



January 31, 2014

Honorable Greg Walden
Chairman, Subcommittee on Communications and Technology
Committee on Energy and Commerce
U.S. House of Representatives
Washington, DC 20515

Dear Chairman Walden:

We write in response to your request for comments regarding an update to the Communications Act to foster more economic growth and innovation through communications and technology. Since 1973, the American Legislative Exchange Council has focused on providing practical policy answers to challenges facing America. State lawmakers are conquering today's economic challenges by refocusing on our nation's founding principles of limited government, free markets and federalism.

The Exchange Council provides a unique opportunity for state legislators, business leaders and citizen organizations from around the country to develop model policies based on academic research, existing state policy and effective business practices. These policies are the result of task force research and debate, and are intended to be academic documents for individual study. While these state-based policy solutions are meant to facilitate economic growth, one size does not fit all. Legislators have the opportunity to determine, in consultation with their constituents and legislative colleagues, what works best for their communities.

The Exchange Council's Task Force on Communications and Technology, which we chair, is comprised of nearly 200 members representing all regions of the country and every segment of industry, who believe that constant, dynamic innovation in communications and technology presents numerous complexities that defy traditional public policy prescriptions. To help policymakers understand the changes underway in the 21st Century economy, the Task Force brings together state legislators, private industry and experts to develop public policies that will promote economic growth, freedom of technology and innovation in the states.

We are pleased to provide you with the following six Principles for Communications and Technology, adopted by our Task Force in January 2013, as you consider how to update communications law. These principles serve as a guide for state policymakers, but speak

to universal ideas and could easily apply to issues facing policymakers at the federal level. The principles are as follows:

1. THE FREE MARKET SHOULD DRIVE COMMUNICATIONS AND TECHNOLOGY POLICY

Public policy relating to communications and technology should be driven by free market principles. The free market has enabled today's Internet Protocol-based, broadband-centric digital economy, which is increasingly characterized by disruptive change, vibrant competition, and consumer choice. Convergence is an ongoing feature of today's communications and technology markets; the providers of products and services once considered separate now compete for the same end users.

2. GOVERNMENT SHOULD STRIVE FOR COMPETITIVE AND TECHNOLOGICAL NEUTRALITY IN ITS POLICIES

Public policy should remain neutral with respect to existing and emerging business models, and technologies. Additionally, government procurement policies should be transparent, non-discriminatory, openly pro-competitive, and performance-based. Rules should be based on desired results rather than preferred designs; in other words, designs of devices, software, or networks must not be dictated through governmental mandates. Government must not seek to create new technologies through regulation.

3. CONSTITUTIONAL LIMITS AND PROTECTIONS SHOULD GUIDE GOVERNMENT POLICY AT ALL LEVELS.

All limits on government power and all protections for individual rights contained in the federal and state constitutions must inform and apply to all government policies regarding communications and technology. Constitutional limits and rights do not cease applying where practices or conduct involves digital technology or takes place online.

4. SELF-GOVERNANCE, CODES OF CONDUCT, AND OTHER VOLUNTARY INITIATIVES ARE PREFERRED METHODS FOR PURSUING SOLUTIONS TO NEW CHALLENGES; REGULATION SHOULD ONLY BE CONSIDERED WHERE MARKET COMPETITION FAILS AND REAL HARM EXISTS.

Voluntary codes of conduct, industry-driven standards and individual empowerment should be preferred over government regulation. If there must be government regulation of communications and technology, it should only be in instances where actual harm results to consumers, and only then with the lightest touch necessary. Prophylactic regulation based on fears about future harms is unwarranted and inappropriate. Instead,

empirical evidence of actual harms to consumer welfare should inform any analysis and rulemaking. Local government entry into the provision of wholesale or retail Internet or broadband services in an attempt to create competition should be permissible only in unserved areas and only where no business case for private service exists, upon a vote by local citizens, and subject to protections against cross-subsidies through taxes or other local government service revenues.

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


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

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

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

We hope that you find these six Principles for Communications and Technology useful in the course of your work. Should you need additional information or if you have questions, please feel free to contact us via John Stephenson our Task Force Director at either 571-482-5046 or jstephenson@alec.org. We are happy to assist you in any way and we wish you good luck in this important endeavor.

Sincerely,


Rep. Blair Thoreson
North Dakota
Public Sector Chair


Bartlett Cleland
Institute for Policy Innovation
Private Sector Chair