



May 23, 2023

The Honorable Mark Lawrence
The Honorable S. Paige Zeigler
Co-Chairs, Joint Committee on Energy, Utilities, and Technology
Maine Legislature
c/o Legislative Information Office
100 State House Station
Augusta, ME 04333

Dear Co-Chairs Lawrence and Zeigler:

On behalf of CTIA®, the trade association for the wireless communications industry, I write to oppose LD 1932 dealing with the proration of broadband customers' bills. This legislation is unnecessary as mobile broadband providers offer consumers numerous options for service, including no contract plans and pay-as-you-go offerings, and work with their customers when issues may arise because the competitive mobile marketplace requires it. The bill is also preempted by federal law.

The wireless industry has been at the forefront of addressing consumer demands and changes in the wireless industry. For example, CTIA's Consumer Code for Wireless Service has been an integral part of delivering superior customer service to wireless consumers since 2003.¹ The Code – followed in all 50 states – has helped consumers make informed decisions when selecting a mobile service plan and has contributed to the continued competitiveness within the industry. The Code also gives mobile providers the flexibility to quickly respond to changes in consumer demand.

Mobile broadband providers that are signatories to the Code, including AT&T, T-Mobile, UScellular, and Verizon, have committed to voluntarily adhere to a set of industry principles. These principles include agreeing to disclose to consumers at the point-of-sale or on their websites whether a fixed-term contract is required and its duration; the trial period during which a consumer may cancel service without an early termination fee; and providing ready access to customer service. CTIA periodically reviews the Code to ensure it reflects the continued innovation within the wireless industry and the needs of consumers.

¹ See <https://www.ctia.org/the-wireless-industry/industry-commitments/consumer-code-for-wireless-service> (last accessed May 22, 2023).



In addition, mobile broadband providers seek to address the needs of customers because of the competitive nature of the industry that provides consumers with a choice of providers. For example, the Federal Communications Commission (FCC) has found that more than 9 out of 10 Americans have a choice of three or more 4G providers. That's because there are nearly 100 mobile providers, resellers, and MVNOs nationwide. This competition not only provides consumers with a choice of providers, but it has also driven down prices. In fact, Americans are paying less for mobile services, including unlimited data plans that are 43 percent cheaper than in 2010. The wireless industry's intense competition continues to bring lower prices—even in the face of historic inflation. While consumers have faced price increases for 94 percent of tracked goods and services nationwide, the average prices of mobile service decreased.

Moreover, mobile broadband providers offer a wide range of plans with different price points. These plans include “all you can use” plans, fixed contract plans, “pay-as-you go” or prepaid options, and month-to-month plans. These service options are provided at different price points so that consumers can choose the option that works best for them. A recent report observed that mobile broadband service has been “a significant factor in bridging the digital divide” in part because of mobile service providers’ “varied and attractive pricing tiers.”² With prices declining and mobile providers incentivized to respond to consumer demands amid fierce competition, it is unnecessary to regulate mobile providers as mandated by LD 1932.

Furthermore, the bill's credit or rebate requirement amounts to mobile rate regulation, which is preempted by federal law. Under the federal Communications Act, “no State . . . shall have any authority to regulate the . . . rates charged by any commercial mobile service or any private mobile service,” i.e., by any wireless service provider.³ The credit or rebate requirement, if enacted, would likely constitute unlawful state regulation of mobile rates. A mandated credit or rebate amounts to a reduction in the price that mobile providers may charge. The Supreme Court has stated that rates do not exist in isolation. *American Telephone and Telegraph Co. v. Central Office Telephone, Inc.*, 524 U.S. 214, 223 (1998). The FCC has also recognized that a rate is an “amount of payment or charge based on another amount.” *Southwestern Bell Mobile Sys., Inc.*, Memorandum Opinion and Order, 14 FCC Rcd 19898, 19906, para. 19 (1999) (emphasis omitted). Finally, Maine's Public Utilities Commission (PUC) treats rebates as a form of rates subject to regulation in the context of energy bills. See, e.g.,

² Multicultural Media, Telecom & Internet Council and CTIA, *Wireless in Communities of Color: Bridging the Digital Divide*, at 6 (July 2022), <https://www.mmtconline.org/wp-content/uploads/2022/07/Wireless-in-Communities-of-Color-July-2022-B.pdf>

³ 47 U.S.C. § 332(c)(3)(A).



2013 Me. PUC LEXIS 37, *12 (establishing the rebates that a gas utility service will provide to customers).

While the First Circuit recently upheld a 2020 Maine law that requires cable providers to offer customers a pro rata credit or rebate upon cancellation, Section 332 of the federal Communications Act governs mobile service including preemption issues, and the court expressly distinguished the narrower scope of federal preemption of state cable rate regulation from the broad federal preemption of state regulation of mobile rates. The court suggested that while the Cable Act only preempts regulation of rates for “the provision of service,” mobile preemption reaches “rates charged” generally by mobile providers.⁴ State regulation of broadband pricing is also preempted because such regulation would disrupt the federal policy of nonregulation of broadband and because federal law occupies the field of regulation of broadband.

The mobile broadband marketplace is highly competitive, which affords consumers the choice of providers, rates, and plans that best suit their needs. Because of this intense competition - which has also driven down prices for consumers - mobile providers work with their customers to resolve issues. As such, LD 1932 is unnecessary. For these reasons, CTIA respectfully requests an Ought Not to Pass report on the bill.

Sincerely,

Gerard Keegan
Vice President
State Legislative Affairs

⁴ *Spectrum Ne., LLC v. Frey*, 22 F.4th 287, 302 (1st Cir. 2022).