



**Testimony of
GERARD KEEGAN
CTIA**

**In Opposition to
Ohio House Bill No. 357**

**Before the
Ohio House Technology and Innovation Committee**

June 12, 2024

Chair, Vice-Chair, Ranking Member, and members of the committee, on behalf of CTIA®, the trade association for the wireless communications industry, I am here in opposition to House Bill No. 357, as amended. This bill is unnecessary considering the competitive U.S. mobile messaging marketplace and is an unlawful technology mandate.

SMS is the Most Common and Widely Available and Accessible Wireless Text Messaging Protocol in the U.S. Today

The most common and widely available wireless text messaging protocol is Short Message Service or SMS, which enables the 325 million U.S. wireless subscribers to send and receive text messages among mobile wireless phones.¹ Wireless text messaging has evolved into one of the most popular forms of communication for Americans, with 2 trillion SMS

¹ *Id.* SMS can reach users with 10-digit telephone numbers that are also SMS enabled (generally those associated with mobile wireless phones). SMS uses a “store and forward” capability where messages are routed through servers on mobile networks and stored in a messaging center in the provider’s network until the recipient device is able to receive it. See *FCC Declaratory Ruling on Regulatory Status of Wireless Messaging Service*, Declaratory Ruling, 33 FCC Rcd 12075, ¶¶ 8, 11 (2018) (*FCC Messaging Declaratory Ruling*).



messages sent and received each year across the U.S.² SMS is also the most affordable and accessible messaging service for low-income consumers and older adults because SMS works on non-smartphone devices, like flip phones, and a consumer doesn't need a data plan to use SMS.

The success of SMS as a trusted platform has developed over decades of innovation and competition.³ Throughout the late 2000s and 2010s, the wireless industry developed innovative solutions to enable large and small businesses, government agencies, and political campaigns to use SMS to provide just-in-time alerts and notifications and enhance customer service and engagement, like flight status and delivery notifications.

U.S. consumers, businesses, and public and private entities trust SMS. Consumers prefer texting over voice calling *nearly 2 to 1*, and nearly half of all consumers text every single day (more than the use of any other communications medium, including voice or email).⁴ Further, SMS open rates have been estimated to be as high as 98 percent and response rates

² In 2022, wireless consumers exchanged more than 2.1 trillion text messages, 6% more messages than they sent in 2021. See CTIA, *CTIA 2023 Annual Survey Highlights*, at 9 (2023), <https://api.ctia.org/wp-content/uploads/2023/07/2023-Annual-Survey.-Highlights.pdf>.

³ See, e.g., CTIA, *Messaging Principles and Best Practices*, 3.1 (May 2023), <https://api.ctia.org/wp-content/uploads/2023/05/230523-CTIA-Messaging-Principles-and-Best-Practices-FINAL.pdf>.

⁴ FCC Consumer Advisory Committee, *Report on the State of Text Messaging*, at 5 (Aug. 30, 2022) (citing Morning Consult Survey: Nationwide poll of 1,999 registered voters, conducted December 3-5, 2021) (“FCC State of Messaging Report”), <https://files.fcc.gov/ecfs/download/20970528-9c2e-400d-951b-1024118e50fb?orig=true&pk=cb77b2ec-1a58-dbc6-139b-ad192cfd5d9b>.



as high as 45 percent.⁵ These engagement rates eclipse email open and response rates – 20 percent and 6 percent, respectively.

Competition and Innovation are Driving the Evolution of Wireless Text Messaging

While SMS remains the most popular and widely available form of wireless text messaging in the U.S. today, competition is growing to the benefit of consumers. As consumers communicate with each other more, they have also begun to communicate more by text message with businesses, government, and non-profit organizations that are important in their lives. We are all familiar with text message notifications from, for example, a restaurant when our table is ready or a school about activity sign ups. While many of these messages are sent using SMS today, message senders have many messaging platform choices to reach consumers, including “over the top” or “OTT” messaging applications and Rich Communication Services or RCS.

When smartphones with mobile data plans became more widely adopted in 2010, various technology companies began offering new OTT messaging platforms. In today’s market, in addition to SMS, consumers can choose between Meta’s WhatsApp, Apple’s

⁵ Stanzie Cote, *The Future of Sales Follow-Ups: Text Messages*, Gartner (Oct. 4, 2019), <https://www.gartner.com/en/digital-markets/insights/the-future-of-sales-follow-ups-text-messages>; see also *SMS Marketing Statistics 2022 for USA Businesses*, SMS Comparison USA , <https://www.smscomparison.com/mass-text-messaging/2022-statistics/> (updated July 27, 2022); *Email Marketing vs. SMS Marketing: You’re Asking the Wrong Question*, Campaign Monitor (Mar. 3, 2022), <https://www.campaignmonitor.com/blog/emailmarketing/roi-showdown-sms-marketing-vs-email-marketing/>.



iMessage, Google Messages, Telegram, Signal, and many other apps - all of which ride “over the top” of an underlying internet connection. Already, more than half of global messaging traffic is through OTT messaging applications.⁶

In addition, the U.S. wireless industry is advancing RCS.⁷ Today, RCS is available through Google Messages on wireless devices with Google’s Android operating system; Apple’s devices use a separate protocol through iMessage, but Apple has announced that iMessage will also support RCS capabilities later this year.⁸ Thus, wireless consumers using either Apple iOS or Google Android devices can soon choose to exchange text messages using RCS.

With fierce competition in text messaging among wireless providers, device manufacturers, and app providers, consumers and non-consumers can pick the right platform for them based on ubiquity, cost, security, or other features and may choose different platforms for different uses. A state law is not necessary to further competitive or market-based pressures that the wireless industry is addressing. As such, Ohio does not need to pass this legislation.

⁶ Pamela Clark-Dickson & Charlotte Palfrey, *OTT Messaging Forecast Report: 2019-24*, Omdia (Jan. 7, 2021); CTIA Annual Survey Highlights, *supra* note 1.

⁷ Sinch, *What is RCS messaging? Android’s communication chat protocol explained* (April 2, 2024), <https://www.sinch.com/blog/what-is-rcs-messaging/>.

⁸ *Id.* See also, The Verge, *Apple says iPhones will support RCS in 2024* (Nov. 16, 2023), <https://www.theverge.com/2023/11/16/23964171/apple-iphone-rcs-support>.



The Bill Mandates that U.S. Wireless Consumers Use Google’s Preferred Implementation of RCS, Cementing Its Market Position, While Violating Federal Law

Today, Ohio consumers have a choice among multiple wireless text messaging platforms that already provide the multimedia, real-time, and security features that this legislation would otherwise mandate. The wireless industry is actively working to further deploy RCS capabilities to compete with OTT platforms. Rather than relying on competition and innovation, this legislation would require specific text messaging features that can only be achieved by Google’s implementation of RCS.⁹

The legislation’s only proponent – Google – has made clear that the goal of this law is to reach well-beyond Ohio state lines to change how wireless text messaging services and solutions are provided to consumers throughout the U.S. In fact, in testimony before this committee, Google encouraged Ohio to draw inspiration from the heavy-handed regulatory approaches of Europe and other foreign authorities instead of relying upon long-held, free market-based principles that have made U.S. companies global leaders in wireless technology and innovation.¹⁰ Courts have found that “one-off” state requirements on an interstate service

⁹ Rita El Khoury, *Sorry, Google, Pushing Apple to adopt RCS isn’t cute anymore; it’s desperate*, Android Authority (Sept. 22, 2023), <https://www.androidauthority.com/google-rcs-push-apple-desperate-3367001/>.

¹⁰ Testimony at 18:20, Paul Carter, Google, [Ohio House Technology and Innovation Committee | The Ohio Channel](#) (“I’m probably not the best person to answer the specific points of law, but *I can give examples of what’s happened in Europe* where similar legislation is introduced and, you know, *that has a profound impact for things outside the state as well. It’s very difficult to just confine it to the state as you say.* But it’s perfectly possible and has been the case *in other regions of the world* where they say it shall



like nationwide wireless messaging are unlawful.¹¹ The Federal Communications Commission has defined wireless messaging as an “information service,” and those services are subject to a long-standing national policy of non-regulation.¹²

The FCC has found that SMS, RCS, and their successors are interstate information services. HB No. 357 is therefore preempted because it purports to regulate the way messaging software providers offer an interstate information service. The proposed statutory language is not limited to text-based messages that are between people and messaging servers located entirely within Ohio. Instead, it purports to reach the transmission of all text-based messages sent through messaging software on smartphones, so long as the sender or the recipient is in Ohio. For that reason, HB No. 357 regulates interstate information services. States have no authority to regulate such services. For example, when Minnesota sought to regulate a cable company’s interstate Voice over Internet Protocol (“VoIP”) service, the Eighth Circuit held that Minnesota was preempted from regulating that service because it is an interstate information service and Minnesota’s regulation conflicted with the federal

happen in this country. It shall be enforced. It’s then down to the product company how far they take that and how widely available they make the service.”)(emphasis added).

¹¹ For example, a federal appeals court affirmed the FCC’s decision to preempt Minnesota’s regulation of a Voice Over IP (“VoIP”) service. The FCC found that VoIP was an interstate service, and Minnesota’s regulation unlawfully impeded the offering of that service. See *Declaratory Ruling and Order of the Minnesota Public Utilities Commission*, Memorandum Opinion and Order, 19 FCC Rcd 22404, 22416 ¶ 21 (2004), *aff’d*, *Minn. Pub. Utils. Comm’n v. FCC*, 483 F.3d 570 (8th Cir. 2007).

¹² *FCC Messaging Declaratory Ruling* ¶ 49.



approach to VoIP services. See *Charter Advanced Servs. (MN), LLC v. Lange*, 903 F.3d 715, 718-20 (8th Cir. 2018).

This Bill would Deprive Ohio Consumers of Critical Protections from Spam and Scam Text Messages

This legislation would also expose Ohio consumers to more spam and scams. Wireless providers and their ecosystem partners actively filter out unlawful and unwanted SMS text messages, ensuring you get the messages you want and blocking the billions of messages you do not. Specifically, wireless providers block or filter message traffic to protect consumers, their networks, and the messaging ecosystem from unlawful and unwanted messages while supporting the ability of consumers to exchange wanted messages with other consumers and non-consumers.¹³

This legislation would strip consumers of all the protections of sophisticated carrier spam filters and mitigation efforts. The bill would effectively mandate that only Google or other messaging platform providers can protect consumers from spam and scam text messages and would risk turning wireless text messaging into Gmail accounts overrun with unwanted messages and advertising.

¹³ Unwanted messages may include message content that (1) is unlawful, harmful, abusive, malicious, misleading, harassing, excessively violent, obscene/illicit, or defamatory; (2) deceives or intends to deceive (e.g., phishing messages intended to access private or confidential information); (3) invades privacy; (4) causes safety concerns; (5) incites harm, discrimination, or violence; (6) is intended to intimidate; (7) includes malware; (8) threatens Consumers; or (9) does not meet age gating requirements. See, [CTIA Messaging Principles and Best Practices](#) at §§ 1, 3.3 and 5.3



Additionally, the legislation would expose more of Ohio consumers' information, including contacts, location, and other device-based information, to messaging application providers like Google.¹⁴ Meanwhile, claims related to the security of SMS are unfounded because there is zero evidence that SMS is subject to widespread eavesdropping regardless of whether messages are encrypted.

In sum, HB No. 357, as amended, is a solution in search of a problem. Ohio does not need to enact legislation to achieve the goal of interoperable RCS. If enacted, HB No. 357 would be an unlawful technology mandate that serves only to undermine the competitive and market-based pressures that drive the wireless industry to offer more and better services. For these reasons, we would urge you not to move this bill.

¹⁴ Google, *Understand the basics of privacy in Messages*, <https://support.google.com/messages/answer/12104873?hl=en> (last visited Nov. 7, 2023).