NCSL Standing Committee on COMMUNICATIONS, FINANCIAL SERVICES, & INTERSTATE COMMERCE

POLICY DIRECTIVES AND RESOLUTIONS

2021 Policy Week Review Call
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The National Conference of State Legislatures (NCSL) is concerned that Congress, the federal financial services regulators, and the federal courts have sought to nationalize control of financial services in Washington, D.C. NCSL has consistently and strongly advocated for state sovereignty in financial services regulation. NCSL has opposed any federal preemption of state legislative or regulatory authority in financial services. A high burden of proof (high threshold) that federal action is necessary, such as a national financial crisis, should be met before any preemption of state financial services laws and regulations is warranted.

Preservation of Dual Banking System

NCSL is committed to the preservation of the dual banking system. The dual banking system enables state governments to apply laws and regulations to banks, and thrifts, and non-bank financial services, including financial technology entities that serve the needs of local economies and that respond to the values and concerns of local citizens. In recognition of the advantages of the dual banking system to the public and to the health of the financial services industry, NCSL opposes any efforts by the federal government to restrict state authority to charter, supervise, or regulate the powers of financial services institutions.
state chartered banks, and thrifts, and non-bank financial services. NCSL opposes any federal attempts to tax state banks for federal oversight services already performed by the appropriate state banking agencies and departments. Nonetheless, NCSL recognizes that the states have a duty to use their powers responsibly and in a way that does not endanger the deposit insurance system and thereby the nation's financial stability.

NCSL acknowledges congressional efforts in the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank) to limit the unchecked preemption efforts by the Office of the Comptroller of the Currency (OCC) of state financial consumer protections. NCSL urges continued congressional vigilance of the OCC and asks the secretary of the Treasury to ensure that the spirit of the Dodd-Frank Act in ensuring the states’ role in protecting consumers is not diminished in regulations establishing the new Consumer Financial Protection Bureau.

NCSL urges Congress to continue close scrutiny of the Office of the Comptroller of the Currency (OCC) to limit unchecked preemption of state consumer protections.

**Federal Regulatory Consolidation**

NCSL recognizes the need for the federal government to reduce the federal regulatory burden that can impede the economic vitality of our nation's financial services industries. In consolidating the federal banking regulators, Congress must ensure that...
any consolidation does not invalidate the regulatory independence of the dual banking system.

NCSL opposes any federal regulatory consolidation plan that would:

- Preempt, limit, or interfere with the rights of states to regulate state-chartered banks, thrifts, and non-bank financial services, including financial technology entities;
- Require federal reporting requirements and examinations that duplicate state efforts;
- Place state-chartered banks, thrifts, and non-bank financial services, including financial technology entities at a competitive disadvantage with national banks or federal thrifts; and
- Grant oversight authority for state-chartered banks, thrifts, and non-bank financial services, including financial technology entities to the OCC, the regulator of national banks.

NCSL supports the continued federal oversight by the FDIC and the Federal Reserve of state-chartered banks. It would be detrimental to the well-being of the dual banking system for Congress to tamper with present oversight cooperation between state banking departments, the FDIC, and the Federal Reserve.

Federal Preemption

NCSL strongly believes that a high burden of proof must be established before federal
preemption of state banking authority is ever justified and that only Congress—and not
federal regulatory agencies—can preempt the actions of elected state leaders. NCSL
supports the “prevent or significantly interfere with” standard established by the
Supreme Court and reiterated in Subtitle D of Title X of the Dodd-Frank Act to govern
federal preemption of state laws as those laws apply to national banks. NCSL strongly
opposes any effort by the OCC to assert its regulatory authority to weaken the standard
of preemption or shield national banks and bank operating subsidiaries from state
consumer protection laws and enforcement. Moreover, NCSL encourages Congress to
eliminate the judicial deference given to the OCC by federal courts in challenges to
state financial services laws and to restrain OCC abuse of its regulatory authority to
preempt state laws.

Dual Chartering of Credit Unions

NCSL believes that state credit union supervisors have the primary responsibility for
assuring the safety and soundness of credit unions chartered by and operating under
state law and regulation. NCSL supports the authority of state governments to
determine how state financial institutions (state-chartered financial entities) must be
insured and opposes any efforts by the federal government to preempt states’ authority
to govern state deposit insurance requirements. NCSL also acknowledges that states
have a responsibility to provide a credible regulatory environment where powers can be
exercised in a way that does not endanger the financial solvency of the National Credit
Union Share Insurance Fund (NCUSIF).
NCSL additionally acknowledges that federal deposit insurance agencies, like the National Credit Union Administration (NCUA), have a legitimate role to play if state authorized powers lead to unreasonable risks for NCUSIF. However, NCUA regulations and policies should be crafted in a way that minimizes the preemption of state authority. NCSL opposes any effort by the Administration and Congress to erode the dual chartering system for credit unions by preempting state credit union laws and regulations that do not adversely impact the financial well-being of state-chartered credit unions and thus the NCUSIF. Any preemption of state credit union laws or regulatory authority (should only occur if an imminent risk to the credit unions’ share insurance fund is threatened) must be justified only by a clear and certain threat to the credit unions’-share insurance fund by those credit unions that are federally insured.

**Consumer Protection**

State legislatures and Congress must periodically consider legislation (There is overlapping state and federal legislative jurisdiction that ensures consumer) access to basic financial services; to protect the privacy of financial consumers and the security of their personal financial information; to provide protection for consumers from abusive lending practices; to ensure disclosure of information about credit terms, interest rates, fees, and balances; to regulate branch closing; and to otherwise protect the consuming public. In recognition that this is an area of overlapping federal and state jurisdiction, NCSL will ordinarily not oppose such federal consumer
protection measures, provided that there is no preemption of complementary state
consumer protection legislation. Federal legislation should not prohibit state legislatures
and state regulators from providing additional protections for consumers of financial
services. Furthermore, as the Consumer Financial Protection Bureau established in
Dodd-Frank commences its role as the federal agency responsible for regulating
consumer protection and enforcing applicable federal laws, NCSL opposes any action
that preempts state consumer protections law or undermines the principles of
federalism.

Finally, as online financial services continue to grow, clear rules must be established as
to which jurisdiction’s consumer protections apply to a given transaction. NCSL believes
that any such rules should be crafted through a partnership between state and federal
regulators and should not place state chartered financial institutions at a disadvantage
in the institution’s ability to provide services over the Internet.

Financial Services and Economic Development
NCSL recognizes that racial, ethnic, or gender discrimination by financial services
institutions (financial services entities) may have an impact on the ability of residents in
distressed communities to obtain financial assistance. State legislators NCSL also
recognizes the need for financial institutions to make safe, sound, and profitable
investments. NCSL, recognizing the responsibility that each state has for (financial
regulation, solvency and ensuring fair lending to their constituents) financial institution
regulation and solvency and for providing for fair lending to their constituents, NCSL
recognizes believes that each state legislature has the responsibility to address the unique needs of its state. Likewise, the federal government as regulator of federal financial institutions must make the same determinations and act accordingly. However, Congress must not mandate federal guidelines that impede the states' abilities to regulate financial services.

Financial Technology

As online financial services products continue to grow, clear rules must be established as to which jurisdiction's consumers protections apply to a given transaction. NCSL believes that any such rules should be crafted through a partnership between state and federal regulators and should not place state-chartered financial institutions at a disadvantage in their ability to provide services over the internet. State banking laws provide thorough consumers protections and NCSL strongly opposes any efforts by Congress or federal regulators to preempt state banking authority in regulating financial technology companies that would limit the financial protections states provide to their citizens.

NCSL believes that state banking regulators should maintain primary responsibility of chartering and supervising financial technology companies that operate in their state. States have implemented the Nationwide Multistate Licensing System to make the licensing and registration process more uniform and efficient for companies across the country while still providing rigorous protections to consumers. States have also created
standards to protect the data privacy of citizens and reduce discrimination in financial services while encouraging innovation. Regulatory sandboxes are often utilized by states to encourage new technologies and innovation without prohibitive government regulation so that states can determine the best regulatory framework for the new technology. These unique solutions should not be infringed upon so that states can continue to inspire innovation while protecting the public.

Securities Regulation

NCSL recognizes that the federal government has an interest in efficient and fair capital markets. NCSL also acknowledges that the states' securities agencies are indispensable partners with their federal counterparts engaging in the pursuit of fair and efficient capital markets by protecting local investors, workers, and communities by ensuring compliance with securities laws.

NCSL is concerned that the preemption of state securities laws and regulations will serve only to erode investor trust in the capital markets by further weakening a system designed to protect investors and putting the financial well-being of hard-working Americans at risk. NCSL opposes such federal preemption and the creation of self-regulatory organizations that usurp state authority. Instead, NCSL supports congressional efforts to expand the restoration of state securities regulators' authority.

Mortgage Industry

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Currently states regulate a significant portion of mortgage lending. Federalizing (Federal intervention in) this area of supervision will displace the 50-state regulatory system that has rapidly evolved and could erode, or even eliminate, the current authority the states have to approve, supervise and bar-license mortgage professionals. The local nature of real estate and consumer protection necessitates direct state authority.

States, through the Conference of State Bank Supervisors (CSBS) and the American Association of Mortgage Regulators (AARMR), developed the Nationwide (Multistate) Mortgage Licensing System (NMLS) to improve and coordinate mortgage supervision. This state system enhances consumer protection and streamlines the licensing process for regulators and the industry. NCSL supports the NMLS to encourage a more coordinated system of state and federal supervision.

FINANCIAL INFORMATION SECURITY

NCSL believes that states should continue to play a vital role in protecting the privacy, confidentiality, and security of sensitive nonpublic personal financial information. States long have sought to balance the economic value of information sharing with reasonable safeguards against the unnecessary disclosure and inappropriate acquisition of sensitive nonpublic personal financial information, such as credit information, account numbers, account balances, and Social Security numbers. Understanding local and regional economic situations and the unique needs of consumers within these markets,
states consistently have ensured the protection of sensitive nonpublic personal financial
information.

State legislatures recognize that financial information security is an area of
overlapping federal and state jurisdiction. Therefore, NCSL does not oppose federal
baseline standards for the protection of financial information, provided that these
standards generally do not preempt complementary state laws. NCSL believes that
states should have the authority and flexibility to adopt standards for the acquisition,
retention, disclosure, and sharing of financial information by and among financial
institutions and nonaffiliated third parties that address local concerns or respond in a
timely way to incidences of neglect or abuse that may be local or regional in nature.
NCSL specifically believes that Congress should preserve state authority to exceed
federal baseline standards for information sharing among nonaffiliated third parties.

Credit Reporting

NCSL acknowledges the benefit to the nation's economy of a uniform national credit
reporting system and Therefore, NCSL does not oppose the limited areas that were subject to federal preemption by the 1996 Amendments of the
Fair Credit Reporting Act and made permanent by the Fair and Accurate Credit
Transactions Act. In doing so, NCSL supports the continued exemption of the state laws
that were in existence prior to the 1996 Amendments and thus are currently exempted
from the preemption provisions.
Data Security Breach Disclosure

Consistent with NCSL’s general policy for safeguarding financial information, NCSL does not oppose baseline federal data security breach notification standards, provided that the requirements do not preempt state authority to adopt standards that provide affected consumers additional protection and notification. NCSL also supports allowing state financial regulators and attorneys general to enforce any new federal data security breach notification standards.

In the event that Congress decides to preempt state law, NCSL urges that the preemption be narrowly construed to preempt only state laws that are inconsistent with the federal standard while preserving state laws that apply to entities that may be excluded from the federal act. Additionally, should Congress decide to preempt state data security breach notification laws, NCSL would support a strong federal law that would require notification of the affected consumers when sensitive personally identifiable information has been, or is reasonably believed to have been, accessed or acquired. In this instance, exceptions should be made only when it is concluded that there is no significant risk that the breach has resulted in, or will result in, harm to the individual whose information has been breached.
As the 21st century progresses, advanced communications services and information technology are the economic forces that are ensuring the continued financial health and stability of our country and our states. Innovation and convergence of existing technologies are rapidly expanding communications services, blurring the distinction between telephone and Internet services; between cable, wireless and satellite; between long distance and local service; and between telephone and other forms of communications. Many of these new technologies are capable of delivering communications services but do not fit within the definitions of the traditional regulatory framework for telecommunications. As a result, similar services can be delivered via networks that are regulated and taxed differently, and for a growing number of technologies, these services are free of regulation and even taxation.

To ensure that government regulation of communications services, when such regulation is necessary to ensure competition, protect the interests of consumers and the needs of law enforcement agencies, is based on an even playing field between competitors of similar services, though possibly delivered by different technologies, the National Conference of State Legislatures calls upon the Congress and the Federal Communications Commission (FCC), in consultation with state legislatures and the providers of communications services, to review the current definitions of...
telecommunications and information services as defined in the Communications Act of 1934 and the Telecommunications Act of 1996 to ensure that all providers of communications services are treated similarly for purposes of government regulation and taxation. The definition of telecommunications and information services should not be decided in the courtroom but rather by the elected representatives of the people working cooperatively with regulators, industry providers and consumer groups.

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

COMMUNICATIONS INFRASTRUCTURE

The United States communications infrastructure is the combined product of a wide range of service providers, including historically regulated common carriers, new entrants and operators of private networks. Government and industry should strive for a communications policy framework that promotes and ensures fair and open competition, removes obsolete barriers that result from outdated burdensome regulation and requirements, ensures similar government regulation for all technologies that provide similar services in markets that are competitive, encourages innovation and investment,

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and allows consumers and the marketplace to determine winners and losers not
government regulation. As competitive markets alone may not be able to provide an
advanced communications infrastructure to all citizens, institutions, and businesses,
government should continue to encourage the availability of such an infrastructure to all.
The federal government must recognize that states have unique priorities that require
state and regional specific solutions.

UNIVERSAL SERVICE FUND

In reforming the federal Universal Service Fund (USF), NCSL reminds Congress that
the USF is funded primarily by customers of telecommunications services and therefore
the Congress needs to evaluate the ever growing burden these increasing fees are
becoming to all Americans. Congress, the FCC, state legislatures and state regulators
should review and address the requirements and goals for universal service by adopting
policies that promote universal mobility and universal competition. As the FCC embarks
to modernize the fund to hasten the deployment of high-speed Internet service
nationwide, NCSL cautions that any reform of the federal USF should not impact or
hinder innovation at the state level or interfere with the administration of state Universal
Service Funds.

ADVANCED COMMUNICATION SERVICES

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

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

NCSL urges the FCC, in conjunction with state, federal and local policymakers, to reevaluate the distinction between telecommunication and information services and gather additional information on the state of advanced broadband and communications services in the United States in light of the technological achievements made within the last decade.

**MUNICIPAL BROADBAND NETWORKS**

As states seek to expand access to broadband and work with the federal government to enhance deployment of broadband, Congress and the FCC must recognize and account for the principles of federalism and numerous decisions by the United States Supreme Court with regard to the relationship between the state and its political subdivisions. NCSL will oppose any effort to authorize or prohibit the establishment of municipal or state created public agencies broadband networks through congressional
or federal regulatory action. Should Congress or the federal government take such action, NCSL will challenge the constitutionality of such action.

**WIRELESS COMMUNICATIONS**

While the wireless industry through self-regulation has been successful in significantly reducing the number of consumer complaints, NCSL continues to support the ability of state government to protect the interests of wireless consumers. However, in carrying out its consumer protection functions government must acknowledge the interstate nature of the wireless industry. Specifically targeted state government requirements such as type size, language or formats of billing statements that may differ from jurisdiction to jurisdiction, while possibly well meaning, will hinder the seamless provision of these services, resulting in confusion and increased costs for all customers especially for those that are not residents of the state that has taken such action.

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

**SPECTRUM MANAGEMENT**

NCSL supports a periodic examination of current and future radio frequency spectrum needs and uses. In view of the limitations of the radio frequency spectrum, NCSL supports management reforms to improve the current allocation and assignment process. Access needs to be provided to all users of the spectrum.
NCSL recommends delaying proposals that would allow developing technologies to share the same bandwidth presently utilized by state and local governments and public utilities until such time as transmission can sufficiently be assured to avoid signal interference with public users. NCSL opposes any effort to provide additional frequency by means of reallocating what is currently allocated for state, local, public utility uses and transportation direction and safety purposes until the aforementioned concerns are adequately addressed.

NCSL supports providing sufficient spectrum to public safety to meet the requirements for an interoperable nationwide broadband network. Therefore, NCSL will oppose future FCC efforts to auction the D Block spectrum within the 700 MHz band to a commercial provider without a strict guarantee that addresses the unique and critical spectrum needs of public safety for an interoperable nationwide broadband network.

**STREAMLINING AND COLLOCATION OF WIRELESS FACILITIES SITES**

The federal Communications Act respects the authority of state and local governments over zoning and land use decisions for personal wireless facilities, but limits that authority to ensure that such local decision making does not become a barrier to entry for wireless providers. While the FCC, state and localities have worked cooperatively in the past, efforts to increase wireless facilities sites or to co-locate on existing sites are facing growing roadblocks by some localities. Local jurisdictions are the creation of either state constitutions or statute. Zoning and land use powers that these political subdivisions of the state exercise were granted to them over time by state legislatures.
Therefore, any attempt by Congress to preempt current local zoning and rights-of-way authority is a preemption of state sovereignty.

To avoid federal preemption, state legislatures enacted legislation to streamline the siting process and to enhance the use of collocation on existing wireless facilities. While NCSL rarely advocates the enactment of legislation in state legislatures, NCSL has at times, when states are facing a serious threat of federal preemption, urged state legislatures to take action. NCSL, in order to preserve the states’ sovereignty, endorses state action to enhance the use of collocation of cell antenna and the streamlining of the current tower siting process. Collocation of antenna should not be subject to additional zoning, land-use or regulatory approval process above and beyond the initial process for siting the wireless facility. NCSL also believes that government should not levy discriminatory fees for the siting of wireless facilities or the application for collocation. Application fees levied on the siting as well as taxes on the wireless facility must not be higher than fees or taxes applied to other general business.

STATE FEDERAL PARTNERSHIP IN TELECOMMUNICATIONS COMPETITION

State legislatures and state regulators have been at the forefront of deregulation of the telecommunications industry, removing barriers to competition in local markets and advocating the infrastructure for the delivery of advanced telecommunications. State legislators recognize that deregulation and competition are among the means to reach the goals of advanced infrastructure development, universal service, expanded consumer choice, availability of services and cost effectiveness for our constituents.
NCSL, through its policy process, has supported the sovereign rights and responsibilities of states to regulate intrastate telecommunications. This principle has guided NCSL’s position with regard to Congressional action to deregulate and provide for competition in telecommunications.

NCSL believes that the Congress and the President, in enacting the Telecommunications Act of 1996, acknowledged the rights and responsibilities of states to regulate intrastate telecommunications, using any and all of the local market entry mechanisms envisioned by Congress in the 1996 Act, including the resale of legacy networks, providing that states use such authority in a competitively neutral manner.

NCSL believes that states and the federal government should continue their joint partnership in sharing regulatory responsibilities which will serve to protect consumers by ensuring the broadest possible consumer choice in each geographic and service market, provide for the appropriate level of universal service, promote effective competition in telecommunications by ensuring similar and minimal regulation for all providers in competitive markets, foster the development of a national infrastructure policy that encourages a positive impact on our nation’s economic future.

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

**TAXATION OF COMMUNICATIONS SERVICES**

With the blurring of boundaries and increased convergence and competition in telecommunications and other related services, NCSL supports the review, simplification and reform of communications tax policies at all levels of government in order to ensure a level playing field between telecommunications service providers, to enhance economic development, to avoid discrimination between new and existing providers and to relieve the higher burden that discriminatory communications taxes have on low income Americans.

Transaction taxes and fees imposed on communications services should be simplified and modernized to minimize confusion, remove distortion and eliminate discrimination regarding the taxability of telecommunications services. NCSL encourages elected policymakers at all levels of government to work together to simplify reform and modernize communications taxes based upon the following principles:

1. **Tax Efficiency**: taxes and fees imposed on communications services should be substantially simplified and modernized to minimize confusion and ease the burden of administration on taxpayers and governments.

2. **Competitive Neutrality**: transaction taxes and fees imposed on communications services should be applied uniformly and in a competitively
neutral manner upon all providers of communications and similar services, without regard to the historic classification or regulatory treatment of the entity.

3. **Tax Equity:** Under a uniform, competitively neutral system, industry-specific communications taxes are no longer justified, except for fees needed for communications services such as 911 and universal service.

**State Sovereignty:** Other than the prohibition of taxes on internet access, NCSL will continue to oppose any federal action or oversight role which preempts the sovereign and Constitutional right of the states to determine their own tax policies in all areas, including communications services.
Committee: Communications, Financial Services, & Interstate Commerce

Policy: Student Athlete Compensation

Type: Directive

In 2019, California became the first state to pass legislation that would allow student athletes compensation for the use of their name, image, or likeness (NIL). The laws would allow students in varying ways to sign endorsement deals, earn money for public appearances, sell autographs or other items, and enter deals with companies for marketing purposes. Half of the states have taken similar action since then. Numerous bills have been introduced in Congress that would provide a system for how student athletes can negotiate contracts and otherwise profit off their NIL. NCSL urges consultation with the states on all these issues.

NCSL strongly supports the ability of the states to determine the best system for their student athletes. NCSL opposes any efforts by Congress to preempt state laws that provide earning rights to students and believes that any federal legislation should be complementary to state laws.