

February 06, 2025

The Honorable Brett Guthrie
Chairman
House Committee on Energy and Commerce
Washington, District of Columbia 20515

The Honorable Frank Pallone
Ranking Member
House Committee on Energy and Commerce
Washington, District of Columbia 20515

The Honorable Richard Hudson
Chairman
House Committee on Energy and Commerce
Subcommittee on Communications and Technology
Washington, District of Columbia 20515

The Honorable Doris Matsui
Ranking Member
House Committee on Energy and Commerce
Subcommittee on Communications and Technology
Washington, District of Columbia 20515

Dear Chairman Guthrie, Ranking Member Pallone, Chairman Hudson, Ranking Member Matsui, and Members of the Committee,

Thank you for the opportunity to provide a statement for the record for the Subcommittee's January 23, 2025, hearing titled "Strengthening American Leadership in Wireless Technology." ACT | The App Association (the App Association) is the leading trade group representing small businesses in the app economy. Today, the App Association represents an ecosystem valued at approximately \$1.8 trillion and responsible for 6.1 million American jobs.¹ Our members are innovators that create the software bringing your smart devices to life. They also make the connected devices that are revolutionizing healthcare, agriculture, public safety, financial services, and virtually all other industries. They propel the data-evolution of these industries and compete with one another and with larger firms in a variety of ways, but they universally rely on seamless wireless communication capabilities.

The App Association supports a coordinated federal spectrum policy to enable next-generation innovations in America, which requires new and innovative approaches to opening more spectrum for both licensed and unlicensed uses as well as supporting wireless infrastructure deployment. Given the integral role of small tech firms in supporting and creating jobs in rural communities, spectrum policy should prioritize helping consumers and entrepreneurs in these areas to access, leverage, and benefit from the wide range of opportunities made possible by advanced connectivity capabilities. Many App Association members are located in and support rural communities across the country. The future of the app economy will depend on the strength and density of next-generation networks, which are supported by myriad spectrum

¹ ACT | The App Association, *State of the U.S. App Economy: 2023*, <https://actonline.org/wp-content/uploads/APP-Economy-Report-FINAL-1.pdf> (last visited Jan. 30, 2025).

bands and different types of infrastructure, including small cell deployment, that seamlessly work together. The App Association therefore supports any efforts that will improve spectrum access and advance American innovation, connectivity, and competition by creating high-paying and highly skilled jobs and producing improvements to the overall quality of life.

We urge U.S. spectrum policy to align with the following:

- **Focus on Spectrum Sharing with Government Bands, Prioritizing Prime Opportunities:** The prospect of countless connected devices accessing communications networks through nodes in homes, workplaces, or other last-mile connectivity endpoints will dramatically increase data flows across communications networks. Spectrum policy should prioritize identification of new opportunities for reallocation and/or new sharing arrangements across spectrum bands, including for government-owned spectrum bands that may be ideal for commercial IoT use, particularly millimeter wave bands. Further, spectrum policy should contribute to the spectrum pipeline through a modernized process for evaluation of the most efficient uses of spectrum bands in which federal users operate, as well as in supporting a procedure to repurpose and free up spectrum frequencies across low, mid, and high bands consistent with sound interference protection principles. Furthermore, spectrum policy should be poised to embrace new artificial intelligence software-driven solutions to dynamic spectrum sharing.
- **Support Innovative Ultra-Wideband (UWB) Usage Across Consumer and Enterprise Contexts:** A growing number of wireless devices utilize UWB, a radio-based communication technology designed for short-range data transmission, primarily relying on pulse or impulse-modulated waveforms. Today, millions of UWB devices are deployed, reflecting significant American innovation and investment. These devices are being used daily for automotive radar (e.g., collision avoidance and parking assistance), medical (e.g., body-worn devices), and consumer products (e.g., smartphones and accessories for features including secure sharing, accessory tracking, and improved connectivity between devices). Despite the already significant traction of this technology, UWB's potential for enabling a wide range of innovative IoT use cases has not yet fully been realized. To enable App Association members to leverage connectivity to create and enter new consumer and enterprise markets moving forward, enhanced UWB capabilities will remain vital to support new and emerging use cases (e.g., high-performance IoT devices demanding extremely low latency communications using frequencies in the 7/8 GHz range). In addition, to unlock new UWB capabilities, the Federal Communications Commission (FCC) and National Telecommunications and Information Administration (NTIA) should create a streamlined and clear UWB waiver process with an expedited process for use cases with lower risk.
- **Leverage and Support Innovations in Specification Development:** We urge spectrum policy to maximize the benefits of competition in next-generation wireless capabilities by welcoming new entrants. For example, the strategy should prioritize leveraging the efforts of the O-RAN Alliance, which has developed an architecture for building the virtualized radio access network (RAN) on open hardware and cloud with embedded AI-powered radio control. O-RAN, and open processes like it for specifications development, stand to revolutionize America's communications networks by enabling network virtualization capabilities and removing vulnerabilities in the networks.

Further, the ability to leverage open and standardized approaches to spectrum bands,

particularly when such standards are incorporated into federal regulation, must not be inhibited by abusive standard-essential patent (SEP) licensing practices, a harmful practice already well-known to the FCC.² App Association member experiences in leveraging wireless connectivity standards, as well as empirical studies,³ demonstrate that SEP monetizers will exploit ambiguous definitions of fair, reasonable, and non-discriminatory (FRAND) in both standard-setting organization (SSO) policies and in government policy, and will renege on their voluntarily-offered FRAND licensing commitments in an attempt to attain excessive value for their patented technology and to control critical markets. For example, despite their voluntarily-offered FRAND commitments, SEP holders have routinely refused to license to reasonable and willing licensees at upstream points in the value chain. We call on Congress, the FCC, and the Administration to recognize the need to prevent SEP licensor abuses to ensure that communications products and services can quickly and reasonably be provided to consumers and businesses, and to take immediate steps to ensure that mandated adherence to standards in spectrum bands do not enable such abuses.

SEP abuses also jeopardize vital U.S. supply chains, threatening American economic and national security.⁴ Specifically, U.S. government policymakers should align their approach to standards and SEP licensing with the following:

- **The FRAND Commitment Means All Can License** – A holder of a voluntarily offered FRAND-committed SEP must license that SEP to all companies, organizations, and individuals who use or wish to use the standard on terms that are truly FRAND.
- **Prohibitive Orders on SEPs that are Voluntarily FRAND-Committed Should Only Be Allowed in Rare Circumstances** – Prohibitive orders (federal district court injunctions and U.S. International Trade Commission exclusion orders) should not be sought by SEP holders or allowed for voluntarily FRAND-committed SEPs except in rare circumstances, such as where monetary remedies are not available.
- **FRAND Royalties** – A reasonable rate for a valid, infringed, and enforceable voluntarily FRAND-committed SEP should be based on the value of the actual patented invention itself, which is separate from purported value due to its inclusion in the standard, hypothetical uses downstream from the smallest saleable patent practicing unit, or other factors unrelated to invention’s value.
- **Respect Patent Territoriality** – Patents are creatures of domestic law, and national courts should respect the jurisdiction of foreign patent laws to avoid overreach with respect to SEP remedies. Absent agreement by both parties, no court should impose global licensing terms on pain of a national injunction.
- **The FRAND Commitment Prohibits Harmful Tying Practices** – While some licensees may wish to get broader licenses, a SEP holder that has voluntarily

² See, e.g., *Authorizing Permissive Use of the “Next Generation” Broadcast Television Standard*, Third Report and Order and Fourth Further Notice of Proposed Rulemaking, 38 FCC Rcd 6409 (2023).

³ See, e.g., Brian J. Love, Yassine Lefouili, & Christian Helmers, *Do Standard-Essential Patent Owners Behave Opportunistically? Evidence from U.S. District Court Dockets*, *American Law & Economics Review*, Vol. 25(1), pp. 300-37, 2023 (Feb. 7, 2023), <http://dx.doi.org/10.2139/ssrn.3727085>.

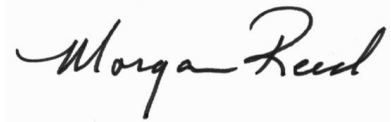
⁴ ACT | The App Association, *ACT | The App Association’s Transition Memo Re: Promoting a Competitive Standard-Essential Patent Landscape*, <https://actonline.org/2025/01/30/act-the-app-associations-transition-memo-re-promoting-a-competitive-standard-essential-patent-landscape/> (last visited Feb. 06, 2025).

made a FRAND commitment cannot require licensees to take or grant licenses to other patents not essential to the standard, invalid, unenforceable, and/or not infringed.

- **The voluntary FRAND Commitment Follows the Transfer of a SEP** – As many jurisdictions have recognized, if a SEP that is voluntarily offered for licensing on FRAND terms is transferred, that commitment follows the SEP in that and all subsequent transfers.

We appreciate the opportunity to provide our views on the important issues addressed during your hearing and welcome the opportunity to assist the Subcommittee moving forward.

Sincerely,

A handwritten signature in black ink that reads "Morgan Reed". The signature is written in a cursive, flowing style.

Morgan Reed
President
ACT | The App Association