Testimony of
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In Opposition to Senate Bill 268
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Before the Connecticut General Assembly General Law Committee

Chairman Doyle, Chairman Taborsak, and members of the committee, I am Gerry Keegan, Director of State Legislative Affairs for CTIA-The Wireless Association®. CTIA is the international trade association representing wireless carriers, device manufacturers, and Internet service providers. I am here today to speak in opposition to Senate Bill 268. The wireless industry believes this legislation, which would require the labeling of cell phones to indicate the amount of radiofrequency energy that each model emits, is unnecessary and would in fact mislead wireless consumers.

When the Federal Communications Commission (FCC) adopted its radiofrequency (RF) safety standards in 1996, it issued a maximum RF exposure limit based on a Specific Absorption Rate (SAR) of 1.6 W/kg that struck the "proper balance between the need to protect the public and workers from exposure to potentially harmful RF electromagnetic fields and the requirement that industry be allowed to provide telecommunications services to the public in the most efficient and practical manner possible."[1] In doing so, the FCC specifically rejected additional restrictions that "would impose significant and unnecessary economic and technical burdens for which adequate justification has not been presented."[2]

[1] *FCC Second Order* ¶¶ 2, 5, 29, 39; *Cellular Phone Taskforce*, 205 F.3d at 91-92.
[2] *FCC First Order*, 11 F.C.C.R. at 15140 ¶ 45.

The FCC based its standards on recommended guidelines adopted by international standards-setting bodies, including the Institute of Electrical and Electronic Engineers (IEEE), the American National Standards Institute (ANSI), and the National Council on Radiation Protection and Measurements (NCRP). These institutions are "composed of leading experts" in the area of the health effects of RF emissions; indeed, in the area of radio frequency operation and safety "there is no comparable group of experts with which to consult or upon which to rely."[3] In addition to the recommendations of IEEE, ANSI, and NCRP, the FCC carefully considered the input of other federal agencies, including the principal agencies for protecting the health of the public like the Food and Drug Administration (FDA) and the Environmental Protection Agency (EPA).

The premise of Senate Bill 268 appears to be that using a lower SAR value phone is safer. The apparent goal of the bill is to incentivize consumers to shop for cell phones with lower SAR values. There is no basis in science for asserting that any one value at or below the FCC standard is less safe than another. The FCC, guided by scientific experts, has determined that every SAR compliant phone is safe for all users. Thus, from a scientific standpoint, disclosure of a phone's SAR value as contemplated by the bill will mislead consumers into thinking one phone is "safer" than another. A common place example of this scientific principle is that a 60 watt light bulb is not "safer" to the human eye than an 80 watt light bulb—both are equally safe because they are below the threshold for potential adverse health impact. By

[3] *FCC EMR Network Order*, 18 F.C.C.R. at 16826 ¶ 10; *EMR Network v. FCC*, 391 F.3d 269, 273 (D.C. Cir. 2004).

contrast, the bill suggests to consumers that certain phones below a SAR of 1.6 W/kg are safer than other phones below a SAR of 1.6 W/kg. This premise conflicts with the scientific judgment underlying the FCC standard itself. In fact, when San Francisco adopted an ordinance similar to what is being proposed in Senate Bill 268, the City reversed course acknowledging that SAR labeling is potentially misleading. In its brief before the U.S. Court of Appeals for the 9th Circuit, the City admits on page 4 that "the Board removed the requirement that retailers disclose SAR values to consumers at the point of sale, having concluded that SAR indeed can be misleading when used for comparing different phones."[4] Additionally, when this Committee reviewed similar legislation last session, it decided not to move the bills.

The City's acknowledgment is in line with what the FCC states on its website, "[m]any people mistakenly assume that using a cell phone with a lower reported SAR value necessarily decreases a user's exposure to RF emissions, or is somehow "safer" than using a cell phone with a high SAR value." The FCC goes on to state further that "[s]ome parties recommend that you consider the reported SAR value of wireless devices. However, comparing the SAR of different devices may be misleading. First, the actual SAR varies considerably depending upon the conditions of use. The SAR value used for FCC approval does not account for the multitude of measurements taken during the testing. Moreover, cell phones constantly vary their power to operate at the minimum power necessary for communications; operation at maximum power occurs infrequently. Second, the reported highest SAR values of wireless

[4] *See* CTIA-The Wireless Association v. City and County of San Francisco, California, DktEntry 29-1, Cross-Appeal Opening Brief and Answering Brief of Appellee City and County of San Francisco at 4 (Jan. 25, 2012).

devices do not necessarily indicate that a user is exposed to more or less RF energy from one cell phone than from another during normal use ..." Accordingly, the state should not mandate the posting of a cell phone's SAR value as such an outcome will mislead consumers into thinking that one phone is safer than another.

Leading national and international health and safety organizations have concluded that there are no known adverse health risks associated with the use of wireless devices. In fact, the Food and Drug Administration concludes that, "[t]he scientific evidence does not show a danger to any users of cell phones from RF exposure, including children and teenagers."[5] Additionally, the FCC states in its consumer fact sheet on the issue of wireless devices and health concerns that, "[r]ecently, some 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."[6] Furthermore, the World Health Organization finds 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."[7]

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[5] *See* Children and Cell Phones, available at http://www.fda.gov/Radiation-EmittingProducts/RadiationEmittingProductsandProcedures/HomeBusinessandEntertainment/CellPhones/ucm116331.htm (last visited Mar 2, 2012).

[6] *See* Wireless Devices and Health Concerns, available at http://www.fcc.gov/cgb/consumerfacts/mobilephone.html (last visited Mar 2, 2012).

[7] *See* Electromagnetic fields and public health: mobile phones, available at http://www.who.int/mediacentre/factsheets/fs193/en/index.html (last visited Mar 2, 2012).

On a broader level, this bill could lead to substantial consumer concerns about the general use and safety of all FCC-compliant wireless products. Requiring the posting of SAR values on packaging provides no context to consumers about the meaning of the values and can only create confusion and anxiety. Consumers may decide to forgo the purchase or use of wireless devices that are important for personal safety. As consumers have come to rely on wireless technology in emergencies, encouraging underutilization by questioning the safety of wireless devices could in fact compromise the public's safety.

Moreover, by mandating that SAR values be placed on cell phones, Senate Bill 268 would be preempted by federal law because such a requirement would be premised on the notion that FCC SAR-compliant devices are nevertheless "unsafe" as sold – a position that would conflict with and upset the balance the FCC struck when it set the safety standards for wireless phones. The suggestion that a lower SAR value device is safer than a device with a higher, but still FCC-compliant SAR value, necessarily implies that the higher-SAR device is not safe, and thus that the FCC's SAR limits are not sufficiently protective. The FCC's RF safety standards have been reviewed and affirmed by the courts. Moreover, applying federal law, courts routinely have ruled that actions challenging the safety of devices certified by the FCC or resting on a perceived inadequacy of the FCC's RF standard are preempted by federal law. Senate Bill 268 also interferes with the FCC's judgment about the RF-related information that is properly disclosed, which the FCC determines as part of the equipment authorization process.

Furthermore, this legislation is preempted because it directly undermines and therefore conflicts with the FCC's standards and upsets the Congressionally-mandated balance struck by the FCC between the federal interests in safeguarding the public health and the rapid deployment of wireless communications services in the most efficient and practical manner possible. It was the FCC's judgment that the precise standards it set would achieve all of those goals.

In conclusion, the wireless industry believes this legislation is unnecessary and will mislead consumers. As such, we respectfully request that you not move the bill forward.