THE INTERNET AND ELECTRONIC COMMERCE

The Internet defies a detailed one-size-fits-all approach to public policy and regulation. America's federal and state lawmakers, as well as policy makers from other countries should be guided by principles that foster the Internet's development while protecting the security and privacy of individual users.

Our nation's state legislatures are well aware of the impact that access to the Internet and electronic commerce have on the economic vitality of our states and communities. State legislatures also recognize that the marketplace for electronic commerce is not just in the United States but is present in the vast global market. State legislatures share the concern of many in Congress that ill-conceived over-regulation and taxation of the Internet and electronic commerce services could harm our nation's ability to compete globally. However, state legislatures also recognize that they have an obligation to act, when and if necessary, to protect the general welfare of their constituents. As the use of the Internet continues to expand, any future or existing regulations must be balanced against market forces in a competitive and technologically neutral manner, as government must not choose the winners or losers of the digital age.

Nothing in this policy statement is to be construed as limiting or affecting the right of any state to regulate alcohol according to its local norms and standards pursuant to the 21st Amendment.

NCSL opposes unnecessary or unwarranted federal legislation or regulation that would impede efforts by states to promote access to the Internet, enhance competition or increased consumer choice or ensure the security of personal information of consumers conducting electronic commerce transactions.
The National Conference of State Legislatures (NCSL) supports the following principles in formulating laws and regulations that impact the Internet and electronic commerce:

**Privacy and Security**
Every American should be empowered to protect their privacy and personal information from intrusion or piracy. While NCSL recognizes that there is a need for Congress to act
to establish a national policy to protect the personal information of Americans, state legislatures, in the absence of any action by Congress and the federal government, have moved to fill the void. NCSL calls upon the Congress to enact federal Internet privacy legislation that ensures the security of Americans’ personal information with the least amount of government regulation as possible. However, NCSL opposes federal legislation that seeks to preempt existing state statutes and regulations governing privacy protections and security for non-Internet based transactions.

**Free Speech**
The Internet allows people to communicate and share ideas with others with an ease never before possible. Federal government policy should rigorously protect freedom of speech and expression on the Internet, but not restrict states or local governments from oversight protecting freedom of speech. New technologies should adequately enable individuals, families and schools to protect themselves and students from communications and materials they deem offensive or inappropriate. State law enforcement, with federal assistance and resources, must be able to enforce criminal statutes against predators that use the Internet to harm or abuse children.

**Self-governance**
NCSL requests the Congress to maintain the current self-governance approach that allows the competitive marketplace to drive broadband and broadband-related applications development and deployment. Congress should avoid adopting new mandates and provide the Federal Communications Commission (FCC) with defined and limited authority to oversee, but not proactively intervene in, the broadband Internet marketplace consistent with principles that focus on assessing whether the market continues to ensure that consumers can:

(1) receive meaningful information regarding their broadband service plans;
(2) have access to their choice of legal Internet content, subject to the limits on
bandwidth and quality of service of their service plan;
(3) run applications of their choice, subject to the needs of law enforcement and
the limits on bandwidth limits and quality of service of their service plans, as long
as they do not harm the provider’s network or interfere with other consumers’ use
of the broadband service; and
(4) be permitted to attach any devices they choose to their broadband connection
at the consumer’s premise, so long as they operate within the limits on bandwidth
and quality of service of their service plans and do not harm the provider’s
network, interfere with other consumers’ use of the broadband service, or enable
theft of services.

**Consumer Protection**

Industry self-regulation has made an important contribution to the development of
electronic commerce. Industry technologies and best practices, combined with the
enactment of strong state laws which outlaw deceptive practices and fraudulent online
behavior, are essential elements in promoting electronic commerce and enhancing
consumer protection. Privacy and consumer protection continue to be priority issues in
state legislatures.

NCSL supports the efforts of state legislatures to develop new policy initiatives to
protect consumers online, especially when the federal government fails to respond to
consumers’ concerns. NCSL also recognizes that because of the global nature of the
Internet that states must seek cooperative federal action to further enhance consumer
protection, privacy and information security. Federal legislation must ensure the
authority of state attorneys general to enforce federal statutes protecting consumers.
However, NCSL opposes any attempt by Congress to restrict the states’ ability to
impose criminal and/or civil penalties for illegal activity that may occur over the Internet.

**Growth**

Public policies must be designed to foster continuing expansion of useful and affordable
bandwidth, encourage development of innovative technologies and promote broad
universal access. Federal and state governments must work together to ensure that all
Americans, regardless of where they live, have competitive access to high-speed
broadband technologies. Government must work to guarantee open and competitive markets for broadband services.

**Information Technology**

Information technology (IT) is a global industry. A strong American IT industry enhances and strengthens the economic well being of our states and nation.

States and the federal government must work together to ensure a climate that allows America’s IT companies to continue to perform research and technology development, to generate innovative new products and services and to solve customer problems. States must have the unfettered ability to continue to seek ways to use IT to better the lives of their residents. Therefore, NCSL opposes any attempt by the federal government to restrict or penalize states’ efforts to utilize information technology services and products that allow states to provide more efficient government services to residents at lower costs to taxpayers.

**Internet Gambling**

Congress must respect the sovereignty of states to allow or to prohibit Internet gambling by their residents.

**Electronic Commerce and Taxation**

Government policies should create a workable infrastructure in which electronic commerce can flourish. Policy makers must resist any temptation to apply tax policy to the Internet in a discriminatory or multiple manner that hinders growth. Government tax systems should treat transactions, including telecommunications and electronic commerce, in a competitively neutral and non-discriminatory manner. The federal government and America’s industries should work with state legislatures in ensuring equal tax treatment of all forms of commerce and should encourage state efforts to achieve simplification and uniformity through the streamlining of state and local sales and telecommunications tax systems. NCSL supports the reform of the discriminatory taxation of communications services and believes that if state and local governments were to take such action, the need for the federal moratorium on Internet access would cease to exist. Since 2003 NCSL has maintained a neutral position on the extension of the moratorium and continues to do so. However, should the moratorium be extended, it is consistent
with NCSL policy that the moratorium be competitively neutral and apply equally to all media used to access the Internet.

**VIDEO FRANCHISE REFORM**

Innovation and convergence of existing technologies are radically expanding communications and information services, blurring distinctions between telephone, Internet services, cable, wireless and satellite. These rapid changes often outpace abilities of federal, state and local regulatory regimes to adapt. It is important that video regulatory policy assure that like services are treated alike, investment is encouraged, and services are in a non-discriminatory manner.

**State Administration Will Preserve State Authority**

Local jurisdictions are the creation of either state constitutions or law. The powers that these political subdivisions of the state exercise were granted to them over time by state legislatures. Those local jurisdictions that have franchise authority have it as a result of state legislation or the state constitution. Therefore, any attempt by Congress to preempt current local franchise authority is a preemption of state sovereignty.

While NCSL rarely advocates the consideration of legislation in state legislatures, NCSL has at times, when states are facing a crisis or a serious threat of federal preemption, urged state legislatures to take action. NCSL endorses efforts that remove barriers to entry for or inequity of regulation among video competitors and foster additional consumer choices in the video marketplace ultimately ensuring competitive neutrality.

Government should encourage competition and consumer choices for broadband and video services and promote the deployment of broadband services and technologies.

**Fees and Taxation of Video Providers**

Franchise fees today are levied, imposed or collected as a percentage of gross revenues, used for general revenue purposes and not based on the actual direct and identifiable costs of any benefit to the entity that pays the fee. To the extent such fees are intended as payment for use of public rights-of-way, that fee should be limited to the actual, direct and identifiable cost of such use, and that portion of the fee should be applied only to those who use the rights-of-way. Franchise fees should be collected and administered by one central agency per state.