

**Testimony of  
Gerard Keegan  
CTIA – THE WIRELESS ASSOCIATION®  
In Opposition to Hawaii Senate Bill 2571**

**February 3, 2014**

**Before the Hawaii Senate Committee on Health & Senate Committee on Technology and the Arts**

On behalf of CTIA-The Wireless Association®, the trade association for the wireless communications industry, I submit this testimony in opposition to Hawaii Senate Bill 2571, which would require cell phones sold in Hawaii to bear warning labels. CTIA believes this legislation is unnecessary, inconsistent with the Food and Drug Administration’s conclusion that “[t]he scientific evidence does not show a danger to any users of cell phones from RF exposure, including children and teenagers,”<sup>1</sup> and conflicts with federal law.

CTIA is not an expert scientific body, and I am not a scientist. That’s why, in addressing this issue, we consistently look to the impartial expert agencies for guidance. We start with the Federal Communications Commission (FCC), which Congress has tasked with establishing standards that safeguard the health of wireless users. The FCC, after consultation with the Food and Drug Administration (FDA), the Environmental Protection Agency (EPA), the Occupational Safety and Health Administration (OSHA), and the National Institute for Occupational Safety and Health (NIOSH), has adopted standards governing radiofrequency (RF) energy from cell phones and determined that all cell phones that comply with those standards are safe for use by the general public. The FCC asserted that its standards represent the “best scientific thought and are sufficient to protect the public health.”<sup>2</sup> No wireless device may be offered for sale or lease in the United States unless the cell phone has been

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<sup>1</sup> See Children and Cell Phones, available at <http://www.fda.gov/Radiation-EmittingProducts/RadiationEmittingProductsandProcedures/HomeBusinessandEntertainment/CellPhones/ucm116331.htm> (last visited Feb 1, 2014).

<sup>2</sup> The FCC has explained that its RF testing, certification, and emissions standards “protect the public health with respect to RF radiation from [all] FCC-regulated transmitters,” including wireless phones. In re Guidelines for Evaluating the Environmental Effects of Radiofrequency Radiation, Release No. 96-326, 11 F.C.C.R. 15123, 15184 ¶ 169 (1996) (“FCC First Order”).

authorized in accordance with the FCC's RF regulations. The FCC states that "[a]ny cell phone at or below these SAR levels (that is, any phone legally sold in the U.S.) is a 'safe' phone, as measured by these standards."<sup>3</sup> In addition, the Federal Radiofrequency Interagency Work Group, composed of representatives from FCC, FDA, EPA, NIOSH, OSHA, and National Telecommunications and Information Administration, continues to monitor the medical literature in this area to ensure the FCC standards remain appropriate.<sup>4</sup>

The FCC has expressly evaluated the potential thermal and non-thermal biological effects of RF from FCC-licensed devices. In fact, the FCC in its 1997 RF Order, addressed a series of proposals calling for lower RF exposure limits than those originally adopted by it based on the alleged non-thermal effects of RF emissions, and specifically declined to adopt those proposals.<sup>5</sup> The FCC's decision not to change its RF standards based on alleged non-thermal effects of RF has been upheld, repeatedly, by federal courts on appeal. In the *Cellular Phone Taskforce* case, the Second Circuit Court of Appeals specifically rejected the argument that the FCC's standards did not account for "non-thermal effects."<sup>6</sup> In the *EMR Network* case, the D.C. Circuit upheld the FCC's decision not to initiate a proceeding to revise its RF regulations.<sup>7</sup> In fact, the D.C. Circuit found "nothing" in the studies referenced by the petitioners that would have required the FCC to revisit its rules based on alleged non-thermal effects.<sup>8</sup>

On March 29, 2013, the FCC released a Notice of Inquiry (NOI) seeking "to determine whether there is a need for reassessment of the Commission's radiofrequency (RF) exposure limits and policies."<sup>9</sup> In its NOI, the FCC notes that it continues "to have confidence in the current exposure limits"<sup>10</sup> The FCC

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<sup>3</sup> See "Cellular Telephone Specific Absorption Rate (SAR)," available at <http://www.fcc.gov/cgb/sar/> (last visited Feb 1, 2014).

<sup>4</sup> See Cell Phones, available at: <http://www.fda.gov/Radiation-EmittingProducts/RadiationEmittingProductsandProcedures/HomeBusinessandEntertainment/CellPhones/default.htm> (last visited Feb 1, 2014).

<sup>5</sup> See In re Guidelines for Evaluating the Environmental Effects of Radiofrequency Radiation, 12 F.C.C.R. 13494, at 13503-06 (¶ 25, ¶ 26, ¶ 28, ¶ 31) (1997).

<sup>6</sup> *Cellular Phone Taskforce v. FCC*, 205 F.3d 82, 90 (2d Cir. 2000).

<sup>7</sup> *EMR Network v. FCC*, 391 F.3d 269 (D.C. Cir. 2005).

<sup>8</sup> Id. at 274.

<sup>9</sup> *Reassessment of Federal Communications Commission Radiofrequency Exposure Limits and Policies*, Notice of Inquiry, FCC 13-39 (rel Mar. 29, 2013) ("NOI")

<sup>10</sup> *NOI* at ¶ 205.

further notes in its NOI that “[a]s an initial matter, while there has been increasing public discussion about the safety of wireless devices, to date organizations with expertise in the health field such as the FDA have not suggested that there is a basis for changing our standards or similar standards applied in other parts of the world.”<sup>11</sup> Furthermore, the Commission states in the NOI that its current RF exposure guidelines include a 50 fold safety factor and that this “safety factor can well accommodate a variety of variables such as different physical characteristics and individual sensitivities - and even the potential for exposures to occur in excess of our limits without posing a health hazard to humans.”<sup>12</sup> Finally, in commenting on the NOI’s release, the FCC noted that the “[t]he United States has the most conservative emissions standards in the world.”<sup>13</sup>

Leading national and international health and safety organizations have concluded that there are no known adverse health risks associated with the use of wireless devices. In fact, the FDA concludes that, “[t]he scientific evidence does not show a danger to any users of cell phones from RF exposure, including children and teenagers.”<sup>14</sup> Additionally, the FCC advises in its consumer fact sheet on the issue of wireless devices and health concerns that, “[s]ome health and safety interest groups have interpreted certain reports to suggest that wireless device use may be linked to cancer and other illnesses, posing potentially greater risks for children than adults. While these assertions have gained increased public attention, currently no scientific evidence establishes a causal link between wireless device use and cancer or other illnesses.”<sup>15</sup> Moreover, in its June 2011 factsheet on this issue, the World Health Organization advises that, “[a] large number of studies have been performed over the last two decades to assess whether

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<sup>11</sup> *NOI* at ¶ 219.

<sup>12</sup> *NOI* at ¶ 236.

<sup>13</sup> See “FCC to Re-examine Cell Phone Radiation Standards,” available at: [http://news.cnet.com/8301-13578\\_3-57454196-38/fcc-to-re-examine-cell-phone-radiation-standards/](http://news.cnet.com/8301-13578_3-57454196-38/fcc-to-re-examine-cell-phone-radiation-standards/) (last visited Feb 1, 2014).

<sup>14</sup> See Children and Cell Phones, available at <http://www.fda.gov/Radiation-EmittingProducts/RadiationEmittingProductsandProcedures/HomeBusinessandEntertainment/CellPhones/ucm116331.htm> (last visited Feb 1, 2014).

<sup>15</sup> See Wireless Devices and Health Concerns, available at <http://www.fcc.gov/cgb/consumerfacts/mobilephone.html> (last visited Feb 1, 2014).

mobile phones pose a potential health risk. To date, no adverse health effects have been established as being caused by mobile phone use.”<sup>16</sup>

This legislation’s labeling mandate on cell phones is intended to serve as a consumer product warning. In testifying against a similar bill in Maine in 2010, then-director of the Maine Center for Disease Control and Prevention, Dr. Dora Anne Mills summarized it best when she advised this Legislature that “to warn against something, there should be a defined risk. Our [Maine CDC and Department of Health and Human Services] reading of the research, including numerous studies and analyses, does not indicate there is a defined cancer risk to warn against.”<sup>17</sup> Moreover, Dr. Mills explained that issuing warnings based on undefined risks would result in an “over-warned and turned-off public as well as a lack of credibility in the warnings themselves.”<sup>18</sup> As the Maine CDC found, mandating cell phone warnings is unnecessary and would result in consumers doubting the efficacy of warnings generally, thereby lessening the impact of warnings on other consumer products where they serve to protect consumers from defined risks and true harm.

SB 2571 contradicts the clear message of the federal regulatory agencies that have carefully considered this issue, which is that devices compliant with the federal standards are safe for consumer use. As such it simply does not meet the fundamental purpose of consumer product information: to better inform the consumer about the product. Instead, it constitutes a contradiction to established RF safety levels and, more specifically, challenges the efficacy of the U.S. government’s determinations of the safety of wireless products. Such a result will not benefit consumers.

The FCC’s March 2013 NOI dispels many misconceptions about RF safety. For example, in the NOI the Commission notes that “exceeding the SAR limit does not necessarily imply unsafe operation, nor do lower SAR quantities imply ‘safer’ operation. The limits were set with a large safety factor, to be

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<sup>16</sup> See Electromagnetic fields and public health: mobile phones, available at <http://www.who.int/mediacentre/factsheets/fs193/en/index.html> (last visited Feb 1, 2014).

<sup>17</sup> Testimony of Dora Anne Mills, M.D., Ph.D., Director, Maine Center for Disease Control and Prevention, in Opposition to Maine LD 1706, Cell Phone Warning Label Legislation, 03/02/2010 at page 1.

<sup>18</sup> Id at page 4.

well below a threshold for unacceptable rises in temperature. As a result, exposure well above the specified SAR limit should not create an unsafe condition.”<sup>19</sup> The FCC goes to further state that “[w]e also take this opportunity to clarify a misconception, apparently held by some in the public, of our policy dealing with separation distance between portable devices and the body. Some cell phone users apparently believe that certain devices need to be kept at least a specified distance (up to 2.5 cm) from the head during normal use to ensure compliance with our SAR limits. Such a requirement does not exist and would clearly be impractical.”<sup>20</sup> Moreover, the FCC notes that a consumer “use that possibly results in non-compliance with the SAR limit should not be viewed with significantly greater concern than compliant use.”<sup>21</sup>

Any attempt by state governments to regulate cell phone labeling based on alleged safety concerns is preempted by federal law. The federal government’s exclusive jurisdiction over radio communications is predicated on a finding that national regulation is not only appropriate, but it is essential to the operation of a seamless, interstate telecommunications network because radio waves operate without regard to any state lines. In light of the federal government’s primacy over wireless communications in general and RF in particular, state government authority to regulate in this area is severely constrained.

After the City of San Francisco adopted a cell phone-related labeling and disclosure ordinance in 2011, CTIA challenged the City’s ordinance. In September 2012, a three-judge panel of U.S. Court of Appeals for the Ninth Circuit ruled in CTIA's favor, finding that the FCC has concluded that cell phones are safe, that the compelled speech required by the ordinance violated the First Amendment, and that the ordinance's requirements were misleading.<sup>22</sup> Accordingly, the court permanently enjoined the City from enforcing its ordinance. The 9<sup>th</sup> Circuit subsequently rejected San Francisco’s petition for rehearing. In

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<sup>19</sup> *NOI* at ¶ 251.

<sup>20</sup> *NOI* at Note 447.

<sup>21</sup> *NOI* at 251.

<sup>22</sup> *CTIA v. City and County of San Francisco*, 9th Cir. Nos. 11-77707, 11-7773.

2013, CTIA and San Francisco entered into a settlement agreement that permanently bars the City from enforcing its cell phone labeling and disclosure ordinance.

In closing, SB 2571 is unnecessary, inconsistent with the FDA's conclusion that "[t]he scientific evidence does not show a danger to any users of cell phones from RF exposure, including children and teenagers," conflicts with federal law, and violates the First Amendment. Accordingly, we urge you to oppose this bill.

**From:** [mailinglist@capitol.hawaii.gov](mailto:mailinglist@capitol.hawaii.gov)  
**To:** [HTHTestimony](#)  
**Cc:** [sherrianwitt@aol.com](mailto:sherrianwitt@aol.com)  
**Subject:** Submitted testimony for SB2571 on Feb 3, 2014 13:15PM  
**Date:** Friday, January 31, 2014 7:13:33 PM

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**SB2571**

Submitted on: 1/31/2014

Testimony for HTH/TEC on Feb 3, 2014 13:15PM in Conference Room 229

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
sherrian witt	Individual	Support	No

Comments: I support informing the public of the risks of radiaton

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