



NATIONAL CONFERENCE of STATE LEGISLATURES

The Forum for America's Ideas

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William T. Pound
Executive Director

November 17, 2015

The Honorable Greg Walden
Chairman – Subcommittee on
Communications & Technology
Committee on Energy & Commerce
U.S. House of Representatives
Washington, D.C. 20515

The Honorable Anna Eshoo
Ranking Member – Subcommittee on
Communications & Technology
Committee on Energy & Commerce
U.S. House of Representatives
Washington, D.C. 20515

Re: Hearing on the “Oversight of the Federal Communications Commission”

Dear Chairman Walden and Representative Eshoo:

On behalf of the National Conference of State Legislatures (NCSL) I would like to express our concern with the subcommittee’s agenda for this oversight hearing, as it fails to address the issue of the Federal Communications Commission’s (FCC) unwarranted preemption of state municipal broadband regulations.

In February of 2015, the FCC issued an order that preempted Tennessee and North Carolina from regulating their respective municipal broadband networks. Recently, NCSL filed an Amicus Brief in the 6th Circuit court along with the National Governors Association (NGA) and the Council of State Governments (CSG) in support of Tennessee and North Carolina’s challenge to the FCC’s preemption of the states’ municipal broadband laws. This preemption of state sovereignty by the Commission is far beyond the authority granted to it by Congress for several reasons:

1. There is no express or implied Congressional authority for the Commission to preempt state law under Section 706(a) of the Telecommunications Act of 1996 (’96 Act);
2. In the absence of express Congressional intent to preempt state law, the U.S. Supreme Court has held that there is a presumption against preemption, *Altria Group v. Good*, 555 U.S. 70 (2008);
3. Preemption ignores the important relationship between states and localities and states and the federal government; and
4. The question of whether a federal agency can, without an express grant of authority to preempt from Congress, dictate preemption as a matter of agency policy has significant fiscal implications for state governments, and threatens our federalist system of government.

While NCSL neither supports nor opposes the state regulation of municipal broadband networks, states are ultimately responsible to the taxpayers for the any financial obligations of failed municipal

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networks. NCSL favors legislative efforts that seek to maximize the effectiveness of a flourishing state-federal partnership. This is in stark contrast to the aforementioned regulatory proceedings that strike at the heart of the principles of federalism that our founding fathers envisioned.

Lastly, we applaud Congresswoman Blackburn of Tennessee and Senator Tillis of North Carolina in their effort to protect state sovereignty by introducing legislation that specifically declares that the FCC does not have the authority under Section 706 of the 1996 Act to preempt state regulation of municipal broadband networks.

I appreciate the opportunity to express the views of our nation's state legislatures on this topic. As states play an integral role in maintaining the regulatory framework, it is imperative that the state legislative perspective be considered as this process moves forward. Should you have any questions regarding this matter, please contact Jon Adame (Jon.Adame@ncsl.org; 202-624-8686) or Susan Parnas Frederick (Susan.Frederick@ncsl.org; 202-624-3566) in NCSL's Washington, D.C. office.

Sincerely,

A handwritten signature in black ink that reads "William Pound". The signature is written in a cursive style with a large, looped initial "W".

William Pound
Executive Director

cc: Members of the United States House of Representatives Committee on Energy & Commerce