May 19, 2020

The Honorable Phil Mendelson
Chairman, Council of the District of Columbia
John A. Wilson Building
1350 Pennsylvania Avenue NW, Suite 504
Washington, DC 20004

Dear Chairman Mendelson:

On behalf of CTIA®, the trade association for the wireless communications industry, I write in opposition to a proposed District of Columbia Act that mandates that telecommunications service providers provide payment plan programs to eligible customers in the District. While the overall legislation is well intentioned, CTIA members, including AT&T, T-Mobile, and Verizon, have already agreed to be a part of Federal Communications Commission (FCC) Chairman Ajit Pai's "Keep Americans Connected Pledge" to assist customers during this time and have taken other steps to address consumer concerns. Furthermore, federal law preempts this legislation as it applies to wireless carriers. Accordingly, we request the legislation be corrected to exclude wireless carriers.

Wireless carriers stepped up early during this difficult time to assist consumers impacted by COVID-19. Carriers have signed the FCC's pledge and committed to: (1) not terminate service to any residential or small business customers because of their inability to pay their bills due to the disruptions caused by the coronavirus pandemic; (2) waive any late fees that any residential or small business customers incur because of their economic circumstances related to the coronavirus pandemic; and (3) open Wi-Fi hotspots to any American who needs them. Each company has also taken additional steps, including providing free data to consumers, expanding options and increasing mobile data for low-income consumers, and providing support to our educators. CTIA has compiled information on these efforts: https://www.ctia.org/homepage/covid-19.

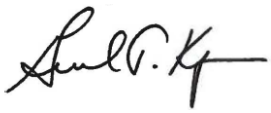
Moreover, federal law expressly forbids states, including the District of Columbia, from regulating the rates or entry of mobile communications providers.[1] The Communications Act allows states to regulate wireless carrier "terms and conditions" but not if they would have the effect of regulating wireless rates. As the FCC has stated, "it is the substance, not merely the form" that determines whether state law is preempted by

[1] Communications Act, 47 U.S.C. § 332(c)(3) ("[N] o State or local government shall have any authority to regulate the entry of or the rates charged by any commercial mobile service or any private mobile service.").

Section 332.[2] For example, the FCC has held that challenges to the manner in which telephone bills are calculated are equivalent to challenges to rates, because wireless rate structures are an integral part of rates.[3] Federal courts have repeatedly invalidated state regulations of wireless carrier rates and similar provisions, and have rejected state-law actions that would have had the effect of regulating wireless rates or entry.[4]

The wireless industry shares your objective to keep Washingtonians connected and looks forward to working with your office to further that objective, but CTIA respectfully requests removing wireless carriers from Section 308 regarding utility payment plans.

Sincerely,



Gerard Keegan
Vice President
State Legislative Affairs

cc: The Honorable Kenyan R. McDuffie, Chairperson, Committee on Business and Economic Development

---

[2] Wireless Consumers Alliance, Memorandum Opinion and Order, 15 FCC Rcd 17021, at 17307 ¶ 28.

[3] See, e.g., In the Matter of Southwestern Bell Mobile Systems, Inc., Petition for a Declaratory Ruling Regarding the Just and Reasonable Nature of, and State Challenges to, Rates Charged by CMRS Providers when Charging for Incoming Calls and Charging for Calls In Whole-Minute Increments, Memorandum Opinion and Order, 14 FCC Rcd 19898 (1999) at 19906 ¶ 19; see also AT&T v. Central Office Tel., Inc., 524 U.S. 214 (1998) at 223 ("Rates … do not exist in isolation. They have meaning only when one knows the services to which they are attached").

[4] Cellco P'ship v. Hatch, 431 F.3d 1077, 1082 (8th Cir. 2005) (state law requiring customer consent before any substantive change in contract between customer and provider could take effect constituted "impermissible rate regulation preempted by [Section 332(c)(3)]"); Bastien v. AT&T Wireless Servs., 205 F.3d 983 (7th Cir. 2000) (claims that carrier misled consumers as to network coverage and capacity preempted by Section 332(c)(3)); CTIA - Wireless Ass'n v. Echols, 2013 U.S. Dist. LEXIS 176578 (ND Ga. 2013) (state requirement that carrier charge certain customers $5.00 per month was "clearly a rate regulation" and party thus likely to succeed in claim that requirement was preempted by Section 332(c)(3)); In re Comcast Cellular Telecomm. Litig., 949 F. Supp. 1193 (E.D. Pa. 1996) (company's method for calculating length of a call directly implicated charges applied for that call, and therefore fell entirely within federal jurisdiction under Section 332(c)(3); Chandler v. AT&T Wireless Servs., 2004 U.S. Dist. LEXIS 14884 (S.D. Ill. 2004) (early termination fees constitute "rates" and fall outside state jurisdiction under Section 332(c)(3)).