

**Testimony of
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CTIA – THE WIRELESS ASSOCIATION®
In Opposition to Maine LD 883**

March 31, 2015

Before the Maine Joint Standing Committee on Energy, Utilities, and Technology

Chairman Woodsome, Chairman Dion, and members of the committee, on behalf of CTIA-The Wireless Association®, the trade association for the wireless communications industry, I am here in opposition to Maine LD 883, which would require cell phone manufacturers to place warning labels on cell phones and their packaging and force cell phone retailers to issue warning disclosures at the point-of-sale. CTIA believes this legislation is unnecessary, based on a fundamental misunderstanding of information provided in device manuals, 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,”¹ and conflicts with federal law.

CTIA is not an expert scientific body, and I am not a scientist. That is 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

¹ See *Children and Cell Phones*, available at <http://www.fda.gov/Radiation-EmittingProducts/RadiationEmittingProductsandProcedures/HomeBusinessandEntertainment/CellPhones/ucm116331.htm> (last visited Mar. 23, 2015).

the public health.”² No cell phone may be offered for sale or lease in the United States unless the cell phone has been 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.”³ 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.⁴

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.”⁵ In its NOI, the FCC notes that it continues “to have confidence in the current exposure limits”⁶ The FCC further notes 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.”⁷

The FCC’s March 2013 NOI dispels many misconceptions about RF safety - some of which are the basis of LD 883 and many that have been repeated in this Legislature’s hearing rooms in 2010, 2011, 2013, and 2014. For example, the FCC in its NOI states 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

² 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”).

³ See “Cellular Telephone Specific Absorption Rate (SAR),” available at <http://www.fcc.gov/cgb/sar/> (last visited Mar. 23, 2015).

⁴ See Cell Phones, available at: <http://www.fda.gov/Radiation-EmittingProducts/RadiationEmittingProductsandProcedures/HomeBusinessandEntertainment/CellPhones/default.htm> (last visited Mar. 23, 2015).

⁵ *Reassessment of Federal Communications Commission Radiofrequency Exposure Limits and Policies*, Notice of Inquiry, FCC 13-39 (rel Mar. 29, 2013) (“NOI”)

⁶ *NOI* at ¶ 205.

⁷ *NOI* at ¶ 219.

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.”⁸ In the NOI, the Commission also affirms that “exceeding the SAR [Specific Absorption Rate] limit does not necessarily imply unsafe operation, nor do lower SAR quantities imply ‘safer’ operation. The [FCC] limits were set with a large safety factor, to be 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.”⁹

Moreover, the FCC notes that “using a device against the body without a spacer will generally result in actual SAR below the maximum SAR tested; moreover, a use that possibly results in non-compliance with the SAR limit should not be viewed with significantly greater concern than compliant use.”¹⁰ The Commission also confirms in the NOI that its RF exposure guidelines include a 50 fold safety factor and 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.”¹¹

The statements included in cell phone manuals are not warnings. In fact, they are compliance statements to show that devices have been tested in compliance with FCC guidelines. The FCC recommends language that manufacturers include in manuals to show compliance with the FCC testing protocols. The statements of compliance in the manuals are consistent with the FCC’s recommended language. Additionally, some manufacturers provide tips in their manuals for consumers who have individualized concerns about RF energy. Some carriers provide similar tips in literature they provide with cell phones. Those tips include using a hands-free option, texting rather than talking, and increasing distance between the device and the body. They are similar to tips offered on the FCC and FDA websites and linked to on the Maine Center for Disease Control & Prevention’s website. The

⁸ *NOI* at Note 447.

⁹ *NOI* at ¶ 251.

¹⁰ *NOI* at ¶ 251.

¹¹ *NOI* at ¶ 236.

FCC, however, has made it clear that it does not endorse the need for additional practices to reduce exposure. Furthermore, the FCC affirms that “so long as exposure levels are below a specified limit value, there is no requirement to further reduce exposure.”¹² In fact, the FDA maintains that “[s]ince there are no known risks from exposure to RF emissions from cell phones, there is no reason to believe that hands-free kits reduce risks.”¹³

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. 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.”¹⁴ 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.”¹⁵ Moreover, in a factsheet on this issue originally published in June 2011 and subsequently reaffirmed in October 2014, the World Health Organization advises that, “[a] large number of studies have been performed over the last two decades to assess whether mobile phones pose a potential health risk. To date, no adverse health effects have been established as being caused by mobile phone use.”¹⁶

The bill’s labeling mandate on cell phones is intended to serve as a consumer product warning. This Legislature rejected similar proposed warning label bills in 2010, 2011, and 2014. In testifying

¹² *NOI* at ¶ 236.

¹³ See Reducing Exposure: Hands-free Kits and Other Accessories, available at <http://www.fda.gov/Radiation-EmittingProducts/RadiationEmittingProductsandProcedures/HomeBusinessandEntertainment/CellPhones/ucm116293.htm> (last visited Mar. 23, 2015).

¹⁴ See Children and Cell Phones, available at <http://www.fda.gov/Radiation-EmittingProducts/RadiationEmittingProductsandProcedures/HomeBusinessandEntertainment/CellPhones/ucm116331.htm> (last visited Mar. 23, 2015).

¹⁵ See Wireless Devices and Health Concerns, available at <http://www.fcc.gov/cgb/consumerfacts/mobilephone.html> (last visited Mar. 23, 2015).

¹⁶ See Electromagnetic fields and public health: mobile phones, available at <http://www.who.int/mediacentre/factsheets/fs193/en/index.html> (last visited Mar. 23, 2015).

against the bill 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.”¹⁷ 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.”¹⁸ 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.

LD 883 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.

It is important to note that 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.¹⁹ 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

¹⁷ 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.

¹⁸ Id at page 4.

¹⁹ 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).

not account for “non-thermal effects.”²⁰ In the *EMR Network* case, the D.C. Circuit upheld the FCC’s decision not to initiate a proceeding to revise its RF regulations.²¹ 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.²²

Finally, 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.

In addition, under the standard established by the United States Supreme Court in *Zauderer v. Office of Disciplinary Counsel*, 471 U.S. 626 (1986), any governmentally compelled disclosures to consumers must be “purely factual and uncontroversial.” By way of example, after the City of San Francisco adopted a cell phone-related labeling and disclosure ordinance in 2011, CTIA challenged the City arguing that the ordinance abridged cell phone retailers First Amendment rights. 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 and the ordinance’s requirements were misleading.²³ Accordingly, the court permanently enjoined the City from enforcing its ordinance. The 9th Circuit subsequently rejected San Francisco’s petition for rehearing. CTIA and San Francisco then entered into a settlement agreement that permanently bars the City from enforcing its cell phone labeling and disclosure ordinance.

²⁰ Cellular Phone Taskforce v. FCC, 205 F.3d 82, 90 (2d Cir. 2000).

²¹ EMR Network v. FCC, 391 F.3d 269 (D.C. Cir. 2005).

²² Id at 274.

²³ CTIA v. City and County of San Francisco, 9th Cir. Nos. 11-77707, 11-7773.

In closing, LD 883 is unnecessary, based on a fundamental misunderstanding of information provided in device manuals, 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," and conflicts with federal law. Accordingly, we urge the Committee to give this bill a unanimous "Ought Not to Pass" report. Thank you for your time.