September 10, 2020

Honorable Alicia V. Barnes
Chair, Committee on Government Operations,
Consumer Affairs, Energy, Environment & Planning
Legislature of the Virgin Islands
56 King Street, Hamilton House
Christiansted, St. Croix, VI 00820

RE: Opposition to Amendment 33-808 to Bill No. 33-0055, amending Virgin Island Code pertaining to the Public Service Commission Oversight of Service Issue Complaints

Dear Chair Barnes:

On behalf of CTIA®, the trade association for the wireless communications industry, and its members, AT&T and T-Mobile that provide service in the United States Virgin Islands, I write to express strong opposition to Part IV of Amendment 33-808 to Bill No. 33-0055, which provides the U.S. Virgin Islands Public Services Commission (PSC) jurisdiction over service quality issues and establishes specific PSC complaint procedures. Part IV of the legislation is unnecessary as service quality issues are regulated at the federal level and because the U. S. Virgin Islands Department of Licensing and Consumer Affairs (DLCA) already has jurisdiction to adjudicate complaints regarding consumer issues pursuant to USVI Code Title 3 Chapter 16 §272.1 Additionally, Section 10 of Amendment 33-808 which removes the Eligible Telecommunications Carrier provisions from USVI statute could have a negative impact on telecommunication competition.

The wireless industry’s competitive nature has spurred rapid wireless development that has witnessed a growth of subscribers to over 442 million nationally and over 157,400 subscriber connections in the U.S. Virgin Islands, more wireless connections than people in the Territory.2 This rapid development was ushered in by Congress’ decision in 1993 to create a national regulatory framework for wireless.

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1 The Department of Licensing and Consumer Affairs (DLCA) is established under Virgin Islands Code Title 3 Chapter 16 (§270 et seq). It establishes, administers, coordinates and supervises the regulation and licensing of private businesses and professions (as provided for in V.I.C. Title 27 Professions and Occupations §301 et seq). DLCA provides and administers consumer services and programs pursuant to the Consumer Protection Law of 1973 as set forth in the Code (V.I.C. Title 12A Consumer Code §101 et seq). https://dlca.vi.gov/aboutdlca/#consumer

2 157,400 subscriber connections as of YE2018 according to Ovum WCIS+ subscription database (accessed April 15, 2019). The World Bank indicates the population of the islands is around 107,270 https://data.worldbank.org/indicator/SP.POP.TOTL.
This national framework allowed wireless providers to offer innovative service options, which significantly lowered the cost of services and provided more consumers with greater access to wireless. For example, in 2010, a personal unlimited voice, text, and data plan cost an average of $113.87 for one line, on a subscriber-weighted basis. Nine years later, the same plans cost $64.95, a decline of 43%. Adjusting for inflation, the decline in cost is even higher at 52%. That means that in 2019, a single line subscriber saved $576.60 a year compared to 2010 prices—totaling a grand savings for Americans of more than $130 billion per year. Bill No. 33-0055 would threaten this national framework and its resulting benefits and could limit consumer choice and increase consumer costs in the Territory.

Since 2003, CTIA’s Consumer Code for Wireless Service has been an integral part of delivering superior customer service to wireless consumers. The Code – which is followed throughout the United States, including the U.S. Virgin Islands – has helped consumers make informed decisions when selecting a wireless plan and has contributed to the continued competitiveness within the wireless industry. Wireless carriers that are signatories to the Code have committed to promptly respond to consumer inquiries and complaints received from government agencies such as the Virgin Islands Department of Licensing and Consumer Affairs, which the wireless industry has been working cooperatively with to resolve consumer complaints for years. Changing this longstanding process could result in consumer confusion.

The Consumer Code for Wireless Service affords wireless providers the flexibility to respond to changes in consumer demand. CTIA and its member companies regularly review the Code to ensure it reflects the ever-changing wireless marketplace. For example, a point was added to the Code that calls for providers to send postpaid customers free notifications for voice, data and messaging usage, and international roaming alerts to help them avoid unexpected overage charges. This has been particularly important to U.S. Virgin Islands consumers on the north shore of St. John and St. Thomas who have been subject to roaming charges from the British Virgin Islands. The wireless industry continues to make changes to its customer facing policies to remain competitive in the marketplace and respond to consumer demands.

Additionally, having a reliable network and quickly responding to service interruptions are necessities in the competitive wireless ecosystem. If a carrier’s network is down while its competitors’ networks are operating, that carrier will suffer reputational harm and will likely lose subscribers. As such, wireless

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carriers are incentivized to ensure that their networks are as resilient as possible, and they have disaster recovery plans in place to immediately deal with outages.

The wireless industry understands the need to promote continuity of service and network resiliency. Wireless carriers have implemented several strategies to address network reliability. Carriers have built redundant networks where appropriate. Overlapping cell sites allow for rerouting of traffic and enable networks to continue operating even if a single site goes down. Carriers also deploy portable cell sites to increase network capacity when needed and utilize cellular base stations on wheels (COWs), as well as other portable equipment, including antennas, generators, switching gear and air conditioning units, in storm-impacted and disaster areas. These were particularly helpful in the U.S. Virgin Islands in the aftermath of Hurricanes Irma and Maria.4

Recently, CTIA, along with its members, utilizing the experience gained in addressing the devastation of the 2017 hurricanes that impacted the U.S. Virgin Islands, released “Best Practices for Enhancing Emergency and Disaster Preparedness and Restoration,” which are designed to help maintain wireless service during hurricanes and other natural disasters.5 The initiative will enhance coordination between wireless carriers and local governments in preparing for a natural disaster or emergency and speed the restoration of wireless services in the wake of such events. Additionally, wireless carriers stepped up early during this difficult time to assist consumers impacted by COVID-19. CTIA has compiled information on these efforts at: https://www.ctia.org/homepage/covid-19.

Furthermore, federal law restricts states and territories from adopting service quality requirements for wireless services. 47 U.S.C. § 332(c)(3)(A) provides that “no State or local government shall have any authority to regulate the entry of or the rates charged by any commercial mobile service . . . , except that this paragraph shall not prohibit a State from regulating the other terms and conditions of commercial mobile services.”

“Entry” regulation includes regulations that effectively require a wireless carrier to build a network capable of providing a particular level of coverage or capacity to handle wireless traffic (See Bastien v. AT&T Wireless Services, Inc., 205 F. 3d 983 (7th Cir. 2000); In re Apple iPhone 3G Products Liability Litigation, 728 F. Supp. 2d 1065, 1076 (N.D. Cal. 2010)). Because establishing U.S. Virgin Islands service

quality regulations for wireless would have such an effect, they are thus prohibited under federal statute.

Additionally, the Federal Communications Commission (FCC) has reaffirmed its exclusive authority over service quality regulations that would require carriers to deploy or operate their networks in a particular manner. The FCC has established technical standards for antenna structures and construction requirements for wireless licensees. (See, e.g., 47 C.F.R. §§ 24.55, 24.103, 24.203.) The FCC has noted the “federal primacy over the areas of technical standards and competitive market structure for cellular service,” because it is “imperative that no additional requirements be imposed by the states which could conflict with [the FCC’s] standards and frustrate the federal scheme for the provision of nationwide cellular service.” (See in the Matter of An Inquiry Into the Use of the Bands 825–845 MHz and 870–890 MHz for Cellular Communications Systems, 89 F.C.C.2d 58, FCC 82-99 (rel. Mar. 3, 1982)).

Finally, Amendment 33-808, Section 10 seeks to provide a new § 45a (Universal Citation: V.I. Code tit. 30, § 45a) thereby eliminating the Eligible Telecommunications Carriers Designation from USVI statute. This could work to impose a barrier to entry, contrary to federal law, and place additional regulations on providers in the competitive marketplace which will only detract from investment and expansion of existing networks, therefore we oppose this amended language and respectfully request it be stricken.

CTIA and its member companies respectfully request that Part IV and Section 10 of Amendment 33-808 to Bill No. 33-0055 be stricken because service quality issues are federally regulated, they unnecessarily change the current regime regarding resolution of consumer complaints through DLCA, which is already tasked with protecting the health, safety, and rights of the consumer through enforcement of Virgin Islands consumer protection laws, would add an additional layer of unnecessary regulation on an extremely competitive industry, could result in customer confusion, and negatively impact competition. With the continued growth in the wireless industry and the benefits it offers U.S. Virgin Islands’ consumers, we respectfully urge the members of the Thirty Third Legislature’s Committee on Government Operations, Consumer Affairs, Energy, Environment & Planning to not adopt Amendment 33-808 to Bill No. 33-0055 as currently drafted.

Respectfully submitted,

Gerard Keegan
Vice President, State Legislative Affairs