willing licensees. Another example is where certain SEP licensors refuse to license their SEPs to innovators and instead only make their licenses available to downstream manufacturers, paternalistically and unilaterally deciding for entire value chains where licenses can and cannot be taken. Conduct like this demonstrably increases costs for consumers, wastes vast amounts of capital on litigation instead of innovation, and pulls the rug out from under small businesses who rely on being able to take a license in order to interoperate with CET standards.

To advance the NSSCET's laudable goals, strong enforcement against well-demonstrated SEP abuses is necessary. As foreign courts diverge on whether and to what extent to respect U.S. domestic law as it applies to SEP remedies, the federal government cannot afford to relinquish its long-standing leadership position on SEP issues. Our own national interests would be best served by taking a strong stand against SEP abuse around CET standards, and we believe the NSSCET's implementation offers prime opportunities to establish this leadership.

Thank you for considering our views and we look forward to working with you on American leadership in CET standards.

Sincerely,

Dave Noderer, Computerways, Inc.  
Drew Linn, Counterpart  
Stephen Forte, Fresco Capital  
Susy Christiansen, Busy Bee Studios  
Benjamin Bengfort, Rotational Labs  
Anthony Licon, Epic Reach  
Jean-Marc Ly  
Douglas McDowell, DB24  
Jeff Hadfield, 1564B  
Juanita Anthony, Youdle  
Luke Chung, FMS, Inc.  
Bruce Backa, Critical Sites  
Tim Huckaby, LuciHub  
Betsy Furler, For All Abilities