SIERRA WIRELESS™

August 5, 2011

Donald S. Clark
Secretary
Federal Trade Commission
Room H-113 (Annex X)
600 Pennsylvania Avenue, N.W.
Washington, DC 20580

Re: Request for Comments and Announcement of Workshop on Standard Setting Issues, 76 FR 28036 (May 13, 2011) (the "Request") - Patent Standards Workshop, Project No. P11-1204

Dear Secretary Clark:

Sierra Wireless Inc. respectfully submits these comments in response to the above-referenced request.

Sierra Wireless is a pioneer in the design and manufacture of devices for wireless data communications over public data networks. Its logo, "Heart of the Wireless Machine," aptly captures its business objective. Sierra Wireless data-communication devices are used with millions of personal computers and are embedded in wireless communication devices used by consumers. Oftentimes, the Sierra Wireless products are sold to telecommunication carriers who may "rebrand" the products for sale to their customers. Sierra Wireless serves markets which are competitive and characterized by product life cycles often measured by only a year or two. In these highly-competitive markets, Sierra Wireless strives to succeed though constant product and technology innovation.[1]

In the following, Sierra Wireless will comment upon the patent-related issues that it has experienced when it manufactures and sells its products for wireless data communications over public networks. In fact, Sierra Wireless has taken licenses under hundreds, if not thousands, of patents that have been declared as "essential" to Standards Setting Organizations (SSO's). Each year, Sierra pays

[1] Sierra Wireless has filed about one thousand patents and applications in the United States and other countries.

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millions of dollars in royalties for non-exclusive rights under patents. The royalties that are paid directly to the patent owners are in addition to other patent-related legal expenses, primarily relating to litigations filed by Non-Practicing Entities (NPE's).[2]

In considering wireless data communication devices such as those designed and sold by Sierra Wireless, it must be kept in mind that the devices are essentially radios that operate in the radio-frequency (RF) portion of the electromagnetic spectrum that is licensed for usage by cellular telephones and similar mobile devices. RF spectrum is a limited public resource and, as such, is allocated in "frequency bands" or "channels" by the Federal Communications Commission (FCC) in the United States.

Sierra Wireless favors lawmaking in a way that encourages reasonable and non-discriminatory (RAND) licensing of patents relating to devices that operate in the licensed RF spectrum. The aspect of RAND licensing that is of most concern to Sierra Wireless -- and the RAND aspect that it has seen most abused in practice -- is the Non-Discriminatory requirement.[3] The following will describe abuses of the Non-Discriminatory aspects of RAND licensing from the perspective of Sierra Wireless.

Because Sierra Wireless is a market leader in devices for wireless data communications over public networks, it has attracted much attention from patent holders, whether NPE's or otherwise, who assert that they hold "essential" patents under one or more of the myriad of standards that relate to interoperability of devices for wireless telecommunications. For various reasons, sometimes not related

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[2] Sierra Wireless is often "caught in the middle" in NPE patent litigations because, when NPE's bring suit against customers of Sierra Wireless, those customers often assert indemnification claims against Sierra Wireless but, at the same time, the sellers of semiconductor devices used in the Sierra Wireless devices have sufficient market power to disclaim any liability for patent infringement assertions by NPE's.

[3] This is not to say that Sierra Wireless has not observed abuses relating to "reasonableness," "royalty-stacking," and other issues relating to RAND licensing.

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to actual liability for patent infringement, Sierra Wireless has taken licenses under patents that are supposedly subject to RAND agreements between the patent owners and an SSO. One area that egregious abuse occurs is that the patent owners, after "picking off" a few willing licensees like Sierra Wireless, ceases their assertion efforts, leaving a number of unlicensed competitors in the market. As a result, Sierra Wireless is placed at a substantial competitive disadvantage relative to its unlicensed competitors – resulting effectively in Sierra Wireless being subject to a license at discriminatory rates.[4]

To cure this problem, Sierra Wireless would be in favor of lawmaking that clarifies that unlicensed competition should be considered when determining that a licensing provision is non-discriminatory. In other words, if unlicensed competition persists for a substantial period after a RAND license is granted, the non-discriminatory royalty rate should be substantially diminished, or eliminated, until substantial unlicensed competition has been licensed.[5]

Sierra Wireless appreciates the opportunity to provide these comments, and for your consideration of them.

Respectfully submitted,
Sierra Wireless Inc.

David G. Mclennan
Chief Financial Officer

[4] The problem with unlicensed competition is acute when the licensor is an NPE or other entity with whom cross-licensing is not practicable. The differential between the royalty rates paid by Sierra Wireless and the zero rates paid by unlicensed competitors places Sierra Wireless at a substantial competitive disadvantage.

[5] Under the law of some other countries, discriminatory licensing, including the existence of non-licensed competition, may be considered as a sufficient reason for denying the right of a patent owner to enforce a patent.