

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

3 **POLICY: THE INTERNET AND ELECTRONIC COMMERCE**

4 **TYPE: EXISTING POLICY DIRECTIVE**

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

9
10 Our nation's state legislatures are well aware of the impact that access to the Internet
11 and electronic commerce have on the economic vitality of our states and communities.
12 State legislatures also recognize that the marketplace for electronic commerce is not
13 just in the United States but is present in the vast global market. State legislatures share
14 the concern of many in Congress that ill-conceived over-regulation and taxation of the
15 Internet and electronic commerce services could harm our nation's ability to compete
16 globally. However, state legislatures also recognize that they have an obligation to act,
17 when and if necessary, to protect the general welfare of their constituents. As the use of
18 the Internet continues to expand, any future or existing regulations must be balanced
19 against market forces in a competitive and technologically neutral manner, as
20 government must not choose the winners or losers of the digital age.

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

24
25 NCSL opposes unnecessary or unwarranted federal legislation or regulation that would
26 impede efforts by states to promote access to the Internet, enhance competition or
27 increased consumer choice or ensure the security of personal information of consumers
28 conducting electronic commerce transactions.

29

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

32

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

44 **Free Speech**

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

53

54 **Self-governance**

55 NCSL requests the Congress to maintain the current self-governance approach that
56 allows the competitive marketplace to drive broadband and broadband-related
57 applications development and deployment. Congress should avoid adopting new
58 mandates and provide the Federal Communications Commission (FCC) with defined
59 and limited authority to oversee, but not proactively intervene in, the broadband Internet

60 marketplace consistent with principles that focus on assessing whether the market
61 continues to ensure that consumers can:

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

74

75 **Consumer Protection**

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

82

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

91

92 **Growth**

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

99

100 **Information Technology**

101 Information technology (IT) is a global industry. A strong American IT industry enhances
102 and strengthens the economic well being of our states and nation. States and the
103 federal government must work together to ensure a climate that allows America's IT
104 companies to continue to perform research and technology development, to generate
105 innovative new products and services and to solve customer problems. States must
106 have the unfettered ability to continue to seek ways to use IT to better the lives of their
107 residents. Therefore, NCSL opposes any attempt by the federal government to restrict
108 or penalize states' efforts to utilize information technology services and products that
109 allow states to provide more efficient government services to residents at lower costs to
110 taxpayers.

111

112 **Internet Gambling**

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

115

116 **Electronic Commerce and Taxation**

117 Government policies should create a workable infrastructure in which electronic
118 commerce can flourish. Policy makers must resist any temptation to apply tax policy to
119 the Internet in a discriminatory or multiple manner that hinders growth. Government tax
120 systems should treat transactions, including telecommunications and electronic
121 commerce, in a competitively neutral and non-discriminatory manner. The federal

122 government and America's industries should work with state legislatures in ensuring
123 equal tax treatment of all forms of commerce and should encourage state efforts to
124 achieve simplification and uniformity through the streamlining of state and local sales
125 and telecommunications tax systems.

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

129
130 Since 2003 NCSL has maintained a neutral position on the extension of the moratorium
131 and continues to do so. However, should the moratorium be extended, it is consistent
132 with NCSL policy that the moratorium be competitively neutral and apply equally to all
133 media used to access the Internet.

134

135 **VIDEO FRANCHISE REFORM**

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

142

143 **State Administration Will Preserve State Authority**

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

149

150 While NCSL rarely advocates the consideration of legislation in state legislatures, NCSL
151 has at times, when states are facing a crisis or a serious threat of federal preemption,
152 urged state legislatures to take action. NCSL endorses efforts that remove barriers to

153 entry for or inequity of regulation among video competitors and foster additional
154 consumer choices in the video marketplace ultimately ensuring competitive neutrality.

155

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

158

159 **Fees and Taxation of Video Providers**

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

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