



**Testimony of
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In Opposition to Oregon Senate Bill 281

Before the Oregon Senate Environment and Natural Resources Committee

March 28, 2019

On behalf of CTIA, the trade association for the wireless communications industry, I submit this testimony in opposition to Oregon Senate Bill 281, which would require digital product manufacturers to label their products with warnings about alleged possible health risks from consumer use of those products. This legislation will in fact mislead consumers and is unlawful.

Wireless devices marketed and sold in the United States are comprehensively regulated at the federal level and have been deemed safe by federal regulators and other impartial experts. SB 281 will alarm consumers by suggesting that cell phones and other digital products are dangerous, which is contrary to what the impartial experts say on this issue. Further, the proposal is unlawful because it violates the First Amendment of the U.S. Constitution and is preempted.

The leading federal regulatory agencies with authority over wireless device compliance have concluded there are no known adverse health risks associated with wireless device use. The U.S. Food and Drug Administration concludes that, "[t]he scientific evidence does not show a danger to any users of cell phones from RF



[radiofrequency] exposure, including children and teenagers.”¹ The Federal Communications Commission (FCC) advises that, “[s]ome health and safety interest groups have interpreted certain reports to suggest that wireless device use may be linked to cancer and other illnesses, posing potentially greater risks for children than adults. While these assertions have gained increased public attention, currently no scientific evidence establishes a causal link between wireless device use and cancer or other illnesses.”² In addition, the World Health Organization advises that, “[a] large number of studies have been performed over the last two decades to assess whether mobile phones pose a potential health risk. To date, no adverse health effects have been established as being caused by mobile phone use.”³ In short, respected authorities responsible for studying this issue agree that there is no evidence of health risks from cell phones.

Cell phones marketed and sold in the U.S. are comprehensively regulated by the federal government and must comply with standards designed to protect consumers. These devices are subject to some of the most demanding radiofrequency (RF) emission standards in the world. Wireless devices that comply with these standards “are safe for use by the general public and may be sold in the United States.”⁴ The FCC’s RF standards

¹ See “Children and Cell Phones,” available at: <http://www.fda.gov/Radiation-EmittingProducts/RadiationEmittingProductsandProcedures/HomeBusinessandEntertainment/CellPhones/ucm116331.htm> (last visited March 22, 2019).

² See “Wireless Devices and Health Concerns,” available at: <http://www.fcc.gov/cgb/consumerfacts/mobilephone.html> (last visited March 22, 2019).

³ See “Electromagnetic fields and public health: mobile phones,” available at: <http://www.who.int/mediacentre/factsheets/fs193/en/index.html> (last visited March 22, 2019).

⁴ See *Murray v. Motorola, Inc.*, 982 A.2d 764, 777–78 (D.C. 2009) (citing FCC determination).



for cell phones incorporate a fifty-fold safety factor for human exposure. The FCC holds that its “safety factor can well accommodate a variety of variables such as different physical characteristics and individual sensitivities - and even the potential for exposures to occur in excess of our limits without posing a health hazard to humans.”⁵

Government entities play a special role in public health information. The public expects government to provide necessary information - grounded in science and sound policy. Government warnings and instructions carry added credibility, so government emphasis on perceived dangers is likely to cause concern. SB 281 fails to provide information grounded in science or sound policy, thus misleading consumers and eroding confidence in government.

The legislation is also unlawful. It violates the First Amendment because it would compel manufacturers to label their products with a message with which they disagree. The forced-speech is misleading and alarmist, because it would cause consumers to take away the message that cell phones and other digital products are dangerous and carry health risks. A similar warning requirement in San Francisco was held unconstitutional by the U.S. Court of Appeals for the Ninth Circuit in *CTIA v. City and County of San Francisco*.⁶ The court rejected San Francisco’s claim that its warnings were merely “factual,” finding that because they contained “recommendations as to what consumers should do,” they therefore “express[ed] San Francisco’s opinion.” The court further reasoned that because the FCC “has established limits of radiofrequency energy

⁵ *Reassessment of Federal Communications Commission Radiofrequency Exposure Limits and Policies*, Notice of Inquiry, FCC 13-39 (rel Mar. 29, 2013) (“NOI”) at ¶ 236.

⁶ 494 F. App’x 752 (9th Cir. 2012).



exposure, within which it has concluded using cell phones is safe," the mandated warnings were "misleading and controversial." SB 281 is similarly fraught.

Moreover, SB 281 is preempted by the FCC's federal system of cell phone regulation. In balancing the weight of the science with the societal benefits of wireless deployment, the FCC has expressly declined to mandate specific disclosure like those contemplated by SB 281. This legislation would impermissibly disrupt the FCC's goal of uniform federal regulation and rebalance the FCC's competing priorities. Federal law preempts any state law that stands as an "obstacle to the accomplishment and execution of the full purposes and objectives of Congress."⁷ And "[f]ederal regulations have no less pre-emptive effect than federal statutes."⁸ Where, as here, "manufacturer choice was an important regulatory objective," any local law "restrict[ing] that choice" is preempted.⁹ SB 281 would undermine the FCC's goals by requiring warning labels for cell phones, a requirement the FCC has deliberately declined to require.

In closing, this legislation is unnecessary as the FCC has determined that cell phones that meet its standards are safe for consumer use. Additionally, SB 281 would mislead consumers, would violate the First Amendment by compelling manufacturers to deliver a message they disagree with, and would be preempted. For these reasons, we respectfully request you oppose this legislation.

⁷ *Wyeth v. Levine*, 555 U.S. 555, 563–64 (2009) (quotation marks omitted).

⁸ *Fid. Fed. Sav. & Loan Ass'n v. de la Cuesta*, 458 U.S. 141, 153 (1982).

⁹ *Williamson v. Mazda Motor of Am., Inc.*, 131 S. Ct. 1131, 1137 (2011).