July 15, 2020

The Honorable Phil Mendelson
Chairman
Council of the District of Columbia
1350 Pennsylvania Avenue NW, Suite 504
Washington, D.C. 20004

Dear Chairman Mendelson:

On behalf of CTIA®, the trade association for the wireless communications industry, I write to oppose Section 7122 of the Budget Support Act of 2020. This provision would impose a new 3 percent sales tax on advertising and the sale of "personal information." CTIA member companies are both sellers and purchasers of advertising services and operate retail stores in the District. CTIA and its members are very concerned this proposed new tax creates significant legal and administrative uncertainty, increases the cost of doing business in the District, and places D.C.-based businesses (both purchasers and sellers of advertising) at a competitive disadvantage with their competitors in Maryland and Virginia.

CTIA and its members oppose this legislation for the following reasons:

- Sales taxes are intended to be imposed on final consumption, not on business-to-business sales of goods and services. The proposed tax will result in the "pyramiding" of taxes and ultimately increase the cost of goods and services sold to D.C. consumers.

- The proposed new advertising tax will raise costs for thousands of local D.C. businesses that purchase advertising, many of them already struggling to survive in the wake of the COVID pandemic. The last thing local businesses need is an increase in the cost of advertising necessary to bring customers back into their businesses.

- The proposed new advertising tax will place local advertisers at a competitive disadvantage with advertisers in Maryland and Virginia. The airwaves and other advertising outlets do not respect geographical boundaries. Advertisements produced and placed in Virginia or Maryland will still be able to reach D.C. consumers.

- The provisions of Section 7122 do not specify how to determine whether the "gross receipts from the sale of or charges for advertising" occur in the District. The determination of where the taxable transaction occurs or the "sourcing" of such activity is especially complex given that advertising does not respect the boundaries of D.C., Maryland, or Virginia. CTIA and its members companies are concerned that this legislation would leave these important decisions to the Office of Taxation and Revenue (OTR).

- The legislation also imposes a new tax on "the sale of or charges for personal information." As with the tax on advertising, the bill does not specify how businesses will determine whether the sale of such information should be sourced to the District. Again, these decisions would be left to OTR with no guidance from the Council. Given that no other jurisdiction imposes such a tax, the development of sourcing rules for the sale of personal information will be very difficult and will likely lead to legal challenges.

- As sellers of advertising, CTIA members are concerned about the complexity associated with sourcing the sales of advertising services. It is unclear whether purchasers of advertising services that have locations in the District, Maryland, and Virginia will be able to source advertising services in Maryland or Virginia to avoid the tax. These complexities put sellers of advertising services at significant financial risk of audit assessments when they rely on representations made by purchasers of advertising services to determine where a sale occurs.

As you know, Maryland Governor Larry Hogan vetoed legislation that would have imposed a new tax on digital advertising services. Governor Hogan cited many of the same issues we have highlighted in this letter in his veto message. For the reasons outlined, I respectfully urge you to oppose the inclusion of these new tax provisions in the budget bill.

Sincerely,

Gerard Keegan
Vice President
State Legislative Affairs

cc: Members, Council of the District of Columbia