United States Senate
WASHINGTON, DC 20510

February 22, 2019

The Honorable David S. Johanson, Chairman
U.S. International Trade Commission
500 E Street, SW, Room 112-A
Washington, DC 20436

Re: *Certain Mobile Electronic Devices and Radio Frequency and Processing Components Thereof,* Inv. No. 337-TA-1065

Dear Chairman Johanson and Commissioners:

We, members of the Arizona congressional delegation, are writing to express our support for Administrative Law Judge Pender's analysis and final determination that an exclusion order in the above-captioned investigation would create significant public interest and national security concerns. We fervently believe that patent holders should have every opportunity to protect their intellectual property. Yet, we respectfully suggest that this is the unusual case in which the International Trade Commission should determine that, under Section 337(d) of the Tariff Act of 1930, the negative effects of excluding preclude the imposition of an exclusion order on an allegedly infringing product.

We find persuasive ALJ Pender's reasoning in declining to issue an exclusion order against Apple iPhones containing Intel chipsets. ALJ Pender determined that Qualcomm and Intel comprise the only two premium baseband chipset suppliers in the premium smart phone merchant market. Aicha Evans, Intel's Chief Strategy Officer and former head of Intel's mobile division, whose testimony the ALJ called "unrebutted, unequivocal, uniquely credible, and highly logical," described Intel's near-certain likelihood of exiting the baseband chipset market if it could no longer sell chipsets to Apple for the U.S. market. And, as ALJ Pender determined, if Intel were forced to exit the market for 4G chips – the type of chips at issue in the proceeding – it would not be able to develop 5G chips. Therefore, granting an exclusion order could eliminate competition in components necessary for development of new 5G technology, technology that will have critical applications for our country's economy and national security.

As a result of such potential stymied or halted competition, according to the ALJ, "public health and welfare would be adversely impacted." Further, the ALJ stated that maintaining competition is "necessary for quality, innovation, competitive pricing, and, in this case, the preservation of a strong U.S. presence in the development of 5G and thus the national security of the United States."

According to Section 337(d) of the Tariff Act, even if the Commission finds that a violation of Section 337 occurred, it must consider the potential effects on public health and welfare before barring the problematic item from the U.S. Although we do not take a position on the merits of

the underlying patent issues in this proceeding, we believe that excluding Apple iPhones containing Intel chipsets would have a negative impact on public health and welfare.

Application of the exclusionary order would hurt competitive conditions, production of essential components related to 5G technology, and U.S. consumers. It would also risk national security, with ALJ Pender emphasizing, "it is obvious that the issue of national security should be a matter of pre-eminent importance in this investigation." Accordingly, to maintain American technological supremacy, safeguard national security, and promote future developments vital to elevating public health and welfare, we believe this case warrants application of a non-exclusionary remedy from the Commission.

We value the opportunity to share our views with you, and thank you for your consideration.

Sincerely,

Kyrsten Sinema
United States Senator

Martha McSally
United States Senator

Tom O'Halleran
Member of Congress

Ann Kirkpatrick
Member of Congress

Andy Biggs
Member of Congress

David Schweikert
Member of Congress

Ruben Gallego
Member of Congress

Debbie Lesko
Member of Congress

Greg Stanton
Member of Congress