

## ALEC EXPOSED

"ALEC" has long been a secretive collaboration between Big Business and "conservative" politicians. Behind closed doors, they ghostwrite "model" bills to be introduced in state capitols across the country. This agenda—underwritten by global corporations—includes major tax loopholes for big industries and the super rich, proposals to offshore U.S. jobs and gut minimum wage, and efforts to weaken public health, safety, and environmental protections. Although many of these bills have become law, until now, their origin has been largely unknown. With **ALEC EXPOSED**, the Center for Media and Democracy hopes more Americans will study the bills to understand the depth and breadth of how big corporations are changing the legal rules and undermining democracy across the nation.

## ALEC's Corporate Board --in recent past or present

- AT&T Services, Inc.
- centerpoint360
- UPS
- Bayer Corporation
- GlaxoSmithKline
- Energy Future Holdings
- Johnson & Johnson
- Coca-Cola Company
- PhRMA
- Kraft Foods, Inc.
- Coca-Cola Co.
- Pfizer Inc.
- Reed Elsevier, Inc.
- DIAGEO
- Peabody Energy
- Intuit, Inc.
- Koch Industries, Inc.
- ExxonMobil
- Verizon
- Reynolds American Inc.
- Wal-Mart Stores, Inc.
- Salt River Project
- Altria Client Services, Inc.
- American Bail Coalition
- State Farm Insurance

For more on these corporations, search at [www.SourceWatch.org](http://www.SourceWatch.org).

**DID YOU KNOW?** Corporations VOTED to adopt this. Through ALEC, global companies work as "equals" in "unison" with politicians to write laws to govern your life. Big Business has "a VOICE and a VOTE," according to newly exposed documents. **DO YOU?**

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### Broadband and Telecommunications Deployment Act

#### Summary

The Legislature recognizes that state and local units of government have an important role in managing the public rights-of-way and public lands and waterways within their jurisdiction and control. While recognizing this important governmental function, the Legislature also finds that prompt, non-discriminatory access to public rights-of-way (as defined herein) by telecommunications providers on reasonable terms and conditions, including at cost-based fees, is essential to facilities-based competition, the deployment of advanced telecommunications and broadband networks, and the implementation of network redundancy necessary to protect against network outages and to ensure the safety and security of the public. Accordingly, in enacting the Broadband and Telecommunications Deployment Act, the Legislature, while preserving the authority of state and local units of government to manage the public rights-of-way under their jurisdiction or control, seeks to provide greater clarity regarding conditions and fees that can lawfully be imposed on telecommunications providers relating to their use of such public rights-of-way. The Legislature thus seeks to ensure that the practices of state and local governmental units with respect to access to these public rights-of-way for the installation of telecommunications facilities do not go beyond legitimate management activities so as to create barriers to the deployment of advanced telecommunications and broadband networks.

#### Model Legislation

*The people of the State of \_\_\_\_\_ do enact as follows:*

#### Section 1. Short Title.

This Act shall be known as the "Broadband and Telecommunications Deployment Act."

#### Section 2. Legislative Findings and Declarations.

To encourage the rapid deployment of advanced telecommunications and broadband networks, while recognizing the role of state and local units of government in managing the public rights-of-way within their jurisdiction, the Legislature finds and declares all of the following:

(a) all entities providing intrastate, interstate or international telecommunications or telecommunications services or deploying facilities to be used directly or indirectly in the provision of such services shall have access to and use of all public rights-of-way within the State in connection with the construction and operation of their networks;

(b) that state and local units of government controlling such rights-of-way shall issue permits for access to and use of public rights-of-way within a fixed and reasonable time to telecommunications providers, not to exceed thirty (30) days from the date of application for such permit, and that no additional authorization, franchise or agreement may be required for access to public rights-of-way;

(c) that revenue-based fees and excessive per-foot charges are a barrier to deployment, and that fees shall be limited to the actual and direct costs associated with managing the public rights-of-way, as further discussed in this Act.

(d) that units of government shall not be permitted to use control over public rights-of-way to impose an additional tier of regulation on providers or to require terms and conditions that are unrelated to the actual management of the public rights-of-way;

(e) that reasonable limits shall be placed on certain management-related permit terms, including those relating to indemnification and bonding requirements;

(f) that units of governmental shall not discriminate in their treatment of providers over the terms and conditions of access to public rights-of-way; and

(g) that telecommunications providers shall have the ability to obtain expedited relief from the courts [or State PUC] for rights-of-way practices that are inconsistent with this Act, and bring existing permits and authorizations into compliance with this Act.

#### Section 3. Definitions.

(a) "Unit of government" means the State, any county, city, town, or village within the State, or any subdivision, agency, department, or instrumentality of the State or of any such county, city, town, or village.

Did you know that global telecommunications company AT&T was the corporate co-chair in 2011?

(b) "Public rights-of-way" means the surface and the area across, in, over, along, upon and below the surface of the public streets, roads, bridges, sidewalks, easements, lanes, courts, ways, alleys, and boulevards, including, public lands and waterways used as public rights-of-way, as the same now or may thereafter exist, which are under the jurisdiction or control of a unit of government.

(c) "Telecommunications" means the transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received.

(d) "Telecommunications facilities" means facilities and equipment, including without limitation, cable, fiber, conduit, ducts, poles, cabinets, vaults, handholes, manholes, and other associated equipment and appurtenances, used directly or indirectly in the provision of telecommunications or telecommunications services.

(e) "Telecommunications provider" or "provider" means a person, or an affiliate of the person, which provides intrastate, interstate, or international telecommunications or telecommunication services or installs facilities used directly or indirectly in the provision of such telecommunications or telecommunications services.

#### **Section 4. Authorization to Use Public Rights-of-Way; Grant of Construction Permit.**

(a) Telecommunications providers may access and use all public rights-of-way within the State for the construction, maintenance, upgrade, repair, replacement, and removal of telecommunications facilities, in such manner that does not unreasonably incommode the public use of any such public rights-of-way.

(b) A unit of government shall issue to telecommunications providers a construction permit for access to and for the ongoing use of public rights-of-way within its jurisdiction or control for the placement of telecommunications facilities. The unit of government shall act upon a request by a telecommunications provider for a construction permit governing access to and use of any public rights-of-way within its jurisdiction or control within thirty (30) days of the date the telecommunications provider files an application for such permit.

(c) A unit of government shall not: (1) unreasonably restrict or condition such access and use; (2) require a telecommunications provider to apply for or enter into an individual franchise, license, or other agreement as a condition of such access and use; or (3) require a permit or other authorization for a person to access, use, or acquire the facilities of other telecommunications providers or to acquire telecommunications services from another telecommunications provider or, for the access or use of the airwaves by a commercial mobile radio service provider.

(d) A unit of government may require a telecommunications provider that places or seeks to place telecommunications facilities in the public rights-of-way within its jurisdiction or control to register with the unit of government provided that, in doing so, the information required is limited to the name of the registrant; name, address, and telephone number of a contact person for the registrant; and proof of insurance or self-insuring status adequate to defend and cover claims.

(e) This section does not require any telecommunications provider that, as of the Effective Date, occupies, or has obtained the consent of a unit of government to use the public rights-of-way within its jurisdiction or control for the placement of existing telecommunications facilities to apply for the additional or continued consent of the local unit of government for such facilities.

#### **Section 5. Regulations and Fees Relating to Occupation of Public Rights-of-Way; Performance Bonds and Indemnification.**

(a) Any rules or regulations adopted by a unit of government which govern access to or use of its public rights-of-way by telecommunications providers, and any conditions of a permit granted under this Section or application requirements for such permit, shall (1) be competitively neutral and nondiscriminatory as to all providers; and (2) relate directly to the management and direct and demonstrable effects of a provider's access to and use of such public rights-of-way.

(b) A unit of government shall not use its authority under this Section as a basis to exercise regulatory control or jurisdiction over a provider's operations, systems, technical, legal or financial qualifications, services, service quality, service territory, rates, or other business activities.

(c) A telecommunications provider shall not be required to waive its right to judicial or administrative review or any other remedies as a condition of obtaining a permit or of accessing and using the public rights-of-way. Any waiver of such rights shall be void as against public policy. A telecommunications provider's agreement to, or negotiation of, a permit or any conditions contained therein, shall not be deemed such a waiver.

(d) Any fee required by a unit of government relating to public rights-of-way shall be imposed on a nondiscriminatory and competitively neutral basis and shall not exceed the actual and direct costs incurred by the unit of government in issuing and administering the permit for access or use. A unit of government may not impose other non-monetary compensation on the provider in connection with its access to and use of the public rights-of-way, such as the use or provision of telecommunications facilities, the provision of telecommunications services, or the use or provision of any other good or service.

(e) Performance Bonds.

(1) A unit of government may require a telecommunications provider to provide an individual project performance bond naming the unit of government as an obligee for

the cost to restore the public rights-of-way to its condition prior to the provider's construction of the telecommunications facilities in the public rights-of-way under a permit. In the event that the unit of government requires such a performance bond, the bond shall not exceed the provider's good faith estimate of the cost to restore the public rights-of-way to its condition prior to the construction of such telecommunications facilities in the public rights-of-way. The performance bond shall terminate thirty (30) days following completion of restoration of the affected public rights-of-way but no later than one year past the completion of restoration. If a unit of government requires a telecommunications provider to provide a construction bond at the onset of an individual project, once the construction is complete the construction bond may revert to 10% of the construction bond amount to satisfy maintenance and restoration.

(2) The unit of government shall allow a telecommunications provider, at its option, to provide a blanket bond covering multiple projects, in which case an individual project performance bond may only be required for the construction of telecommunications facilities in public rights-of-way under a permit to the extent that the reasonable estimate of restoration costs for that project and all other projects covered by the blanket bond exceeds the amount of the blanket bond. A bond shall not be required where the unit of government determines it is not necessary to secure restoration considering, without limitation, the amount of restoration for the project, or the telecommunications provider's ability to cover any claims without the need for security in the form of a bond, including through the provision of self-insurance in a form acceptable to the unit of government.

(3) Except as provided in this subsection, a unit of government shall not require a performance bond or other security from a telecommunications provider in connection with its access to and use of the public rights-of-way. The foregoing limitation shall not apply to the proof of insurance that may be required pursuant to Subsection 4(d).

(f) Indemnification.

(1) A unit of government shall have authority to include in a permit a provision requiring the telecommunications provider to defend, indemnify, and hold harmless the unit of government from liabilities, damages, costs, and expenses, including reasonable attorney's fees, arising from injury to person or property proximately caused by the acts or omissions of the telecommunications provider in connection with its access to or use of the public rights-of-way.

(2) Any such provision shall: (a) require the unit of government to promptly notify the telecommunications provider of any claims, demands, or actions ("Claims") covered by such provision; (b) provide the telecommunications provider with the right to defend and compromise such claims, and require the unit of government to cooperate in the defense of such Claims; and (c) not apply to Claims arising from the negligent, willful or other acts of the unit of government, its employees or agents, except to the extent such Claims arise from the joint negligence of the telecommunications provider and unit of government, in which case, the amount of the Claims for which the unit of government shall be entitled to indemnification shall be limited to that portion attributable to the actions of the telecommunication provider.

(3) Except as provided in this subsection, a unit of government shall not require indemnification from a telecommunications provider in connection with its access to and use of the public rights-of-way.

#### **Section 6. Action on Application; Review**

(a) If the unit of government has not acted upon an application for a permit under this Section within thirty (30) days of the date of such application, the application shall be deemed granted. If the local unit of government has denied such application, or has granted such application on conditions that the telecommunications provider believes to be unlawful under this Section, the telecommunications provider shall have the right to bring an action in state court [or petition the Public Utility Commission] for injunctive, declaratory, or other appropriate relief. Such action [or petition] shall be heard on an expedited basis.

(b) Upon petition of any telecommunications provider that an existing arrangement does not comply with this Section, the unit of government shall reform the existing arrangement to comply with this Section. .

(c) In an action by a telecommunications provider against the unit of government for a violation of this Section, the prevailing party may recover from the other court costs and reasonable attorney's fees at trial and on appeal.

#### **Section 7. Severability**

If any provision of this Act or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of this Act, which are to be given effect without the invalid provision or application, and to this end the provisions of this Act are deemed severable.

#### **Section 8. Effective Date**

This bill will become effective upon enactment.

*Adopted by ALEC's Telecommunications & Information Technology Task Force at the Annual Meeting August 9, 2002. Approved by full ALEC Board of Directors September, 2002.*

