MEMORANDUM

To: ALEC Communications and Technology Task Force Members

From: John Stephenson, Task Force Director

Re: 2012 States and Nation Policy Summit

This is Part II of III for the ALEC 2012 Spring Task Force Summit 35 Day Mailing, which will take place November 28-30 in Washington, DC. If you have not already done so, please register for the Summit by clicking here.

In Part II you will find:

- Memo from the Senior Director of Policy and Strategic Initiatives
- Memo from the Task Force Director
- Old Model Legislation for Review

The Summit will begin early on Wednesday, November 28. We have a full agenda scheduled each day that includes consideration of several model bills and presentations on several timely topics relating to communications and technology. Therefore, attendance at all Task Force events is strongly encouraged.

I look forward to seeing you in our Nation’s Capital for what is sure to be an excellent Summit. If you have any questions about the Summit, please do not hesitate to contact me by telephone at 202-742-8524 or by e-mail at jstephenson@alec.org.

Sincerely,

John
To: All ALEC Task Force Members

RE: Sunset Procedures

The Board of Directors has approved a set of procedures for reviewing all ALEC Model Legislation and resolutions. All model legislation must be reviewed before every 5th year after the bill has been adopted or re-reviewed by the Task Force and the ALEC Board. All model legislation under review is eligible for sunset according to the five year sunset review process. The entire process is outlined in this packet and should answer most questions. The upcoming task force meeting at the 2012 States and Nation Policy Summit in Washington DC will have a different focus than previous task force meetings. Most task forces will be reviewing dozens of past ALEC bills and resolutions.

ALEC’s Board of the Directors and staff adopted this sunset procedure to enable all ALEC bills to be reviewed and updated as needed on a reasonable basis. This process has already proved that some legislation served its purpose and is no longer needed. We believe this will result in ALEC having clear and relevant legislation and policies that legislators are proud to promote.

The following is a quick executive overview of the process:

- Staff recommends which bills should be retained, amended or sent to sunset. All recommendations are sent for review to the Task Force Executive Committee.

- The Task Force Executive Committee will review staff recommendations. Bill and resolutions approved by two thirds of the Executive Committee will be sent directly to the ALEC Board. Any bill that is amended or requested to be reviewed will be sent to the full Task Force.

- The Full Task Force will review all bills the Executive Committee recommended for review, amendment, and bills that failed to receive a two thirds majority vote.

- All Task Force recommendations regarding model bills and resolutions to be sunset or retained shall be sent to the ALEC Board of Directors.

- The ALEC Board of Directors will vote on all bills that are to either be sunset or retained.

If you have any questions about this process please either contact your Task Force Director or you may contact me directly.

Sincerely,

Michael D. Bowman
Senior Director of Policy & Strategic Initiatives
Five Year Sunset Model Legislation and Resolutions

All ALEC model bills and resolutions will have an original adoption date and five year sunset date which can be renewed by a vote of the Task Force Executive Committee or the full Task Force and the ALEC Board of Directors.

All bills or model resolutions that are four years from adoption date will have one year for the Task Force to review and vote on whether to extend another five years. The Task Force Director will transmit all four year old model bills and resolutions to the Task Force Executive Committee no later than 65 Days before the next Task Force Meeting.

In the 65 Day Notice ALEC Staff will make one of the following recommendations for each four year model bill or resolution to the Task Force Executive Committee.

- The policy should sunset
- The policy should be amended
- The policy should be retained

The Task Force Co Chairs may appoint a special committee to review the recommendations from the ALEC staff. Executive Committees are to vote 40 Days prior the next Task Force Meeting. The Executive Committees shall vote by phone, in person, or by any electronic means.

If a two-thirds majority of the Task Force Executive Committee votes to retain the model bill or resolution that action is to be reported to the full Task Force. The model bill or resolution will be directly transmitted to the Board for consideration. No Task Force vote is necessary since the model bill or resolution is existing policy and both the Task Force Executive Committee and the Board will vote to extend the sunset.

If a majority of the Task Force Executive Committee agrees to sunset, amend, or retain the model bill or resolution the model policy moves onto the full Task Force. The Task Force Executive Committee will transmit all model bills that are to expire as sunset or that are to be amended to the full Task Force. At the Co-Chairs discretion, any bill or resolution up for task force consideration may be placed on the consent slate that will go before the full Task Force.

Any member of the Task Force may make a motion to separate any model bill or resolution from the Consent calendar but must have an additional four members of the Task Force rise in support to second the motion. It would take a majority of the public and private sector bill to take any action on the model bill or resolution.

All model bills retained, amended, or sunset will go before the public sector board for approval before adoption as described in Section IX.
MEMORANDUM
To: Task Force Members
From: John Stephenson, Task Force Director
Re: Model Legislation Review

Below are the results from a meeting of the Executive Committee via conference call on September 25, 2012. The purpose of this meeting was to fulfill a Board request to review ALEC model policies more than five years old. A yellow highlighted title means that a two-thirds majority of the Executive Committee voted to retain the model policy as is. All other model policies listed below will be on the agenda for consideration (i.e. to sunset, amend, or retained) by the full Task Force.

STATEMENTS OF PRINCIPLES
Statement of Principles for Slamming
Statement of Principles for Telecommunications Tax Reform
Principles on Online Privacy
Statement of Principles on Rights-of-Way Management
The Principles of Competitive Telecommunications
Statement of Principles: The Internet and Electronic Commerce
Principles of Telecommunication Taxation

MODEL RESOLUTIONS
Resolution on United States Encryption Export Restrictions
A Resolution Regarding the Regulation of Intrastate Telecommunications Services in Healthy and Sustainable Competitive Environments
A Resolution Opposing Government Intervention in the Multichannel Video Programming Distribution Marketplace Through A La Carte or Tiering Requirements
Resolution Supporting Pro Consumer Public Policy for Voice, Video, and Data Services
Resolution to Restate State Sovereignty

MODEL ACTS
Broadband and Telecommunications Deployment Act
Local Cellular Phone Preemption Act
Municipal Telecommunications Private Industry Safeguards Act
Parity and Certainty in Regulatory Treatment of High Speed Internet Access Services and Broadband Services and Providers Act
Electronic Government Services Act
Online Bidding Act
Collocation & Streamlined Tower Siting Act
Wireless Competition Act
**Computer Protection Act**
Neutrality and Integrity in Software Procurement Act
Computer Spyware Protection Act
Cable and Video Competition Act
*The Breach of Personal Information Notification Act*
Phone Records Act
**Anti-Phishing Act**
Enabling Legislation for Public-Private Electronic Information Network Partnerships
Remote Video Court Appearance Act
Distance Learning: Wiring the Public Schools Act
Distance Learning Commission Act
Telecommunications Regulatory Reform Act

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Common Cause and
The Center for Media and Democracy
Old Model Legislation
2012 Review Process

- Statement of Principles (page 2)
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Obtained and released by:
Common Cause and
The Center for Media and Democracy
Statement of Principles

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{A1} Statement of Principles for Slamming

1. Competition in the telecommunications industry allows opportunities for providers to change one or more of a customer's selected telephone service providers without the customer's knowledge, agreement or express authorization, an activity commonly known as "slamming". Unauthorized changes in telephone service providers are deceptive practices in conducting business and an action that causes injury to customers. Unauthorized changes in telephone service providers may subject customers to excessive telephone charges, requiring time and effort by customers to reverse changes, and depriving customers of a choice of telephone providers. Accordingly, ALEC declares that it is in the public interest to prohibit any unauthorized changes in preferred providers of local telephone service and/or long-distance service to residential or business customers, to establish procedure for authorizing changes in customers' telephone service providers, and to provide meaningful and effective penalties for unauthorized changes in providers of telephone service.

2. In keeping with the above philosophy ALEC recommends that state consider the following principles when developing legislation:

1. Require companies to provide customers with sufficient information upon which to make informed choices among telecommunications providers.

   - A clear communication of the exact service to be changed and the affirmation of the subscriber that the selection of the telecommunications provider will result in a change of providers.

   - This communication should also contain the name of the selected provider, the selected provider’s toll-free telephone number and the charges associated with the change.

2. Require any company to obtain consent from the subscriber before causing any product to be billed to the subscriber's telephone bill.

   - The consent of the telephone service subscriber may be verified utilizing any method that is consistent with federal law or regulation, which may include written, electronic or third party verification.

3. Recognize that the best mechanism to discourage and prevent slamming is to remove the economic incentive to slam.

   - Civil penalties may include fines, suspension or revocation of operating authority.

   - Restitution paid to subscriber and authorized carrier

   - Require the unauthorized carrier to pay for reasonable billing and collection expenses, including attorney fees, incurred by the authorized carrier.
Model Legislation for Review

- Require the unauthorized carrier to pay for the expenses of restoring the subscriber to his or her authorized carrier.

4. Provide language to make slamming unlawful.

- No telecommunications carrier shall execute an unauthorized conversion of a subscribers telecommunications provider to another telecommunications provider

- Provide the appropriate enforcement agency with the authority to investigate incidents of slamming to pursue appropriate legal remedies on behalf of the state and consumers

5. Clarify the rights and remedies available to customers with regard to easily accessible means of resolving disputes over unauthorized, misleading, or fraudulent practices.

6. Provide subscribers the option of a preferred carrier freeze, which prevents a change in a subscriber’s preferred carrier selection, including a reasonable procedure for lifting the freeze.

7. States should write and interpret statutes and regulations in a manner consistent with the federal law and the Federal Communications commission’s slamming rules and orders.

Adopted by the Telecommunications and Information Technology Task Force in 1999.
Model Legislation for Review

{A2} 2003 Principles on Online Privacy

Summary: The American Legislative Exchange Council recognizes that the Internet has flourished due in a large part to the unregulated environment in which it has developed and grown. Self-regulation, industry-driven standards, individual empowerment and a market environment generally promise greater future success than intrusive governmental regulation.

In order to secure the economic growth and vitality of the electronic marketplace, The American Legislative Exchange Council has developed the following principles regarding the preservation of online privacy:

1. The private sector should lead. For electronic commerce to flourish, the private sector must continue to lead through self-regulation. Innovation, expanded services, broader participation, and lower prices will arise in a market driven arena, not in an environment that operates as a regulated industry.

2. Government should avoid undue restrictions on electronic commerce. Parties should be able to enter into legitimate agreements to buy and sell products and services across the Internet with minimal government involvement or intervention. Unnecessary regulation of commercial activities will distort development of the electronic marketplace by decreasing the supply and raising the costs of products and services for the consumer. Governments should refrain from imposing new and unnecessary regulations and bureaucratic procedures on commercial activities that take place via the Internet.

3. The marketplace is working. The online market has responded favorably and swiftly to consumer concerns regarding the collection and use of personal information. Among other privacy improvements, studies have found that Web sites are collecting less information and privacy notices are more prevalent, prominent and complete. Dynamic market forces have encouraged commercial Web sites to reduce the use of third party cookies, to track Internet surfing behavior, and third party sharing of information. What these studies demonstrate is that the market is responding to consumer concerns, without burdensome government regulation.

4. To the greatest extent possible, individuals should be directing their privacy choices. The most effective privacy policies provide notice, choice, security, and access; individuals should be free to select the policy that best fits their needs.¹


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{A3} Statement of Principles on Rights-of-Way Management

1. Maintaining a competitive environment in the telecommunications industry is vital to our local state and national economies. In order to advance competition in telecommunication service it is imperative that certain principles be followed in administering public rights of way. Public policy in this area will have a profound effect on the future of the telecommunications industry in our country.

5. The members of the American Legislative Exchange Council’s Telecommunications and Information Technology Task Force have developed the following principles regarding the administration of public rights of way:

8. 1. Local of rights-of-way management must be administered in a predictable, nondiscriminatory and competitively neutral manner.

10. 2. Preserving a competitive telecommunications market requires that no barriers be imposed that would hinder access to public rights of way.

12. 3. Communications industry regulation and general taxes should be set at the state level. Thousands of different local rights-of-way policies would drive the cost of compliance up dramatically and would greatly impede any new service providers from entering the market.

15. 4. Rights-of-way fees should be limited to the actual cost of rights-of-way administration, and should be recovered in a competitively neutral manner. These fees should not be used as a source to offset, replace or enhance local revenue.

18. 5. Cities and local governments are responsible for the sensible management of public rights of ways to ensure public safety. However, any policing powers given to local governments should be clearly defined.

21. 6. Municipalities do not have any regulatory authority over telephone service providers above their policing power which is limited by federal and state law.

Adopted by the Telecommunications & Information Technology Task Force in 1998.
{A4} The Principles of Competitive Telecommunications

1. **Competition, not regulation, should shape the telecommunications industry.** Regulation should serve as a substitute for competition only in those limited instances where competition cannot provide results which serve consumers’ best interests.

   The state public service/utility commissions will continue to play a significant role in ensuring quality of service standards and providing an avenue for resolution of consumer complaints. Regulation should not be focused on the provider, rather, it should be directed towards what will best serve consumers. As such, the emphasis should be whether the service being provided warrants regulation.

2. **Where regulation is necessary, it should be competitively neutral and equally applies to all providers.**

   No provider should be burdened with more regulation than any other provider. For example, rate of return regulation is inappropriate in a competitive environment because it would be inappropriate for the government to determine the amount of profit a new provider could earn. Therefore, rate of return or earnings regulation should not be applied to the incumbent local telephone company any longer as well. In fact, rate of return regulation is counterproductive even where only one provider operates because of the way it distorts market results.

3. **Universal service should be preserved, but ultimately only through explicit subsidies.**

   Universal service ensures that affordable phone service is available to all residential customers – both rural and urban. Currently, universal service is provided by the local telephone companies through a combination of implicit and explicit subsidies established by regulators in regulated rates. Implicit subsidies are generated from a number of sources. Long distance rates are priced based on statewide averages. This results in residents in high cost, rural areas paying the same for long distance calls as customers in low cost, urban areas. Consequently, a subsidy flows from urban customers to rural customers. Another implicit subsidy is the practice of pricing business services above cost and residence exchange service below cost, creating a subsidy which flows from business customers to residence customers. With increasing competition, implicit subsidies built into regulated rates are not sustainable. This erosion of subsidies jeopardizes universal service at affordable rates.

   Explicit subsidies include various mechanisms which provide assistance to certain local telephone customers or to certain companies. For example, the Universal Service Fund is a national program, with state administration, which is funded via access charges and subscriber line charges and is distributed to local telephone carriers that are the carrier of last resort in high cost areas. “Lifeline” and “Link-UpAmerica” are also funded via access charges but are targeted to provide service at a reduced cost for low-income customers.
Model Legislation for Review

New local exchange service providers don’t have to provide universal service, yet they benefit from the network built by the incumbent local telephone company in fulfillment of universal service obligations. Therefore, it is imperative that all providers be required to contribute to preserving universal service in a competitively neutral manner.

4. **All providers should be permitted to compete in all markets at the same time.**

Regulations which prohibit providers from competing in a market should be abolished. Consumers derive the greatest benefit from competition, and the number of providers in a market should not be artificially constrained by government. Consumers want competition and expect it will result in lower prices and better service. According to a recently released public opinion poll conducted by the Mellman Group, and Public Opinion Strategies for the Alliance for Competitive Communications (April 1995), 75 percent of Americans polled believe open competition should be introduced in all markets. Over 75 percent of Americans want Congress to allow local and long distance companies to enter each other’s markets at the same time and believe it will result in lower rates. Nearly 80 percent of Americans say they should be able to choose the communications company they do business with. Clearly consumers want competition.

By adhering to these four principles when setting public policy, legislators can be assured they will be transitioning the telecommunications industry according to the Jeffersonian principles of free markets and open competition, as well as setting the stage for consumers to fully benefit from and be prepared to participate in the Third Wave.

However, it is important to keep in mind when setting telecommunications public policy the interdependent and the synergistic relationship the current telecommunications public policy has. This policy was developed over a period of 100 years in a regulated monopoly environment where decisions were not based solely on social goals. Any change to one portion of what has become a complex regulatory framework will undoubtedly affect other portions, with potentially unfavorable consequences to the consumer. Therefore, it is critical for legislators to consider the effects of their decisions on the “whole” policy, and not attempt to do “piecemeal” policy making.

*As Adopted in the November 10, 1995*  
*Competitive Telecommunications State Factor*  
*Volume 21, Number*
{A5} Statement of Principles: The Internet and Electronic Commerce

The Internet is dramatically changing the way we communicate, learn, conduct business, transact financial services and are entertained. Every day the nature of the Internet changes, as people add more material, build faster computers, devise cheaper means of electronic storage, create improved software, and develop more capable communications. Such explosive growth of the Internet defies detailed one-size-fits-all approach to public policy and regulation. However, as policymakers write laws and regulations impacting the Internet, they should be guided by principles which have fostered the early progress of the Internet and will ensure the fullest realization of its potential.

The American Legislative Exchange Council supports the following principles in formulating laws and regulations that impact the Internet and electronic commerce:

Dynamic Competition. New electronic and/or digital technologies are converting industries once characterized by economies of scale and natural monopolies into prototypical competitive markets. Government policies, laws and regulations should support the Internet and Internet access by aggressively promoting free entry into markets and replacing government mandates with market competition. Laws and regulations designed for a regulated utility market environment should not be applied to the Internet.

Growth. The Internet’s continued expansion depends on continuing growth in its capacity. Public policies must be designed to foster ongoing expansion of useful and affordable bandwidth, encourage development of innovative technologies and promote broad universal access.

Self-Governance. The Internet has flourished in large part due to the unregulated environment in which it has developed and grown. Voluntary codes of conduct, industry-driven standards and individual empowerment, together with a market environment, generally hold greater future promise than does intrusive governmental regulation.

Free Speech. The Internet allows persons to communicate and share ideas with others with an ease never before possible. Federal and state government policy should rigorously protect freedom of speech and expression on the Internet, but not restrict states or local governments from future needed controls. New electronic and/or digital technologies adequately enable individuals, families and schools to protect themselves and students from communications and materials they deem offensive or inappropriate.

Electronic Commerce and Taxation. Electronic commerce promises to become an increasingly vital component of our states’ and national economies. Government policies should not hinder the creation of 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 manner that hinders growth.
Model Legislation for Review

Privacy and Security. Citizens should be empowered to protect, assure and secure their privacy and intellectual property from intrusion or piracy. Advanced technologies, including encryption, should be available in the marketplace without government controls, restrictions, or technical mandates.

Digital Government. State Governments should place their agencies and departments on the Internet in order to facilitate efficient and convenient citizen/government interactions. Transactions, such as permits and licenses, and property records are examples that can be handled electronically. Education programs for the public should be developed so that citizens are aware of the resources available through the Internet.

The American Legislative Exchange Council will oppose any federal legislation or regulation that would: hinder access to the Internet; limit competition or an increase in consumer choice; or, impede efforts by states to ensure the security of personal information of consumers conducting electronic commerce transactions.
{A6} Principles of Telecommunication Taxation

Summary

In a world where our national, state and local prosperity increasingly depends on competitiveness in global markets whose currency is information, a strong ubiquitous telecommunications infrastructure is critical to our states and their citizens. In a number of ways, government policies fashioned in an earlier and far simpler telecommunications environment are being outpaced by the rapid technological and business developments that are driving the Information Age. Among the outdated policies which retard the development of telecommunications infrastructure are discriminatory state and local tax policies.

The historic monopoly status of local companies has rapidly eroded.

The traditional tax treatment of local telephone companies is inappropriate on today's marketplace of multiple telecommunications providers.

Local telephone companies should not be used as utilities, but rather as members of the general business community.

Special tax assessments, distinctions, fees and categories unfairly disadvantaged local telephone companies in competition with alternative telecommunications providers.

Discriminatory tax treatment of local telephone companies adversely impacts the public interest by weakening the public network to the benefit of private and alternative networks.

Taxes levied on local telephone companies should be uniformly applied to all providers of telecommunications products and services.

{On May 16, 1992 the Task Force on Telecommunications adopted the above taxation principles for local telephone companies.}
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\{C1\} 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,
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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.

(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 telecommunications 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
Model Legislation for Review

173 This bill will become effective upon enactment.

174 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
Model Legislation for Review

{C2} Local Cellular Phone Preemption Act
1 Relating to cellular telephones. Be It Enacted by the People of the State of _____:

2 Section 1. A city, county or other local government may not enact or enforce any charter provision, ordinance, resolution or other provision regulating the use of cellular telephones in motor vehicles.

3 Section 2. Section 1 of this Act applies to all charter provisions, ordinances, resolutions and other provisions regulating the use of cellular telephones in motor vehicles, adopted before, on or after the effective date of this Act.


Obtained and released by: Common Cause and The Center for Media and Democracy
Model Legislation for Review

{C3} Parity and Certainty in Regulatory Treatment of High Speed Internet Access Services and Broadband Services and Providers Act

Parity and Certainty in Regulatory Treatment of High Speed Internet Access Services and Broadband Services and Providers Act

Summary

This Act provides for regulatory parity and certainty at the state level in the critical areas of high-speed Internet access services and broadband services. The Act prohibits state commissions from imposing regulations in these areas, regardless of the technology or medium used to provide such services. The Act further provides, however, that the incumbent local exchange provider must continue comply with the unbundling and other requirements of the Federal Communications Commission.

Model Legislation

Section 1. {Legislative Findings} The legislature hereby finds and declares:

(A) The cable modem service offered by cable operators and other technologies such as satellite that are used for high-speed access to the Internet are functionally equivalent to, and compete with, digital subscriber line service and other broadband services offered by local exchange carriers.

(B) Cable modem services and digital subscriber line services are subject to disparate regulatory treatment by the Federal Government and by State and local governments.

(C) Competing and functionally equivalent products and services should be treated in the same manner, regardless of who provides such products or services.

(D) A deregulatory environment should apply to providers of high-speed Internet access services and broadband services, regardless of the platform used to provide such services.

(E) Government regulation should not favor or advantage one class of competitors among competitors offering similar products or services.

(F) The deployment of digital subscriber line service, in particular, has been restrained by regulatory requirements that are inappropriate for a competitive service offered by various providers.

(G) Inappropriate regulation imposes needless costs and results in higher consumer costs.

(H) Lower consumer costs will accelerate demand for high-speed Internet access services.

(I) Deregulation across broadband platforms will provide incentives to increase deployment of high speed Internet services and broadband services, bringing the benefits of such services to communities in the form of enhancements in medicine, education, national security, work from home, and other benefits.
Model Legislation for Review

(J) When all providers of high speed Internet access services and broadband services compete in a free market environment, consumers will benefit from increased choices and lower prices.

Section 2. {Definitions}

“High speed Internet access service” or “broadband service” means, as used in this Act, those services and underlying facilities that provide upstream, from customer to provider, or downstream, from provider to customer, transmission to or from the Internet or have the capability to transmit information in excess of one hundred forty four (144) kilobits per second, regardless of the technology or medium used including, but not limited to, wireless, copper wire, fiber optic cable, or coaxial cable, to provide such service.

Section 3. {Main Provisions}

A. Neither the Commission, nor any unit of local government shall, by entering any order, adopting any rule, or otherwise taking any agency action, impose any regulation upon a provider of high speed Internet access service or broadband service in its provision of such service, regardless of technology or medium used to provide such service.

B. An incumbent local exchange telecommunications service provider (ILEC) subject to the provisions of 47 U.S.C., Section 251(c) shall be required to provide unbundled access to network elements, including but not limited to loops, subloops, and collocation space within the facilities of the ILEC, to the extent specifically required under Federal Communications Commission regulations or any successor regulations issued by the Federal Communications Commission.

C. Nothing in this section shall effect the assessment of any company under Article (property tax provisions).

Adopted by ALEC’s Telecommunications & Information Technology Task Force at the States and Nation Policy Summit December 11, 2002. Approved by full ALEC Board of Directors January, 2003
Model Legislation for Review

{C4} Collocation & Streamlined Tower Siting Act

Summary

This Act promotes and encourages the collocation of wireless facilities by revising and streamlining the approval process for additions to existing tower sites and expediting the permitting process for new sites.

Model Legislation

The people of the State of _______ do enact as follows:

Section 1. {Short Title}

This Act shall be known as the “Collocation & Streamlined Tower Siting Act.”

Section 2. {Legislative Findings and Declarations}

To encourage the collocation of wireless facilities to enhance the deployment of advanced wireless telecommunication services, while streamlining the approval processes employed by state and local units of government regarding wireless communication infrastructure within their jurisdiction, the Legislature finds and declares all of the following:

Section 3. {Definitions}

1. “Antennae” means any device that facilitates the transmission of CMRS.

2. “Local government” means 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.

3. “State (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.

4. “Wireless telephone service” means Commercial Mobile Radio Services” (“CMRS”) as defined in 47 C.F.R. Section 20.3

5. “Wireless communications facility” means facilities and equipment, including but not limited to any and all associated equipment and software, used directly or indirectly in the provision of telecommunications and/or wireless telecommunications services.

6. “Wireless telephone provider” means any person engaged in the offering of communications services utilizing the radio frequency spectrum or a provider of Commercial Mobile Radio Services” (“CMRS”) as defined in 47 C.F.R. Section 20.3.

Section 4. Encouraging collocation
Model Legislation for Review

1. Collocation among wireless telephone providers is encouraged by the state. To further facilities agreements among providers for collocation of their facilities, any antennae and related equipment to service the antennae that is being collocated on an existing above-ground structure is not subject to land development regulation, provided the height of the existing structure is not increased. However, construction of the antennae and related equipment is subject to local building regulations and any existing permits or agreements for such property, buildings, or structures. Nothing herein shall relieve the permit holder for or owner of the existing structure of compliance with any applicable condition or requirement of a permit, agreement, or land development regulation, including any esthetic requirements, or law.

2. Local governments shall not require providers to provide evidence of a wireless communications facility’s compliance with federal regulations. However, local governments shall receive evidence of proper Federal Communications Commission licensure from a provider and may request the Federal Communications Commission to provide information as to a provider’s compliance with federal regulations, as authorized by federal law.

Section 5. Streamlined Statewide Tower Siting Permitting and Application

1. A local government shall grant or deny a properly complete application for a permit, including permits under paragraph (a), for the collocation of a wireless communications facility on property, buildings, or structures within the local government’s jurisdiction within 45 business days after the date the properly completed application is initially submitted in accordance with the applicable local government application procedures, provided that such permit complies with the applicable federal regulations and applicable local zoning or land development regulations, including any aesthetic requirements. Local building regulations shall apply.

2. A local government shall grant or deny a properly completed application for a permit for the siting of a new wireless tower or antenna on property, buildings, or structures within the local government’s jurisdiction within 90 business days after the date the properly completed application is initially submitted in accordance with the applicable local government application procedures, provided that such permit complies with applicable federal regulations and applicable local zoning or land development regulations, including any aesthetic requirements. Local building regulations shall apply.

(a) The local government shall notify the permit applicant within 20 business days after the date the application is submitted as to whether the application is, for administrative purposes only, properly completed and has been properly submitted. However, such determination shall not be deemed as an approval of the application. Such notification shall indicate with specificity any deficiencies which, if cured, shall make the application properly completed.

(b) If the local government fails to grant or deny a properly completed application for a permit which has been properly submitted within the timeframes set forth in this paragraph, the permit shall be deemed automatically approved and the provider may proceed with placement of such facilities without interference or penalty. The timeframes specified in subparagraphs 1 and 2 shall be extended only to the extent that the permit has not been granted or denied because the local government’s procedures...
Model Legislation for Review

generally applicable to all permits, require action by the governing body and such action has not taken place within the timeframes specified in subparagraphs 1 and 2. Under such circumstances, the local government must act to either grant or deny the permit at is next regularly scheduled meeting or, otherwise, the permit shall be deemed to be automatically approved.

(c) To be effective, a waiver of the timeframes set forth herein must be voluntarily agreed to by the applicant and the local government. A local government may request, but not require, a waiver of the timeframes by an entity seeking a permit, except that, with respect to a specific permit, a one-time waiver may be required in the case of a declared local, state, or federally emergency that directly affects the administration of all permitting activities of the local government.

(d) Any additional wireless communications facilities, such as communication cables, adjacent accessory structures, or adjacent accessory equipment use in the provision of cellular enhanced specialized mobile radio, or personal communications services, required within the existing secured equipment compound within the existing site shall be deemed a permitted use or activity. Local building and land development regulations, including any aesthetic requirements, shall apply.

(e) Any other provision of law to the contrary notwithstanding, [insert appropriate department] shall negotiate, in the name of the state, leases for wireless communications facilities that provide access to state government-owned property and the [insert the appropriate department] shall negotiate, in the name of the state, leases for wireless communications facilities that provide access to property acquired for state rights-of-way. On property acquired for transportation purposes, leases shall be granted in accordance with the applicable law. On other state government-owned property, leases shall be granted on a space available, first-come, first-served basis. Payments required by state government under a lease must be reasonable and must reflect the market rate for the use of the state government-owned property. The [insert appropriate department] are authorized to adopt rules for the terms and conditions and granting of any such leases.

(f) Any wireless telephone service provider may report to the appropriate Public Safety Answering Point governing the board the specific locations or general areas within a county or municipality where the provider has experienced unreasonable delay to locate wireless telecommunications facilities necessary to provide the needed coverage for compliance with the federal Phase II E911 requirements using its own network.

Section 6. (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 7. (Effective Date)

This bill will become effective upon enactment.
Model Legislation for Review

Model Legislation for Review

{C5} Wireless Competition Act

Summary

This Act promotes and encourages wireless telephone competition by preventing unnecessary and burdensome regulation by the state utilities commission.

Model Legislation

The people of the State of _______ do enact as follows:

Section 1. (Short Title) This Act shall be known as the “Wireless Competition Act.”

Section 2. (Legislative Findings and Declarations) A bill for an act to amend the [insert appropriate code sections] concerning wireless telecommunications.

WHEREAS, the people of [state] are best served by markets which are open and competitive; and

WHEREAS, effective competition and the free marketplace has resulted in increased usage, growing employment, improved public safety, expanded coverage, and declining prices; and

WHEREAS, eighty-three percent of the U.S. population lives in counties with five or more mobile telephone operators competing to offer service; and

WHEREAS, it is the belief of this assembly that open and vigorous competition is the most efficient way to continue these improvements:

THEREFORE, the general assembly agrees to the following enactment.

Section 3. (Exemption of Commercial Mobile Radio Service (CMRS) Providers) A CMRS provider (as defined in 47 U.S.C. 332(d)(1)) is not subject to regulation by the [insert name of utilities commission] under this chapter*

* in states that have a state universal service fund, insert: “except that a CMRS provider shall respond, subject to the protection of the CMRS provider's competitive information, to reasonable requests for information about its operations in this state from the commission necessary to administer the state universal service fund.”

Obtained and released by:
Common Cause and
The Center for Media and Democracy
{C6} Cable and Video Competition Act
(Certainty in Regulatory Treatment of Competitive Cable Service Providers and Video Service Providers)

Summary
This Act provides for regulatory certainty at the state level in the critical areas of cable and video services with respect to the authority of Competitive Cable Service Providers and Video Service Providers to use the public rights of way to provide Cable Service or Video Service and to promote competitive entry by all Competitive Cable Service Providers and Video Service Providers. The Act provides the State the authority to provide a state-issued authorization for Competitive Cable Service Providers and Video Service Providers to deploy their systems and provide Cable Service and Video Service to residents of the State. The Act further provides, however, that Competitive Cable Service Providers and Video Service Providers must reimburse municipalities for use of the public rights of way, provide sufficient capacity for public, educational and government noncommercial programming and continue comply with the public rights of way management requirements.

Model Legislation
An act to add Sections _________ to the [STATE] _________ Code.

THE PEOPLE OF THE STATE OF [STATE] DO ENACT AS FOLLOWS:

Section 1. (Legislative Findings) A new Section _________ is added to the _________ Code to read as follows:

“This act shall be known and may be cited as the Cable and Video Competition Act (‘Act’).

The Legislature finds and declares all of the following:

(a) [STATE]’s economy would be enhanced by investment in new communications and video programming infrastructure, including fiber optic and Internet protocol (‘IP’) technologies.

(b) Cable Services and Video Services bring important daily benefits to [STATE] by providing news, education and entertainment.

(c) Competitive Cable Service Providers and Video Service Providers are capable of providing new video programming services and competition to consumers in [STATE] - and have stated their desire to do so.

(d) There has been only minimal competitive entry into the facilities-based video programming market since [STATE] current franchising requirements were enacted.

(e) The cable franchise requirements and associated build-out requirements have acted as a barrier to entry to many new facilities-based entrants, because time-to-market and reasonable cost of entry are critical for new entrants seeking to compete with the cable incumbents.
Model Legislation for Review

(f) Under both federal and State law, there is considerable uncertainty concerning whether and to what degree the cable franchise requirements apply to various Competitive Cable Service Providers and Competitive Video Service Providers, especially to the extent those new entrants are already subject to public right-of-way management under other State regulatory schemes.

(g) To remove legal uncertainty under State law with respect to the authority of Competitive Cable Service Providers and Video Service Providers to use the public rights of way to the extent the cable franchise requirements do not apply, and to promote competitive entry by all Competitive Cable Service Providers and Video Service Providers, the State of [STATE] can and should provide a state-issued authorization for Competitive Cable Service Providers and Video Service Providers to deploy their systems and provide Cable Service and Video Service to residents of the State. This state-issued grant will allow all Competitive Cable Service Providers and Video Service Providers to move forward in making the significant investments required to provide new services and competition for video programming."

Section 2. (Definitions) A new Section ______ is added to the _______ Code to read as follows:

“For purposes of this Act:

(a) ‘Cable Service’ is defined as set forth in 47 U.S.C. Section 522(6).

(b) ‘Cable Operator’ is defined as set forth in 47 U.S.C. Section 522(8).

(c) ‘Cable System’ is defined as set forth in 47 U.S.C. Section 522(7).

(d) ‘Competitive Cable Service Provider’ means a person authorized by this Act to provide Cable Service over a Cable System other than the incumbent Cable Operator providing service in the area to be served by the Competitive Cable Service Provider, or (ii) a Cable Operator authorized by this Act to provide Cable Services over a Cable System in areas where it currently does not have an existing franchise agreement as of the effective date of this Act.

(e) ‘Competitive Video Service Provider’ means a person authorized by this Act to provide Video Service. This term does not include a Cable Operator, and a Competitive Video Service Provider shall not be considered a Cable Operator and the facilities of a Competitive Video Service Provider shall not be considered a Cable System.

(f) ‘Competitive Cable Service Provider Fee’ means the amount paid by a Competitive Cable Service Provider pursuant to section 4 of this Act.

(g) ‘Competitive Video Service Provider Fee’ means the amount paid by a Competitive Video Service Provider pursuant to section 4 of this Act.

(h) ‘Franchise’ means an initial authorization, or renewal of an authorization, issued by a Franchising Entity, regardless of whether the authorization is designed as a franchise, permit, license, resolution,
Model Legislation for Review

65 contract, certificate, agreement, or otherwise, that authorizes the construction and operation of a Cable
66 System or Video Service Provider’s network in the public rights-of-way.
67 (i) ‘Franchising Entity’ means the city or county or city and county entitled to require franchises and
68 impose fees under [STATE] _____ Code §_____ for Cable Systems.
69 (j) “Public Rights-of-Way” means the area on, below, or above a public roadway, highway, street, public
70 sidewalk, alley, waterway, or utility easements dedicated for compatible uses.
71 (k) ‘Video Programming’ means programming provided by, or generally considered comparable to
72 programming provided by, a television broadcast station, as set forth in 47 U.S.C. Section 522(20).
73 (l) ‘Video Service’ means Video Programming services provided through wireline facilities located at
74 least in part in the public rights-of-way without regard to delivery technology, including Internet
75 protocol technology. This definition does not include any Video Programming provided by a commercial
76 mobile service provider defined in 47 U.S.C. Section 332(d) or cable service provided by a Competitive
77 Cable Service Provider.”
78 Section 3. (Main Provisions) A new section ______ is added to the _______ Code to read as
79 follows:
80 “(a) State Authorization to Provide Cable Service or Video Service.
81 (1) The following entities shall possess a Cable Service or Video Service Authorization:
82 (i) any entity certificated to provide local exchange service in the State of [STATE] that seeks to operate
83 or operates as a Competitive Cable Service Provider or Competitive Video Service Provider in its local
84 exchange service area and (ii) any other Competitive Cable Service Provider or Competitive Video
85 Service Provider that secures permission from the Secretary of State. The entities that are certificated
86 under part (i) shall automatically possess such authorization upon the effective date of this Act. The
87 Secretary of State shall promulgate regulations to govern the Cable Service or Video Service
88 Authorization application process for Competitive Cable Service Providers and Video Service Providers
89 included in part (ii) of this subparagraph. To the extent required by applicable law, any Cable or Video
90 Service Authorization granted by this Act or the Secretary of State shall constitute a ‘franchise’ for
91 purposes of 47 U.S.C. § 541(b)(1). To the extent required for purposes of 47 U.S.C. §§ 521-561, only the
92 State of [STATE] shall constitute the exclusive ‘franchising authority’ for Competitive Cable Service
93 Providers and Competitive Video Service Providers in the State of [STATE].
94 (2) (i) No Franchising Entity or other political entity of the State of [STATE] may (1) require a
95 Competitive Cable Service Provider or Competitive Video Service Provider to obtain a separate Franchise
96 or (2) otherwise impose any fee or Franchise requirement on any Competitive Cable Service Provider or
97 Competitive Video Service Provider except as provided in this Act. For purposes of this subsection, a
98 Franchise requirement includes, without limitation, any provision regulating rates charged by
99 Competitive Cable Service Providers or Competitive Video Service Providers or requiring Competitive
100 Cable Service Providers or Competitive Video Service Providers to satisfy any build-out requirements or
deploy any facilities or equipment. [STATE] Code §§ ______ shall not apply to Competitive Cable Service Providers or Competitive Video Service Providers.

(3) A Cable Operator with an existing franchise to provide Cable Service in any municipality in the state as of the effective date of this Act is not eligible to seek a State Authorization to Provide Cable Service of Video Service under this Act as to such municipality until the expiration date of the existing franchise agreement.

(b) Customer access to community programming.

(1) Not later than 180 days after a request by a municipality or county in which the Competitive Cable Service Provider or the Competitive Video Service Provider is providing Cable Service or Video Service, the holder of a State Authorization to Provide Cable Service or Video Service shall designate a sufficient amount of capacity on its communications network to allow the provision of a comparable number of channels or capacity of public, educational, and governmental (PEG) noncommercial programming provided by the incumbent cable operator.

(2) The content to be provided over this PEG access pursuant to this section shall be the responsibility of the municipality or county receiving the benefit of such capacity and the holder of a State Authorization to Provide Cable Service or Video Service bears only the responsibility for the transmission of such content, subject to technological restraints.

(3) The municipality or county must ensure that all transmissions, content, or programming to be transmitted by a holder of a State Authorization to Provide Cable Service or Video Service are provided or submitted to the Competitive Cable Service Provider or Competitive Video Service Provider in a manner or form that is capable of being accepted and transmitted by a provider, without requirement for additional alteration or change in the content by the provider, over the particular network of the Competitive Cable Service Provider or Competitive Video Service Provider, which is compatible with the technology or protocol utilized by the Competitive Cable Service Provider or Competitive Video Service Provider to deliver services.

(4) Where technically feasible, the holder of a State Authorization to Provide Cable Service or Video Service and an incumbent cable service provider shall use reasonable efforts to interconnect their cable or video systems for the purpose of providing PEG programming. Interconnection may be accomplished by direct cable, microwave link, satellite, or other reasonable method of connection. Holders of a State Authorization to Provide Cable Service or Video Service and incumbent cable service providers shall negotiate in good faith and incumbent cable service providers may not withhold interconnection of PEG channels.

(5) A court of competent jurisdiction shall have exclusive jurisdiction to enforce any requirement under this section.
Model Legislation for Review

(c) Except as provided in section 3 (a) and (b) of this Act, Competitive Cable Service Providers and Competitive Video Service Providers shall enjoy the same rights under the law of the State of [STATE] as incumbent Cable Operators and other providers of Video Programming.

(d) The Secretary of State shall be solely responsible for enforcing the provisions of this Act and may do so by filing a complaint in a court of competent jurisdiction.”

Section 4. A new section _____ is added to the ____________ Code to read as follows:

Competitive Cable Service Provider and Competitive Video Service Provider Fee.

“(a) A Competitive Cable Service Provider or Competitive Video Service Provider will provide notice to each Franchising Entity with jurisdiction in any locality in which a Competitive Cable Service Provider or Competitive Video Service Provider begins to offer Cable Service or Video Service.

(b) In any locality in which a Competitive Cable Service Provider offers Cable Service or a Competitive Video Service Provider offers Video Service, the Competitive Cable Service Provider or Competitive Video Service Provider shall calculate and pay the Competitive Cable Service Provider or Competitive Video Service Provider Fee to the Franchising Entity with jurisdiction in that locality upon the Franchising Entity’s written request. If the Franchising Entity makes such a request, the Competitive Cable Service Provider or Competitive Video Service Provider Fee shall be due on a quarterly basis, 45 days after the close of the quarter, and shall be calculated as a percentage of gross revenues, as defined herein. The Franchising Entity may not demand any additional fees or charges from the Competitive Cable Service Provider or Competitive Video Service Provider, and may not demand the use of any other calculation method.

(c) The percentage to be applied against gross revenues pursuant to section 4(a) shall be set by the Franchising Entity and identified in its written request equal to the percentage paid by the incumbent cable operator or 5%, whichever is less.

(1) For purposes of this subsection, “gross revenues” means all consideration of any kind or nature, including, without limitation, cash, credits, property and in-kind contributions (services or goods) received by the provider from subscribers for the provision of Cable Service over a Cable System by a Competitive Cable Provider or Video Service by a Competitive Video Service Provider within the Franchising Entity’s jurisdiction. Competitive Cable Service Providers and Competitive Video Service Providers shall be subject to and only be required to pay either the Competitive Cable Service Provider Fee or the Competitive Video Service Provider Fee but no event will a provider be subject to both the Competitive Cable Service and Competitive Video Service Provider Fees.

(2) For purposes of this subsection, “gross revenues” does not include:

(A) Revenues not actually received, even if billed, such as bad debt.

(B) Revenues received by any affiliate or any other person in exchange for supplying goods or services used by the provider to provide Cable Service or Video Service.
Model Legislation for Review

(C) Refunds, rebates or discounts made to subscribers, leased access providers, advertisers, or any municipality or other unit of local government.

(D) Any revenues from services not classified as Cable Service or Video Service, including, without limitation, revenue received from telecommunications services, revenue received from information services, revenue received in connection with advertising, revenue received in connection with home shopping services, or any other revenues attributed by the Competitive Cable Service Provider or Competitive Video Service Provider to non-cable service or non-video service in accordance with any applicable laws, rules, regulations, standards or orders.

(E) Any revenue paid by subscribers to home shopping programmers directly from the sale of merchandise through any home shopping channel offered as part of the Cable Services or Video Services.

(F) The sale of Cable Services or Video Services for resale in which the purchaser is required to collect the 5% fee from the purchaser’s customer.

(G) Any tax of general applicability imposed upon the Competitive Cable Service Provider or Competitive Video Service Provider or upon subscribers by a city, state, federal or any other governmental entity and required to be collected by the Competitive Cable Service Provider or Competitive Video Service Provider and remitted to the taxing entity (including, but not limited to, sales/use tax, gross receipts tax, excise tax, utility users tax, public service tax, and communication taxes), and including the 5% fee specified in this subsection.

(H) The provision of Cable Services or Video Services to public institutions, public schools or governmental entities at no charge.

(I) Any foregone revenue from the Competitive Cable Service Provider’s or Competitive Video Service Provider’s provision of free or reduced-cost video service to any person, including, without limitation, any municipality and other public institutions or other institutions.

(J) Sales of capital assets or sales of surplus equipment.

(K) Reimbursement by programmers of marketing costs incurred by the Competitive Cable Service Provider or Competitive Video Service Provider for the introduction or promotion of new programming.

(L) Directory or Internet advertising revenue including, but not limited to, yellow page, white page, banner advertisement and electronic publishing.

(M) Copyright fees paid to the United States Copyright Office.

(d) At the request of a Franchising Entity, no more than once per year, the Secretary of State may perform reasonable audits of the Competitive Cable Service Provider’s or Competitive Video Service Provider’s calculation of the Competitive Cable Service Provider or Competitive Video Service Provider Fee.
Model Legislation for Review

204 (e) Any Competitive Cable Service Provider or Competitive Video Service Provider may identify and
205 collect the amount of the Competitive Cable Service Provider or Competitive Video Service Provider Fee
206 as a separate line item on the regular bill of each subscriber.”

207 Section 5. A new section _____ is added to the _________ Code to read as follows:

208 Nondiscrimination By Franchising Entity.

209 (a) A Franchising Entity shall allow the holder of a State Authorization to Provide Cable Service or Video
210 Service to install, construct, and maintain a communications network within a public right-of-way and
211 shall provide the holder of a State Authorization to Provide Cable Service or Video Service with open,
212 comparable, nondiscriminatory, and competitively neutral access to the public right-of-way.

213 (b) A Franchising Entity may not discriminate against the holder of a State Authorization to Provide
214 Cable Service or Video Service:

215 (1) the authorization or placement of a communications network in public rights-of-way;

216 (2) access to a building; or

217 (3) a municipal utility pole attachment term.

218 (c) A Franchising Entity may impose on a Competitive Cable Service Provider or Competitive Video
219 Service Provider a permit fee under [STATE] — Code § ______ only to the extent it imposes such a fee
220 on incumbent Cable Operators, and any fee may not exceed the actual, direct costs incurred by the
221 Franchising Entity for issuing the relevant permit. In no event may a fee under this subsection be levied
222 (i) if the Competitive Cable Service Provider or Competitive Video Service Provider already has paid a
223 permit fee of any kind in connection with the same activity that would otherwise be covered by the
224 permit fee under this subsection or is otherwise authorized by law or contract to place the facilities used
225 by the Competitive Cable Service Provider or Competitive Video Service Provider in the public rights of
226 way, or (ii) for general revenue purposes.”

227 Section 6. A new section _____ is added to the ____________ Code to read as follows:

228 (a) The purpose of this section is to prevent discrimination among potential residential subscribers.

229 (b) A Competitive Cable Service Provider or Competitive Video Service Provider that has been granted a
230 State Authorization to Provide Cable Service or Video Service may not deny access to service to any
231 group of potential residential subscribers because of the income of the residents in the local area in
232 which such group resides.

233 (c) The holder of a State Authorization to Provide Cable Service or Video Service may use direct-to-
234 home satellite service or another alternative technology that provides comparable content, service, and
235 functionality to satisfy the requirements of this section.”

236 Section 7. A new section [_____] is added to the ____________ Code to read as follows:
Model Legislation for Review

237 Applicability of Other Law.

238 (a) The provisions of this Chapter are intended to be consistent with the Federal Cable Act, 47 U.S.C.
239 Section 521 et. seq.

240 (b) Except as otherwise stated herein, nothing in this Chapter shall be interpreted to prevent a
241 Competitive Cable Service Provider, Competitive Video Service Provider, a Cable Operator or a
242 Franchising Entity from seeking clarification of its rights and obligations under federal law or to exercise
243 any right or authority under federal or state law.

244 (c) If any provision of this Act or the application thereof to any person or circumstance is held invalid for
245 any reason in a court of competent jurisdiction, the invalidity does not affect other provisions or any
246 other application of this Act which can be given effect without the invalid provision or application, and
247 for this purpose the provisions of this Act are declared severable.”

Adopted by the Telecommunications & Information Technology Task Force at the States and Nation
{C7} Phone Records Act

Summary

AN ACT to create XXX.XX of the statutes; relating to: obtaining, selling, or soliciting a telephone record that pertains to another person without the person’s consent and providing a penalty.

Model Legislation

Section 1. XXX.XX of the statutes is created to read: XXX.XX Telephone records; obtaining, selling, or receiving without consent.

(1) In this section:

(a) “Caller identification record” means a record that is delivered electronically to the recipient of a telephone call simultaneously with the reception of the telephone call and that indicates the telephone number from which the telephone call was initiated or similar information regarding the telephone call.

(b) “Customer” means a person who subscribes to telephone service.

(c) “Telephone record” means a record in written, electronic, or oral form, except a caller identification record and subscriber list information, that is created by a telephone service provider and that contains any of the following information with respect to a customer:

1. Telephone numbers that have been dialed by the customer.

2. Telephone numbers pertaining to calls made to the customer.

3. The time when calls were made by the customer or to the customer.

4. The duration of calls made by the customer or to the customer.

5. The location(s) from which calls were initiated by the customer or received from the customer.

(d) “Telephone service” means the conveyance of 2-way voice communication in analog, digital, or other form by any medium, including wire, cable, fiber optics, cellular, broadband personal communications services, or other wireless technologies, satellite, microwave, or at any frequency over any part of the electromagnetic spectrum. “Telephone service” includes the conveyance of voice communication over the Internet and telephone relay service.

(e) “Telephone service provider” means a person who provides telephone service to a customer.
(2) No person may do any of the following:

(a) Obtain, attempt to obtain, or conspire with another to obtain a telephone record that pertains to a customer who is resident of this state, without the customer’s consent, by doing any of the following:

1. Making a false or deceptive statement to an employee, representative, or agent of a telephone service provider.

2. Making a false or deceptive statement to a customer of a telephone service provider.

3. Accessing such customer’s telephone record via the Internet.

4. Knowingly providing to a telephone service provider a document that is fraudulent, that has been lost or stolen, or that has been obtained by fraud or contains a false, fictitious, or fraudulent statement or representation.

(b) Ask another person to obtain a telephone record knowing that the person will obtain the telephone record in a manner prohibited under this section.

(c) Sell or offer to sell a telephone record obtained in a manner prohibited under this section.

(3)(a) A person who violates this section is guilty of a Class I felony, a fine not to exceed $10,000 or imprisonment not to exceed 3 years and 6 months, or both, if the violation involves one telephone record.

(b) A person who violates this section is guilty of a Class G felony, a fine not to exceed $25,000 or imprisonment not to exceed 10 years, or both, if the violation involves 2 or more telephone records.

(c) A person who violates this section is guilty of a Class E felony, a fine not to exceed $50,000 or imprisonment not to exceed 15 years, or both, if the violation involves more than 10 telephone records.

(4)(a) In addition to the penalties authorized under sub. (3), a person who violates this section may be required to forfeit personal property used or intended to be used in the violation.

(b) In an action to enforce this section, the court shall award to a person who is the subject of a telephone record involved in a violation of this section all of the following:

1. The amount of the person’s pecuniary loss suffered because of a violation of this section, if proof of the loss is submitted to the satisfaction of the court, or $1,000, whichever is greater.

2. The amount of any gain to the violator as a result of the violation.

(5) This section does not apply to any of the following:
Model Legislation for Review

54 (a) Action by a law enforcement agency in connection with the official duties of the law enforcement agency.

56 (b) A disclosure by a telephone service provider, if any of the following applies:

57 1. The telephone service provider reasonably believes the disclosure is necessary to do any of the following:

58 a. Provide telephone service to a customer.

59 b. Protect an individual or the telephone service provider from fraudulent, abusive, or unlawful use of telephone service or a telephone record.

62 2. The disclosure is made to the National Center for Missing and Exploited Children.

63 3. The disclosure is authorized by state or federal law or regulation.

64 4. The disclosure is related to testing the security procedures or systems of the telephone service provider for maintaining the confidentiality of customer information.

66 5. The disclosure is to a government entity, if the telephone company provider reasonably believes that an emergency involving immediate danger of death or serious physical injury to any person justifies disclosure of the information.

69 6. The disclosure is in connection with the sale or transfer of all or part of its business, or the purchase or acquisition of a portion or all of a business, or the migration of a customer from one carrier to another.

72 (c) A disclosure pursuant to Section (5)(b), if such disclosure is made reasonably and in good faith, notwithstanding any later determination that such action was not in fact authorized.

Adopted by the Telecommunications & Information Technology Task Force at the Spring Task Force Summit April 22, 2006. Approved by the full ALEC Board of Directors May, 2006.
Model Legislation for Review

{C8} Enabling Legislation for Public-Private Electronic Information Network Partnerships

Summary

This act authorizes public entities to establish state boards, commissions and authorities with, but not exclusive to private sector, the private sector for the purpose of providing electronic access for members of the public to public information of agencies via a gateway service. This act addresses such issues as creating a body politic and corporate to be known as the Information Network of (insert state) as a public instrumentality with the authority and powers conferred by this act shall be deemed and held to be the performance of an essential governmental function.

Model Legislation

Section 1. {Legislative Findings} The legislature hereby finds and declares:

(A) As government has changed with the evolution of the internet, it is essential for the economic, social, and environmental well-being of the state and the maintenance of a high quality of life that people of the state have access to efficient e-government services.

(B) The ability of the state and its localities to provide efficient e-government services will be enhanced by a public-private program enabling private entities to undertake all or a portion of online services to the public.

(C) A public-private partnership will provide benefits to both the public and private sectors. Public-private models afford close collaboration that combines the best of what the public and private sector have to offer working towards a common goal that assures all public sector e-government objectives are met including speed, savings, reliability, responsiveness, agency autonomy, etc. while maintaining the public trust.

(D) Public entities should be encouraged to take advantage of new opportunities provided by the private sector’s technical know-how in the application of advanced technologies.

Section 2. {Definitions}

Authority” means the (insert state) Providers Network Authority, a political subdivision of the state.

“Board” means the board of directors of the authority.

“Commission” means a permanent legislative agency.

“Gateway” means any centralized electronic information system by which public information shall be provided by the internet.
Model Legislation for Review

“Public information” means any information created, acquired, or stored in electronic, magnetic, optical or magneto-optical form by state agencies which is included within the information deemed to be public pursuant to (insert state) Freedom of Information Act or (insert state applicable statute).

“State agency” means any agency, institution, board, bureau, commission, council or instrumentality of state government.

“User association” means an association of users of information through a gateway.

Section 3. (Main Provisions)

(A) Purpose and Duties

(1) The purpose of the Information Network of (insert state) is to perform the following duties:

(i) provide electronic access for members of the public to public information of agencies via a gateway service;

(ii) provide appropriate oversight of any network manager;

(iii) explore ways and means of expanding the amount and kind of public information provided, increasing the utility of the public information provided and the form in which provided, expanding the base of users who access such public information and, where appropriate, implementing such changes;

(iv) cooperate with the division of information systems and communications in seeking to achieve the purposes of the Information Network of (insert state);

(v) explore technological ways and means of improving citizen and business access to public information and, where appropriate, implement such technological improvements; and

(vi) explore options of expanding such network and its services to citizens and businesses by providing add-on services such as access to other for-profit information and databases.

(B) Creation of Governing Board, Membership, Election of Officers, Quorum, Vote Provisions

(1) there is hereby created a body politic and corporate to be known as the Information Network of (insert state) is hereby constituted as a public instrumentality and the exercise by the Information Network of (insert state) of the authority and powers conferred by this act shall be deemed and held to be the performance of an essential governmental function.

(2) the Information Network of (insert state) shall be governed by a board consisting of 10 members as follows:

(i) the president of Information Network of (insert state)

(ii) the secretary of state;
Model Legislation for Review

(iii) two members who are chief executive officers of agencies of the executive branch, appointed by the
governor who shall serve at the pleasure of the governor;

(iv) one member appointed by the governor from a list of three state bar association members
submitted by such association. Such member shall serve a three-year term;

(v) three members from other user associations of a statewide character appointed by the governor
from a list of not less than nine individuals and their respective user associations compiled initially by
the president of the Information Network of (insert state) and thereafter by the board of the
Information Network of (insert state) and submitted to the governor. No two members appointed
pursuant to this paragraph shall represent the same user association. The terms for such members shall
be for a period of three years, except initially, when the terms shall be for one, two and three years,
respectively;

(vi) one member appointed by the governor from a list submitted by the president of the (insert state)
public libraries association and comprised of three librarians employed by public libraries. Following the
initial appointment hereunder, such list shall be comprised of librarians of public libraries which
subscribe to the Information Network (insert state). Such member shall serve a three-year term; and

(vii) the director of information systems and communications who shall serve as a member.

(3) the board shall annually elect one member from the board as chairperson of Information Network of
(insert state) another as vice-chairperson and another as secretary.

(4) five members of the board shall constitute a quorum and the affirmative vote of five members shall
be necessary for any action taken by the board. No vacancy in the membership of the board shall impair
the right of a quorum to exercise all the rights and perform all the duties of the board.

(C) Duties and Responsibilities of State Agencies, Recovery of Costs and Contract Authority

(1) in order to achieve its purpose as provided in this act, the Information Network (insert state) shall:

(i) serve in an advisory capacity to the secretary of administration, division of information services and
communications and other state agencies regarding the provision of state data to the citizens and
businesses of (insert state);

(ii) seek advice from the general public, its subscribers, professional associations, academic groups and
institutions and individuals with knowledge of and interest in areas of networking, electronic mail, public
information access, gateway services, add-on services and electronic filing of information; and

(iii) develop charges for the services provided to subscribers, which include the actual costs of providing
such services.

(2) all interested state agencies may participate with the Information Network of (insert state) in
providing such assistance as may be requested for the achievement of its purpose. Agencies may
recover actual costs incurred by providing such assistance. Services and information to be provided by
any agency shall be specified pursuant to contract between the Information Network of (insert state) and such agency and shall comply with the provisions of (insert state statute).

(3) States agencies shall be custodians of their public records, in accordance with state laws, and shall be free to contract directly with interested parties through arrangements outside of the Information Network of (insert state).”

(D) Duties and Compensation for Network Manager

(1) The Information Network of (insert state) shall hire a network manager, which may be either a person or a company or corporation. The Information Network of (insert state) shall draw criteria and specifications in consultation with the division of information services and communications for such a network manager and its duties. The Information Network of (insert state) may negotiate and enter into an employment agreement with the network manager selected which may provide for such duties, responsibilities and compensation as may be provided for in such agreement.

(i) the network manager shall direct and supervise the day-to-day operations and expansion of such gateway and network, including the initial phase of operations necessary to make such gateway operational, and:

(ii) may employ, supervise and terminate such other employees of the Information Network of (insert state) as designated by the Information Network of (insert state).

(iii) shall attend meetings of the Information Network of (insert state).

(vi) shall keep a record of all gateway, network and related operations of the Information Network of (insert state) which records shall be the property of the Information Network of (insert state) and shall maintain and be a custodian of all financial and operational records, documents and papers filed with the Information Network of (insert state) and

(v) shall yearly update and revise the business plan of the Information Network of (insert state) in consultation with and under the direction of the Information Network of (insert state).

(E) Contracting Authority of the Information Network of (insert state)

(1) the Information Network of (insert state) is hereby authorized to negotiate and enter into contracts for professional consulting, research and other services

(2) the Information Network of (insert state) shall not be subject to state purchasing laws.

(F) Gifts, donations and grants

(1) the Information Network of (insert state) may accept gifts, donations, grants, and any other public or private moneys.

(2) all moneys received by the Information Network of (insert state) from gifts, donations, grants or any other source outside the state treasury may be deposited in the state treasury and credited to the
Model Legislation for Review

Information Network of (insert state) fund or may be maintained in interest-bearing accounts in (insert state)) banks or (insert state) savings and loan associations until expended or otherwise disposed of pursuant to this act.

(G) Staff and other assistance and cost of assistance

(1) the Information Network of (insert state) and the division of information services and communications may provide to the Information Network of (insert state) such staff and other assistance as may be requested thereby, and the actual costs of such assistance shall be paid for by the Information Network of (insert state).

(H) Financing of Operations

(1) the Information Network of (insert state) shall fund its operations from revenues generated from subscribers, and from money, goods or in-kind services provided by public or private sources. Initial funding for start-up costs shall be obtained from private donations.

(I) Other

(1) nothing in this act shall be construed as placing any officer or employee of Information Network of (insert state) in the classified service or unclassified service under the (insert state) civil service act.

(2) subject to policies established by the board of Information Network of (insert state) the chairperson of Information Network of (insert state) or the chairperson’s designee shall be authorized to approve all travel and travel expenses of such officers and employees.

Section 4. {Effective Date}

{C9} Remote Video Court Appearance Act

Summary

The Remote Video Court Appearances Act allows the court to dispense with the personal appearance of a defendant, except an appearance at a hearing or trial, and conduct an electronic appearance by means of an fully interactive audio-visual system. This bill also allows this method to be used in parole hearings.

Model Legislation

{Title, enacting clause, etc.}

Section 1. {Title.} This act shall be known and may be cited as the Remote Video Court Appearance Act.

Section 2. {Definitions.} The following words and phrases when used in this act shall have the meanings given to them in this section unless the context clearly indicates otherwise:

(A) "Fully interactive audio-visual system" means an electronic system for the transmission and receiving of broadcast-quality audio and visual signals, encompassing encoded signals, frequency domain multiplexing or other suitable means to preclude the unauthorized reception and decoding of the signals by commercially available television receivers, channel converters, or commercially available receiving devices.

(B) "Electronic appearance" means an appearance in which various participants, including the defendant, are not present in the court, but in which, by means of an independent audio-visual system.

(1) all of the participants are simultaneously able to see and hear reproductions of the voices and images of the judge, counsel, defendants, police officer, and any other appropriate participant; and

(2) counsel is present with the defendant, or if the defendant waives the presence of counsel on the record, the defendant and their counsel are able to see and hear each other and engage in private conversation via a private telephone line.

Section 3. {Policy and rules.}

(A) Notwithstanding any other provision of law and except as provided in Section 4 of this article, the court, in its discretion, may dispense with the personal appearance of the defendant, except an appearance at a hearing or trial, and conduct an electronic appearance in connection with a criminal action pending provided that the chief administrator of the courst has authorized use of electronic appearance and the defendant, after consultation with counsel, consents on the record. Such consent shall be required at the commencement of each electronic appearance to such electronic appearance.

(B) If, for any reason, the court determines on its own motion or on the motion of any party that the conduct of an electronic appearance may impair the legal rights of the defendant, it shall not permit the electronic appearance to proceed. If, for any other articulated reason, either party requests at any time
Model Legislation for Review

during the electronic appearance that such appearance be terminated, the court shall grant such
request and adjourn the proceeding to a date certain. Upon the adjourned date the proceeding shall be
recommenced from the point at which the request for termination of the electronic appearance had
been granted.

(C) The electronic appearance shall be conducted in accordance with rules issued by the chief
administrator of the courts.

(D) When the defendant makes an electronic appearance, the court stenographer shall record any
statements in the same manner as if the defendant had made a personal appearance. No electronic
recording of any electronic appearance may be made, viewed or inspected except as may be authorized
by the rules issued by the chief administrator of the courts.

Section 4. {Conditions and limitations.} Electronic appearances shall have the following conditions and
limitations:

(A) The defendant may not enter a plea of guilty to, or be sentenced upon a conviction of, a felony.

(B) The defendant may not enter a plea of not responsible by reason of mental disease or defect.

(C) The defendant may not be committed to the state department of mental hygiene.

(D) The defendant may not enter a plea of guilty to a misdemeanor conditioned upon a promise of
incarceration unless such incarceration will be imposed only in the event that the defendant fails to
comply with a term or condition imposed under the original sentence.

(E) A defendant who has been convicted of a misdemeanor may not be sentenced to a period of
incarceration which exceeds the time the defendant has already served when sentence is imposed.

Section 5. {Approval by the chief administrator of the courts.} The appropriate administrative judge
shall submit to the chief administrator of the courts a written proposal for the use of electronic
appearance in their jurisdiction. If the chief administrator of the courts approves the proposal,
installation of an independent audio-visual system may begin.

Section 6. {Parole hearings.}

(A) Notwithstanding any other provision of law, the department may install, maintain, and operate an
independent audio-visual system in each correctional institution of the department that has committed
persons eligible for parole and at the principal office of the Prisoner Review Board for the purpose of the
conduct of parole hearings by the Prisoner Review Board by means of electronic appearance.

(B) If the person under consideration for parole is in the custody of the department, at least three
members of the Prisoner Review Board shall interview the person by means of an independent audio-
visual system.

Section 7. {Severability clause.}
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Section 8. {Repealer clause.}

Section 9. {Effective date.}

ALEC's Sourcebook of American State Legislation 1995

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Common Cause and
The Center for Media and Democracy
**Model Legislation for Review**

{C10} Distance Learning: Wiring the Public Schools Act

1 Summary

The potential benefits are significant, and can be achieved without major new commitments of tax funds. Legislation may be needed to establish a state distance learning policy, provide distance learning teacher certification, retrofit old classrooms, and provide technology for new classrooms.

2 Model Legislation

Section 1. (Title.) This Act may be cited as Distance Learning: Wiring the Public Schools Act.

Section 2. (Public policy purpose.)

(A) It is state policy that all students in the state, regardless of economic or geographic status, deserve the educational benefits offered by distance learning through state-of-the-art technology.

(B) The state recognizes that distance learning can enhance the educational opportunities for all schools, especially those with unique needs.

(C) The state also recognizes the obligation to utilize the cost-efficient opportunity of new building and renovation of schools to install wiring in education facilities, and to avoid costly independent retrofitting at a later time.

Section 3. (Definitions.) In this Act, the following words have the meanings indicated.

(A) “Distance learning” means the transmission of educational information and interaction of geographically dispersed individuals or groups through a single medium or a combination of audio, video, and data.

(B) “Major renovation” means the reconstruction or rehabilitation of a school building during which the renovation creates a cost-efficient opportunity to install wiring and other equipment necessary for the implementation of distance learning.

(C) “Wiring” means copper, coaxial, fiber optic, or any other cabling that has the capabilities of signal conveyance.

Section 4. (Statement of purpose.)

(A) At the time that a school district is developing a plan for the construction of a new school or for a major renovation of an existing school, the school district shall seriously consider the cost efficient inclusion of wiring and other equipment necessary for distance learning.

(B) The renovation plan shall include:

1. Consultation with the telecommunication hardware and service providers to determine options available to the schools which shall be documented in the plan;

2. A listing of existing distance learning programs which they may join;

3. The cost of the wiring and other equipment necessary for distance learning.

Section 5. (Severability clause.)

Section 6. (Repealer clause.)

Section 7. (Effective date.)
{C11} Distance Learning Commission Act

Summary

Several forward-thinking states have identified the need for a broadband, state-of-the-art telecommunications infrastructure to address specific state problems. States need a policy that maximizes infrastructure development and full public access at affordable costs. The test of successful telecommunications policy is whether the end result equips our citizens and communities with the means to better their future. The key component of such a policy is universal access to Twenty-first Century technology. Universal access is synonymous with universal opportunity.

Today virtually every state has distance learning in some form, compared to fewer than 10 states as recently as 1987. The distance learning programs across the states differ significantly in terms of the technology used, goals, and the quality and effectiveness of the programs. While all states have some form of distance learning effort underway they need to resolve issues that are barriers to the use of distance learning, such as teacher certification and evaluation, and curriculum and textbook standardization.

Model Legislation

Section 1. {Title.} This act shall be known and may be cited as the Distance Learning Commission Act.

Section 2. {Declaration of policy.} The legislature finds and declares as follows:

(A) It is state policy that all students in the state, regardless of economic or geographic status, deserve the educational benefits offered by distance learning through state-of-the-art technology.

(B) Distance learning programs, ranging from voice and data communication to state-of-the-art audiovisual delivery, have proven to be both innovative instructional tools and viable curriculum alternatives.

(C) The state should set clear goals and provide leadership in the development of a comprehensive distance learning policy.

(D) Without a distance learning policy, the development of innovative distance learning programs in this state will be seriously impeded.

(E) A Distance Learning Commission should be formed to develop Statewide distance learning programs and applications and to assist the Department of Education in providing technical assistance to potential distance learning providers.

Section 3. {Definitions.} The following words and phrases when used in this Act shall have the meanings given to them in this Section, unless the context clearly indicates otherwise:

(A) “Commission” means the Distance Learning Commission established in Section 4.

(B) “Department” means the Department of Education of the state.

(C) “Distance learning” means the transmission of educational information and interaction of geographically dispersed individuals or groups through a single medium or a combination of audio, video, and data.
Section 4. (Commission.)

(A) A Distance Learning Commission is hereby established. The commission shall be composed of 13 members who shall be appointed as follows:

(1) The Superintendent of Public Instruction shall appoint one representative from a county office of education.
(2) The Governor shall appoint one practicing school administrator from an organization representing state administrators, one business representative with experience in applications of technology, one practicing school teacher representing state teachers, one library media specialist from an association representing library media specialists, one public member from the state office of telecommunications or with expertise in application of technology, and one member of the faculty or a post-secondary institution.
(3) The Senate Rules Committee shall appoint one business representative with experience in applications of technology, and one practicing secondary school teacher representing technology-using educators.
(4) The Speaker of the House of Representatives shall appoint one business representative with experience in applications of technology, and one practicing elementary school teacher representing state teachers.
(5) The Chairman of the Public Utilities Commission shall appoint one regulator with knowledge and experience in telecommunications regulatory history, and one recognized consumer.

(B) Members shall serve two-year terms, with the exception of the initial appointment of the three teachers and the three business representatives, who shall serve for three years to facilitate a staggered appointment schedule in order to ensure continuity. No member shall serve for more than one term.

(C) No private business entity, school district, or employee association shall have more than one of its officers or employees serving as a member of the council.

(D) Members selected shall have the authority to represent their business, school district, or association from which they were appointed.

(E) Members shall be knowledgeable about applications of technology for learning experiences and shall be selected based on documentation of that experience.

(F) The commission shall initially meet on the first Monday of the month following the effective date of this Act. At that meeting, the members shall elect a chairperson and a three-member board of directors. Further meetings of the commission shall be held at the discretion of the members, but the board shall meet at least quarterly.

(G) Members shall receive no payment for their services, but they shall be reimbursed for pre-approved expenses incurred in the course of their duties.

(H) The department shall provide the commission with the staff necessary to fulfill its mission and goals. In addition, the commission may enlist voluntary assistance as available from citizens, research organizations, and other organizations.

Section 5. (Powers and duties of commission.)

(A) The commission shall engage in the development of a comprehensive distance learning policy. The policy shall:
Model Legislation for Review

84 (1) identify the distance learning educational and professional development needs of
85 various educational, community; and business organizations;
86 (2) identify various distance learning technologies that could serve to meet educational
87 needs;
88 (3) identify the role of the state in implementing the policy and in including distance
89 learning in the state and local curricula;
90 (4) encourage the development of local and regional distance learning applications and
91 active participation in the full development and utilization of the infrastructure-
92 technology partnership;
93 (5) encourage interactions between public and private nonprofit distance learning
94 providers and users.
95 (B) The commission shall work in concert with department staff to compile a database of
96 information and research regarding distance learning programs and applications. The database
97 shall be made available to the public and to state agencies and local governments.
98 (C) The commission may communicate distance learning information to the department. The
99 advisory communication shall serve to provide the department with information on methods of
100 providing technical assistance and needs assessment information to entities developing distance
101 learning programs.
102 Section 6. {Severability clause.}
103 Section 7. {Repealer clause.}
104 Section 8. {Effective date.}
{C12} Telecommunications Regulatory Reform Act

Summary

The regulatory process must stimulate, rather than inhibit, all telecommunications companies’ abilities to meet the competitive challenges facing this nation. The stimuli required include, encouraging the investment to develop and deploy new technologies and services, enhancing existing technologies and services, and accelerating efficient network operations management.

Model Legislation

{Title, enacting clause, etc.}

Section 1. {Title.} This Act shall be known as the Telecommunications Regulatory Reform Act.

Section 2. {Declaration of policy.}* It is the policy of this state to:

(A) Preserve the commitment to universal service. In most cases this should include a continued commitment to and reliance on federal and/or state programs for the “truly needy”, such as “Link up” and “Life line”. In today’s increasingly competitive environment all service providers must target subsidies to the truly needy in order to ensure universal access.

(B) Rely on marketplace forces to determine the price, terms, availability, and conditions of competitive and discretionary services.

(C) Where regulation is necessary, focus on price and quality of service, instead of on the provider. Regulators can assure customers of continued high quality service at affordable prices and the providers can benefit from their own efficiencies and successful marketing efforts.

(D) Increase incentives to companies to provide the most efficient services and products and provide for options to move away from rate of return regulation. Providers will have an incentive to more effectively respond to customers’ needs and the realities of the competitive marketplace and be encouraged to invest in the telecommunications infrastructure. This will offer opportunities for improvements in economic development, and in delivery of essential services such as education and health care.

(E) Streamline the regulatory process for setting and adjusting basic local exchange and other regulated service rates. In an increasingly competitive environment, there must be an acceptable way, short of the lengthy hearings associated with general rate cases, to address the need for price changes.

Section 3. {Definitions.} The following words and phrases when used in this Act shall have the meanings given to them in this Section:

(A) “Access service” means the provision of access to a local exchange network for the purpose of enabling a provider to originate or terminate telecommunications service within the exchange.
(B) “Basic local exchange service” means the provision of an access line and usage within a local calling area for the transmission of high-quality two-way switched voice communication.

*ALEC’s Telecommunication Task Force supports the principles of this model bill, but recognizes that specific issues, including the definition of terms must be negotiated on a state-by-state basis. The purpose of this model is to highlight the major issues to be addressed and provide a framework for statutory changes. It is hoped that legislators who wish to change telecommunications regulatory statutes will develop bills that reflect the general policy declaration in Section 2.

(C) “Commission” means the appropriate regulatory body.

(D) “Contested case” or “case” means a proceeding as defined in state law.

(E) “Exchange” means one or more contiguous offices and all associated facilities within a geographical area in which local exchange telecommunications services are offered by a provider.

(F) “Information services” or “enhanced services” means the offering or a capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information that is conveyed by telecommunications. Information or enhanced services does not include the use of such capability for management, control, or operation of a telecommunications system or the management of a telecommunications service.

(G) “License” means a license issued pursuant to this Act, or other authority granted to a provider.

(H) “Line” or “access line” means the medium over which a telecommunications user connects to the local exchange.

(I) “Local calling area” means a geographic area encompassing one or more local communities as described in maps, tariffs, or rate schedules filed with and approved by the commission.

(J) “Local exchange rate” means the monthly rate, including all necessary and attendant charges, imposed for basic local exchange service to customers.

(K) “New telecommunication service” means a service not available on the effective date of this Act.

(L) “Person” means an individual, corporation, partnership, association, government entity, or any other legal entity.

(M) “Reasonable rate” or “Just and reasonable rate” means a rate that is not inadequate, excessive, or discriminatory as determined by the commission.
Model Legislation for Review

(N) “Residential customer” means a person to whom telecommunications services are furnished predominately for personal or domestic reasons.

(O) “Telecommunications provider” or “provider” means a person who for compensation provides telecommunications service.

(P) “Telecommunications services” includes regulated and unregulated services offered to customers for the transmission of two-way interactive communication and associated usage.

(Q) “Toll Service” means the transmission of two-way interactive switched communication between local calling areas. Toll service does not include individually negotiated contracts for similar telecommunication service or wide area telecommunications service.

(R) “Wide area telecommunications service” or “WATS” means the transmission of two-way interactive switched communication over a dedicated access line.

Section 4. { Definition on intent.}

Except as otherwise provided in this Act, this Act shall not be construed to prevent any persons from providing telecommunications services in competition with another telecommunication provider.

Section 5. {The commission.}

(A) The commission shall have the jurisdiction and authority to administer this Act.

(B) In administering this Act, the commission shall be limited to the powers and duties prescribed by this Act.

(C) In addition to the other powers and duties prescribed by this Act, the commission shall have the authority to do the following:

1. Establish by order the manner and form in which telecommunications providers of regulated services within the state keep accounts, books of accounts, records, and memoranda. The commission requirements under this subdivision shall not be in conflict with or in addition to any federal regulations covering the same subject.

2. Require by order that a provider of a regulated service, including access, make available for public inspection and file with the commission a schedule of the provider’s rates, services, and condition of service.

3. Establish by order the standards for quality of service for each regulated telecommunication service offered in this state.

4. Assure the availability of high quality basic local exchange services.
Model Legislation for Review

(5) Issue a yearly report to the legislature and governor.

{Specify Information Required}

(D) With respect to contested cases the commission shall:

(1) Upon receipt of an application or complaint filed pursuant to a provision of this Act, or on its own motion, the commission may conduct an investigation, hold hearings, and issue its findings and order in accordance with approved state administrative regulations.

(2) The commission shall require uniform filing standards for a case commenced under this Section. An application filed under this Act shall contain all information, testimony, exhibits, or other documents and information. The burden of proving a case under this Act shall be with the party filing the application or complaint.

(3) The commission shall have the power to administer oaths, certify to all official acts, and to compel the attendance of witnesses and the production of papers, books, accounts, documents, and testimony.

(4) The commission shall issue a final order in a case filed under this Act within 90 days from the date the application or complaint is filed. If a hearing is held, the commission shall have an additional 30 days to issue its final order.

(5) An order of the commission shall be subject to review as provided by state law.

(6) Before commencing a hearing under this Section, the commission shall attempt alternative means of resolving a dispute under its jurisdiction.

(E) If two or more telecommunication providers are unable to agree on a matter relating to a regulated telecommunication service between two parties, then either provider may file with the commission an application for resolution of the matter.

(F) Complaints on service

(1) The commission may investigate and resolve complaints that concern the quality and availability, conditions, or disconnection of a regulated service, or any other provision of this Act that regulates service.

(2) If the commission finds, after notice and hearing, that the quality, general availability, or conditions for regulated service violate this Act or an order of the commission under this Act, or is adverse to the public interest, the commission may require changes in how the telecommunication services are provided. The commission’s authority includes, but is not limited to, the revocation of a license and issuing cease and desist orders.
Model Legislation for Review

(G) Upon complaint and after a review pursuant to Section 5(D), if the commission finds that a new telecommunication service as being offered is adverse to the public health, safety, or general welfare or to the quality of basic local exchange service, the commission may order changes in the terms and conditions under which the service is offered.

(H) Upon application by a service provider, the commission shall deregulate a service of that provider if the commission determines that competition among providers of that service is sufficient to protect the public interest.

(I) If the commission finds that a party’s position in a proceeding under this Act was frivolous, the commission shall award to the prevailing party the costs, including reasonable attorney fees, against the non-prevailing party and their attorney.

(1) As used in this Section: “Frivolous” means that at least one of the following conditions is met:

(a) The party’s primary purpose in initiating the proceeding or asserting the defense was to harass, embarrass, or injure the prevailing party.

(b) The initiating party had no reasonable basis to believe that the facts underlying its legal position were true.

(c) The initiating party’s legal position was devoid of arguable legal merit.

(2) “Prevailing party” means a party who wins the proceedings.

(J) Disclosure

(1) Trade secrets and commercial or financial information submitted pursuant to the provisions of this Act are exempt from disclosure under the Freedom of Information Act.

(2) A protective order entered in a contested case proceeding shall exempt disclosure of information identified in 5 I(1) during the pendency of a contested case proceeding.

(3) Nothing in this Section affects the commission’s authority to issue protective orders or precludes a party to a proceeding before the commission from obtaining discovery of information pursuant to law or procedure applicable to such proceedings.

(K) Pre-existing clause.

(1) Except as otherwise provided by Section 5(K)(2) or by this Act, all complaints pending before the commission on the effective date of this Act, and all investigations, examinations, and proceedings undertaken, commenced, or instituted by the commission before the effective date of this Act, may be heard, conducted, and
Model Legislation for Review

continued to final determination, and all pending actions or proceedings brought by or against the commission may be prosecuted or defended in the same manner.

(2) The commission shall order the dismissal of all complaints, investigations, examinations, and proceedings undertaken, commenced, or instituted before this Act takes effect that are in conflict, prohibited, or otherwise inconsistent with the provisions of this Act.

(L) The commission may promulgate rules or issue orders for the implementation and administration of this Act.

Section 6. (Basic local exchange services.)

(A) Licensure.

(1) A telecommunication provider not possessing a license on the effective date of this Act shall not provide basic local exchange service in this state until it has obtained a license from the commission pursuant of this Act.

(2) Except as provided in Section 6(A)(3), a license granted to a telecommunication provider of basic local exchange service before the effective date of this Act shall remain in full force and effect, and carriers need not apply for a new license in order to continue offering or providing service to the extent authorized in the license or this Act.

(3) The commission shall review, modify, and establish the terms of any license issued to a telecommunication provider of basic local exchange service before the effective date of this Act in order to ensure its conformity with the requirements of this Act.

(4) Pending the determination of an application for a license, the commission without notice and hearing may issue a temporary license for a period not to exceed one year in cases of emergency to assure maintenance of adequate service or to serve particular customers and may exempt from the requirements of this Act temporary services or operations when the exemption would be in the public interest.

(B) When granting a license:

(1) After notice and hearing, the commission shall approve an application for a license if the commission finds both the following:

(a) The applicant possesses sufficient technical, financial, and managerial resources and abilities to provide basic local exchange service to every person within the geographical area of the license.

(b) The granting of a license to the applicant would not be contrary to the public interest.
Model Legislation for Review

(2) The commission shall retain a copy of all granted licenses and make all information contained in the license available to the public.

(3) Each provider granted a license shall retain a copy of the license at its principal place of business and make the license available for review to the public.

(C) Before substantially altering the nature or scope of the basic local exchange services authorized under a license, the provider of basic local exchange services shall apply to the commission for approval before making any alterations or additions pursuant to this Act.

(D) Pursuant to the provisions of this Section, the commission shall approve for each provider any alterations to the local exchange rates.

(1) A provider of basic local exchange service shall set the initial rates to be charged under this Act on or before the effective date of this Act, and file them with the commission.

(2) The rates for basic local exchange service shall be just and reasonable as determined by the commission.

(3) A provider may alter its rates for basic local exchange service upon notice to the commission. The notice to the commission of a rate alteration shall be accompanied with sufficient documentary support that the rate alteration is just and reasonable. After consulting with providers, the commission shall establish either by rule or order any documentation that may be required under this subsection. Notice to customers is required and shall be published in a newspaper of general circulation in the service area to be affected within a reasonable time period after the notice of the rate alteration is provided to the commission, and shall be included in or on the bill each affected customer of the provider in the next billing. The notice shall contain all of the following information:

(a) An estimate of the amount of the annual change for the typical residential customer that would result if the rate alteration is approved by the commission.

(b) A statement that a customer who desires to comment on the rate alteration or who desires the complete details of the rate alteration may call or write the commission.

(c) Either by a complaint filed by an affected party or on the commission’s own motion at any time prior to the rate alteration taking effect, the commission may require a filing as provided in Section 5(D) to review a rate set pursuant to Section 6(D)(3) and after the review issue an order approving, modifying, or rejecting the rate alteration including, but not limited to, a refund of collected excessive rates, including interest on the rates.

(d) The commission shall hold a public hearing, if necessary, within 45 days from the date of the notice and issue an order within the 120-day period following the date the application or complaint is filed, finding one of the following:
Model Legislation for Review

(i) That the rate alteration is just and reasonable.

(ii) That a filing under Section 5(D) should be commenced pursuant to Section 6(D)(3)(c).

(iii) That there is a likelihood that the proposed rate alteration is not just and reasonable and order a stay of the rate alteration pending a review of the rate under this Section.

(E) A telecommunication provider of basic local exchange service is not required to, but may provide toll services. If a telecommunication provider that provides basic local exchange service does not offer toll or connect with a toll provider, the commission may order a toll provider to interconnect with the telecommunication provider upon terms that are fair to both providers.

(F) If it is the public policy of the state to subsidize low income customers, then:

(1) The commission shall require each provider of residential basic local exchange service to offer certain low income customers the availability of basic local exchange service at a rate below the regulated rate.

(2) The commission shall establish a rate for each subscriber line of a provider to allow the provider to recover costs incurred under this Section.

(3) The commission by order shall determine which customer's quality for the special rate under this Section.

Section 7. (Obligation of service providers.) Providers of telecommunications service shall not do any of the following:

(A) Discriminate against another provider by refusing or delaying access to the local exchange.

(B) Refuse or delay interconnections or provide inferior connections to another provider.

(C) Degrade the quality of access provided to another provider.

(D) Impair the speed, quality, or efficiency of lines used by another provider.

(E) Develop new services to take advantage of planned but not publicly known changes in the underlying network.

(F) Refuse or delay a request of another provider for information regarding the technical design and features, geographic coverage, and traffic capabilities of the local exchange network.
(G) Refuse or delay access or be unreasonable in connecting another provider to the local exchange whose product or service requires novel or specialized access requirements.

(H) Upon a request, fail to fully disclose in a timely manner all available information necessary for the design of equipment that will meet the specifications of the local exchange network.

(I) Refuse or delay access by any person to another provider.

(J) Sell, lease, or otherwise transfer an asset to an affiliate of the provider for an amount less than the fair market value of the asset.

(K) Buy, lease, or otherwise acquire an asset from an affiliate of the provider for an amount greater than the fair market value of the asset.

(L) Bundle unwanted services or products for sale or lease to another provider.

(M) Except with the approval of the commission, jointly market or offer as a package, at a discounted rate, one or more unregulated services with a regulated service.

(N) Sell service or products, extend credit, or offer other terms and conditions on more favorable terms to an affiliate of the provider or to its retail department that sells end users than the provider offers to other providers.

(O) Refuse, charge, delay, or impair the speed of the connecting of a person to a telecommunication emergency service.

Section 8. {Access service.}

Each state needs to address its own situation and policy needs as they relate to access service.

Section 9. {Toll service.}

(A) Except as provided by this section, the commission shall not review or set rates for toll services.

(B) The commission shall require that toll service is universally available on a nondiscriminatory basis to all persons in the state.

Section 10. {Discontinuance of service.}

(A) A telecommunication provider that provides either basic local exchange or toll service, or both, may discontinue either service to an exchange if one or more other telecommunication providers are furnishing substantially the same telecommunication service to the customers in the exchange.
Model Legislation for Review

(B) A telecommunication provider proposing to discontinue a regulated service to an exchange shall file a notice of discontinuance of service with the commission, publish the notice in a newspaper of general circulation within the exchange, and provide other reasonable notice as required by the commission.

(C) Within 30 days after the date of publication of the notice, a person or other telecommunication provider may apply to the commission to determine if the discontinuance of service is authorized pursuant to this Act.

(D) A provider of a regulated service shall not discontinue the regulated service for failure by a customer to pay a rate or charge imposed for an unregulated service. For the purposes of this section, the commission may determine how payments are allocated between regulated and unregulated services.

(E) The commission shall determine when and under what conditions a provider of basic local exchange service may discontinue service under this Section.

Section 11. {Sunset clause.} This Act sunsets _____ years from the effective date of the Act.

Section 12. {Severability clause.}

Section 13. {Repealer clause.}

Section 14. {Effective date.}
# Model Resolutions

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{B1} Resolution on United States Encryption Export Restrictions

WHEREAS, Current United States export control laws governing cryptographic products are adversely affecting American high-tech companies; and

WHEREAS, outdated cryptographic provisions dating back to World War II and the Cold War retard the ability of U.S. producers of cryptographic products to compete and succeed in the global market; and

WHEREAS, the future of the Internet and electronic commerce are reliant on the security of online transaction and a tremendous global market has for encryption technologies has developed; and

WHEREAS, Foreign competitors of data-scrambling technology, unfettered by strict government export controls on cryptographic products, are developing, marketing, and selling sophisticated encryption systems well above the United States limit; and

WHEREAS, Any benefit to American law enforcement or national security realized by American export controls on cryptographic products has been minimized by the rapid availability of strong, robust cryptographic systems produced by non-American companies and even by the ability to lawfully import these systems into the United States; and

WHEREAS, The Computer Systems Policy Project estimates that if the current outdated policy remains in effect, the cost to American companies could be up to $96 billion by the year 2002 and the loss of over 200,000 high-skill, high-wage jobs by the year 2000; and

WHEREAS, The National Research Council of the National Academy of Sciences has concluded after exhaustive study that United States export controls on cryptography may be causing American software and hardware companies to lose a significant share of a rapidly growing market, with losses of at least several hundred million dollars per year; and

WHEREAS, The current administration supports a "key recovery" system that would force computer users to give the government access to their encryption keys, thus allowing the federal government to monitor an individual's communications and on-line transactions without that individual's knowledge or consent; and

NOW THEREFORE BE IT RESOLVED that the American Legislative Exchange Council (ALEC) strongly supports efforts to immediately relax current United States export control laws governing cryptographic products to a level which is readily available in the global market.

BE IT FURTHER RESOLVED, that ALEC denounces any proposal that would require the implementation of a federally mandated "key recovery" program.

BE IT FURTHER RESOLVED, that the clerk of the (House of Representatives or Senate) transmit copies of this resolution to the President and Vice President of the United States, to the Speaker of the United States House of Representatives, and to each Member of Congress of the United States.
Model Legislation for Review

Obtained and released by:
Common Cause and
The Center for Media and Democracy
{B2} A Resolution Regarding the Regulation of Intrastate Telecommunications Services in Healthy and Sustainable Competitive Environments

WHEREAS, it is the mission of the American Legislative Exchange Council to advance the Jeffersonian principles of free markets, limited government, federalism and individual liberty, and

WHEREAS, telecommunications services, a sector that is essential to the nation’s economy, commerce and technological growth, is being radically transformed by the development of new, competing and converging technologies and services, and

WHEREAS, the rise of varied competition among numerous competing technologies has brought increased consumer choice in many marketplaces, and

WHEREAS, ALEC believes that full and open competition, not multiple layers of regulation, should drive healthy and sustainable competitive marketplaces, and

WHEREAS, ALEC is an important, influential voice in the promotion of policies that are true to the Jeffersonian principles of free markets, limited government, federalism and individual liberty, now

THEREFORE BE IT RESOLVED that ALEC shall voice its support of minimal, competitively neutral state and federal regulation of all telecommunications providers, including incumbent and competitive wireline carriers, wireless carriers and cable telephony providers, and further,

BE IT FURTHER RESOLVED that ALEC supports the current minimally regulated status of the Internet and Internet-based services, and

BE IT FURTHER RESOLVED that ALEC urges state regulatory and legislative bodies to refocus their efforts on specific and limited efforts targeted at ensuring that essential basic telecommunications service remains universally available and affordable for consumers, phasing out historic subsidy systems, and urge state regulatory bodies to oversee the resolution of disputes that may arise when networks interconnect, and further,

BE IT FURTHER RESOLVED that ALEC’s support for balanced and minimal telecommunications regulations that more accurately reflect today’s competitive situation in a particular marketplace be communicated to all ALEC members, and further

BE IT FURTHER RESOLVED that ALEC shall convey its support to the members of United States Congress and Executive Branch.
Model Legislation for Review


Obtained and released by:

Common Cause and

The Center for Media and Democracy
Obtained and released by: Common Cause and The Center for Media and Democracy
{B3} Resolution to Restate State Sovereignty

1  **Summary**

2  ALEC’s model Resolution to Restate State Sovereignty is designed to affirm the powers reserved to the States under the 10th Amendment of the United States Constitution.

3  **Model Resolution**

4  **WHEREAS**, The 10th Amendment to the Constitution of the United States reads as follows: “The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people;” and

5  **WHEREAS**, The 10 Amendment defines the total scope of federal powers as being that specifically granted by the United States Constitution and no more; and

6  **WHEREAS**, The scope of federal power defined by the 10th Amendment means that the federal government was created by the states specifically to be an agent of the states; and

7  **WHEREAS**, State authority has been eroded primarily by four developments: (1) Federal assumption of powers reserved to the states under the 10th Amendment; (2) Interpretations of the “commerce clause” which go beyond any reasonable conception, and in effect authorize federal pre-emption with respect to any issue for which some faint or circuitous connection can be made to interstate commerce; (3) By threat of withholding, withdrawing, or diverting federal funds to coerce compliance with federal policies; (4) Failure on the part of the states to challenge federal intrusions. Indeed state governments have endorsed federal usurpation by seeking additional federal funding and by accepting federal delegations of power.

8  **WHEREAS**, Today, in [insert year], the states are demonstrably treated as agents of the federal government; and

9  **WHEREAS**, Numerous resolutions have been forwarded to the federal government by the (insert year) without any response or result from Congress or the federal government; and

10  **WHEREAS**, Many federal mandates are directly in violation of the 10th Amendment to the Constitution of the United States; and

11  **WHEREAS**, The United States Supreme Court has ruled in New York v. United States, 112 S. Ct. 2408 (1992), that Congress may not simply commandeer the legislative and regulatory processes of the states; and
WHEREAS, A number of proposals from previous administrations and some now pending from
the present administration and from Congress may further violate the United States
Constitution;

NOW THEREFORE BE IT RESOLVED, That the State of (insert State) hereby claims sovereignty
under the 10th Amendment to the Constitution of the United States over all powers not
otherwise enumerated and granted to the federal government by the United States
Constitution.

BE IT FURTHER RESOLVED, That this serve as Notice and Demand to the federal government, as
our agent, to cease and desist, effective immediately, mandates that are beyond the scope of its
constitutionally delegated powers.

BE IT FURTHER RESOLVED, That copies of this Resolution be sent to the president of the United
States, the Speaker of the United States House of Representatives, the President of the United
States Senate, The Speaker of the House and the President of the Senate of each state’s
legislature of the United States of America, and (insert State) Congressional delegation.

The more centralized and remote a government is from its people the more undemocratic and
dangerous it will become. In the words of Thomas Jefferson, “The true theory of our
Constitution is surely the wisest and best...When all government...shall be drawn to Washington
and the centre of all power, it will render powerless the checks provided on one government on
another, and will become as...oppressive as the government from with we separated.”
Constitutional power must be restored to the state and to the people. It is the duty of each
State to reaffirm its sovereignty and serve notice to the federal government to cease and desist
all activity outside the scope of its constitutional powers.

Sourcebook of American State Legislation, 1995, Volume II
Obtained and released by:
Common Cause and
The Center for Media and Democracy