



## NATIONAL CONFERENCE of STATE LEGISLATURES

*The Forum for America's Ideas*

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April 4, 2017

Honorable Marsha Blackburn  
Chairman, Communications and Technology  
Subcommittee  
Committee on Energy and Commerce  
U.S. House of Representatives  
Washington, D.C. 20515

Honorable Michael Doyle  
Ranking Member, Communications and  
Technology Subcommittee  
Committee on Energy and Commerce  
U.S. House of Representatives  
Washington, D.C. 20515

Dear Chairman Blackburn and Ranking Member Doyle,

We write on behalf of the National Conference of State Legislatures to express our opposition to the “Wireless Telecommunications Tax and Fee Collection Fairness Act of 2017,” which is contained in Section 20 of the “MOBILE NOW Act,” S. 19. NCSL, along with other state and local organizations, has long opposed preemption provisions like those in the Wireless Telecommunications Tax and Fee Collection Fairness Act. We respectfully request that you decouple the Wireless Telecommunications Tax and Fee Collection Fairness Act from S. 19 while you consider the provisions of the MOBILE NOW Act that address broadband and the need for sufficient spectrum for wireless providers. We also request that this letter be submitted for the record.

We are concerned that Congress would attach this provision to much needed legislation on broadband deployment. The Wireless Telecommunications Tax and Fee Collection Fairness Act has been introduced numerous times as a stand-alone bill but the merits of the legislative have never been heard or considered by a committee. Including this provision in the MOBILE NOW Act would delay its consideration as it would need to be referred to the House Judiciary Committee, which has jurisdiction for state tax legislation. We would urge you not to hold up passage of the MOBILE NOW Act for a poorly drafted and unwarranted preemption.

The wireless tax and fee collection provision is supported by certain prepaid wireless providers whose business models rely heavily on subsidization from federal and state Universal Service Funds, which is funded through fees levied on telecommunications consumers each month. It is our understanding that the largest prepaid provider, which also benefits the most from the federal Universal Service Fund program known as “Lifeline,” supports the inserted provision so that they would not have to collect 911 fees from customers using prepaid phones in one state.

Eight years ago, NCSL acknowledged the difficulty in collecting 911 fees on prepaid wireless services and worked with the wireless industry to develop model legislation that established a seamless system to collect 911 fees on prepaid wireless services. We are pleased to report that of the 42 states that place a 911 fee on prepaid wireless services, 41 states have enacted the NCSL model 911 fee collection legislation. We therefore believe it is unnecessary to preempt every state that has already acted to address this issue.

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With the growth of prepaid wireless, the collection of 911 fees is essential to provide efficient and timely emergency response. The consumers of prepaid service should pay the 911 fee just like customers of post-paid services (traditional monthly service) and all providers of prepaid wireless service should collect the 911 fee just as AT&T, Verizon, T-Mobile, Sprint and others do now for prepaid wireless. If you provide prepaid wireless service to consumers, you should collect the 911 fee, fair and simple.

Additionally, the provisions of the Wireless Telecommunications Tax and Fee Collection Fairness Act are so broadly and vaguely drafted that we believe that in addition to preempting state 911 fee collection authority, it would also impact many state and local taxes and fees that currently being collected by wireless providers and would therefore cost states billions of dollars annually. This ambiguity confused the Congressional Budget Office as well, which in its cost estimate of the Wireless Telecommunications Tax and Fee Collection Fairness Act last year wrote that the language “is circular in nature, and consequently, it is difficult to clearly determine when state or local taxing authority would be allowed and when it would be preempted.” This legislation is a litigant’s dream as the federal courts would be called upon time and time again to decide what tax, fee or surcharge is covered by the legislation.

NCSL has supported federal efforts to increase broadband access and adoption and provide additional spectrum to wireless providers across this country as we know that broadband is an economic driver for many of our communities. However, if the Wireless Telecommunications Tax and Fee Collection Fairness Act remains in S. 19, NCSL must oppose passage of the MOBILE NOW Act.

Thank you for consideration of our opposition to this provision.

Sincerely,



Senator Daniel T. Blue, Jr., North Carolina  
President, NCSL



Senator Deb Peters, South Dakota  
President-Elect, NCSL

CC. Members of the House Energy & Commerce Committee