



February 7, 2024

Senator Herman Otten, Chair  
Senate Agriculture and Natural Resources Committee  
PO Box 325  
Tea, SD 57064

Senator Randy Deibert, Vice-Chair  
Senate Agriculture and Natural Resources Committee  
1715 Scott Ave  
Spearfish, SD 57783

**RE: Opposition to SB 215**

Chair Otten, Vice-Chair Deibert and Committee Members,

On behalf of CTIA, the trade association for the wireless communications industry, I write to respectfully oppose SB 215. The legislation as drafted imposes new onerous oversight and reporting requirements as well as potential prohibitions on wireless infrastructure deployments that could severely hamper the wireless industry's ability to provide enhanced wireless service to South Dakota residents while providing no countervailing benefits. Numerous provisions of SB 215 are also unlawful and conflict with federal law.

First, SB 215 falsely assumes wireless technology may be "hazardous" or "harmful" even when installed and operated in accordance with applicable federal regulations. Wireless infrastructure deployments must comply with structural, engineering and safety regulations as well as radio frequency (RF) emission regulations imposed by the Federal Communications Commission (FCC). The consensus among health experts – including the American Cancer Society, the World Health Organization and the U.S. Food and Drug Administration – is that the weight of scientific evidence shows no known adverse health effects to humans from exposure to wireless antennas or devices at, below, or even in some cases above, the RF limits set by the FCC.

Second, federal law preempts the proposals in this bill to the extent they seek to regulate FCC-certified wireless infrastructure. The bill's proposals include within their scope FCC-certified wireless infrastructure and equipment and directs the "Governor or any sheriff" to regulate any federally approved equipment that they have "deemed hazardous" or "are harmful to humans" as unlawful in South Dakota and "enforcement must ensue" (page 2, lines 18-24; page 3, lines 24-26).

However, federal law expressly prohibits regulation like this that is based on the alleged environmental or health effects of FCC-certified wireless facilities. As set forth in Section 332(C)(7)(B)(iv) of the federal Communications Act, "No State or local government or instrumentality thereof may regulate the placement, construction, and modification of personal wireless service facilities on the basis of the environmental effects of radio frequency emissions to the extent that such facilities comply with the



[FCC]’s regulations concerning such emissions.”<sup>1</sup> Moreover, federal law impliedly preempts the proposals in this bill because any provision that enables state or local government determinations that RF FCC-certified wireless infrastructure is non-compliant, hazardous and unsafe directly conflicts with the FCC’s determination that the FCC-certified wireless infrastructure is both compliant and safe. SB 215 is also preempted because Section 332(c)(3)(A) provides that “no State or local government shall have any authority to regulate the entry of or the rates charged by any commercial mobile service or any private mobile service...”<sup>2</sup> The restrictions of HB 1700 constitute the very “market entry” regulation that the Communications Act preempts.

Finally, provisions in SB 215 that permit the Governor or county sheriff to issue a cease-and-desist order or require cessation of operations of wireless infrastructure violates Section 332’s separate requirement that a regulation “shall not prohibit or have the effect of prohibiting the provision of personal wireless facilities” (Section 332(c)(7)(B)(i)), as well as Section 253 of the federal Communications Act that includes a prohibition against state and local regulations or requirements that “prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service.”

For these reasons, we oppose SB 215.

Sincerely,

Jeremy Crandall  
Assistant Vice President  
State Legislative Affairs

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<sup>1</sup> 47 U.S.C. sec. 332(C)(7)(B)(iv).

<sup>2</sup> 47 U.S.C. sec. 332(c)(3)(A).