

**Statement of Bernita Sims
Council Member, City of High Point, North Carolina**

**Before the
Subcommittee on Courts, Commercial and Administrative Law
U.S. House of Representatives**

**H.R. 1002
“Wireless Tax Fairness Act of 2011”**

March 15, 2011

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Chairman Coble and distinguished members of the House Subcommittee on Courts, Commercial and Administrative Law, my name is Bernita Sims. I am a Council Member, from the City of High Point, North Carolina. In addition, I serve on the Finance, Administration and Intergovernmental Relations Committee of the National League of Cities.

I appreciate the opportunity to appear before you today on behalf of the National League of Cities, the United States Conference of Mayors, the National Association of Counties, the Government Finance Officers Association, and the National Association of Telecommunications Officers and Advisors.

Let us be clear. This bill is not about expanding broadband technology or providing tax parity for an overtaxed industry. Rather, this bill is about special treatment and favoritism for wireless phone companies that continue to experience explosive growth and profits. The current tax treatment of wireless services by federal, state, and local authorities has not hindered product innovation, service growth, or industry profitability. In fact, the wireless communications industry is a strong and successful industry with vibrant subscribership levels and revenues.

If there is one thing all of our organizations share, it is our long-standing opposition to efforts by Congress to preempt state and local taxing authority. How to levy taxes fairly, how to ensure there is no discrimination among companies that provide different forms of the same service, and how to protect local government revenues, are all appropriate debates. But these debates belong at the state and local levels. And this is why our associations unite in opposing this bill.

Local governments exercise their taxing authority to the extent provided by state law. As a result, local taxing authority and practices differ from state to state. And often times, taxing policy differs from county to county and city to city within the state. But this is good, because this means that every local government taxing authority tailors its tax policy by taking into account the sources of revenue available and the needs and wants of its residents. More importantly, the local officials making these decisions are accountable by the ballot box to those paying the taxes that support the services they use. Our citizens do not need to be protected by the long-arm of the federal government. They already have the power to change locally imposed taxes.

In today's difficult economic times, where state aid to local governments has decreased dramatically, local taxing autonomy is crucial in helping to ensure that the needs of local citizens – our mutual constituents – are met. The ability to make taxing and other fiscal policy decisions at the local level, without federal interference, enables High Point to provide the quality services my constituents expect.

Some argue the proposed 5-year ban set forth in this bill wouldn't hurt state and local governments because they can still continue to collect the taxes they currently impose. But this misses the point. What this legislation does is preempt state and local taxing authority and represents a federal intrusion into historically-protected state and local tax classifications. Enactment of this bill would lead other industries to seek preferential tax treatment at the expense of state and local budgets and taxpayers. This slippery slope necessarily leads to an erosion of our system of federalism and a direct threat to the fiscal health of state and local governments.

It is important to remember that state and local governments, unlike the federal government, must balance their budgets. In this tough financial climate, this isn't an easy task, and the impact of decisions made by local elected officials are felt immediately by constituents. Hard, and often times unpopular, choices – like those made by High Point – must be made. Even my counterparts at the county level are leaving no stone unturned to rein in spending, as demonstrated in a recent survey by the National Association of Counties. Essential services may be cut. Public employees may be laid off. Infrastructure repairs and construction may be put on hold. And yes, taxes may occasionally have to be raised. But what is important to emphasize is that when balancing the budget, all options must be on the table. What this bill does is takes away one of these options – to tax the wireless industry – at the expense of other taxpayers and businesses. To have the federal government, which has difficulties balancing its own budget,

seek to tie the hands of state and local lawmakers through the misguided enactment of legislation such as this is simply wrong.

This bill fails to recognize the plain fact that not all jurisdictions depend on identical revenue sources. Some have an income tax – others don't. Some tax food – others don't. As a result, some jurisdictions may necessarily have to tax wireless services at a higher level than others. Enactment of this bill would force those jurisdictions to rely even more heavily on other types of taxes, thereby shifting the tax burden to those in the community less able to tolerate it.

The wireless industry argues misleadingly that this bill is necessary because taxes on wireless providers are higher than those imposed on other industries. Our organizations have published a report disputing these claims, which I will be pleased to provide you.

According to CTIA, the wireless association, wireless subscribership jumped from 97 million in June 2000 to nearly 293 million in June 2010, representing a penetration rate of 93%. And the total number of data-capable devices on operators' networks rose to more than 264 million. CTIA President and CEO Steve Largent stated: "As the survey data constantly proves, the wireless industry is an incredibly vibrant, intensely competitive and remarkably innovative while still providing unparalleled value for consumers. Every day across the country, Americans are benefiting from being able to access the mobile Internet or make a phone call at anytime and anywhere. Whether wireless technology is being used by other industries such as healthcare, education, transportation or energy, these results affirm our industry is revolutionizing and improving the way we live and work."

Furthermore, state and local taxes on wireless services are not an obstacle to wireless broadband deployment. Profit motivation is the reason for slower (or nonexistent) deployment in rural areas. Deployment of communications networks is extremely costly; communications carriers are private, for-profit companies and they quite rationally allocate their investment resources to areas of the country where they are likely to achieve the highest return on investment – those areas that have relatively dense populations and thereby greater potential penetration and higher revenues per mile of construction.

The economics of the industry will not be changed by preemption of state or local taxes. Wireless carriers will, quite rationally, still invest their resources in the most potentially lucrative areas and will still set their prices at the highest aggregate rates they believe the market will bear. Relieving wireless providers of local taxes is unlikely to change investment choices and may

simply serve to convert into carrier profits those funds that would otherwise have accrued to localities in this critical economic environment.

However, whether a particular state or local government has imposed too high a tax burden on the wireless industry is an issue that should be addressed by the appropriate state or local government. The federal government should not step in and impose a uniform, nationwide taxing scheme that provides preferential tax treatment to a single industry – the wireless industry – while preempting state and local taxing authority.

Preemption of state and local authority presents a serious matter, as any such preemption that undermines the 10th Amendment to the United States Constitution. Those who support such legislation must ask themselves whether the preemption of state and local authority is ever warranted. I would argue in this case, where the legislation seeks to protect an industry that continues to experience explosive growth and profits, potentially at the expense of other taxpayers – it is most definitely not.

Finally, let me say this. Our associations support the need for state and local governments to stand on their own and use all tools and resources available to them to balance their budgets, while continuing to provide essential services. Not always, but in some cases, taxation of the wireless industry, even at higher rates than other industries, might be one of those tools. It is incumbent for all members of Congress to support their hometown leaders.

I urge you to oppose this bill.