

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 III 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 III you will find:

- New Motions and Draft Model Legislation

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

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

Summary: *The goal of this statement of principles is to provide policymakers with general guidance consistent with ALEC principles. The statement affirms ALEC's mission to advance the principles of free markets in policy regarding communications and technology in the 21st century. This statement also recognizes the tremendous, rapid change underway in communications and technology, and underscores the importance of competition in retail services to protect consumers.*

Six Principles for Communications and Technology

- 1 WHEREAS, it is the mission of the American Legislative Exchange Council (ALEC) to advance the
2 principles of free markets, limited government, and federalism, and;
- 3 WHEREAS, it is the mission of ALEC's Communications and Technology Task Force to advance these
4 principles in order to promote economic growth, freedom of technology, and innovation;
- 5 THEREFORE, LET IT BE RESOLVED, that ALEC supports the following principles in formulating
6 government policy regarding communications and technology:
- 7 1. THE FREE MARKET SHOULD DRIVE COMMUNICATIONS AND TECHNOLOGY
8 POLICY
- 9 Public policy relating to communications and technology should be driven by free market principles. The
10 free market has enabled today's Internet Protocol-based, broadband-centric digital economy, which is
11 increasingly characterized by disruptive change, vibrant competition, and consumer choice. Convergence
12 is an ongoing feature of today's communications and technology markets; the providers of products and
13 services once considered separate now compete for the same end users.
- 14 2. GOVERNMENT SHOULD STRIVE FOR COMPETITIVE AND TECHNOLOGICAL
15 NEUTRALITY IN ITS POLICIES
- 16 Public policy should remain neutral with respect to existing and emerging business models, and
17 technologies. Additionally, government procurement policies should be transparent, non-discriminatory,
18 openly pro-competitive, and performance-based. Rules should be based on desired results rather than
19 preferred designs; in other words, designs of devices, software, or networks must not be dictated through
20 governmental mandates. Government must not seek to create new technologies through regulation.
- 21 3. CONSTITUTIONAL LIMITS AND PROTECTIONS SHOULD GUIDE GOVERNMENT
22 POLICY AT ALL LEVELS.
- 23 All limits on government power and all protections for individual rights contained in the federal and state
24 constitutions must inform and apply to all government policies regarding communications and
25 technology. Constitutional limits and rights do not cease applying where practices or conduct involves
26 digital technology or takes place online.
- 27 4. SELF-GOVERNANCE, CODES OF CONDUCT, AND OTHER VOLUNTARY INITIATIVES
28 ARE PREFERRED METHODS FOR PURSUING SOLUTIONS TO NEW CHALLENGES;
29 REGULATION SHOULD ONLY BE CONSIDERED WHERE MARKET COMPETITION FAILS
30 AND REAL HARM EXISTS.
- 31 Voluntary codes of conduct, industry-driven standards and individual empowerment should be preferred
32 over government regulation. If there must be government regulation of communications and technology,

33 it should only be in instances where actual harm results to consumers, and only then with the lightest
34 touch necessary. Prophylactic regulation based on fears about future harms is unwarranted and
35 inappropriate. Instead, empirical evidence of actual harms to consumer welfare should inform any
36 analysis and rulemaking. Local government entry into the provision of wholesale or retail Internet or
37 broadband services in an attempt to create competition should be permissible only in unserved areas and
38 only where no business case for private service exists, upon a vote by local citizens, and subject to
39 protections against cross-subsidies through taxes or other local government service revenues.

40 5. ANY NECESSARY REGULATIONS SHOULD BE SIMPLE, CERTAIN, AND
41 ACCOMPANIED BY SAFEGUARDS.

42 Primary policy decision-making should rest with the legislative branch. Necessary delegations of
43 authority should contain intelligible principles, and not confer unfettered discretion in either process or
44 policy, or employ vague standards on regulatory agencies. Regulations should target actual harms to
45 consumers or to public health or safety, and should not stifle innovation, competition, or access to
46 technologies. Safeguards against regulatory excess may include: public records and other transparency
47 measures; requirement that executive branch officials sign rules before they take effect; mandating cost-
48 benefit analysis for economically significant rules; and attaching forbearance and sunsets in a certain
49 timeframe to all new rules.

50 6. DEREGULATION SHOULD BE CONTINUOUSLY PURSUED TO REDUCE BURDENS AND
51 PROMOTE GROWTH AND INNOVATION

52 Government policy should encourage innovation, investment and competition by ongoing removal of
53 outdated regulations and other barriers to entry to the marketplace, and no new regulations should be
54 adopted unless there is a showing of market failure or actual consumer harm. Implicit subsidies built into
55 regulated rates are not sustainable and should be phased out. Any remaining subsidies should be explicit
56 and preferably targeted to end-users as necessary.

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MOTION

Rep. Thoreson moves for the Communications and Technology Task Force to endorse the Digital Due Process Coalition.

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Summary: Cell phones, particularly the newer smartphones and their ability to store and retrieve data, present new challenges for laws protecting personal information from things such as theft or unauthorized search. Calendars, pictures, videos, e-mails, saved e-mails, instant messages, text messages, Internet browsing histories are available on smartphones. Access to cloud storage via smartphones also allows access to personal and business files, which impact the economy if they are compromised. Cell phones present numerous legal issues with Fourth Amendment implications, particularly the ability to search data incident to arrest, and various courts are ruling differently. This model act aims to provide some clarity for the courts, law enforcement, and consumers by stating that a warrant or express written consent is required prior to search of wireless communications device incident to arrest.

The Electronic Data Privacy Protection Act

1 SECTION 1. {Title} This bill may be cited as the Electronic Data Privacy
2 Protection Act.

3 SECTION 2. {Purpose} The purpose of this bill is to clarify requirements for
4 searches of cell phones and other mobile devices incident to arrest.

5 SECTION 3. {Definitions}

6 (A) As used in this section, 'cellular or other portable electronic wireless
7 communications device' means a moveable or transportable device that is
8 capable of creating, receiving, accessing, or storing electronic data or
9 communications and includes, but is not limited to, cellular telephones or
10 'smart phones'.

11 SECTION 4. {Warrant or express written consent required prior to search of
12 wireless communications device incident to arrest}

13 (A) Notwithstanding another provision of law, information contained or stored in
14 a cellular or other portable electronic wireless communications device is not
15 subject to a search by a law enforcement officer incident to a lawful
16 custodial arrest except pursuant to the provisions of sections of state
17 code providing for the issuance, execution, and return of a search warrant or
18 pursuant to the express written consent of the person subject to the lawful
19 custodial arrest or other lawful owner of the device.

20 SECTION 5. {Limitations}

21 (A) The repeal or amendment by this act of any law, whether temporary or
22 permanent or civil or criminal, does not affect pending actions, rights, duties,

23 or liabilities founded thereon, or alter, discharge, release or extinguish any
24 penalty, forfeiture, or liability incurred under the repealed or amended law,
25 unless the repealed or amended provision shall so expressly provide. After
26 the effective date of this act, all laws repealed or amended by this act must
27 be taken and treated as remaining in full force and effect for the purpose of
28 sustaining any pending or vested right, civil action, special proceeding,
29 criminal prosecution, or appeal existing as of the effective date of this act,
30 and for the enforcement of rights, duties, penalties, forfeitures, and liabilities
31 as they stood under the repealed or amended laws.

32 SECTION 6. {Effective Date} This act takes effect upon approval by the Governor.

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Summary: Demand for wireless data and usage continues to grow. With the growth in demand for wireless data, there is a growing need for the government to make available additional commercial spectrum. This model resolution urges Congress, the Federal Communications Commission, and the National Telecommunications and Information Administration to use market-based mechanisms to free up spectrum.

A RESOLUTION SUPPORTING ADDITIONAL COMMERCIAL SPECTRUM

1 For the purpose of urging Congress to continue to deploy commercial spectrum on a predictable,
2 expedient basis through auctions, with no government intervention in the form of excessive regulation,
3 fees or taxes and allowing free market principles of consumer demand to dictate the efficient use of all
4 commercial spectrum.

5 **WHEREAS** for the first time in United States history, at the end of 2011, the number of total wireless
6 subscriber connections (316 million) has surpassed the population (315.3 million) of the United States
7 and its territories (Puerto Rico, Guam and the U.S. Virgin Islands);ⁱ

8 **WHEREAS** since 2001, wireless providers have invested more than \$258 billion in capital expenditures to
9 accommodate U.S. wireless demand;ⁱⁱ

10 **WHEREAS** 2011 was the largest annual increase of operational cell sites with 283,385 at year-end,
11 which was 30,299 more than 2010;ⁱⁱⁱ

12
13 **WHEREAS** the wireless industry is responsible for indirectly and directly supporting 3.8 million jobs, or
14 2.6% of all U.S. employment;^{iv}

15
16 **WHEREAS** the burgeoning app economy, beginning in 2007, has created 519,000 jobs in the United
17 States, nearly \$19 billion in revenue, and is expected to generate \$46 billion by 2016;^v

18
19 **WHEREAS** the wireless industry contributes \$195.5 billion annually to U.S. GDP;^{vi}

20 **WHEREAS** the demand for wireless data and usage is exploding, doubling in each of the last three years,
21 amounting to more than 1.1 trillion megabytes in the last 12 months;^{vii}

22 **WHEREAS** by mid-year 2012, voice and text traffic showed year-over-year increases, to total more than
23 2.3 trillion minutes of use (MOU) and 2.3 trillion SMS messages for the last 12 months;^{viii}

24 **WHEREAS** by mid-year 2012, wireless carriers reported 300.4 million wireless data-capable devices,
25 where more than 130.8 million of these devices are smartphones and more than 21.6 million are
26 wireless-enabled laptops, tablets, or wireless broadband modems;^{ix}

27 **WHEREAS** in the past 10 years, the FCC's commercial spectrum auctions have raised more than \$34
28 billion from the wireless industry;^x

29 **WHEREAS** across 26 member countries of the Organisation for Economic Co-operation and
30 Development (“OECD”), as of year-end 2011, wireless customers in the U.S. used the most voice
31 minutes, and paid the lowest average revenue per minute among these countries;^{xi}

32 **WHEREAS** the United States is one of only three OECD countries with five or more mobile wireless
33 carriers competing in its wireless market;^{xii}

34 **WHEREAS** the United States is an efficient user of commercial spectrum with only 504 MHz of spectrum
35 available or in the pipeline for mobile broadband use, when compared with other OECD countries, such
36 as: Japan with 755 MHz, Germany with 615 MHz, the United Kingdom with 603 MHz, and Spain with 600
37 MHz of spectrum allocated or in the pipeline for mobile broadband use;^{xiii}

38 **WHEREAS** the explosion of wireless usage highlights why the search for more spectrum is imperative
39 and important to all types of consumers, individual and businesses alike;

40 **WHEREAS** the FCC’s National Broadband Plan provides that an additional 500 MHz of spectrum should
41 be made available for commercial use by 2020, and calls for at least 300 MHz of that spectrum to be
42 made available by 2015;

43 **WHEREAS** this additional spectrum has the potential to create an additional 350,000 new U.S. jobs,
44 increase of \$166 billion in U.S. GDP, boost of \$23.4 billion in government revenues, and increase of
45 \$13.1 billion in wireless applications and content sales;^{xiv}

46 **WHEREAS** the Administration, Congress on a bi-partisan basis, and the Federal Communications
47 Commission support the fact the United States faces a spectrum shortage in the immediate future;^{xv}

48 **WHEREAS** it has historically taken between six to thirteen years to identify, clear, auction and deploy
49 commercial spectrum;

50 **NOW THEREFORE BE IT RESOLVED** that all state delegations to the United States Congress,
51 Commissioners of the Federal Communications Commission and the National Telecommunications and
52 Information Administration are urged to vigorously support all appropriate legislative and regulatory
53 actions that would further the availability and deployment of spectrum for commercial wireless use;

54 **BE IT FURTHER RESOLVED** that any such federal legislative or regulatory action should focus upon, or
55 contain, the intent of the following guidelines:

56 Implement market-based mechanisms, such as competitive bidding and auctions for commercial
57 spectrum assignments, which would greatly reduce or eliminate speculation;

58 Implement a process that expedites and streamlines the process of bringing spectrum to the
59 commercial market;

60 Reduce regulation and rules to encourage flexible use of all assigned frequencies, while
61 maintaining broad requirements, thereby encouraging development of new innovations in services and
62 ensuring more efficient use of all assigned commercial spectrum.

ⁱ CTIA-The Wireless Association ®: “Semi-Annual Mid-Year 2012 Survey,” October 11, 2012.

ⁱⁱ *Ibid.*

ⁱⁱⁱ CTIA-The Wireless Association ®: “Year-End Data Survey Results,” April 13, 2012.

^{iv} Roger Entner, Recon Analytics: “Wireless Industry: The Essential Engine of US Economic Growth,” April 30, 2012, <http://reconanalytics.com/2012/04/essential-engine-of-us-economic-growth>.

^v Dr. Michael Mandel and Judith Scherer, MCP, MA: “The Geography of the App Economy,” September 20, 2012, http://files.ctia.org/pdf/The_Geography_of_the_App_Economy.pdf.

^{vi} Recon Analytics Report: “Wireless Industry: The Essential Engine of US Economic Growth,” *op cit.*

^{vii} CTIA-The Wireless Association ®: “Semi-Annual Mid-Year 2012 Survey,” October 11, 2012.

^{viii} *Ibid.*

^{ix} *Ibid.*

^x FCC Auctions: http://wireless.fcc.gov/auctions/default.htm?job=auctions_home, last accessed October 18, 2012.

^{xi} FCC Reply Comments of CTIA-The Wireless Association ®: “In The Matter of Wireless Telecommunications Bureau Seeks Comment on the State of Mobile Wireless Competition,” WT Docket No. 11-186, April 30, 2012.

^{xii} Glen Campbell, Bank of America Merrill Lynch, Global Wireless Matrix 1Q 2012: What Happened to Revenue Growth?, April 19, 2012.

^{xiii} FCC Press Release: “FCC Removes Regulatory Barriers to Free Up 30 MHz of Broadband Spectrum,” October 17, 2012, <http://www.fcc.gov/document/fcc-removes-barriers-free-spectrum>.

^{xiv} Recon Analytics Report: “Wireless Industry: The Essential Engine of US Economic Growth,” *op cit.*

^{xv} FCC Staff Technical Paper: “Mobile Broadband: The Benefits of Additional Spectrum,” October 2010, p. 19, <http://download.broadband.gov/plan/fcc-staff-technical-paper-mobile-broadband-benefits-of-additional-spectrum.pdf> (“Even with the conservative set of assumptions used in this model, it is apparent that the nation faces the prospect of a spectrum shortage within the next five years.”).

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Summary: Several state legislatures and state public utility commissions are examining ways to modernize their electric power grids. These efforts to modernize electric power grids have raised significant issues relating to reliability, efficiency, privacy, and cybersecurity, among others, for policymakers and consumers to consider. To assist policymakers as they consider these issues, this resolution establishes seven foundational principles for electric power grid modernization.

Resolution in Support of Electric Power Grid Modernization

1 WHEREAS, ALEC supports the modernization of the electric power grid to make it more
2 efficient and offer benefits to consumers; *and*

3
4 WHEREAS, ALEC has previously adopted energy principles that express that reliable
5 electricity supply depends in part upon significant improvements of the electric power grid; *and*

6
7 WHEREAS, State regulatory commissions, acting under authority granted by state legislatures,
8 are responsible for ensuring that electric power grid modernization investments funded wholly or
9 in part by retail ratepayer dollars are just and reasonable, and properly balance the needs of all
10 consumers, as well as the needs of utilities; *and*

11
12 WHEREAS, State legislators and regulators are in position to consider unique local situations,
13 including electric power market structures, infrastructure needs, consumer concerns, and policy
14 priorities; *and*

15
16 WHEREAS, ALEC members have participated in dialogues with governmental and industry
17 experts on electric power grid modernization, addressing important issues including reliability,
18 cyber security, benefits and costs, consumer education and consumer protection, including
19 consumer privacy; *now, therefore be it*

20
21 RESOLVED, That the American Legislative Exchange Council while recognizing that electric
22 power grid modernization will evolve over time and additional principles may emerge, endorses
23 the following foundational principles relating to electric power grid modernization for the
24 purpose of educating ALEC members and identifying issues of interest to State legislators, the
25 federal government and others:

- 26
27 • *Electric Power Grid Modernization Investments Can Provide Benefits to Consumers.*
28 State legislators should consider the potential for electric power grid modernization
29 investments to provide for a more resilient power system, increase operational
30 efficiencies, increase electric grid reliability, reduce outages, reduce outage restoration
31 time, improve power quality, reduce peak demand, improve overall system efficiency,
32 provide consumers with new information and tools to voluntarily control their own
33 energy costs, integrate an increasingly diverse set of energy resources, and enable
34 economic growth and innovation.
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- ***Grid Modernization Deployment Projects Need to Demonstrate That the Benefits Outweigh Costs.*** When evaluating proposed electric power grid modernization investments, State legislators and regulators should require the quantification of the benefits and costs of proposed projects, to the extent reasonably possible. Any qualitative benefits and costs used in the analysis and decision-making should be identified and articulated, to the extent reasonably possible. State legislators and regulators should request utilities to identify the risks and rewards of electric power grid modernization investment projects, and allocate those risks and rewards appropriately to utility shareholders and consumers.
 - ***Prudent Costs Must Be Recovered.*** Cost recovery for electric power grid modernization investments should be predicated primarily on the determination of the prudence and reasonableness of such investments.
 - ***Advanced Meters are an Important Component of a Modernized Grid.*** State legislators and regulators should consider whether and how proposed grid modernization projects will include the deployment of advanced meters. Deployment of advanced electric metering systems enable electric utilities to realize substantial operational cost efficiencies, helping to keep the cost of providing service to customers down. Advanced electric meters can also provide consumers with information on their electric consumption, and enable them to voluntarily participate in programs to efficiently optimize their use of electricity, helping them to reduce their energy cost.
 - ***Rules to Govern Access to Data are Necessary.*** Customers should have access to information about their own energy usage. Such Consumer Energy Usage Data (CEUD) should continue to be available to the regulated utility serving the customer for the purpose of planning and operating reliable and efficient power delivery systems, and billing customers for the services they use. Rules that govern data access must protect consumer privacy. When considering rules to govern access to CEUD, State legislators and regulators should consider: how third party entities will receive authorization to obtain CEUD, which entities will be responsible for providing CEUD to authorized entities, in what form, and at what cost, if any; how to ensure that consumers have affordable and timely access to their own CEUD; what data, if any, should be made available, with consumers' informed consent and authorization, in a competitively neutral manner to utility affiliates and third parties; and how the data access rules will affect innovation. The North American Energy Standards Board's recommended practices for ensuring customer data privacy, *Third Party Access to Smart Meter-based Information*, provide a good reference point when developing such rules.
 - ***Safeguarding the Privacy of Consumers' Data is Critical.*** Consumer privacy is essential and should be protected. When considering proposed electric power grid modernization investments, State policy makers should examine policies, practices, and systems to protect customer data privacy. Electric utilities should be required to meet all legislative and regulatory requirements regarding consumer privacy, and to operate on the premise that they have a duty to protect CEUD from unauthorized disclosure.

82 • *Cyber and Physical Security of the Modernized Grid is Essential.* State policy makers
83 should hold utilities responsible for ensuring that electric power grid modernization
84 technologies are deployed in a manner consistent with reasonable and effective cyber and
85 physical security best practices. Systems should be designed to mitigate risks and
86 enhance the resiliency of the electric power grid, and preserve the accuracy, integrity, and
87 privacy of data. State legislators and regulators should refer to the cyber security
88 standards promulgated by the North American Electric Reliability Corporation and the
89 National Institute of Standards and Technology cyber security guidelines, while
90 recognizing that cyber security requires coordination, adaptability, and resiliency that go
91 beyond standards compliance. State public utility commissions should require utilities to
92 employ cost-effective measures to protect the electric power grid's critical systems, while
93 recognizing that a determined adversary may be capable of infiltrating non-essential
94 systems. Further, State public utility commissions may want to assure that utilities have
95 recovery plans in the event of a successful cyber or physical threat.

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