



March 22, 2022

The Honorable Gregg Takayama
Chair, House Committee on Higher Education & Technology
Hawaii State Capitol, Room 223
Honolulu, HI 96813

The Honorable Linda Clark
Vice Chair, House Committee on Higher Education & Technology
Hawaii State Capitol, Room 230
Honolulu, HI 96813

RE: HCR 37/HR 32 — Methodology to Assess Effects of Radio Frequency Emissions

Dear Chair Takayama and Vice Chair Clark,

On behalf of CTIA, the trade association for the wireless communications industry, I respectfully write in opposition to HCR 37/HR 32. This legislation is both unnecessary and is preempted by federal law.

Radio waves are critical to wireless communications. Congress instructed the Federal Communications Commission (FCC) to regulate radio frequency (RF) emissions to ensure a proper balance between an effective communication system and consumer protection.¹ Congress has long exercised federal authority over radio waves through the 1934 Communications Act, its creation of the FCC, the Telecommunications Act of 1996, and its delegation of authority to the FCC to regulate all technical aspects of wireless communication.²

Because of the need for an efficient and effective national telecommunications system, Congress and the FCC have emphasized the importance of uniformity in the regulation of wireless phones and equipment such that the same phone-and-wireless network that works in Hawaii works in every other state. National uniformity ensures accessibility and compatibility. In contrast, state-by-state regulation, like a state-specific methodology “to assess the effects of radio frequency emissions generated by wireless antenna sites” as provided for in HCR 37/HR 32, would disrupt that system and place unnecessary and costly burdens on industry.³

¹ *CTIA – The Wireless Ass’n v. City of Berkeley*, 928 F.3d 832, 850 (9th Cir. 2019) (“the FCC was tasked not only with protecting the health and safety of the public, but also with ensuring the rapid development of an efficient and uniform network.”) (citation omitted).

² *Farina v. Nokia, Inc.*, 625 F.3d 97, 124 (3d Cir. 2010) (“The stated purpose behind the FCA is to “regulat[e] interstate and foreign commerce in communication by wire and radio so as to make available ... a rapid, efficient, Nation-wide, and world-wide wire and radio communication service with adequate facilities at reasonable charges[.]” (citing 47 U.S.C. § 151)).

³ *Farina*, 625 F.3d at 126 (“The wireless network is an inherently national system ... Congress and the FCC recognized uniformity as an essential element of an efficient wireless network.”)



Based on recommendations from blue-chip standard-setting organizations and based on a consensus of the federal health and safety agencies, such as the Food and Drug Administration (FDA), Environmental Protection Agency, and the Occupational Safety and Health Administration, in 1996 the FCC adopted an RF emission standard that protects consumers at 50 times below the level at which adverse biological effects were observed in laboratory animals.⁴ In reality, wireless devices and equipment operate at well below the FCC limit.⁵

In 2019, the FCC and FDA, after re-evaluating the standard, confirmed the adequacy of the standard to protect consumers and workers. The standard applies to RF emitted from 5G systems. The FCC and FDA have declared that wireless phones and equipment compliant with the FCC's standards are safe for use by all workers and consumers, including children.⁶ Thus, HCR 37/HR 32 is unnecessary.

Courts have repeatedly upheld the preemptive effect of the FCC's regulations, rendering legislation like HCR 32/HR 32 unlawful.⁷ Federal preemption applies with equal force to state-mandated warnings or disclosure requirements that suggest FCC-compliant equipment is unsafe.⁸ Specifically, federal courts in the Ninth Circuit have barred as preempted state regulation that creates "an erroneous public perception" that RF emissions from FCC-compliant equipment are unsafe.⁹ A legislative action, like HCR 37/HR 32, that even raises the "implication about public safety" is preempted.¹⁰

HCR 37/HR 32 Is Preempted for a Number of Reasons

First, HCR 37/HR 32 is premised on the alleged inadequacy of the FCC's RF standards. The fourth 'Whereas' clause states, "in the absence of credible data and information, public perceptions concerning wireless technologies have too often been shaped by speculation and misinformation rather than verifiable scientific evidence..." As previously outlined, there is no 'absence of credible data and information.' As discussed

⁴ *Cohen v. Apple*, 497 F. Supp. 3d 769, 782 (N.D. Ca. 2020).

⁵ *Id.* at 783 (noting that FCC compliance testing "is performed under more extreme conditions than a user would normally encounter").

⁶ *CTIA – The Wireless Ass'n v. City of Berkeley*, 487 F. Supp. 3d 821, 826-827 (N.D. Ca. 2020); *Cohen*, 497 F. Supp.3d at 775-776 (N.D. Ca. 2020).

⁷ *Murray v. Motorola, Inc.*, 982 A.2d 764, 777 (D.C. 2009) ("insofar as plaintiffs' claims rest on allegations about the inadequacy of the FCC's RF radiation standard or about the safety of their FCC-certified cell phones, the claims are preempted under the doctrine of conflict preemption."); *Farina*, 625 F.3d at 122 (federal law preempts state law based on the premise that FCC RF emission "standards are inadequate—that they are insufficiently protective of public health and safety."); *Cohen*, 497 F. Supp.3d at 785 (same).

⁸ *Cohen*, 497 F. Supp.3d at 785 (holding that requiring "additional consumer disclosures regarding [] FCC-certified cell phones ... conflict[s] with the FCC's contrary determination that its existing disclosure requirements adequately inform the American public."); *id.* at 786 (preempting claims requiring additional disclosures because they risk "improperly impeding the marketing of cell phones that the FCC has found to be safe").

⁹ *CTIA*, 487 F. Supp. 3d at 828 (federal preemption barred Berkeley's disclosure requirement because "the FCC concluded that the information about RF exposure on its website and in cell phone user manuals was 'adequate to inform consumers' of potential health risks associated with RF emissions from FCC-certified cell phones ... any additional warnings about RF exposure could create 'an erroneous public perception or overwarning of RF emissions from FCC certified or authorized devices' and 'contribute to a feeling of uncertainty or a lack of control.'").

¹⁰ *Id.* at 834 n.11; *Cohen*, 497 F. Supp.3d at 785 (disclosure requirements in addition to what the FCC already requires "conflict with the FCC's considered policy judgment regarding how best and in what form to disseminate relevant information about RF exposure to the public.").



above, in 2019, the FCC and FDA, after re-evaluating the standard, confirmed the adequacy of the standard to protect consumers and workers.¹¹

Second, HCR 37/HR 32 raise the implication that RF emissions from FCC-certified equipment are unsafe, which could contribute to “an erroneous public perception” that RF emissions from FCC-compliant equipment are unsafe. Two separate District Courts in the Ninth Circuit recently held that federal law preempts this type of state regulation, whose stated goal is “to protect public health and safety,” because it conflicts with the FCC’s policy against “overwarning.” Even if the legislation were not misleading, it is still preempted because it conflicts with the FCC’s balancing of its policy objectives.¹²

In closing, as discussed above, HCR 37/HR 32 are both unnecessary and unlawful and should be rejected. CTIA and our members respectfully request that HCR 37/HR 32 not advance.

Sincerely,

Bethanne Cooley
Assistant Vice President
State Legislative Affairs

¹¹ *Cohen*, 497 F.Supp.3d at 785 (agreeing that requiring additional disclosures “conflict[s] with the FCC’s considered policy judgment regarding how best and in what form to disseminate relevant information about RF exposure to the public.”).

¹² *CTIA*, 487 F.Supp.3d at 833 (“Furthermore, even if the Berkeley ordinance specifically is (as the Ninth Circuit indicated) literally true and not misleading, it does not necessarily follow that there is no risk of ‘overwarning’ – especially given that the FCC is tasked with balancing the competing objectives of ensuring public health and safety and promoting the development and growth of the telecommunications network and related services.”).



Testimony of Chris Leonard
President – Hawai'i Association of Broadcasters, Inc.
President – New West Broadcasting Corp.
Regarding HCR 37 / HR 32

Before the House Committee on Higher Education & Technology
March 23, 2022

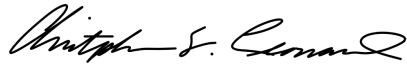
REQUESTING THE UNIVERSITY OF HAWAI'I TO ESTABLISH A RELIABLE, INDEPENDENT, AND
TRANSPARENT MEHODOLOGY TO ASSESS EFFECTS OF RADIO FREQUENCY EMISSION
GENERATED BY WIRELESS ANTENNA SITES

Good afternoon Chairman Takayama, Vice Chair Clark and members of the committee. For the record, my name is Chris Leonard and I am the President of the Hawai'i Association of Broadcasters. The Association represents over 100 television and radio stations that serve local communities across the State of Hawai'i. I am also the President of New West Broadcasting Corp., a locally-owned broadcast company that owns and operates six radio stations in Hilo and Kona. I provide this testimony in opposition to HCR 37 and HR32.

We share your concern about public safety as it pertains to radio frequency (RF) exposure. The first few sentences of the resolution are targeted at the deployment of 5G, however the resolution creates potential unintended consequences for Hawai'i's radio and television broadcasters and would require the University of Hawaii to provide unnecessary, costly and duplicative services that are currently provided by and fall under the jurisdiction of the Federal Communications Commission (FCC). Hawai'i's radio and television broadcasters are licensed and regulated by the FCC and are already required to comply with 47 C.F.R. section 1.1307(b) which, as you state in the resolution, includes compliance with "limits to human exposure to radio frequency..." Furthermore, much of the data that you are asking the University to compile and maintain is already publicly available on the FCC's website at FCC.gov and compliance with these rules is enforced by the FCC.

Chairman Takayama, Vice Chair Clark and committee members, we appreciate your time to hear our concerns about HCR 37 and HR 32. We strongly support public safety and your goal to ensure that growth in new wireless technologies "...occurs in a responsible and managed manner, consistent and compliant with Federal Communications Commission regulations..." but do not feel these resolutions best address these concerns.

Sincerely,

A handwritten signature in black ink, appearing to read "Christopher S. Leonard". The signature is fluid and cursive, with a large initial "C" and "L".

Christopher S. Leonard
President
Hawai'i Association of Broadcasters

President/General Manager
New West Broadcasting Corp.