

# TELECOMMUNICATIONS AND TECHNOLOGY

## STATEMENT OF BASIC PHILOSOPHY

Counties play a major role in the nation's communications system as regulators, service providers, and consumers of communications services. County officials have a responsibility to ensure that the public interest is being served by communications providers, regardless of the delivery platform. The social goals and public good expected from our citizens must be ensured. This includes public educational government access, public and homeland security matters, and protecting the interests of special needs citizens.

Expanding communication has become a critical component of a successful economic development policy as counties work to attract and retain skilled jobs and industries, and counties labor as first responders to homeland security threats and events. Homeland security has required a much wider role for counties in securing the Nation. Adequate communications systems and information access are vital to meet this growing responsibility. It is therefore imperative that county officials play an increasing role in the future of communications policy.

Technology has changed the future of county governance, and the evolving opportunities for counties to utilize technology to provide timely and effective service are immense.

Faster computer networks, wireless internet access, enhanced broadband services, new public safety systems, geospatial information applications and technologies not yet deployed, will make the county of the future more responsive and meaningful to county residents. County officials must be prepared to adapt to this changing environment.

## POLICIES AND PRACTICES

- A. Encouraging Competition and Development of New Technologies:** It is in the counties' interest to encourage competition among communications and technology providers and to support the development of new technologies for government and public use.
- B. Preemption of Local Authority:** Counties need to be concerned about retaining authority as trustees of public property and as protectors of public safety and welfare. The 1996 Telecommunications Act acknowledges the balance among federal, primarily through the Federal Communications Commission (FCC), and state and local authority.

NACo opposes any actions that would undermine this shared responsibility and any federal or state preemption of counties' traditional powers in these areas. NACo opposes efforts to restrict or prohibit, at state and federal levels, county or municipal ownership of communications facilities.

- C. Financial Assistance for Enhanced Communications Capacity:** Communications play an important role in county government operations and the delivery of services. Counties use advanced telecommunication systems for a full range of public and law enforcement services. Nothing in federal policy should undermine the ability of counties to develop such infrastructure through partnerships with network providers.

NACo believes state and federal governments should provide financial assistance for these initiatives and should encourage efforts to improve coordination across jurisdictions and systems, especially for public safety and homeland security issues. Access charges for completion of calls on the local public switched telephone network need to continue in some form to assure rural counties retain adequate communications services.

- D. Interoperability:** Communications interoperability, for both voice and data, is critical to coordinate the response to disasters and joint law enforcement efforts. This is important among agencies of local government, as well as, the various local, state, and federal agencies. A broad interpretation should be made as to which

entities should be included in an interoperability plan. NACo supports efforts to improve interoperability for public safety purposes, and believes the state and federal governments should assist counties with the costs associated with migrating to viable interoperability standards. Congress should provide funding to local governments, as part of a comprehensive strategy, to improve public safety and emergency management interoperability.

- E. Wireless Communications Facilities Siting:** Counties have a regulatory role regarding the siting of tower and antenna facilities. With the exception of decisions based on the health effects of radio frequency (RF) emissions, local authority is preserved with minimal limitations supporting nondiscriminatory, timely action. Even in the case of RF emissions, the law clearly requires that the facilities operate in compliance with RF emission standards.

NACo believes any disputes between counties and the industry should continue to be resolved in the courts on a case-by-case basis. No federal actions should undermine local government's zoning authority.

Counties have an obligation to their constituents to ensure that, to the extent possible, the public health, safety and welfare are not endangered or otherwise compromised by the construction, modification or installation of broadcast towers. NACo believes nothing should preempt local government authority to reject new tower applications upon finding of adequate existing facilities.

NACo supports policy and/or legislation giving more consideration to public health and safety needs when locating cell towers on public lands in rural areas with little or no service.

- F. Emergency Services Communications, Cross Ownership and Local Services:** Counties' ability to communicate with citizens during a public safety emergency, whether natural or man-caused, is critical. Media consolidation, particularly in the radio sector, has raised serious concerns about the ability of local stations to meet their public safety obligations. The FCC should review the requirements on broadcasters to ensure the needs of local government to contact their citizens are met.

Along with concerns raised by media consolidation for public safety, county officials are concerned about the loss of local content, civic discourse, and advertising opportunities for local business. As a matter of economic development, local media outlets are important vehicles for promoting local opportunities and business. Local media outlets are an important component of the community and as so, should participate in the civic aspects of the community. County officials should work with media outlets to assure ample opportunity for public debate. Congress and the FCC should review limiting media diversity through cross ownership of media outlets including newspapers and their online offerings.

- G. Rights-of-Way:** Counties own substantial amounts of public rights-of-way, which many communication providers use extensively to construct their own communications networks. These are valuable local government real estate assets worth billions of dollars that are held in trust by local governments to benefit the local community.

Federal and state governments must recognize the authority of local governments to protect the public investment, to balance competing demands on this public resource and to require fair and reasonable compensation from communications providers for use of the public rights-of-way on a nondiscriminatory (but not necessarily identical) basis. Rights-of-way disputes between communications companies and local governments should be resolved in local jurisdictions.

In order to use the right-of-way, private communications companies should be required to enter into an agreement with local government that sets the terms and conditions of such use/access. Local governments

must be able to require universal services that include nondiscriminatory pricing and equal access to all its citizens as a requirement. Like services should be treated alike.

Because disruption to streets and businesses can have a negative impact on public safety and industry, local governments should have control over allocation of the rights-of-way and be able to ensure that there is neither disruption to other “tenants” or transportation nor any diminution of the useful life of the right-of-way. Local governments must have the right to analyze the legal, financial, and technical qualifications of any communications provider wanting to use the public right-of-way and shall have the right not to issue a franchise to an unqualified applicant.

**H. Video Services:** Counties have come to rely on video services as a vital communication link to constituents. This includes cable, fiber to the home, IPTV and internet services.

Under existing federal law, it is clear that counties may, through the franchising process, monitor the performance of existing cable television operators to ensure that the operators provide quality service to consumers in all sections of a franchise area. The ability of local franchising authorities should be enhanced through action by the Congress and Administration to protect the interest of consumers in quality, yet affordable, video services, and to enact laws which encourage greater competition for the video franchises and in the cable industry, and which encourage the availability of other technologies as rapidly and as widespread as possible.

Video franchising authorities must continue to have the ability to require through the franchise process the following components:

- Explicit approval to transfer a franchise.
- The ability to deny a renewal application for cause, i.e., renewals cannot be considered automatic.
- The right to solicit competitive bids from other video service providers.
- Immunities from monetary damages when local government actions are consistent with the Cable Act of 1984.
- The ability to terminate a video service provider for cause to ensure that it is not more profitable for an operator to violate a franchise agreement than to follow it.
- The ability to require cable operators to carry all local broadcast signals.
- The ability to define reasonable notice to subscribers of rate and service changes.
- The ability to regulate the equipment or any transmission technology such as system capacity, extent of use of fiber optic cable, homes per node, bandwidth for digital carriage, or amplifiers per cascade. While the FCC retains the authority to develop technical standards, Congress retained for local franchise authorities the ability to enforce these standards. Retaining this authority will go a long way to ensure uniform customer service and signal reliability in rural and suburban areas.
- Video service providers must lease cable to whomever wants to offer competitive programming.
- All programming that is available on cable must be available to other technologies such as IPTV, fiber to the home, and satellite.
- The ability to require PEG (Public, Education, and Government) channels as part of the franchise agreement.
- The ability to require universal cable video service. This is particularly important to rural and low-income residents who traditionally have been denied service.

Franchise fees are, in part, the rent cable operators pay for the use of public rights-of-way. Operators should not pass through to basic subscribers those rental expenses associated with non-subscriber services. NACo also strongly opposes the pass through to cable video customers of “non-subscriber” revenue, such as advertising and other commissions, and opposes the itemization of franchise fees stemming from such actions.

**I. Consumer Protection:** Counties have a major role to play in protecting consumer interests, including a strong consumer protection process. Congress should protect consumers from monopoly pricing power in the absence of effective competition. Every effort should be made to promote competition between providers to ensure consumers are receiving an appropriate range of services at the lowest possible cost. Companies wishing to provide communications or video services, including traditional telephone companies or cable operators, must be subject to safeguards to protect consumers against cross subsidies. NACo believes counties have the right to review mergers and acquisitions when such activity might result in the reduction of competition in the local marketplace.

**J. Broadband Deployment and Adoption:** NACo strongly supports legislation and administrative policies that help counties attract broadband services regardless of population or technology used. This includes supporting legislation that provides tax credits to telecommunications providers that develop broadband in rural and underserved communities, and provides for broadened eligibility and additional federal agency loan authority or extension of credit to telecommunications providers that deploy broadband in rural communities.

In supporting expanded broadband service, NACo shall maintain a neutral position on the differing technologies and policy initiatives promoted by the various elements of the communications industry that are seeking to obtain a competitive advantage in retaining or expanding market share. NACo believes all levels of government should work cooperatively with the private sector, nonprofits, and academia to develop robust awareness, adoption, and use programs for broadband.

**K. Universal Service:** NACo supports the current principles, six of which were originally codified in the Telecommunications Act and two later adopted by the FCC. At the heart of these principles lie the affordability, accessibility, reliability, competitiveness, and non-discriminatory access to communication related services to all Americans regardless of any circumstance. NACo opposes any federal actions to preempt state universal service programs and any efforts to redefine, modify, and/or expand technological services of any type that does not include local government input and guidance.

Given recent technological advances in both the quality and delivery of communication related services, these fundamental principles should continue to survive both now and in the future by shifting the focus of current program support mechanisms toward the expansion of advanced technological services that a good majority of Americans are afforded today.

In general, NACo supports efforts that continue to promote these principles such as:

- Updating and modernizing the “Schools and Libraries” program to provide funds in the form of discounts, grants, and/or reimbursements to local governments that ensure schools and libraries have access to the technology services of today in an affordable manner;
- Expansion of the “Schools and Libraries” program to allow for flexibility of local governments to collaborate and create partnerships with schools, libraries, non-profit organizations, and the private sector through innovative efforts to provide infrastructure such as fiber and outside cable plants that will assist in extending access throughout rural areas. These efforts should not be limited to the thinking of the past as many students and citizens alike need access to these services from their homes;
- Stronger support and equal funding methodology expected from service providers of all types is strongly encouraged as the federal government looks to expand broadband access through the “Connect America Fund”;
- Focused and concerted efforts among all governing bodies and agencies must continue to be streamlined to ensure that broadband expansion and adoption efforts are carried out in the most timely and efficient manner as possible with specific emphasis on rural underserved areas.

**L. Online Privacy and Security:** As counties expand their “e-governance” initiatives, more personal information will be collected, stored, and potentially, made available to the public. Consumers are becoming more aware of

the potential uses of personal information for purposes other than those intended, and are becoming more concerned about how counties are going to respond. Because of security compromises in the private sector, constituents expect counties to protect their private information. County privacy policies should be reflective of community values, and should follow best available practices to meet those values.

NACo also supports initiatives and systems to secure personal and county information from “hackers” or other illegitimate uses. While every effort should be made to protect private information, NACo supports reasonable liability limits for counties if information that counties control is compromised. If information is compromised, counties should have procedures and policies for notifying affected individuals.

Third party vendors should be expected to conform to county privacy policies and practices to maximize the security of private information. Franchise and other agreements should allow for contractual requirements for maintaining privacy. At the same time, counties should consider policies that protect the public’s private information from the misuse by public employees. Counties should also consider adopting “Freedom of Information Act” policies that provide for public disclosure without compromising private information.

**M. Taxation:** The Telecommunications Act of 1996 did not change or impair any state or local government authority to tax telecommunications providers. NACo needs to ensure:

- No actions are taken by Congress, the FCC, or the courts to preempt local authority on either fees or taxes or land use authority.
- Any federal action that affects communications fees or taxes must be revenue neutral to the locality generally, between providers, and allow for a growth in tax revenue as the service or industry grows.
- County tax policy should be technology neutral for like services.
- Tax policy must recognize the cost to local government of the use of public property or facilities.
- Use of advanced communications services should not be a means of escaping local taxation.
- There must be recognition of local diversity in the taxation of communications services.
- Tax simplification should not be a vehicle used by the federal government to undermine county government’s ability to retain taxing authority and revenue streams.
- Fees for specific uses, such as 911 centers and rights-of-way should not be considered taxes when considering modifications to tax structures.

**N. Geospatial Information Systems:** Geospatial Information Systems (GIS) are critical tools for county officials to make appropriate land use decisions, manage existing infrastructure, and maintain adequate linkages between the county’s land base and its government and maximize the use of resources as first responders to homeland security threats and events. NACo encourages member counties, other local governments, states, tribal entities, and the private sector to engage in a coordinated effort that will lead to standardized best practices and land record modernization as well as a solid digital infrastructure, in particular cadastral data.

NACo supports the effort of the federal government to coordinate the collection and dissemination of GIS data (based on common interoperable data standards) by the federal, state, local, and tribal governments through programs. The common data standards should be designed to:

- maximize the degree to which unclassified GIS data from various sources can be made electronically available; and
- promote the use of GIS for better governance due to increased data sources and sharing of geographic data by all levels of government. Congress should provide funding to facilitate this effort.

**O. CyberSecurity:** NACo recognizes the ever increasing cyber threats that our nation faces from multiple sources on a daily basis. The threats are continuing to increase in sophistication and in turn requiring costly proactive measures to mitigate the potential loss of data and/or damage to our nation’s critical infrastructure.

Understanding this, local governments carry a huge burden of responsibility in ensuring that our citizens' personal information, priceless historical records, and critical infrastructure are adequately protected, recoverable, and secured in the event of any potential breach. In efforts to ensure that local governments provide the stability, integrity, and security expected of protecting such critical infrastructure and digital assets, NACo supports the following:

- Funding assistance in any form deemed necessary to provide for the information technology resources required to adequately provide security at all levels;
- Funding assistance for basic security awareness training of employees and advanced security training for information technology professionals within local government including assistance in the completion of advance certification and degree programs;
- Cooperative efforts in information sharing among all federal, state, and local governments in addition to private sector organizations regarding breaches, potential threats, threat levels, and any techniques that would assist in the prevention or mitigation of cyber related threats;
- Collaborative efforts in the form of committees or task forces that are inclusive of local government membership with federal agencies such as the Department of Homeland Security and subprograms such as NCC, US-CERT, and ICS-CERT;
- Creation of programs and initiatives that designate local government Cybersecurity liaisons and/or representatives that serve in conjunction with federal agencies such as the Department of Homeland Security.

## **TELECOMMUNICATIONS AND TECHNOLOGY RESOLUTIONS**

### **Resolution in Support of Empowering Counties to Be Active in the Deployment and Operation of High Speed Internet**

**Issue:** Resolution in support of empowering counties to be active in the deployment and operation of high speed internet

**Adopted Policy:** The National Association of Counties (NACo) supports the removal of barriers to counties supplying infrastructure to the private sector, partnering with the private sector or operating Internet services as a public utility when no commercial service is available.

**Approved | July 25, 2016**

### **Resolution Urging Congress to Rewrite the Telecommunications Act of 1996**

**Issue:** Encourage Congress to undertake a systemic rewrite of the Telecommunications Act of 1996

**Adopted Policy:** The National Association of Counties (NACo) urges Congress to work with NACo and other appropriate associations representing local government in updating and rewriting the Telecommunications Act of 1996.

**Approved | July 25, 2016**

### **Resolution of Support and Recommendations for the Work of the Broadband Opportunity Council**

**Issue:** Support for recommendations made by the Broadband Opportunity Council

**Adopted Policy:** The National Association of Counties (NACo) supports the ongoing efforts of the Broadband Opportunity Council (BOC), and their efforts to reduce federal regulatory barriers to the ongoing deployment of broadband capability throughout the nation. Additionally, NACo encourages the BOC to facilitate the use of publicly held infrastructure via lease and partnership arrangements with the private sector to increase the deployment of Broadband to underserved areas. Lastly, NACo urges the BOC to utilize the “align funding policies” section of its charter to solicit input from the Broadband industry as to changes necessary to maximize the impact of the Universal Service Fee (USF) dollars on “last mile” High Speed deployment.

**Approved | July 25, 2016**