



Information Technology Industry Council  
Leading Policy for the Innovation Economy



August 20, 2010

The Honorable Patrick Leahy  
Chairman  
Senate Judiciary Committee  
224 Dirksen Senate Office Building  
Washington, D.C. 20510

The Honorable John Conyers  
Chairman  
House Judiciary Committee  
2138 Rayburn House Office Building  
Washington, D.C. 20515

The Honorable Jeff Sessions  
Ranking Member  
Senate Judiciary Committee  
152 Dirksen Senate Office Building  
Washington, D.C. 20510

The Honorable Lamar Smith  
Ranking Member  
House Judiciary Committee  
2142 Rayburn House Office Building  
Washington, D.C. 20515

Re: Technology industry concerns with proposed performance rights royalty “settlement”

Dear Chairmen Leahy and Conyers and Ranking Members Sessions and Smith:

While our organizations have not previously had an interest in the performance rights issue considered by your respective committees, we are concerned by an August 6 release by the National Association of Broadcasters and several recent trade press reports suggesting that parties to the long-standing dispute over performance rights royalties may be working to forge a legislative compromise that would mandate the inclusion of FM radio chips in all mobile devices. We strongly oppose any proposal to impose such a technology mandate on mobile devices and urge you to resist efforts to include such a mandate in legislation addressing the performance rights royalty issue.

It is simply wrong for two entrenched industries to resolve their differences by agreeing to burden a third industry - which has no relationship to or other interest in the performance royalty dispute - with a costly, ill-considered, and unnecessary new mandate. The proposed imposition of an FM chip mandate is not necessary for resolution of the dispute between performance artists and broadcasters and, if adopted, it would be bad policy for several reasons.

First, mandating that every wireless device include an FM chip would raise the cost of producing wireless devices, with the likely outcome being that consumers would pay more for functionality they may not desire or ever use. While there are a number of FM-capable devices available in the U.S. market, they are not among the top sellers and do not appear to be

avored by consumers. If they were, manufacturers and wireless carriers alike would rush to respond to that demand.

Second, the groups that are parties to the discussions over the performance rights royalty issue lack any expertise in the development of wireless devices and are in no position to dictate what type of functionality is included in a wireless device. As devices continue to evolve, chip and antenna space is at a premium. Requiring that devices carry an FM chip

may foreclose opportunities to include other functionality that may be more highly valued by consumers and harm competition among device makers by limiting opportunities for differentiation. Additionally, requiring an FM chip would require a separate antenna in order to accommodate the significant differences between FM signal wavelengths and cellular/PCS signal wavelengths. Design decisions of this nature should be left to the market; manufacturers and carriers will provide services and functionalities that are demanded by consumers.

Third, while certain proponents of an FM chip mandate couch their call for dictated design decisions as necessary to enhance public safety, such claims are not true. Pursuant to the Warning, Alert, and Response Network (WARN) Act (enacted as part of P.L. 109-347), industry is working with the Federal Communications Commission, the Federal Emergency Management Agency, and other governmental stakeholders to develop a mobile broadcast emergency alerting system compatible with present and future wireless air interfaces that will allow for the targeted real-time delivery of government-approved alerts. A widely available alerting platform will soon be a reality.

Changing direction now and adopting an FM chip focused solution, which was considered and rejected during the WARN Act implementation, will put this multi-year collaboration and investment at risk and delay the widespread availability of alerting capability. In addition, an FM chip would provide a materially inferior means of providing real-time alerts to mobile consumers. The existence of an FM chip in a mobile device does not guarantee that a consumer would be tuned to a station broadcasting an announcement about an impending danger. In contrast, the WARN Act system will provide immediate notification of government-approved alerts.

Calls for an FM chip mandate are not about public safety but are instead about propping up a business which consumers are abandoning as they avail themselves of new, more consumer-friendly options. Disintermediation should not be a basis for legislation, and a solution to the dispute between the recording industry and the broadcasters should not burden device manufacturers and carriers as they work to extend wireless broadband coverage to every American.

On behalf of our respective members, including wireless carriers, device manufacturers, and chip makers, we thank you for your attention to this matter, and for resisting self-interested calls to intrude on the most dynamic and innovative wireless industry in the world.

Sincerely,



Steve Largent  
President and CEO  
CTIA-The Wireless Association



Grant Seiffert  
President  
Telecommunications Industry Association



Phillip Bond  
President and CEO  
TechAmerica



Gary Shapiro  
President and CEO  
Consumer Electronics Association



Dean Garfield  
President and CEO  
Information Technology Industry Council



Steve Berry  
CEO/Executive Director  
Rural Cellular Association