

1 **COMMITTEE: COMMUNICATIONS, FINANCIAL SERVICES & INTERSTATE**  
2 **COMMERCE**

3  
4 **TITLE: TWENTY-FIRST CENTURY COMMUNICATIONS**

5  
6 **TYPE: DRAFT POLICY STATEMENT**  
7

8  
9 At the start of the Twenty-first Century, advanced communications services and  
10 information technology are the economic forces that are ensuring the continued  
11 financial health and stability of our country and our states. The information age is no  
12 longer merely a segment of economic growth but must be addressed as the  
13 underpinning of the entire marketplace. There is hardly an industry or trade that does  
14 not depend in some way on communications services and the infrastructure that  
15 provides vital information at the push of a button or the command of the voice.  
16

#### 17 **THE STATE OF COMMUNICATIONS**

18 Innovation and convergence of existing technologies are radically expanding  
19 communications services, blurring distinction between telephone and Internet services;  
20 between cable, wireless and satellite; between long distance and local service; and  
21 between telephone and other forms of communications.  
22

23 The primary goal of the federal Telecommunications Act of 1996 was to open  
24 telecommunications markets to competition. Eleven years later competition exists  
25 because of many factors, including increased innovation and consumer access to  
26 wireless services and the ability of consumers to communicate over the Internet through  
27 Instant Messaging, e-Mail, Voice over Internet Protocol (VOIP), Internet Protocol  
28 Television (IPTV) and satellite communications. The 1996 Act along with similar efforts  
29 at the state level allowed for much industry self-regulation that has fostered these  
30 competitive forces while providing consumers with communications choices.  
31

32 In 2007, according to the Federal Communications Commission (FCC), 111 million  
33 households had telephone service; this represents 94.6 percent of the total households  
34 in the United States. The FCC also reported that incumbent local exchange carriers  
35 (ILECs) accounted for 142.2 million access lines compared to 29.8 million access lines

36 provided by competitive local exchange carriers (CLECs). At the same time there were  
37 over 233 million wireless telephone subscribers, surpassing the total of all wireline  
38 access lines. Add to this overview of competition, estimates from Bernstein Research  
39 that in 2007, 75 percent of households in America had internet access enabling  
40 alternative communications such as e-Mail and Instant Messaging.

41  
42 Many of these new technologies are capable of delivering communications services but  
43 do not fit within the definitions of the traditional regulatory framework for  
44 telecommunications. As a result similar services can be delivered via networks that are  
45 regulated and taxed differently, and for a growing number of technologies, these  
46 services are free of regulation and even taxation. This uneven governmental treatment,  
47 while not intentional, has led to competitive barriers, discouraged investment in  
48 infrastructure development, and delayed the roll out of advanced communications  
49 services by existing regulated telecommunications providers.

50  
51 To ensure that government regulation of communications services, when such  
52 regulation is necessary to ensure competition, protect the interests of consumers and  
53 the needs of law enforcement agencies, is based on an even playing field between  
54 competitors of similar services, though possibly delivered by different technologies, the  
55 National Conference of State Legislatures calls upon the Congress and the Federal  
56 Communications Commission, in consultation with state legislatures and the providers  
57 of communications services, to review the current definitions of telecommunications and  
58 information services as defined in the Communications Act of 1934 and the  
59 Telecommunications Act of 1996 to ensure that all providers of communications  
60 services are treated similarly for purposes of government regulation and taxation.

61  
62 The need to review and possibly re-define telecommunications and information services  
63 has been made more urgent by numerous federal court rulings since 1996, which have  
64 added confusion to what are telecommunications services by delivering several  
65 contradictory decisions. The definition of telecommunications and information services  
66 should not be decided in the courtroom but rather by the elected representatives of the  
67 people working cooperatively with regulators, industry providers and consumer groups.

68

69 NCSL would have concerns about a piecemeal approach by Congress in addressing  
70 regulatory and taxation issues with regard to a particular developing technology and not  
71 similar issues faced by other providers of communications. NCSL supports  
72 reconsideration of the 1996 Telecommunications Act to eliminate remaining barriers to  
73 competition, modernize outdated regulations that distort the market or results in  
74 government favoring one technology over another, and ensure a level playing field for  
75 all providers of communications services, while maintaining the basic right of  
76 interconnection that is fundamental to a competitive market

77

## 78 **COMMUNICATIONS INFRASTRUCTURE**

79 The United States communications infrastructure is the combined product of a wide  
80 range of service providers, including historically regulated common carriers, new  
81 entrants and operators of private networks. With proper attention given to infrastructure  
82 development, communications and information technology present boundless  
83 opportunities for America to lead the world throughout the 21st century.  
84 Communications services will achieve its fullest potential only if it allows every  
85 American, regardless of geographic location and economic status, the opportunity to  
86 realize the full benefits of the information age. Government policies that promote  
87 competition and reduce outdated layers of regulation, where markets are competitive  
88 are the key to reaching this full potential.

89

90 Government and industry, working cooperatively, must continue to provide our citizens,  
91 businesses and governments with the best communications infrastructure in the world.  
92 Our goal is the creation of affordable, easily accessible communications and information  
93 networks serving the societal needs of a broad range of users and industries. To that  
94 end, government and industry should strive for a communications policy framework that  
95 promotes and ensures fair and open competition, removes obsolete barriers that result  
96 from outdated burdensome regulation and requirements, ensures similar government  
97 regulation for all technologies that provide similar services in markets that are  
98 competitive, encourages innovation and investment, and allows consumers and the  
99 marketplace to determine winners and losers not government regulation. As competitive  
100 markets alone may not be able to provide an advanced communications infrastructure

101 to all citizens, institutions, and businesses, government should continue to encourage  
102 the availability of such an infrastructure to all.

103

104 While investments in communications infrastructure have received considerable national  
105 attention, the federal government must recognize that states have unique priorities that  
106 require state and regional specific solutions.

107

### 108 **UNIVERSAL SERVICE**

109 Since its inception, the federal Universal Service Fund (USF) has sought to increase  
110 access to telecommunications services to historically underserved populations through  
111 contributions by all telecommunications providers. These contributions are typically  
112 passed onto telecommunications consumers through a monthly fee on their billing  
113 statement.

114

115 Of the almost \$7 billion annual budget of the federal USF, 64.1 percent goes to the High  
116 Cost Fund, which finances telecommunications facilities in rural areas; 14 percent goes  
117 to the Low Income Fund, which finances carriers for customers who are in a means  
118 tested public assistance program; 21.6 percent goes to Schools and Libraries Fund (E-  
119 Rate Program) which funds services to public schools and libraries; and, about 0.3  
120 percent goes to Rural Health Care Fund. In addition many states have established  
121 state Universal Service Funds, providing universal access solutions that remain unique  
122 to their respective states and constituents.

123

124 With well over two-thirds of the federal USF supporting access to basic telephony, and  
125 assessments on providers being raised almost every year by the Universal Service  
126 Administrative Company, concerns in Congress are growing about the future of the  
127 federal USF. In reforming the federal USF, NCSL would remind Congress that the USF  
128 is funded primarily by customers of telecommunications services and therefore the  
129 Congress needs to evaluate the ever growing burden these increasing fees are  
130 becoming to all Americans.

131

132 Congress, the Federal Communications Commission, state legislatures and state  
133 regulators should review and address the requirements and goals for universal service  
134 by adopting policies that promote universal mobility and universal competition.

135

136 Any reform of the federal Universal Service Fund should not impact or hinder innovation  
137 at the state level or interfere with the administration of state Universal Service Funds.

138

### 139 **ADVANCED COMMUNICATION SERVICES**

140 According to the Federal Communications Commission, the number of high-speed lines  
141 connecting to the Internet (exceeding 200 kilobits per second in one direction) increased  
142 by 52 percent between June of 2005 and June of 2006, resulting in a total of 64 million  
143 lines in service in the United States. In addition, the FCC reported an increase in the  
144 number of advanced service lines connecting to the Internet (exceeding 200 kilobits per  
145 second in both directions) increased by 35 percent between June of 2005 and June of  
146 2006, resulting in a total of 50 million lines in service in the United States.

147

148 The future expansion of access to advanced communications and broadband services  
149 will depend upon additional private investment and minimal government regulation. Any  
150 regulation of communications and broadband services must be minimal and should not  
151 discriminate between communication providers or the technology used in delivering  
152 such services.

153

154 NCSL urges Congress to work with states in developing an integrated broadband  
155 strategy to ensure universal deployment and affordable access to every constituent,  
156 regardless of geography or economic status. NCSL supports the creation of a national  
157 advisory board, including state, federal and local policymakers, as well industry  
158 representatives, to develop principles to facilitate deployment of advanced broadband  
159 communications services.

160

161 NCSL urges the Federal Communications Commission, in conjunction with state,  
162 federal and local policymakers, to reevaluate the distinction between telecommunication  
163 and information services and gather additional information on the state of advanced

164 broadband and communications services in the United States in light of the  
165 technological achievements made within the last decade.

166

### 167 **MUNICIPAL BROADBAND NETWORKS**

168 As states seek to expand access to broadband and work with the federal government to  
169 enhance deployment of broadband, Congress and the FCC must recognize and  
170 account for the principles of federalism and numerous decisions by the United States  
171 Supreme Court with regard to the relationship between the state and its political  
172 subdivisions. Most recently, in 2004, by a vote of 8-1 in *Nixon v. Missouri Municipal*  
173 *League*, the United States Supreme Court upheld the decision by the Missouri  
174 legislature forbidding the state's political subdivisions from offering telecommunications  
175 or Internet services.

176

177 Legislation has been introduced in Congress to preempt any state statute, rule or  
178 regulation that seeks to regulate, limit or prohibit the ability of municipalities and state  
179 created public agencies with regard to funding or establishing high speed Internet  
180 networks, broadband and wireless technology known as WiFi. Such congressional  
181 action would violate the states' sovereignty over its own political subdivisions.

182

183 NCSL will oppose any effort to authorize or prohibit the establishment of municipal or  
184 state created public agencies broadband networks through congressional or federal  
185 regulatory action. Should Congress or the federal government take such action, NCSL  
186 will challenge the constitutionality of such action.

187

### 188 **WIRELESS COMMUNICATIONS**

189 According to the Trends in Telephone Service Report, released by the FCC, the number  
190 of mobile telephone subscribers in the United States rose to 217.4 million by June  
191 2006. The CTIA- The Wireless Association estimated that by December 2006, the  
192 number of subscribers had risen to 233 million.

193

194 The FCC reported that Americans increased their average monthly "minutes of use" by  
195 27 percent, from 584 minutes per subscriber in 2004, to 740 minutes per subscriber in

196 2005. CTIA reports that by December 2006, the total wireless minutes of use exceed  
197 850 billion. Text messaging, according to the FCC almost doubled between 2004 and  
198 2005, going from 24.7 billion messages to 48.7 billion messages.

199

200 This unprecedented growth in the wireless industry is a tribute to the innovation by the  
201 private sector in the delivery and development of wireless communication services, and  
202 the minimal regulation imposed upon wireless service providers by government.

203

204 Since 1993, for the most part the regulation of the wireless industry has been the  
205 domain of the Federal Communications Commission. Efforts by a few states to impose  
206 some form of economic regulation have not survived court challenges. States,  
207 however, continue to have authority to monitor wireless providers with regard to  
208 consumer protection issues.

209

210 In 2004, the Federal Communications Commission received over 29,000 complaints  
211 relating to wireless telecommunications services, including billing issues, early  
212 terminations fees and advertising issues.

213

214 As a result, the majority of the wireless industry has taken significant strides in  
215 addressing these concerns, in part by adopting a wireless Consumer Code, which  
216 includes:

- 217     ▪ Disclose Rates and Terms of Service to Consumers;
- 218     ▪ Make Available Maps Showing Where Service is Generally Available;
- 219     ▪ Provide Contract Terms to Customers and Confirm Changes in Service ;
- 220     ▪ Allow a Trial Period for New Service;
- 221     ▪ Provide Specific Disclosure in Advertising;
- 222     ▪ Separately Identify Carrier Charges from Taxes on Billing Statements;
- 223     ▪ Provide Customers the Right to Terminate Service for Changes to Contract
- 224         Terms;
- 225     ▪ Provide Ready Access to Customer Service;
- 226     ▪ Promptly Respond to Consumer Inquires and Complaints Received from
- 227         Government Agencies; and
- 228     ▪ Abide by Policies for Protection of Customer Privacy

229

230 In 2006, the Federal Communications Commission received over 17,000 complaints  
231 relating to wireless telecommunications services, including billing issues, early  
232 terminations fees and advertising issues. This amounted to almost 11 out of every 1  
233 million wireless customers or 0.00001 percent of all wireless subscribers. While the  
234 wireless industry through self-regulation has been successful in significantly reducing  
235 the number of consumer complaints, NCSL continues to support the ability of state  
236 government to protect the interests of wireless consumers. However, in carrying out its  
237 consumer protection functions government must acknowledge the interstate nature of  
238 the wireless industry. Specifically targeted government requirements such as type size,  
239 language or formats of billing statements that may differ from jurisdiction to jurisdiction  
240 while may be well meaning, will hinder the seamless provision of these services,  
241 resulting in confusion and increased costs for all customers especially for those that are  
242 not residents of the state that has taken such action.

243

244 NCSL urges state and federal policy makers to work together to ensure that industry  
245 targeted consumer protections can be applied within a national framework that ensures  
246 the continued ability of the state attorneys general to enforce such consumer  
247 protections.

248

249 While states recognize the need for prepaid wireless phones, especially to those who  
250 may not be able to afford the costs of a wireless service contract, state legislatures and  
251 law enforcement agencies are concerned that such phones may also be used for illegal  
252 purposes. NCSL would encourage the wireless industry to work with state and local law  
253 enforcement agencies to ensure that prepaid wireless phones do not become a means  
254 to criminal or terrorist activity.

255

## 256 **STREAMLINING AND COLLOCATION OF WIRELESS FACILITIES SITES**

257

258 American consumers are depending more and more on wireless services and are  
259 demanding better reception and service. As wireless broadband becomes more  
260 accessible, consumers are becoming accustomed to using their laptops and handheld  
261 computers wherever they go. Americans want to be connected at all times.

262

263 This continually growing demand for access to wireless devices and services requires  
264 sufficient infrastructure. As the FCC's Eleventh Annual Report to Congress on the  
265 status of competition in the wireless industry stated:

266

267 "By increasing network coverage and call handling capacity and improving  
268 network performance and capabilities, carriers' investments in network  
269 deployment and upgrades have the potential to result in service quality  
270 improvements that are perceptible to consumers, such as better voice  
271 quality, higher call-completion rates, fewer dropped calls and deadzones,  
272 additional calling features, more rapid data transmission, and advanced  
273 data applications. As noted in the Ninth Report, one of the principal ways  
274 carriers have improved network coverage and quality is by increasing the  
275 number of cell sites."

276

277 Increasing the number of cell sites for increased service capabilities can also mean  
278 opposition from the very same people that demand better cell reception. The refrain  
279 "not in my back yard," is often heard and some localities have used the siting process  
280 to make it very difficult to site new towers or even to co-locate antenna at existing  
281 wireless facility sites.

282

283 The federal Communications Act respects the authority of state and local governments  
284 over zoning and land use decisions for personal wireless facilities, but limits that  
285 authority to ensure that such local decision making does not become a barrier to entry  
286 for wireless providers. While the FCC, state and localities have worked cooperatively in  
287 the past, efforts to increase wireless facilities sites or to co-locate on existing sites are  
288 facing growing roadblocks by some localities.

289

290 Local jurisdictions are the creation of either state constitutions or law. Zoning and land  
291 use powers that these political subdivisions of the state exercise were granted to them  
292 over time by state legislatures. Therefore, any attempt by Congress to preempt current  
293 local zoning and rights-of-way authority is a preemption of state sovereignty.

294

295 To avoid federal preemption, state legislatures, such as California and Florida, have  
296 begun to enact legislation to streamline the siting process and to enhance the use of  
297 collocation on existing wireless facilities. While NCSL rarely advocates the enactment  
298 of legislation in state legislatures, NCSL has at times, when states are facing a serious  
299 threat of federal preemption, urged state legislatures to take action.

300  
301 The National Conference of State Legislatures, in order to preserve the states'  
302 sovereignty, endorses state action to enhance the use of collocation of cell antenna and  
303 the streamlining of the current tower siting process. Collocation of antenna should not  
304 be subject to additional zoning, land-use or regulatory approval process above and  
305 beyond the initial process for siting the wireless facility. NCSL also believes that  
306 government should not levy discriminatory fees for the siting of wireless facilities or the  
307 application for collocation. Application fees levied on the siting as well as taxes on the  
308 wireless facility must not be higher than fees or taxes applied to other general business.

309  
310

### 311 **STATE FEDERAL PARTNERSHIP IN TELECOMMUNICATIONS COMPETITION**

312 State legislatures and state regulators have been at the forefront of deregulation of the  
313 telecommunications industry, removing barriers to competition in local markets and  
314 advocating the infrastructure for the delivery of advanced telecommunications. State  
315 legislators recognize that deregulation and competition are among the means to reach  
316 the goals of advanced infrastructure development, universal service, expanded  
317 consumer choice, availability of services and cost effectiveness for our constituents.

318  
319 The National Conference of State Legislatures through its policy process has supported  
320 the sovereign rights and responsibilities of states to regulate intrastate  
321 telecommunications. This principle has guided NCSL's position with regard to  
322 Congressional action to deregulate and provide for competition in telecommunications.

323  
324 In enacting the Telecommunications Act of 1996, NCSL believes that the Congress and  
325 the President acknowledged the rights and responsibilities of states to regulate  
326 intrastate telecommunications, using any and all of the local market entry mechanisms  
327 envisioned by Congress in the 1996 Act, including the resale of legacy networks,

328 providing that states use such authority in a competitively neutral manner. We believe  
329 that states and the federal government should continue their joint partnership in sharing  
330 regulatory responsibilities which will serve to protect consumers by ensuring the  
331 broadest possible consumer choice in each geographic and service market, provide for  
332 the appropriate level of universal service, promote effective competition in  
333 telecommunications by ensuring similar and minimal regulation for all providers in  
334 competitive markets, foster the development of a national infrastructure policy that  
335 encourages a positive impact on our nation's economic future.

336

337 While NCSL acknowledges the historic role of states as the primary regulator of  
338 intrastate telecommunications, state legislators also recognize that the historic  
339 distinctions between intrastate and interstate communications is fast becoming  
340 irrelevant in today's global marketplace. Some new services, such as Voice over  
341 Internet Protocol, involve integrated functionalities that cannot even be characterized as  
342 jurisdictional. As has been stated previously in this policy statement, NCSL calls upon  
343 the Congress and the FCC to partner with states in a national framework for  
344 communications policy that ensures minimal regulation but guarantees all Americans  
345 with a choice of mediums and service providers.

346

347

#### 348 **TAXATION OF COMMUNICATIONS SERVICES**

349 With the blurring of boundaries and increased convergence and competition in  
350 telecommunications and other related services, the National Conference of State  
351 Legislatures supports the review, simplification and reform of communications tax  
352 policies at all levels of government in order to ensure a level playing field between  
353 telecommunications service providers, to enhance economic development, to avoid  
354 discrimination between new and existing providers and to relive the higher burden that  
355 discriminatory communications taxes have on low income Americans.

356

357 Taxation of communications services developed for a monopoly that no longer exists  
358 has adverse consequences on competition, the nation's communications infrastructure  
359 and the overall economic development ability of the state. For states to be competitive

360 in the global economy, taxation of communications must be in line with general business  
361 taxation at all levels of government.

362  
363 The taxation of communications services at rates substantially above those imposed  
364 upon general business taxes not only harms competition in the marketplace, but also  
365 negatively impacts low-income consumers.

366  
367 Transactional taxes on communications services are regressive. The higher the tax, the  
368 more significant the burden on low-income households. As a result, the ability of low-  
369 income families to purchase additional services, such as high-speed broadband and  
370 access to premium service packages becomes even more out of reach, thus serving to  
371 expand the digital divide.

372  
373 Transaction taxes and fees imposed on communications services should be simplified  
374 and modernized to minimize confusion, remove distortion and eliminate discrimination  
375 regarding the taxability of telecommunications services. The National Conference of  
376 State Legislatures encourages elected policymakers at all levels of government to work  
377 together to simplify, reform and modernize communications taxes based upon the  
378 following principles:

- 379 1) **Tax Efficiency:** taxes and fees imposed on communications services should be  
380 substantially simplified and modernized to minimize confusion and ease the  
381 burden of administration on taxpayers and governments.
- 382 2) **Competitive Neutrality:** transaction taxes and fees imposed on communications  
383 services should be applied uniformly and in a competitively neutral manner upon  
384 all providers of communications and similar services, without regard to the  
385 historic classification or regulatory treatment of the entity.
- 386 3) **Tax Equity:** Under a uniform, competitively neutral system, industry-specific  
387 communications taxes are no longer justified, except for fees needed for  
388 communications services such as 911 and universal service.
- 389 4) **State Sovereignty:** Other than the prohibition of taxes on internet access, NCSL  
390 will continue to oppose any federal action or oversight role which preempts the

391 sovereign and Constitutional right of the states to determine their own tax policies  
392 in all areas, including communications services.