

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

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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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Old Model Legislation *2012 Review Process*

- **Statement of Principles** (*page 2*)
- **Model Acts** (*page 17*)
- **Model Resolutions** (*page 74*)

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Statement of Principles

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Model Legislation for Review

{A1} Statement of Principles for Slamming

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

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

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

- 16 • A clear communication of the exact service to be changed and the affirmation of the subscriber that
17 the selection of the telecommunications provider will result in a change of providers.
- 18 • This communication should also contain the name of the selected provider, the selected provider's
19 toll-free telephone number and the charges associated with the change.

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

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

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

- 27 • Civil penalties may include fines, suspension or revocation of operating authority.
- 28 • Restitution paid to subscriber and authorized carrier
- 29 • Require the unauthorized carrier to pay for reasonable billing and collection expenses, including
30 attorney fees, incurred by the authorized carrier.

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- 31 • Require the unauthorized carrier to pay for the expenses of restoring the subscriber to his or her
32 authorized carrier.
- 33 4. Provide language to make slamming unlawful.
- 34 • No telecommunications carrier shall execute an unauthorized conversion of a subscribers
35 telecommunications provider to another telecommunications provider
- 36 • Provide the appropriate enforcement agency with the authority to investigate incidents of slamming
37 to pursue appropriate legal remedies on behalf of the state and consumers
- 38 5. Clarify the rights and remedies available to customers with regard to easily accessible means of
39 resolving disputes over unauthorized, misleading, or fraudulent practices.
- 40 6. Provide subscribers the option of a preferred carrier freeze, which prevents a change in a subscriber's
41 preferred carrier selection, including a reasonable procedure(s) for lifting the freeze.
- 42 7. States should write and interpret statutes and regulations in a manner consistent with the federal law
43 and the Federal Communications commission's slamming rules and orders.

Adopted by the Telecommunications and Information Technology Task Force in 1999.

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Model Legislation for Review

{A2} 2003 Principles on Online Privacy

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

5
6 In order to secure the economic growth and vitality of the electronic marketplace, The American
7 Legislative Exchange Council has developed the following principles regarding the preservation of online
8 privacy:

9
10 **1. The private sector should lead.** For electronic commerce to flourish, the private sector must continue
11 to lead through self-regulation. Innovation, expanded services, broader participation, and lower prices
12 will arise in a market driven arena, not in an environment that operates as a regulated industry.

13
14 **2. Government should avoid undue restrictions on electronic commerce.** Parties should be able to enter
15 into legitimate agreements to buy and sell products and services across the Internet with minimal
16 government involvement or intervention. Unnecessary regulation of commercial activities will distort
17 development of the electronic marketplace by decreasing the supply and raising the costs of products
18 and services for the consumer. Governments should refrain from imposing new and unnecessary
19 regulations and bureaucratic procedures on commercial activities that take place via the Internet.

20
21 **3. The marketplace is working.** The online market has responded favorably and swiftly to consumer
22 concerns regarding the collection and use of personal information. Among other privacy improvements,
23 studies have found that Web sites are collecting less information and privacy notices are more
24 prevalent, prominent and complete. Dynamic market forces have encouraged commercial Web sites to
25 reduce the use of third party cookies, to track Internet surfing behavior, and third party sharing of
26 information. What these studies demonstrate is that the market is responding to consumer concerns,
27 without burdensome government regulation.

28
29 **4. To the greatest extent possible, individuals should be directing their privacy choices.** The most
30 effective privacy policies provide notice, choice, security, and access; individuals should be free to select
31 the policy that best fits their needs.¹

*Adopted by ALEC's Telecommunications & Information Technology Task Force at the Annual Meeting
August 1, 2003. Approved by full ALEC Board of Directors August, 2003.*

¹ Studies include: Adkinson, William,; etal. Privacy Online: A Report on the Information Practices and Polices of Commercial Web Sites. Progress & Freedom Foundation. Special Report March 2002. Arrison, Sonia. Consumer Privacy: A Free Market Approach. Pacific Research Institute. 2001.

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Model Legislation for Review

{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
2 national economies. In order to advance competition in telecommunication service it is imperative that
3 certain principles be followed in administering public rights of way. Public policy in this area will have a
4 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
6 Technology Task Force have developed the following principles regarding the administration of public
7 rights of way:

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

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

12 3. Communications industry regulation and general taxes should be set at the state level. Thousands of
13 different local rights-of way policies would drive the cost of compliance up dramatically and would
14 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
16 recovered in a competitively neutral manner. These fees should not be used as a source to offset,
17 replace or enhance local revenue.

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

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

Adopted by the Telecommunications & Information Technology Task Force in 1998.

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Model Legislation for Review

{A4} The Principles of Competitive Telecommunications

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

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

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

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

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

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

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

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

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

38 Regulations which prohibit providers from competing in a market should be abolished. Consumers
39 derive the greatest benefit from competition, and the number of providers in a market should not be
40 artificially constrained by government. Consumers want competition and expect it will result in lower
41 prices and better service. According to a recently released public opinion poll conducted by the
42 Mellman Group, and Public Opinion Strategies for the Alliance for Competitive Communications (April
43 1995), 75 percent of Americans polled believe open competition should be introduced in all
44 markets. Over 75 percent of Americans want Congress to allow local and long distance companies to
45 enter each other's markets at the same time and believe it will result in lower rates. Nearly 80 percent
46 of Americans say they should be able to choose the communications company they do business
47 with. Clearly consumers want competition.

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

52 However, it is important to keep in mind when setting telecommunications public policy the
53 interdependent and the synergistic relationship the current telecommunications public policy has. This
54 policy was developed over a period of 100 years in a regulated monopoly environment where decisions
55 were not based solely on social goals. Any change to one portion of what has become a complex
56 regulatory framework will undoubtedly affect other portions, with potentially unfavorable
57 consequences to the consumer. Therefore, it is critical for legislators to consider the effects of their
58 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*

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Model Legislation for Review

{A5} Statement of Principles: The Internet and Electronic Commerce

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

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

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

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

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

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

29 **Electronic Commerce and Taxation.** Electronic commerce promises to become an increasingly vital
30 component of our states' and national economies. Government policies should not hinder the creation
31 of a workable infrastructure in which electronic commerce can flourish. Policy makers must resist any
32 temptation to apply tax policy to the Internet in a discriminatory manner that hinders growth.

Model Legislation for Review

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

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

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

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Model Legislation for Review

{A6} Principles of Telecommunication Taxation

1 **Summary**

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

9 The historic monopoly status of local companies has rapidly eroded.

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

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

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

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

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

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

Model Acts

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Model Legislation for Review

{C1} Broadband and Telecommunications Deployment Act

1 **Summary**

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

17 **Model Legislation**

18 The people of the State of _____ do enact as follows:

19 **Section 1. Short Title.**

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

21 **Section 2. Legislative Findings and Declarations.**

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

- 25 (a) all entities providing intrastate, interstate or international telecommunications or
26 telecommunications services or deploying facilities to be used directly or indirectly in the provision of
27 such services shall have access to and use of all public rights-of-way within the State in connection with
28 the construction and operation of their networks;
- 29 (b) that state and local units of government controlling such rights-of-way shall issue permits for access
30 to and use of public rights-of-way within a fixed and reasonable time to telecommunications providers,

Model Legislation for Review

31 not to exceed thirty (30) days from the date of application for such permit, and that no additional
32 authorization, franchise or agreement may be required for access to public rights-of-way;

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

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

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

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

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

46 **Section 3. Definitions.**

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

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

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

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

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

Model Legislation for Review

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

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

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

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

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

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

90 **Section 5. Regulations and Fees Relating to Occupation of Public Rights-of-Way; Performance Bonds** 91 **and Indemnification.**

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

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

Model Legislation for Review

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

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

112 (e) Performance Bonds.

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

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

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

137 (f) Indemnification.

Model Legislation for Review

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

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

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

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

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

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

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

168 **Section 7. Severability**

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

172 **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*

175 *August 9, 2002. Approved by full ALEC Board of Directors September, 2002*

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

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,
3 ordinance, resolution or other provision regulating the use of cellular telephones in motor vehicles.

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

7 *Adopted by the Telecommunications & Information Technology Task Force at the Annual Meeting August*
8 *9, 2002. Approved by full ALEC Board of Directors September, 2002.*

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

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Model Legislation for Review

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

1 Parity and Certainty in Regulatory Treatment of High Speed Internet Access Services and Broadband 2 Services and Providers Act

3 *Summary*

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

9 *Model Legislation*

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

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

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

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

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

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

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

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

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

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

Model Legislation for Review

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

32 **Section 2. {Definitions}**

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

39 **Section 3. {Main Provisions}**

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

44 B. An incumbent local exchange telecommunications service provider (ILEC) subject to the provisions of
45 47 U.S.C., Section 251(c) shall be required to provide unbundled access to network elements, including
46 but not limited to loops, subloops, and collocation space within the facilities of the ILEC, to the extent
47 specifically required under Federal Communications Commission regulations or any successor
48 regulations issued by the Federal Communications Commission.

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

51 *Adopted by ALEC's Telecommunications & Information Technology Task Force at the States and Nation*
52 *Policy Summit December 11, 2002. Approved by full ALEC Board of Directors January, 2003*

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

Model Legislation for Review

{C4} Collocation & Streamlined Tower Siting Act

1 **Summary**

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

5 **Model Legislation**

6 The people of the State of _____ do enact as follows:

7 **Section 1. {Short Title}**

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

9 **Section 2. {Legislative Findings and Declarations}**

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

14 **Section 3. {Definitions}**

- 15 1. “Antennae” means any device that facilitates the transmission of CMRS.
- 16 2. “Local government” means any county, city, town, or village within the State, or any subdivision,
17 agency, department, or instrumentality of the State or of any such county, city, town, or village.
- 18 3. “State (Public) rights-of-way” means the surface and the area across, in, over, along, upon and below
19 the surface of the public streets, roads, bridges, sidewalks, easements, lanes, courts, ways, alleys, and
20 boulevards, including, public lands and waterways used as public rights-of-way, as the same now or may
21 thereafter exist, which are under the jurisdiction or control of a unit of government.
- 22 4. “Wireless telephone service” means Commercial Mobile Radio Services” (“CMRS”) as defined in 47
23 C.F.R. Section 20.3
- 24 5. “Wireless communications facility” means facilities and equipment, including but not limited to any
25 and all associated equipment and software, used directly or indirectly in the provision of
26 telecommunications and/or wireless telecommunications services.
- 27 6. “Wireless telephone provider” means any person engaged in the offering of communications services
28 utilizing the radio frequency spectrum or a provider of Commercial Mobile Radio Services” (“CMRS”) as
29 defined in 47 C.F.R. Section 20.3.

30 **Section 4. Encouraging collocation**

Model Legislation for Review

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

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

45 **Section 5. Streamlined Statewide Tower Siting Permitting and Application**

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

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

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

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

Model Legislation for Review

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

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

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

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

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

98 **Section 6. {Severability}**

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

102 **Section 7. {Effective Date}**

103 This bill will become effective upon enactment.

Model Legislation for Review

Adopted by ALEC's Telecommunications & Information Technology Task Force at the Annual Meeting August 1, 2003. Approved by full ALEC Board of Directors August, 2003.

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

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The Center for Media and Democracy

Model Legislation for Review

{C5} Wireless Competition Act

1 **Summary**

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

4 **Model Legislation**

5 The people of the State of _____ do enact as follows:

6 **Section 1. {Short Title}** This Act shall be known as the “Wireless Competition Act.”

7 **Section 2. {Legislative Findings and Declarations}** A bill for an act to amend the [insert appropriate code
8 sections] concerning wireless telecommunications.

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

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

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

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

16 **THEREFORE**, the general assembly agrees to the following enactment.

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

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

*Adopted by the Telecommunications & Information Technology Task Force at the Spring Task Force
Summit May 1, 2004. Approved by the full ALEC Board of Directors June, 2004.*

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

Model Legislation for Review

{C6} Cable and Video Competition Act

1 (Certainty in Regulatory Treatment of Competitive Cable Service Providers and Video Service 2 Providers)

3 *Summary*

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

14 *Model Legislation*

15 An act to add Sections _____ to the [STATE] _____ Code.

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

17 **Section 1. {Legislative Findings}** A new Section _____ is added to the _____ Code to read as
18 follows:

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

20 The Legislature finds and declares all of the following:

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

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

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

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

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

Model Legislation for Review

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

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

45 **Section 2. {Definitions}** A new Section _____ is added to the _____ Code to read as follows:

46 “For purposes of this Act:

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

48 (b) ‘Cable Operator’ is defined as set forth in 47 U.S.C. Section 522(5).

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

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

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

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

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

63 (h) ‘Franchise’ means an initial authorization, or renewal of an authorization, issued by a Franchising
64 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

Model Legislation for Review

101 deploy any facilities or equipment. [STATE] ____ Code §§ _____ shall not apply to Competitive Cable
102 Service Providers or Competitive Video Service Providers.

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

107 (b) Customer access to community programming.

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

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

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

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

133 (5) A court of competent jurisdiction shall have exclusive jurisdiction to enforce any requirement under
134 this section.

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

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

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

141 Competitive Cable Service Provider and Competitive Video Service Provider Fee.

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

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

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

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

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

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

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

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- 170 (C) Refunds, rebates or discounts made to subscribers, leased access providers, advertisers, or any
171 municipality or other unit of local government.
- 172 (D) Any revenues from services not classified as Cable Service or Video Service, including, without
173 limitation, revenue received from telecommunications services, revenue received from information
174 services, revenue received in connection with advertising, revenue received in connection with home
175 shopping services, or any other revenues attributed by the Competitive Cable Service Provider or
176 Competitive Video Service Provider to non-cable service or non-video service in accordance with any
177 applicable laws, rules, regulations, standards or orders.
- 178 (E) Any revenue paid by subscribers to home shopping programmers directly from the sale of
179 merchandise through any home shopping channel offered as part of the Cable Services or Video
180 Services.
- 181 (F) The sale of Cable Services or Video Services for resale in which the purchaser is required to collect
182 the 5% fee from the purchaser's customer.
- 183 (G) Any tax of general applicability imposed upon the Competitive Cable Service Provider or
184 Competitive Video Service Provider or upon subscribers by a city, state, federal or any other
185 governmental entity and required to be collected by the Competitive Cable Service Provider or
186 Competitive Video Service Provider and remitted to the taxing entity (including, but not limited to,
187 sales/use tax, gross receipts tax, excise tax, utility users tax, public service tax, and communication
188 taxes), and including the 5% fee specified in this subsection.
- 189 (H) The provision of Cable Services or Video Services to public institutions, public schools or
190 governmental entities at no charge.
- 191 (I) Any foregone revenue from the Competitive Cable Service Provider's or Competitive Video Service
192 Provider's provision of free or reduced-cost video service to any person, including, without limitation,
193 any municipality and other public institutions or other institutions.
- 194 (J) Sales of capital assets or sales of surplus equipment.
- 195 (K) Reimbursement by programmers of marketing costs incurred by the Competitive Cable Service
196 Provider or Competitive Video Service Provider for the introduction or promotion of new programming.
- 197 (L) Directory or Internet advertising revenue including, but not limited to, yellow page, white page,
198 banner advertisement and electronic publishing.
- 199 (M) Copyright fees paid to the United States Copyright Office.
- 200 (d) At the request of a Franchising Entity, no more than once per year, the Secretary of State may
201 perform reasonable audits of the Competitive Cable Service Provider's or Competitive Video Service
202 Provider's calculation of the Competitive Cable Service Provider or Competitive Video Service Provider
203 Fee.

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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
Policy Summit, December 2005. Approved by the ALEC Board of Directors, April 20, 2006.*

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

Model Legislation for Review

{C7} Phone Records Act

1 **Summary**

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

4 **Model Legislation**

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

7 (1) In this section:

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

11 (b) "Customer" means a person who subscribes to telephone service.

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

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

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

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

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

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

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

25 (e) "Telephone service provider" means a person who provides telephone service to a customer.

Model Legislation for Review

- 26 (2) No person may do any of the following:
- 27 (a) Obtain, attempt to obtain, or conspire with another to obtain a telephone record that pertains to a
28 customer who is resident of this state, without the customer's consent, by doing any of the following:
- 29 1. Making a false or deceptive statement to an employee, representative, or agent of a telephone
30 service provider.
 - 31 2. Making a false or deceptive statement to a customer of a telephone service provider.
 - 32 3. Accessing such customer's telephone record via the Internet.
 - 33 4. Knowingly providing to a telephone service provider a document that is fraudulent, that has been lost
34 or stolen, or that has been obtained by fraud or contains a false, fictitious, or fraudulent statement or
35 representation.
- 36 (b) Ask another person to obtain a telephone record knowing that the person will obtain the telephone
37 record in a manner prohibited under this section.
- 38 (c) Sell or offer to sell a telephone record obtained in a manner prohibited under this section.
- 39 (3)(a) A person who violates this section is guilty of a Class I felony, a fine not to exceed \$10,000 or
40 imprisonment not to exceed 3 years and 6 months, or both, if the violation involves one telephone
41 record.
- 42 (b) A person who violates this section is guilty of a Class G felony, a fine not to exceed \$25,000 or
43 imprisonment not to exceed 10 years, or both, if the violation involves 2 or more telephone records.
- 44 (c) A person who violates this section is guilty of a Class E felony, a fine not to exceed \$50,000 or
45 imprisonment not to exceed 15 years, or both, if the violation involves more than 10 telephone records.
- 46 (4)(a) In addition to the penalties authorized under sub. (3), a person who violates this section may be
47 required to forfeit personal property used or intended to be used in the violation.
- 48 (b) In an action to enforce this section, the court shall award to a person who is the subject of a
49 telephone record involved in a violation of this section all of the following:
- 50 1. The amount of the person's pecuniary loss suffered because of a violation of this section, if proof of
51 the loss is submitted to the satisfaction of the court, or \$1,000, whichever is greater.
 - 52 2. The amount of any gain to the violator as a result of the violation.
- 53 (5) This section does not apply to any of the following:

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- 54 (a) Action by a law enforcement agency in connection with the official duties of the law enforcement
55 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
58 following:
- 59 a. Provide telephone service to a customer.
- 60 b. Protect an individual or the telephone service provider from fraudulent, abusive, or unlawful use of
61 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
65 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
67 an emergency involving immediate danger of death or serious physical injury to any person justifies
68 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
70 or acquisition of a portion or all of a business, or the migration of a customer from one carrier to
71 another.
- 72 (c) A disclosure pursuant to Section (5)(b), if such disclosure is made reasonably and in good faith,
73 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.

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

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

1 **Summary**

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

8 **Model Legislation**

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

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

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

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

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

23 **Section 2. {Definitions}**

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

25 "Board" means the board of directors of the authority.

26 "Commission" means a permanent legislative agency.

27 "Gateway" means any centralized electronic information system by which public information shall be
28 provided by the internet.

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

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

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

35 **Section 3. {Main Provisions}**

36 (A) Purpose and Duties

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

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

40 (ii) provide appropriate oversight of any network manager;

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

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

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

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

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

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

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

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

58 (ii) the secretary of state;

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

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

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

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

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

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

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

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

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

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

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

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

90 (2) all interested state agencies may participate with the Information Network of (insert state) in
91 providing such assistance as may be requested for the achievement of its purpose. Agencies may
92 recover actual costs incurred by providing such assistance. Services and information to be provided by

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93 any agency shall be specified pursuant to contract between the Information Network of (insert state)
94 and such agency and shall comply with the provisions of (insert state statute).

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

98 (D) Duties and Compensation for Network Manager

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

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

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

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

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

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

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

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

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

121 (F) Gifts, donations and grants

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

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

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

129 (G) Staff and other assistance and cost of assistance

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

134 (H) Financing of Operations

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

138 (I) Other

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

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

144 **Section 4. {Effective Date}**

Adopted by ALEC's Telecommunications & Information Technology Task Force on January 13, 2001.

Approved by full ALEC Board of Directors February, 2001.

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

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Common Cause and
The Center for Media and Democracy

Model Legislation for Review

{C9} Remote Video Court Appearance Act

1 **Summary**

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

5 **Model Legislation**

6 {Title, enacting clause, etc.}

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

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

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

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

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

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

22 **Section 3. {Policy and rules.}**

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

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

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

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

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

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

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

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

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

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

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

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

56 **Section 6. {Parole hearings.}**

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

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

64 **Section 7. {Severability clause.}**

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65 **Section 8. {Repealer clause.}**

66 **Section 9. {Effective date.}**

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{C10} Distance Learning: Wiring the Public Schools Act

1 Summary

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

5 Model Legislation

6 **Section 1. {Title.}** This Act may be cited as Distance Learning: Wiring the Public Schools Act.

7 Section 2. {Public policy purpose.}

- 8 (A) It is state policy that all students in the state, regardless of economic or geographic status, deserve the
9 educational benefits offered by distance learning through state-of-the-art technology.
10 (B) The state recognizes that distance learning can enhance the educational opportunities for all schools,
11 especially those with unique needs.
12 (C) The state also recognizes the obligation to utilize the cost-efficient opportunity of new building and
13 renovation of schools to install wiring in education facilities, and to avoid costly independent retro fitting
14 at a later time.

15 **Section 3. {Definitions.}** In this Act, the following words have the meanings indicated.

- 16 (A) "Distance learning" means the transmission of educational information and interaction of geographically
17 dispersed individuals or groups through a single medium or a combination of audio, video, and data.
18 (B) "Major renovation" means the reconstruction or rehabilitation of a school building during which the
19 renovation creates a cost-efficient opportunity to install wiring and other equipment necessary for the
20 implementation of distance learning.
21 (C) "Wiring" means copper, coaxial, fiber optic, or any other cabling that has the capabilities of signal
22 conveyance.

23 Section 4. {Statement of purpose.}

- 24 (A) At the time that a school district is developing a plan for the construction of a new school or for a major
25 renovation of an existing school, the school district shall seriously consider the cost efficient inclusion of
26 wiring and other equipment necessary for distance learning.
27 (B) The renovation plan shall include:
28 (1) Consultation with the telecommunication hardware and service providers to determine options
29 available to the schools which shall be documented in the pain;
30 (2) A listing of existing distance learning programs which they may join;
31 (3) The cost of the wiring and other equipment necessary for distance learning.

32 Section 5. {Severability clause.}

33 Section 6. {Repealer clause.}

34 Section 7. {Effective date.}

Model Legislation for Review

{C11} Distance Learning Commission Act

1 **Summary**

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

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

14 **Model Legislation**

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

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

- 17 (A) It is state policy that all students in the state, regardless of economic or geographic status,
18 deserve the educational benefits offered by distance learning through state-of-the-art
19 technology.
- 20 (B) Distance learning programs, ranging from voice and data communication to state-of-the-art
21 audiovisual delivery, have proven to be both innovative instructional tools and viable curriculum
22 alternatives.
- 23 (C) The state should set clear goals and provide leadership in the development of a comprehensive
24 distance learning policy.
- 25 (D) Without a distance learning policy, the development of innovative distance learning programs in
26 this state will be seriously impeded.
- 27 (E) A Distance Learning Commission should be formed to develop Statewide distance learning
28 programs and applications and to assist the Department of Education in providing technical
29 assistance to potential distance learning providers.

30
31 **Section 3. {Definitions.}** The following words and phrases when used in this Act shall have the meanings
32 given to them in this Section, unless the context clearly indicates otherwise:

- 33 (A) "Commission" means the Distance Learning Commission established in Section 4.
34 (B) "Department" means the Department of Education of the state.
35 (C) "Distance learning" means the transmission of educational information and interaction of
36 geographically dispersed individuals or groups through a single medium or a combination of
37 audio, video, and data.

Model Legislation for Review

38

39 Section 4. {Commission.}

40 (A) A Distance Learning Commission is hereby established. The commission shall be composed of 13
41 members who shall be appointed as follows:
42

43 (1) The Superintendent of Public Instruction shall appoint one representative from a county
44 office of education.

45 (2) The Governor shall appoint one practicing school administrator from an organization
46 representing state administrators, one business representative with experience in
47 applications of technology, one practicing school teacher representing state teachers,
48 one library media specialist from an association representing library media specialists,
49 one public member from the state office of telecommunications or with expertise in
50 application of technology, and one member of the faculty of a post-secondary
51 institution.

52 (3) The Senate Rules Committee shall appoint one business representative with experience
53 in applications of technology, and one practicing secondary school teacher representing
54 technology-using educators.

55 (4) The Speaker of the House of Representatives shall appoint one business representative
56 with experience in applications of technology, and one practicing elementary school
57 teacher representing state teachers.

58 (5) The Chairman of the Public Utilities Commission shall appoint one regulator with
59 knowledge and experience in telecommunications regulatory history, and one
60 recognized consumer.

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

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

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

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

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

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

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

80 Section 5. {Powers and duties of commission.}

81 (A) The commission shall engage in the development of a comprehensive distance learning policy.
82 The policy shall:

Model Legislation for Review

83

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.}**

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

Model Legislation for Review

{C12} Telecommunications Regulatory Reform Act

1 **Summary**

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

6 **Model Legislation**

7 **{Title, enacting clause, etc.}**

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

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

- 10 (A) Preserve the commitment to universal service. In most cases this should include a continued
11 commitment to and reliance on federal and/or state programs for the "truly needy", such as
12 "Link up" and "Life line". In today's increasingly competitive environment all service providers
13 must target subsidies to the truly needy in order to ensure universal access.
14
- 15 (B) Rely on marketplace forces to determine the price, terms, availability, and conditions of
16 competitive and discretionary services.
17
- 18 (C) Where regulation is necessary, focus on price and quality of service, instead of on the provider.
19 Regulators can assure customers of continued high quality service at affordable prices and the
20 providers can benefit from their own efficiencies and successful marketing efforts.
21
- 22 (D) Increase incentives to companies to provide the most efficient services and products and
23 provide for options to move away from rate of return regulation. Providers will have an
24 incentive to more effectively respond to customers' needs and the realities of the competitive
25 marketplace and be encouraged to invest in the telecommunications infrastructure. This will
26 offer opportunities for improvements in economic development, and in delivery of essential
27 services such as education and health care.
28
- 29 (E) Streamline the regulatory process for setting and adjusting basic local exchange and other
30 regulated service rates. In an increasingly competitive environment, there must be an
31 acceptable way, short of the lengthy hearings associated with general rate cases, to address the
32 need for price changes.
33

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

- 36 (A) "Access service" means the provision of access to a local exchange network for the purpose of
37 enabling a provider to originate or terminate telecommunications service within the exchange.

Model Legislation for Review

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(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 of 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

- 82 (N) "Residential customer" means a person to whom telecommunications services are furnished
83 predominately for personal or domestic reasons.
84
- 85 (O) "Telecommunications provider" or "provider" means a person who for compensation provides
86 telecommunications service.
87
- 88 (P) "Telecommunications services" includes regulated and unregulated services offered to
89 customers for the transmission of two-way interactive communication and associated usage.
90
- 91 (Q) "Toll Service" means the transmission of two-way interactive switched communication between
92 local calling areas. Toll service does not include individually negotiated contracts for similar
93 telecommunication service or wide area telecommunications service.
94
- 95 (R) "Wide area telecommunications service" or "WATS" means the transmission of two-way
96 interactive switched communication over a dedicated access line.
97

Section 4. { Definition on intent. }

98
99
100 Except as otherwise provided in this Act, this Act shall not be construed to prevent any persons from
101 providing telecommunications services in competition with another telecommunication provider.
102

Section 5. {The commission.}

- 103
104
- 105 (A) The commission shall have the jurisdiction and authority to administer this Act.
106
- 107 (B) In administering this Act, the commission shall be limited to the powers and duties prescribed
108 by this Act.
109
- 110 (C) In addition to the other powers and duties prescribed by this Act, the commission shall have the
111 authority to do the following:
112
- 113 (1) Establish by order the manner and form in which telecommunications providers of
114 regulated services within the state keep accounts, books of accounts, records, and
115 memoranda. The commission requirements under this subdivision shall not be in
116 conflict with or in addition to any federal regulations covering the same subject.
117
- 118 (2) Require by order that a provider of a regulated service, including access, make available
119 for public inspection and file with the commission a schedule of the provider's rates,
120 services, and condition of service.
121
- 122 (3) Establish by order the standards for quality of service for each regulated
123 telecommunication service offered in this state.
124
- 125 (4) Assure the availability of high quality basic local exchange services.
126

Model Legislation for Review

127 (5) Issue a yearly report to the legislature and governor.
128

129 **{Specify Information Required}**
130

131 (D) With respect to contested cases the commission shall:
132

133 (1) Upon receipt of an application or complaint filed pursuant to a provision of this Act, or
134 on its own motion, the commission may conduct an investigation, hold hearings, and
135 issue its findings and order in accordance with approved state administrative
136 regulations.
137

138 (2) The commission shall require uniform filing standards for a case commenced under this
139 Section. An application filed under this Act shall contain all information, testimony,
140 exhibits, or other documents and information. The burden of proving a case under this
141 Act shall be with the party filing the application or complaint.
142

143 (3) The commission shall have the power to administer oaths, certify to all official acts, and
144 to compel the attendance of witnesses and the production of papers, books, accounts,
145 documents, and testimony.
146

147 (4) The commission shall issue a final order in a case filed under this Act within 90 days
148 from the date the application or complaint is filed. If a hearing is held, the commission
149 shall have an additional 30 days to issue its final order.
150

151 (5) An order of the commission shall be subject to review as provided by state law.
152

153 (6) Before commencing a hearing under this Section, the commission shall attempt
154 alternative means of resolving a dispute under its jurisdiction.
155

156 (E) If two or more telecommunication providers are unable to agree on a matter relating to a
157 regulated telecommunication service between two parties, then either provider may file with
158 the commission an application for resolution of the matter.
159

160 (F) Complaints on service.
161

162 (1) The commission may investigate and resolve complaints that concern the quality and
163 availability, conditions, or disconnection of a regulated service, or any other provision of
164 this Act that regulates service.
165

166 (2) If the commission finds, after notice and hearing, that the quality, general availability, or
167 conditions for regulated service violate this Act or an order of the commission under this
168 Act, or is adverse to the public interest, the commission may require changes in how the
169 telecommunication services are provided. The commission's authority includes, but is
170 not limited to, the revocation of a license and issuing cease and desist orders.
171

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- 172 (G) Upon complaint and after a review pursuant to Section 5(D), if the commission finds that a new
173 telecommunication service as being offered is adverse to the public health, safety, or general
174 welfare or to the quality of basic local exchange service, the commission may order changes in
175 the terms and conditions under which the service is offered.
176
- 177 (H) Upon application by a service provider, the commission shall deregulate a service of that
178 provider if the commission determines that competition among providers of that service is
179 sufficient to protect the public interest.
180
- 181 (I) If the commission finds that a party's position in a proceeding under this Act was frivolous, the
182 commission shall award to the prevailing party the costs, including reasonable attorney fees,
183 against the non-prevailing party and their attorney.
184
- 185 (1) As used in this Section: "Frivolous" means that at least one of the following conditions is
186 met:
187
- 188 (a) The party's primary purpose in initiating the proceeding or asserting the defense was
189 to harass, embarrass, or injure the prevailing party.
190
- 191 (b) The initiating party had no reasonable basis to believe that the facts underlying its
192 legal position were true.
193
- 194 (c) The initiating party's legal position was devoid of arguable legal merit.
195
- 196 (2) "Prevailing party" means a party who wins the proceedings.
197
- 198 (J) Disclosure
199
- 200 (1) Trade secrets and commercial or financial information submitted pursuant to the
201 provisions of this Act are exempt from disclosure under the Freedom of Information Act.
202
- 203 (2) A protective order entered in a contested case proceeding shall exempt disclosure of
204 information identified in 5 I(1) during the pendency of a contested case preceding.
205
- 206 (3) Nothing in this Section affects the commission's authority to issue protective orders or
207 precludes a party to a proceeding before the commission from obtaining discovery of
208 information pursuant to law or procedure applicable to such proceedings.
209
- 210 (K) Pre-existing clause.
211
- 212 (1) Except as otherwise provided by Section 5(K)(2) or by this Act, all complaints pending
213 before the commission on the effective date of this Act, and all investigations,
214 examinations, and proceedings undertaken, commenced, or instituted by the
215 commission before the effective date of this Act, may be heard, conducted, and

Model Legislation for Review

216 continued to final determination, and all pending actions or proceedings brought by or
217 against the commission may be prosecuted or defended in the same manner.
218

219 (2) The commission shall order the dismissal of all complaints, investigations, examinations,
220 and proceedings undertaken, commenced, or instituted before this Act takes effect that
221 are in conflict, prohibited, or otherwise inconsistent with the provisions of this Act.
222

223 (L) The commission may promulgate rules or issue orders for the implementation and
224 administration of this Act.
225

226 **Section 6. {Basic local exchange services.}**

227

228 (A) Licensure.
229

230 (1) A telecommunication provider not possessing a license on the effective date of this Act
231 shall not provide basic local exchange service in this state until it has obtained a license
232 from the commission pursuant of this Act.
233

234 (2) Except as provided in Section 6(A)(3), a license granted to a telecommunication provider
235 of basic local exchange service before the effective date of this Act shall remain in full
236 force and effect, and carriers need not apply for a new license in order to continue
237 offering or providing service to the extent authorized in the license or this Act.
238

239 (3) The commission shall review, modify, and establish the terms of any license issued to a
240 telecommunication provider of basic local exchange service before the effective date of
241 this Act in order to ensure its conformity with the requirements of this Act.
242

243 (4) Pending the determination of an application for a license, the commission without
244 notice and hearing may issue a temporary license for a period not to exceed one year in
245 cases of emergency to assure maintenance of adequate service or to serve particular
246 customers and may exempt from the requirements of this Act temporary services or
247 operations when the exemption would be in the public interest.
248

249 (B) When granting a license:
250

251 (1) After notice and hearing, the commission shall approve an application for a license if the
252 commission finds both the following:
253

254 (a) The applicant possesses sufficient technical, financial, and managerial resources and
255 abilities to provide basic local exchange service to every person within the
256 geographical area of the license.
257

258 (b) The granting of a license to the applicant would not be contrary to the public
259 interest.
260

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- 261 (2) The commission shall retain a copy of all granted licenses and make all information
262 contained in the license available to the public.
263
- 264 (3) Each provider granted a license shall retain a copy of the license at its principal place of
265 business and make the license available for review to the public.
266
- 267 (C) Before substantially altering the nature or scope of the basic local exchange services authorized
268 under a license, the provider of basic local exchange services shall apply to the commission for
269 approval before making any alterations or additions pursuant to this Act.
270
- 271 (D) Pursuant to the provisions of this Section, the commission shall approve for each provider any
272 alterations to the local exchange rates.
273
- 274 (1) A provider of basic local exchange service shall set the initial rates to be charged under
275 this Act on or before the effective date of this Act, and file them with the commission.
276
- 277 (2) The rates for basic local exchange service shall be just and reasonable as determined by
278 the commission.
279
- 280 (3) A provider may alter its rates for basic local exchange service upon notice to the
281 commission. The notice to the commission of a rate alteration shall be accompanied
282 with sufficient documentary support that the rate alteration is just and reasonable.
283 After consulting with providers, the commission shall establish either by rule or order
284 any documentation that may be required under this subsection. Notice to customers is
285 required and shall be published in a newspaper of general circulation in the service area
286 to be affected within a reasonable time period after the notice of the rate alteration is
287 provided to be the commission, and shall be included in or on the bill each affected
288 customer of the provider in the next billing. The notice shall contain all of the following
289 information:
290
- 291 (a) An estimate of the amount of the annual change for the typical residential customer
292 that would result if the rate alteration is approved by the commission.
293
- 294 (b) A statement that a customer who desires to comment on the rate alteration or who
295 desires the complete details of the rate alteration may call or write the commission.
296
- 297 (c) Either by a complaint filed by an affected party or on the commission's own motion
298 at any time prior to the rate alteration taking effect, the commission may require a
299 filing as provided in Section 5(D) to review a rate set pursuant to Section 6(D)(3) and
300 after the review issue an order approving, modifying, or rejecting the rate alteration
301 including, but not limited to, a refund of collected excessive rates, including interest
302 on the rates.
303
- 304 (d) The commission shall hold a public hearing, if necessary, within 45 days from the
305 date of the notice and issue an order within the 120-day period following the date
306 the application or complaint is filed, finding one of the following:

Model Legislation for Review

- 307
- 308 (i) That the rate alteration is just and reasonable.
- 309
- 310 (ii) That a filing under Section 5(D) should be commenced pursuant to Section
- 311 6(D)(3)(c).
- 312
- 313 (iii) That there is a likelihood that the proposed rate alteration is not just and
- 314 reasonable and order a stay of the rate alteration pending a review of the rate
- 315 under this Section.
- 316
- 317 (E) A telecommunication provider of basic local exchange service is not required to, but may
- 318 provide toll services. If a telecommunication provider that provides basic local exchange service
- 319 does not offer toll or connect with a toll provider, the commission may order a toll provider to
- 320 interconnect with the telecommunication provider upon terms that are fair to both providers.
- 321
- 322 (F) If it is the public policy of the state to subsidize low income customers, then:
- 323
- 324 (1) The commission shall require each provider of residential basic local exchange service to
- 325 offer certain low income customers the availability of basic local exchange service at a
- 326 rate below the regulated rate.
- 327
- 328 (2) The commission shall establish a rate for each subscriber line of a provider to allow the
- 329 provider to recover costs incurred under this Section.
- 330
- 331 (3) The commission by order shall determine which customer's quality for the special rate
- 332 under this Section.
- 333
- 334 **Section 7. {Obligation of service providers.}** Providers of telecommunications service shall not do any of
- 335 the following:
- 336
- 337 (A) Discriminate against another provider by refusing or delaying access to the local exchange.
- 338
- 339 (B) Refuse or delay interconnections or provide inferior connections to another provider.
- 340
- 341 (C) Degrade the quality of access provided to another provider.
- 342
- 343 (D) Impair the speed, quality, or efficiency of lines used by another provider.
- 344
- 345 (E) Develop new services to take advantage of planned but not publicly known changes in the
- 346 underlying network.
- 347
- 348 (F) Refuse or delay a request of another provider for information regarding the technical design
- 349 and features, geographic coverage, and traffic capabilities of the local exchange network.
- 350

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- 351 (G) Refuse or delay access or be unreasonable in connecting another provider to the local exchange
352 whose product or service requires novel or specialized access requirements.
353
- 354 (H) Upon a request, fail to fully disclose in a timely manner all available information necessary for
355 the design of equipment that will meet the specifications of the local exchange network.
356
- 357 (I) Refuse or delay access by any person to another provider.
358
- 359 (J) Sell, lease, or otherwise transfer an asset to an affiliate of the provider for an amount less than
360 the fair market value of the asset.
361
- 362 (K) Buy, lease, or otherwise acquire an asset from an affiliate of the provider for an amount greater
363 than the fair market value of the asset.
364
- 365 (L) Bundle unwanted services or products for sale or lease to another provider.
366
- 367 (M) Except with the approval of the commission, jointly market or offer as a package, at a
368 discounted rate, one or more unregulated services with a regulated service.
369
- 370 (N) Sell service or products, extend credit, or offer other terms and conditions on more favorable
371 terms to an affiliate of the provider or to its retail department that sells end users than the
372 provider offers to other providers.
373
- 374 (O) Refuse, charge, delay, or impair the speed of the connecting of a person to a
375 telecommunication emergency service.
376

377 **Section 8. {Access service.}**

378
379 Each state needs to address its own situation and policy needs as they relate to access service.
380

381 **Section 9. {Toll service.}**

- 382
383 (A) Except as provided by this Section, the commission shall not review or set rates for toll services.
384
- 385 (B) The commission shall require that toll service is universally available on a nondiscriminatory
386 basis to all persons in the state.
387

388 **Section 10. {Discontinuance of service.}**

- 389
390 (A) A telecommunication provider that provides either basic local exchange or toll service, or both,
391 may discontinue either service to an exchange if one or more other telecommunication
392 providers are furnishing substantially the same telecommunication service to the customers in
393 the exchange.
394

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- 395 (B) A telecommunication provider proposing to discontinue a regulated service to an exchange shall
396 file a notice of discontinuance of service with the commission, publish the notice in a
397 newspaper of general circulation within the exchange, and provide other reasonable notice as
398 required by the commission.
399
- 400 (C) Within 30 days after the date of publication of the notice, a person or other telecommunication
401 provider may apply to the commission to determine if the discontinuance of service is
402 authorized pursuant to this Act.
403
- 404 (D) A provider of a regulated service shall not discontinue the regulated service for failure by a
405 customer to pay a rate or charge imposed for an unregulated service. For the purposes of this
406 section, the commission may determine how payments are allocated between regulated and
407 unregulated services.
408
- 409 (E) The commission shall determine when and under what conditions a provider of basic local
410 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.}

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

Model Resolutions

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Obtained and released by:
Common Cause and
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Model Legislation for Review

{B1} Resolution on United States Encryption Export Restrictions

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

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

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

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

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

14 **WHEREAS**, The Computer Systems Policy Project estimates that if the current outdated policy remains in
15 effect, the cost to American companies could be up to \$96 billion by the year 2002 and the loss of over
16 200,000 high-skill, high-wage jobs by the year 2000; and

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

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

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

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

30 **BE IT FURTHER RESOLVED**, that the clerk of the (House of Representatives or Senate) transmit copies of
31 this resolution to the President and Vice President of the United States, to the Speaker of the United
32 States House of Representatives, and to each Member of Congress of the United States.

Model Legislation for Review

Adopted by ALEC's Telecommunications & Information Technology Task Force at the Annual Meeting August 12, 1999. Approved by full ALEC Board of Directors September, 1999.

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

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Model Legislation for Review

{B2} A Resolution Regarding the Regulation of Intrastate Telecommunications Services in Healthy and Sustainable Competitive Environments

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

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

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

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

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

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

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

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

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

27 **BE IT FURTHER RESOLVED** that ALEC shall convey its support to the members of United States
28 Congress and Executive Branch.

Model Legislation for Review

Adopted by the Telecommunications & Information Technology Task Force at the Annual Meeting, July 30, 2004. Approved by the full ALEC Board of Directors August, 2004.

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

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The Center for Media and Democracy

Model Legislation for Review

{B3} Resolution to Restate State Sovereignty

1 **Summary**

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

4 **Model Resolution**

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

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

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

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

20 **WHEREAS**, Today, in (insert year), the states are demonstrably treated as agents of the federal
21 government; and

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

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

26 **WHEREAS**, The United States Supreme Court has ruled in *New York v. United States*, 112 S. Ct.
27 2408 (1992), that Congress may not simply commandeer the legislative and regulatory
28 processes of the states; and

Model Legislation for Review

29 **WHEREAS**, A number of proposals from previous administrations and some now pending from
30 the present administration and from Congress may further violate the United States
31 Constitution;

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

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

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

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

Sourcebook of American State Legislation, 1995, Volume II

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