FIRST AMENDED COMPLAINT AND PRAYER FOR DECLARATORY AND INJUNCTIVE RELIEF

Plaintiff CTIA – The Wireless Association® ("CTIA") files this Complaint for declaratory and injunctive relief to prevent Defendants Tim G. Echols, Charles M. Eaton, Jr., Herman Douglas Everett, Lauren W. McDonald, Jr., and Stan Wise,
each in his official capacity as a commissioner of the Georgia Public Service Commission (the “GPSC” and Defendants Echols, Eaton, Everett, McDonald, and Wise, collectively, “Commissioners” or “Defendants”), from giving effect to or enforcing an amendment to Utility Rule 515-12-1-.35(3) against wireless providers. The amendment is preempted by the Communications Act of 1934, 47 U.S.C. § 151, et seq., as amended (the “Communications Act” or “FCA”).

CTIA hereby alleges as follows:

PRELIMINARY STATEMENT

1. On October 15, 2013, the GPSC voted 3-2 to adopt an amendment to Utility Rule 515-12-1-.35(3) by adding section 515-12-1-.35(3)(f) (the “Amended Rule”) that, if allowed to become effective, will require CTIA members and other wireless telephone service providers to increase the service rates charged to low-income Georgians who depend upon federally-subsidized wireless telephone services provided by the Federal Communication Commission’s (“FCC”) Lifeline program.1

2. The FCC implemented the Lifeline program in 1985, as part of its longstanding mission to promote “universal service” and ensure that low-income

1 A copy of the transcript of the administrative session at which the GPSC adopted the Amended Rule is attached hereto as Exhibit A, and a copy of the GPSC’s Order adopting the Amended Rule is attached hereto as Exhibit B.
Americans who meet established eligibility criteria have affordable access to telephone services. The Lifeline program provides a federally-funded monthly subsidy of $9.25 per customer that is applied to reduce the service rate that Eligible Telecommunications Carriers ("ETCs") would otherwise charge Lifeline enrollees for service.

3. Enrollment in the Lifeline program is available only to low-income households that meet federal or state eligibility criteria. Persons eligible for enrollment in the Lifeline program include participants in Medicaid, the Supplemental Nutrition Assistance Program (a/k/a “Food Stamps”), and Temporary Assistance for Needy Families, among others. Georgia households with annual income of less than 135% of the Federal Poverty Guidelines are also eligible for enrollment in the Lifeline program. A single person with annual income below $14,702 or a family of four with combined annual income of less than $30,173 would qualify under that criteria.\(^2\) Prospective enrollees must apply for admission to the Lifeline program, a process that includes completion of a detailed Lifeline eligibility certification form and submission of documentation that evidences eligibility for enrollment in the Lifeline program. Enrollees must

also verify their continued eligibility for enrollment in the Lifeline program on an annual basis.

4. Through innovation and competition, CTIA members have developed and currently offer wireless telephone service plans that leverage the federal Lifeline subsidy to provide eligible low-income Georgian Lifeline enrollees with 250 minutes of wireless telephone service per month at no charge. These no-charge wireless service plans further the aims of the Lifeline program and the FCC’s universal service mandate because they help ensure that more than 700,000 low-income Georgia households have access to the public telecommunications network in order to pursue employment, remain in contact with family, and access critical medical, social, and emergency services. Many Georgians who receive Lifeline-subsidized wireless telephone services provided by CTIA members have no other phone service.

5. The GPSC adopted the Amended Rule with the express intent and purpose of precluding ETCs, including CTIA members, from continuing to offer eligible Georgians the no-charge wireless service plans that those wireless providers, assisted by the federal Lifeline program, currently offer. If allowed to become effective, the Amended Rule will indisputably have the effect of precluding CTIA members and other wireless carriers from continuing to offer no-
charge service plans to eligible Georgian Lifeline enrollees. The results will be disastrous, both for CTIA’s members, and for the hundreds of thousands of low-income Georgia households that presently rely on no-charge wireless service plans provided by CTIA members as their only telecommunications service.

6. Many of the hundreds of thousands of low-income Georgia households that presently rely on Lifeline-subsidized wireless services will no longer be able to afford telephone service if the Amended Rule is allowed to become effective. Tellingly, just last year, the FCC—the federal agency charged with administering the Lifeline program and overseeing wireless service rates—considered and rejected implementing a $5.00 minimum monthly charge for Lifeline enrollees, finding that the imposition of such a charge “would potentially pose a significant barrier to participation for those in severe economic need.”

7. The Amended Rule also will cause CTIA members to lose customers and goodwill and will impose incalculable financial and administrative costs and other harm on many CTIA members for which there will be no recourse.

8. None of that should be permitted to happen. The Amended Rule, which facially requires wireless service providers to charge customers a rate in

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excess of that which they otherwise would charge for service, is preempted by Section 332(c)(3)(A) of the Communications Act.

9. Section 332(c)(3)(A) expressly 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." 47 U.S.C. § 332(c)(3)(A). The Amended Rule does precisely what Section 332(c)(3)(A) forbids by imposing a new requirement that wireless ETCs "bill and collect from [their] Lifeline customers a minimum monthly service rate of $5.00 per month" for all service plans offering fewer than 500 minutes of use per month. This new minimum monthly rate on Lifeline service plans, on its face and in practice, constitutes regulation of rates charged by commercial mobile service providers and is unquestionably preempted by Section 332(c)(3)(A).

10. Furthermore, the Amended Rule's inclusion of a purported alternative that permits ETCs to avoid the minimum $5.00 monthly service rate for service plans that provide a minimum of 500 minutes of use per month does not save the Amended Rule from preemption. The Amended Rule still facially sets a minimum rate that CTIA members must charge their Lifeline subscribers for any service plan offering fewer than 500 minutes of use per month and constitutes preempted rate regulation for that reason alone.
11. The 500 minutes per month alternative also impermissibly seeks to regulate an essential rate element by setting a minimum number of minutes of use per month that ETCs must provide in order to avoid the alternative $5.00 minimum monthly service rate.

12. Separately and collectively, the components of the Amended Rule—i.e., the $5.00 minimum monthly service rate and the minimum 500 minutes per month option—constitute preempted rate regulation because they are designed to, and unquestionably will have the effect of, regulating wireless service rates and rate elements and eliminating the provision of no-charge Lifeline service plans in the state of Georgia.


14. Because Section 332(c)(3)(A) of the Communications Act preempts the Amended Rule, CTIA seeks an injunction preventing the Commissioners from giving effect to or enforcing the Amended Rule, along with declaratory relief and other appropriate remedies.
JURISDICTION AND VENUE


16. This Court also has diversity jurisdiction over the subject matter of this lawsuit pursuant to 28 U.S.C. § 1332. Plaintiff CTIA is a District of Columbia non-profit corporation with its principal place of business in Washington, D.C. Each of the Defendants is a resident of the State of Georgia, and the amount in controversy exceeds $75,000.

17. Venue is proper in this Court, pursuant to 28 U.S.C. § 1391, because Defendants are government officials who perform official duties in this judicial district and because substantial parts of the events giving rise to CTIA’s claims have occurred in this judicial district.
PARTIES

18. CTIA is a District of Columbia non-profit corporation with its principal place of business in Washington, D.C. CTIA represents all sectors of the wireless industry, including but not limited to providers of wireless services, and sellers of wireless services, including prepaid wireless services, handsets and accessories.

19. Several of CTIA’s members—including, for instance, Virgin Mobile USA, LP d/b/a Assurance Wireless (“Assurance Wireless”), and TracFone Wireless, Inc. (“TracFone”)—provide wireless telephone and electronic communications services to Georgia customers as ETCs, and therefore will be subject to the requirements of the Amended Rule if it is allowed to become effective. Those CTIA members provide services as commercial mobile services pursuant to the Communications Act.

20. CTIA has associational standing to bring and maintain this action. One or more of CTIA’s members would have standing to sue in their own right. In addition, the interests that CTIA seeks to protect are germane to its members and CTIA’s purpose, and neither the claims asserted nor the relief requested require the participation of individual members in this lawsuit.
21. Defendant Charles M. Eaton, Jr. is a commissioner of the GPSC and is made a party to this action in that official capacity. He is a resident of Georgia.

22. Defendant Tim G. Echols is a commissioner of the GPSC and is made a party to this action in that official capacity. He is a resident of Georgia.

23. Defendant Herman Douglas Everett is a commissioner of the GPSC and is made a party to this action in that official capacity. He is a resident of Georgia.

24. Defendant Lauren W. McDonald, Jr. is a commissioner of the GPSC and is made a party to this action in that official capacity. He is a resident of Georgia.

25. Defendant Stan Wise is a commissioner of the GPSC and is made a party to this action in that official capacity. He is a resident of Georgia.

THE GPSC

26. The GPSC, which is not a party to this action, is a governmental agency of the State of Georgia. The GPSC adopted the Amended Rule on or about October 15, 2013. The GPSC’s principal place of business is in Atlanta, Georgia.
FACTS

I. THE FCC’S LIFELINE PROGRAM.

A. The Lifeline Program Plays A Critical Role In Connecting Low-Income Americans To Telephone Services.

27. The FCC implemented the Lifeline program in 1985, as part of its longstanding mission to promote “universal service.”4 “Universal service” refers to Congress’s direction to the FCC, in the Communications Act, “to make available, so far as possible, to all the people of the United States, . . . a rapid, efficient, Nation-wide, and world-wide wire and radio communication service with adequate facilities at reasonable charges.”5

28. The Lifeline program was developed specifically to ensure that low-income Americans who meet established eligibility criteria would have affordable access to telephone services. The program was implemented in 1985 in the wake of the 1984 divestiture of AT&T. Its initial purpose was to ensure that any increase in local rates that occurred following major changes in the marketplace would not put local phone service out of reach for low-income households and result in service disconnections. At the time, the FCC was concerned that the implementation of a subscriber line charge would force low-income consumers to

4 See Lifeline Order ¶¶ 11-12.
5 47 U.S.C. § 151 (creating the FCC).
drop voice service, which, the FCC found, had “become crucial to full participation in our society and economy, which are increasingly dependent upon the rapid exchange of information.”\(^6\) That has only become more true today.

29. In the Telecommunications Act of 1996, Congress codified the FCC’s commitment to advancing the availability of telecommunications services to all Americans and established principles upon which “the [FCC] shall base policies for the preservation and advancement of universal service.” 47 U.S.C. § 254(b). Among other things, Congress articulated national goals that services should be available at “affordable” rates and that “consumers in all regions of the nation, including low-income consumers, . . . should have access to telecommunications and information services.” 47 U.S.C. § 254(b)(1)&(3). After passage of the Telecommunications Act of 1996, the FCC revised and expanded the Lifeline program. Thereafter, all states participated in the program and the level of federal Lifeline support steadily increased.

30. The Lifeline program provides a benefit to enrolled persons in the form of a monthly subsidy that is applied to all or a portion of the amounts charged by participating telephone service providers for their monthly telephone service. The subsidy is funded by the Universal Service Fund (the “USF”) established by

\(^6\) See Lifeline Order ¶ 12 (citation omitted).
the FCC to promote universal service initiatives such as the Lifeline program. The
USF in turn is funded by mandatory contributions by all providers of
telecommunications services. The FCC establishes the amount of the federal
Lifeline subsidy—which is currently set at $9.25 per month.

31. According to the FCC, evidence suggests that Lifeline has been
instrumental in increasing the availability of quality voice service to low-income
consumers. Indeed, many low-income consumers have stated on the record before
the FCC that without a Lifeline subsidy, they would be unable to afford service.
Low income-consumers have also described the hardships they would face without
access to phone service. When consumers are only able to intermittently remain
on the network, they are not fully connected to society and the economy because,
among other things, they are unable to apply for and receive call-backs for jobs or
reach important social services, health care, and public safety agencies on a
reliable basis.

32. Telephone subscribeship among low-income Americans has grown
significantly since the Lifeline program was initiated in 1984. Only 80 percent of
low-income households had telephone service in 1984, compared to 95.4 percent
of non-low-income households in 2011. Since the inception of Lifeline, the gap between telephone penetration rates for low-income and non-low-income households has narrowed from about 12% in 1984 to 4% in 2011.

33. The FCC has found that the Lifeline program “provide[s] the best source of assistance for individuals to obtain and retain universal service, and, therefore, help[s] maintain and improve telephone subscribership.” As the FCC has observed, there are substantial benefits to increasing the availability of communications services for low-income Americans. According to the FCC, all consumers, not just low-income consumers, receive value from the network effects of widespread voice subscribership. Moreover, those consumers without affordable, quality voice services are at a disadvantage in accessing public safety and health care resources, social and economic resources, and employment opportunities. As the FCC has recognized, voice service is particularly important for low-income consumers, who often must juggle multiple jobs and interviews for new employment as well as keep in contact with social service agencies.

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8 See Lifeline Order ¶ 15.
34. If quality voice service is not affordable, low-income consumers may forgo voice service in favor of other critical necessities, such as food and medicine, and thus may be unable to purchase sufficient voice service to obtain adequate access to critical employment, health care, or educational opportunities. Further, if low-income consumers initially subscribe to phone service, but intermittently lose access because they cannot consistently pay for the service, many of the economic benefits of phone service will be lost.

B. Wireless Services Providers Have Played A Pivotal Role In Advancing The Goals Of The Lifeline Program.

35. As the telecommunications industry has evolved, so too has the Lifeline program. Providers of wireless telephone services, including many members of CTIA, have played an especially significant role in advancing the goals of the Lifeline program. Wireless Lifeline enrollment has greatly increased, consistent with the trend of increased reliance on wireless service in the general population. In its 2012 Lifeline Order, the FCC observed that wireless services have taken on particular importance to low-income consumers, who are more likely to reside in wireless-only households than consumers at higher income levels.9

9 See Lifeline Order ¶ 21.
36. The FCC has noted that wireless providers’ increasing participation in the Lifeline program has provided low-income consumers with Lifeline service during a time period in which declining economic conditions and increasing pressure on the poorest Americans has made the need for the Lifeline program all the more acute. Since 1999, real median household income in the U.S. has declined by 7.1 percent, while households at the bottom of the income scale have seen their income decline by 12.1 percent. In 2010, 46.2 million Americans were living in poverty, defined as living at or below the benchmark established in the Federal Poverty Guidelines, compared to 31.6 million in 2000.

37. Beginning in 2005, the FCC permitted certain non-facilities based providers, including prepaid wireless carriers, to obtain low-income support from the USF. Since then, a number of prepaid wireless providers, including CTIA member Assurance Wireless, have become Lifeline-only ETCs, competing for low-income subscribers by marketing telephone service that provides a specified number of minutes at no charge to the consumer. Other CTIA members, like

10 Id. at ¶ 23.
TracFone, offer no-charge and other wireless plans to eligible Lifeline enrollees. The FCC has observed that this development has expanded choices in many states for low-income consumers, who now have greater access to mobile services than they did a decade ago, and has likely contributed to the increasing telephone penetration rate of consumers making less than $10,000 a year. Wireless ETCs now account for more than 40 percent of all Lifeline support.14

II. SECTION 332 OF THE COMMUNICATIONS ACT PROHIBITS STATE REGULATION OF WIRELESS SERVICE RATES.

38. Wireless service providers, including CTIA members, have developed innovative services and rate plans that have expanded the reach of the Lifeline program and furthered its goals. These beneficial innovations are the direct result of the deregulatory, pro-competitive approach Congress and the FCC have taken with respect to wireless providers.

39. Congress has enacted legislation codifying deregulatory, pro-competitive policies as they relate to wireless service rates. In 1993, Congress amended the Communications Act “to dramatically revise the regulation of the wireless telecommunications industry.” Conn. Dep’t of Pub. Util. v. FCC, 78 F.3d 842, 845 (2d Cir. 1996). The 1993 amendments included two key provisions that

are relevant here. First, Congress amended Section 2(b) to give the FCC plenary jurisdiction over all aspects of "intrastate" and "interstate" wireless service. See 47 U.S.C. § 152(b). Second, Congress expressly preempted state regulation of the rates charged for wireless services by adding Section 332(c)(3)(A), which provides: "[N]o State or local government shall have any authority to regulate the entry of or the rates charged by any commercial mobile service . . . , except that this paragraph shall not prohibit a State from regulating the other terms and conditions of commercial mobile services." 47 U.S.C. § 332(c)(3)(A) (emphasis added). Together, these 1993 amendments preempted state regulation of the rates charged for wireless services by eliminating the dual regulatory system whereby states had authority to establish rates for intrastate wireless services. See La. Pub. Serv. Comm'n v. FCC, 476 U.S. 355, 364 & 371 (1986); California v. FCC, 798 F.2d 1515, 1520 (D.C. Cir. 1986).

40. Congress recognized that "state regulation can be a barrier to the development of competition in [the wireless] market, [and that a] uniform national policy is necessary and in the public interest."\(^{15}\) With respect to wireless services, "the public interest" has always meant championing deregulatory and pro-competitive policies to the benefit of consumers and businesses. Through the 1993

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amendments limiting states' authority to regulate rates for commercial mobile/wireless services, Congress sought to achieve its view of a uniform, nationwide deregulatory environment for commercial mobile services by centralizing wireless ratemaking authority in the FCC and instructing it to allow market forces, not regulation, to direct the market. Specifically, Congress intended Section 332(c)(3)(A) to prevent "balkanized state-by-state" rate regulation and thereby foster the growth and development of mobile services, which, by their nature, operate without regard to state lines and are an integral part of the national telecommunications infrastructure.

41. By freeing the industry from the constraints of an unpredictable patchwork of potentially inconsistent state-level rate regulations, Section 332(c)(3)(A) has allowed wireless service providers to innovate and compete to provide Americans with a broader array of telephone service options. The no-charge wireless service plans that mobile providers have developed to serve eligible Lifeline participants are an important example of the benefits to consumers that Section 332(c)(3)(A)'s prohibition on state regulation helps make possible.

III. THE FCC EXTENSIVELY REGULATES THE LIFELINE PROGRAM.

42. Although the FCC has, on the whole, favored a deregulatory, pro-competitive approach to its oversight of wireless services, the FCC has also
devoted substantial time, attention, and effort to ensuring that the Lifeline program and USF resources are administered efficiently. In its 2012 Lifeline Order, the FCC exercised its jurisdictional authority to establish rates for wireless Lifeline service (covering both intrastate and interstate service) by considering, but ultimately rejecting, a proposed $5.00 monthly minimum charge on Lifeline-subsidized telephone services. The FCC has not hesitated, however, to impose rules and regulations governing the Lifeline program that, after careful and thorough consideration, it has deemed necessary to safeguard against waste, fraud, and abuse; improve program administration and accountability; and ensure that USF resources are responsibly deployed to meet the Lifeline program’s goals while conserving USF funds and, ultimately, reducing the contribution burden on the public at large.

43. In its 2012 Lifeline Order, the FCC enacted a number of reforms intended to further these aims. The FCC set a goal to save $200 million in USF funds during 2012 through reforms designed to, among other things, eliminate fraud, waste, abuse, and inefficiency in the Lifeline program. Such reforms included increased efforts by the Universal Service Administration Company (“USAC”), the entity that administers the USF at the FCC’s direction, to conduct In-depth Data Validations of ETC subscriber records to identify subscribers
receiving Lifeline support from multiple ETCs and require such persons’ de-enrollment from duplicate support services.

44. Between the January 2012 adoption of the Lifeline Order and the end of the year 2012, USAC completed six phases of In-depth Data Validations in a total of 23 states, resulting in approximately $45 million in savings.\(^{16}\) To ensure that ETCs are reimbursed only for service that is actively utilized by low-income subscribers, the FCC also required ETCs that do not assess or collect a monthly fee from subscribers to de-enroll subscribers who have not used the service for a consecutive 60-day period.\(^{17}\) The FCC also imposed enhanced proof of eligibility requirements that must be satisfied before an ETC can enroll a prospective Lifeline subscriber as well as requirements that ETCs undertake procedures to re-certify the eligibility of existing Lifeline subscribers on an annual basis and de-enroll any subscribers whose eligibility the ETCs could not confirm.\(^{18}\)

45. These and other substantial reforms and initiatives undertaken and advanced during 2012 at the FCC’s direction resulted in savings well in excess of


\(^{17}\) Id. at 3-4.

\(^{18}\) Id. at 4.
the $200 million goal the FCC set for 2012.\textsuperscript{19} On February 12, 2013, the FCC issued a press release stating that it projects an additional $400 million in savings to the USF during 2013 as the result of recent reforms, and that further projected savings by the end of 2014 could exceed $2 billion.\textsuperscript{20}

**IV. THE AMENDED RULE REGULATES WIRELESS SERVICE RATES AND, THUS, IS PREEMPTED BY SECTION 332(C)(3)(A).**

46. The GPSC’s Amended Rule flies in the face of Section 332(c)(3)(A) of the Communications Act’s prohibition of state regulation of wireless service rates and is thus preempted by that provision of federal law.

47. The Amended Rule facially regulates the rates wireless service providers that are ETCs, including many CTIA members, charge their Lifeline-enrolled customers for service by expressly requiring that: “An Eligible Telecommunications Carrier \textit{shall} either \textit{bill and collect from its Lifeline customers a minimum service rate of $5.00 per month}, after application of the Federal Lifeline discount, or \textit{provide to its Lifeline customers a minimum of 500 minutes of use per month.” See Ex. B, Rule 515-12-1-.35(f) (emphasis added).

\textsuperscript{19} \textit{Id. at 1, 5.}

48. Notably, two earlier versions of the Amended Rule did not contain the 500-minutes-per-month option for ETCs. On January 15, 2013, the GPSC approved the adoption a version of the Amended Rule that simply required ETCs to “charge a minimum monthly service rate of $5.00 per month after application of the Federal Lifeline discount” with no alternative of providing a number of minimum monthly minutes of use. On January 18, 2013, the GPSC filed a Notice of Proposed Rulemaking proposing further amendments to Utility Rule 515-12-1-.35(3) that would have required ETCs to “bill and collect a minimum monthly service rate of $5.00 after application of the federal Lifeline discount,” again with no minimum monthly minutes of use alternative.

49. Only after this lawsuit was filed and commenters, including many CTIA members, observed that the proposed minimum $5.00 monthly service rate requirement constituted blatant rate regulation preempted by Section 332(c)(3)(A) of the Communications Act, did the GPSC propose further amending the Amended Rule to include the 500 minutes per month option.

50. But whatever the GPSC may have hoped to accomplish by adding the 500 minutes per month option, it has not changed the reality that the Amended

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21 A copy of the GPSC’s Order adopting the January 15, 2013 version of the Amended Rule is attached hereto as Exhibit C.

22 A copy of the January 18, 2013 Notice of Proposed Rulemaking is attached hereto as Exhibit D.
Rule remains impermissible state regulation of wireless service rates that is preempted by Section 332(c)(3)(A). The GPSC’s clear intention through all of the variations of the Amended Rule has been to regulate wireless services rates in the State of Georgia and to eliminate the no-charge Lifeline service plans that CTIA members presently offer and would continue to offer, absent the Amended Rule. With or without the 500 minutes per month option, the Amended Rule constitutes preempted state regulation of wireless services rates.

51. Many CTIA members currently provide Lifeline service plans that offer 250 minutes of use per month at rates lower than the $5.00 monthly “minimum service rate” that the Amended Rule would require for such plans, including service plans that provide Georgia Lifeline subscribers with 250 minutes of use per month at no charge to the Lifeline enrollees. Many CTIA members would continue to provide these no-charge service plans to eligible Lifeline enrollees if not for the Amended Rule.

52. The Amended Rule would prevent CTIA members from continuing to provide no-charge wireless Lifeline service plans to eligible Georgia Lifeline enrollees. The Amended Rule expressly requires CTIA members who are ETCs serving Georgia Lifeline enrollees to charge a “minimum service rate of $5.00 per month” for any service plan offering fewer than 500 minutes of use per month,
which would include the 250 minutes-per-month no-charge plans CTIA members currently provide to their Georgia Lifeline enrollees.

53. By requiring wireless ETCs to impose a minimum monthly service rate charge on their Lifeline-enrolled customers for service plans offering fewer than 500 minutes of use per month, the Amended Rule regulates “the rates charged by any commercial mobile service” in contravention of Section 332(c)(3)(A)’s express directive that “no State or local government shall have any authority to regulate” such rates.

54. Moreover, the Amended Rule’s purported alternative allowing ETCs to avoid the $5.00 monthly rate floor by offering only service plans that provide a minimum of 500 minutes of use per month likewise constitutes impermissible rate regulation. The 500 minutes per month mandatory minimum (under this alternative) precludes Georgia ETCs from offering the no-charge 250 minutes per month plans those ETCs currently offer (and would continue to offer absent the Amended Rule), and offering no-charge service plans providing 500 or more minutes per month of use is not economically feasible.

55. In addition, the Amended Rule impermissibly regulates rate levels and rate elements, including the rate element of use time per month, by imposing a
minimum $5.00 monthly service rate on plans offering fewer than 500 minutes of use per month.

56. The Amended Rule is also preempted because it undermines the intended purposes and effects of both the Communications Act and the Lifeline program. Congress’s principle objective in passing the Communications Act was to ensure that “consumers in all regions of the nation, including low-income consumers, . . . have access to telecommunications and information services.” 47 U.S.C. § 254(b)(1)&(3). In addition, Congress sought to establish and promote “a national regulatory policy for [wireless service], not a policy that is balkanized state-by-state.” Report and Order, Pet. of the People of the State of Cal. and the Public Utilities Comm’n of the State of Cal. to Retain Reg. Auth. over Intrastate Cellular Serv. Rates, 10 F.C.C.R. 7486, ¶ 24 (1995). Congress also sought to prevent unnecessary and burdensome state regulations that would serve as “barrier[s]” to the development of the industry. See S. 1134, Title IV, § 402(13). The Amended Rule would undermine each of these objectives and purposes and would frustrate the goals of the federal Lifeline program by erecting an anomalous and burdensome set of state rate regulations unique to Georgia that would reduce access to telephone services for low-income Georgians most in need of the Lifeline program.
57. The Amended Rule is thus expressly preempted by Section 332(c)(3)(A). Accordingly, the Amended Rule should be declared invalid, and this Court should enjoin the Commissioners from giving effect to or enforcing the Amended Rule.

V. THE AMENDED RULE WILL CAUSE IRREPARABLE HARM.

58. If the Amended Rule is allowed to become effective, wireless service providers, including CTIA members, and many of the hundreds of thousands of needy Georgia households that depend on no-charge Lifeline-subsidized services that CTIA members have been able to provide in the absence of the Amended Rule will suffer immediate and irreparable harm.

A. CTIA Members Will Be Irreparably Harmed By The Amended Rule.

59. If allowed to become effective, the Amended Rule will cause CTIA members to suffer immediate and irreparable harm.

60. CTIA members providing Lifeline service in the State of Georgia will suffer the loss of their Lifeline-enrolled customers who are unable to afford the new $5.00 monthly minimum service rate, or such other new rates as CTIA member ETCs seeking to comply with the Amended Rule by providing 500 monthly minutes would necessarily be forced to charge their Lifeline-enrolled
customers (otherwise, the provision of 500 minute of use per month would not be economically feasible).

61. CTIA members will also lose Lifeline-enrolled customers who might be able to afford the new monthly rates themselves, but for whom the cost of transmitting the monthly payments will render continued Lifeline enrollment impossible. Many Georgia Lifeline enrollees lack bank accounts, credit cards, or other viable means of making non-cash payments for goods and services. These “unbanked” customers would have to rely on expensive methods like money orders to pay the new monthly rates imposed by the Amended Rule. Such payment methods can entail additional service fees as high as $12.99 per transaction, meaning that, for these customers, the actual cost of paying the $5.00 minimum monthly service rate imposed by the Amended Rule would be as high as $17.99 per month.

62. In addition to losing customers, CTIA members will lose goodwill as the result of being forced to comply with the Amended Rule. Customers who have come to rely on no-charge Lifeline-subsidized services will understandably become confused and angry upon learning that they must suddenly begin paying new monthly service rates to continue to receive service. Customers will doubtless feel they are the victims of “bait-and-switch” tactics, and will unfairly blame CTIA
members for the new monthly service rates. The consequent loss of goodwill to CTIA members is not subject to reasonable measurement or calculation and constitutes irreparable harm.

63. CTIA members would also suffer severe but incalculable economic and administrative costs in connection with having to extensively modify and supplement their existing information technology systems, customer service functions, advertising plans, and other systems and procedures. Moreover, many CTIA members would be required to create new billing and collection systems to comply with the Amended Rule.

64. Finally, CTIA members would be unjustly deprived of revenues that they will not be able to recover as the result of the GPSC’s refusal to recognize the limits of its authority under basic federal preemption principles.

65. For all of these and other reasons, CTIA members will suffer irreparable harm if the Amended Rule is allowed to become effective.

B. Low-Income Georgians Will Be Irreparably Harmed By The Amended Rule.

66. The impact of the Amended Rule on the low-income Georgia families the Lifeline program was designed to help will be even more devastating.

67. In its 2012 Lifeline Order, in which the FCC considered but rejected a proposed $5.00 monthly minimum charge on Lifeline-subsidized telephone
services, the FCC noted its “serious concerns about the unintended costs of imposing a minimum charge.” The FCC found that a minimum charge could potentially discourage consumers from enrolling in the program and could result in current Lifeline subscribers leaving the program. The FCC acknowledged a survey conducted by CTIA member TracFone which showed that almost 65 percent of TracFone’s responding consumers stated that they would de-enroll from the Lifeline program instead of paying a mandatory charge.

68. The FCC further noted the increased (but hidden) burden that a minimum monthly charge would have on Lifeline-enrolled Georgians who are “unbanked” – i.e., lack a bank account, credit card, or other viable means of making non-cash payments for goods and services. As the FCC stated:

We are concerned that requiring a minimum consumer charge could be burdensome for those low-income consumers who lack the ability to make such payments electronically or in person, potentially undermining the program’s goal of serving low-income consumers in need. We conclude that imposing a minimum charge could impose a significant burden on some classes of Lifeline consumers. For example, making regular payments to an ETC, even when those payments are minimal, may be difficult for low-income consumers who do not have bank accounts and might fail credit checks. TracFone reports that 60 percent of its Lifeline subscribers do not have checking accounts, credit cards, or debit cards, and would have no alternative other than to use money transfer services or purchase money orders to make minimum payments. Further, the cost of
a money transfer is likely to exceed the nominal $1-$5 monthly fee that some parties advocate, significantly raising the effective cost of Lifeline services for low-income consumers. For example, one commenter notes that a Western Union money transfer for $1 would cost consumers $12.99 in fees. We have serious concerns about the unintended costs of imposing a minimum charge. 23

69. Ultimately, the FCC rejected a minimum charge due to these concerns, noting that the Lifeline program serves “the truly neediest of the population in the most dire economic circumstances and for whom even a routine charge is an excessive financial burden.” 24

70. These same concerns regarding the impact of a minimum charge on low-income consumers were also raised in the proceedings that ultimately resulted in the GPSC’s adoption of the Amended Rule. Representatives of CTIA members and other service providers spoke to the devastating impact a minimum charge would have on the ability of many of their customers to afford telephone service under the Lifeline program. Brian Herbert, the President of Apex Veteran Staffing, spoke to the importance of Lifeline-subsidized telephone access to low-income veterans seeking employment, and to the burden a $5.00 monthly charge would place on veterans and their families. Private citizen Evanne Hines implored the

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23 Lifeline Order ¶ 266.
24 Id. at ¶ 267.
GPSC to reject a $5.00 minimum monthly charge because it would force many needy Georgians to choose between phone service and a meal or necessary medication. Although similar concerns persuaded the FCC not to adopt a $5.00 minimum monthly charge, they apparently did not have the same effect on the GPSC.

71. If the Amended Rule is permitted to take effect, hundreds of thousands of low-income Georgians who depend on the Lifeline program would lose access to the vital telecommunications services that the FCC has proclaimed are “crucial to full participation in our society and economy,” and necessary to keep those persons connected to family, community, job opportunities, and health and emergency services. As a result, the Amended Rule presents a harm that would not only substantial, but also irreparable.

**CLAIMS FOR RELIEF**

**COUNT I DECLARATORY RELIEF:**

**EXPRESS PREEMPTION UNDER § 332 OF THE FCA**

72. CTIA incorporates the preceding paragraphs by reference as though set forth fully herein.
73. Section 332 of the FCA expressly 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." 47 U.S.C. § 332(c)(3)(A).

74. The Amended Rule conflicts with § 332(c)(3)(A) of the FCA by regulating wireless rates and requiring commercial mobile service providers designated as ETCs to charge a minimum monthly service rate of $5.00 for Lifeline service plans that provide users with fewer than 500 minutes of use per month.

75. To the extent that the Amended Rule prescribes a minimum number of minutes of use that wireless ETCs must offer in order to avoid the $5.00 minimum monthly service charge, the Amended Rule regulates wireless rates, rate levels, and rate elements, and is therefore preempted by § 332(c)(3)(A).

76. Accordingly, the Amended Rule is expressly preempted by § 332(c)(3)(A) of the FCA and is invalid pursuant to the Supremacy Clause of the United States Constitution.

77. Pursuant to 28 U.S.C. § 2201, a declaration is necessary and appropriate to specify that the Amended Rule is preempted by § 332 of the Communications Act and thus invalid.
COUNT II DECLARATORY RELIEF:
CONFLICT PREEMPTION UNDER THE COMMUNICATIONS ACT

78. CTIA incorporates the preceding paragraphs by reference as though set forth fully herein.

79. The Supremacy Clause of the United States Constitution preempts state laws that operate to frustrate the purposes and objectives of federal law.

80. The purposes and objectives of the Communications Act are to ensure that telecommunications services are universally available to consumers, including low-income consumers; develop a uniform national regulatory policy for the telecommunications industry; and prevent burdensome and unnecessary state regulations.

81. By preventing CTIA members from continuing to offer no-charge wireless services to Georgia Lifeline enrollees, the Amended Rule will frustrate each of these federal purposes and objectives. The Amended Rule will leave many low-income Georgia Lifeline enrollees without access to telephone services of any kind; establish an anomalous set of wireless service rate regulations unique to Georgia; and impose entirely unnecessary financial and administrative burdens on wireless service providers and the Georgians they serve.
82. Accordingly, the Amended Rule is preempted by the Communications Act and is invalid pursuant to the Supremacy Clause of the United States Constitution.

83. Pursuant to 28 U.S.C. § 2201, a declaration is necessary and appropriate to specify that the Amended Rule is preempted by the Communications Act and thus invalid.

**COUNT III**

**INJUNCTIVE RELIEF**

84. CTIA incorporates the preceding paragraphs by reference as though set forth fully herein.

85. CTIA is likely to succeed on the merits of its preemption claims because the Amended Rule is preempted by the Communications under the doctrines of express preemption and conflict preemption.

86. The Amended Rule will cause CTIA members immediate injury for which there is no adequate remedy at law because it: (1) requires that CTIA members who serve as wireless ETCs to Georgia Lifeline-enrolled customers charge those customers a $5.00 minimum monthly service rate for service plans which provide fewer than 500 minutes of use per month, which requirement is inconsistent with, and preempted by, federal law; (2) will cause CTIA members to
lose customers and goodwill; and (3) requires CTIA members to incur substantial but incalculable loss of customers and goodwill as well as economic and administrative costs, for which CTIA members will have no recourse, to meet, and prepare to meet, the Amended Rule’s requirements.

87. These injuries cannot be adequately compensated by money damages and will be irreparable absent preliminary and permanent injunctive relief.

88. Accordingly, these injuries are redressable by the granting of appropriate injunctive relief enjoining the Commissioners from giving effect to or enforcing the Amended Rule as to wireless providers and wireless services.

89. An injunction would pose no countervailing harm to Defendants, the GPSC, or the State of Georgia, because Defendants and the GPSC lacked the authority to adopt the preempted Amended Rule. Moreover, there is no public interest weighing against an injunction that would merely preserve the status quo while preventing the enforcement of a preempted state law.

PRAYER FOR RELIEF

WHEREFORE, CTIA respectfully requests that this Court:

A. Enter judgment in CTIA’s favor;

B. Preliminarily and permanently enjoin each and all of the Commissioners and their officers, agents, subordinates, and employees from giving
effect to or enforcing amended Utility Rule 515-12-1-.35(3)(f), as adopted pursuant to the October 18, 2013 Order attached hereto as Exhibit B; the GPSC’s January 15, 2013 Order attached hereto as Exhibit C; and the GPSC’s January 18, 2013 Notice of Proposed Rulemaking attached hereto as Exhibit D, with respect to wireless service providers;

C. Declare that amended Utility Rule 515-12-1-.35(3)(f), as adopted pursuant to the October 18, 2013 Order attached hereto as Exhibit B; the GPSC’s January 15, 2013 Order attached hereto as Exhibit C; and the GPSC’s January 18, 2013 Notice of Proposed Rulemaking attached hereto as Exhibit D, as applied to wireless service providers, is preempted by the Communications Act, specifically 47 U.S.C. § 332(c)(3)(A);

D. Declare amended Utility Rule 515-12-1-.35(3)(f), as adopted pursuant to the October 18, 2013 Order attached hereto as Exhibit B; the GPSC’s January 15, 2013 Order attached hereto as Exhibit C; and the GPSC’s January 18, 2013 Notice of Proposed Rulemaking attached hereto as Exhibit D, null and void against any wireless service provider;

E. Issue all preliminary and permanent relief and process necessary and appropriate to prevent each and all of the Commissioners and their officers, agents, subordinates, and employees from taking any action pursuant to amended Utility
Rule 515-12-1-.35(3)(f), as adopted pursuant to the October 18, 2013 Order attached hereto as Exhibit B; the GPSC’s January 15, 2013 Order attached hereto as Exhibit C; and the GPSC’s January 18, 2013 Notice of Proposed Rulemaking attached hereto as Exhibit D, against any wireless service providers;

F. Preliminarily and permanently enjoin the GPSC, the Commissioners, and their officers, agents, subordinates, employees, and all acting in concert with any of the foregoing from enacting, proposing to enact, enforcing, or proposing to enforce any rule, action condition, or mandate that contains any rate or rate element pertaining to wireless service providers;

G. Award CTIA its costs and reasonable attorneys’ fees as appropriate; and

H. Grant such additional relief as the Court may deem appropriate.

DATED: October 23, 2013.

Respectfully submitted,

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The Wireless Association®
CERTIFICATE OF COMPLIANCE

Pursuant to Rule 7.1(D) of the Local Rules of the Northern District of Georgia, the undersigned counsel for Plaintiff CTIA – The Wireless Association hereby certifies that the foregoing document was prepared in a font and point selection approved by this Court and authorized in Local Rule 5.1(C).

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CERTIFICATE OF SERVICE

I hereby certify that on the date indicated below I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, which will automatically send email notification of such filing to the following attorneys of record:

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DATED: October 23, 2013.

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