

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

3
4 **POLICY: INTERNET & ELECTRONIC COMMERCE**

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6 **TYPE OF POLICY: DRAFT POLICY DIRECTIVE**

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8 **THE INTERNET AND ELECTRONIC COMMERCE**

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

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

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

27 NCSL opposes unnecessary or unwarranted federal legislation or regulation that would
28 impede efforts by states to promote access to the Internet, enhance competition or
29 increased consumer choice or ensure the security of personal information of consumers
30 conducting electronic commerce transactions.

31 The National Conference of State Legislatures (NCSL) supports the following principles
32 in formulating laws and regulations that impact the Internet and electronic commerce:

33 **Privacy and Security**

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

43 **Free Speech**

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

52 **Self-governance**

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

- 60 (1) receive meaningful information regarding their broadband service plans;

61 (2) have access to their choice of legal Internet content, subject to the limits on
62 bandwidth and quality of service of their service plan;
63 (3) run applications of their choice, subject to the needs of law enforcement and
64 the limits on bandwidth limits and quality of service of their service plans, as long
65 as they do not harm the provider's network or interfere with other consumers' use
66 of the broadband service; and
67 (4) be permitted to attach any devices they choose to their broadband connection
68 at the consumer's premise, so long as they operate within the limits on bandwidth
69 and quality of service of their service plans and do not harm the provider's
70 network, interfere with other consumers' use of the broadband service, or enable
71 theft of services.

72 **Consumer Protection**

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

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

87 **Growth**

88 Public policies must be designed to foster continuing expansion of useful and affordable
89 bandwidth, encourage development of innovative technologies and promote broad
90 universal access. Federal and state governments must work together to ensure that all
91 Americans, regardless of where they live, have competitive access to high-speed

92 broadband technologies. Government must work to guarantee open and competitive
93 markets for broadband services.

94 **Information Technology**

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

97 States and the federal government must work together to ensure a climate that allows
98 America's IT companies to continue to perform research and technology development,
99 to generate innovative new products and services and to solve customer problems.

100 States must have the unfettered ability to continue to seek ways to use IT to better the
101 lives of their residents. Therefore, NCSL opposes any attempt by the federal
102 government to restrict or penalize states' efforts to utilize information technology
103 services and products that allow states to provide more efficient government services to
104 residents at lower costs to taxpayers.

105 **Internet Gambling**

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

108 **Electronic Commerce and Taxation**

109 Government policies should create a workable infrastructure in which electronic
110 commerce can flourish. Policy makers must resist any temptation to apply tax policy to
111 the Internet in a discriminatory or multiple manner that hinders growth. Government tax
112 systems should treat transactions, including telecommunications and electronic
113 commerce, in a competitively neutral and non-discriminatory manner. The federal
114 government and America's industries should work with state legislatures in ensuring
115 equal tax treatment of all forms of commerce and should encourage state efforts to
116 achieve simplification and uniformity through the streamlining of state and local sales
117 and telecommunications tax systems.

118 NCSL supports the reform of the discriminatory taxation of communications services
119 and believes that if state and local governments were to take such action, the need for
120 the federal moratorium on Internet access would cease to exist.

121 Since 2003 NCSL has maintained a neutral position on the extension of the moratorium
122 and continues to do so. However, should the moratorium be extended, it is consistent

123 with NCSL policy that the moratorium be competitively neutral and apply equally to all
124 media used to access the Internet.

125 **VIDEO FRANCHISE REFORM**

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

132 **State Administration Will Preserve State Authority**

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

138 While NCSL rarely advocates the consideration of legislation in state legislatures, NCSL
139 has at times, when states are facing a crisis or a serious threat of federal preemption,
140 urged state legislatures to take action. NCSL endorses efforts that remove barriers to
141 entry for or inequity of regulation among video competitors and foster additional
142 consumer choices in the video marketplace ultimately ensuring competitive neutrality.
143 Government should encourage competition and consumer choices for broadband and
144 video services and promote the deployment of broadband services and technologies.

145 **Fees and Taxation of Video Providers**

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