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Subcommittee on Telecommunications and the Internet
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“How Internet-Enabled Services are Changing the Face of Communications: A View from
Government Officials”
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Mr. Chairman and members of the committee, my name is David Quam, and I am the Director of Federal Relations for the National Governors Association (NGA). I appreciate the opportunity to appear before you today on behalf of NGA to discuss the role of states in the future of communications policy.

Overview

The Internet has changed everything. While only a generation ago most people had not even heard of the Internet, today they go online to conduct business transactions, purchase goods and services, trade stocks and bonds, and make phone calls. The Internet has also spurred competition. Every week another company seems to announce a new service for consumers that breaks with the existing regulatory framework of one delivery platform-one service. Telephone companies are rolling out IP video services; cable companies are offering Voice-over-Internet-Protocol phone services; and wireless providers allow a person to surf the World-Wide-Web while picnicking on the National Mall. The beneficiaries of this revolution are consumers, individuals, and businesses that rely on communications services to conduct business, purchase goods and services, send and receive information, and reach emergency services. The innovators are the companies and entrepreneurs who are constantly pushing to find new ways to communicate and to improve existing systems. The regulators are the federal, state, and local government officials who must now decide how to best work together to maximize the benefits

for consumers, foster innovation and investment, promote competition, protect the public safety, and ensure consumer protection in an IP-enabled world.

The Public Policy Challenge

The remarkable revolution in communications technology since the 1996 Act could have not been anticipated by lawmakers. Current federal and state communications policies call for a distinct regulatory treatment for telephone, cable, satellite, wireless, and Internet services industries. Under this “vertical silo” approach, each segment is treated differently based on its core service. The 1996 Act, which focused on promoting competition within these silos, did little to prepare for the development and maturation of new platforms and services that are not bounded by technology. It is these new innovations, including IP-enabled services, that are creating advantages and disadvantages for both incumbents and new entrants, and challenging state and federal policymakers to rethink communications laws to better reflect the way services are delivered in a digital age.

Governors welcome this challenge and are committed to working with Congress, industry and local governments to modernize the nation’s communications laws in a way that supports continued growth of a competitive industry for the benefit of consumers and the national economy. NGA has been working with other state and local organizations to find common ground and align our interests and policies. Governors encourage Congress to work with state and local governments to create a regulatory framework that:

- employs a balanced federalism approach that grants states, territories, and localities the authority to protect the interests of their constituencies, particularly as it relates to promoting local competition, encouraging economic development, protecting public safety, and ensuring consumer protection;
- creates a level playing field for all industry participants in any given service area, regardless of the nature of the technology used to provide that service;

- is sufficiently flexible and technology-neutral to respond to new developments in the industry;
- continues to emphasize service reliability standards on all communications systems;
- ensures states, territories, and localities retain the authority to manage public rights-of-way consistent with state laws and policies; and
- does not preempt the states' sovereignty to determine their own tax policies.

While Governors look forward to modernizing our nation's communications laws in a way that promotes further economic development and innovation, any new regulatory structure must also give states, territories, and localities the ability to maintain state services and roles consumers have come to expect.

State Roles in Communications Policy Must Be Maintained

States play a major role in the nation's communications system as regulators, service providers, and consumers of communications services. State governments have the responsibility to ensure the public interest is being served by all businesses in our states, including communications providers. Consumers expect states to ensure certain public goods and social goals. These include maintaining the public safety, consumer protection, universal service, and consumer choice. While Governors understand that these state roles may change as technology develops and communication services converge, they still believe the states are best suited to perform these essential roles consumers have come to expect. States have more resources, as well as a better understanding of local markets and day to day issues related to communications services, than the federal government, thereby making them better suited to carry out and enforce these important public services. At the same time, Governors recognize the benefits working together within a national communications framework to accomplish common goals in protecting

the public interest. Specifically, Governors feel states must maintain their roles in the following key areas.

Public Safety

State and local law enforcement and public safety agencies rely heavily on communications services and operators to protect the public interest. In particular, the ability to receive E911 calls and direct emergency services to a caller's location is vital for first responders. States must continue to have the authority to collect fees and run a ubiquitous E911 system within their borders.

Currently, states and localities have the sole responsibility for funding, managing, and upgrading state wireline and wireless 911 services. States and localities collect E911 fees on wireline and wireless phone services, which is the only source of funding for state E911 systems. Without the authority to collect E911 fees on new services, funding for E911 systems may be jeopardized as consumers shift to new technologies. This potential decrease in funds will place a strain on legacy E911 systems and increase the cost burden on citizens who use wireline and wireless services.

Moreover, it is states that ensure all wireline and wireless phone companies have access to phone trunks and customer databases, which is a critical part of maintaining a ubiquitous and functional E911 system. Even though some VoIP services are working to voluntarily implement E911 services, they are finding it increasingly difficult to interconnect with incumbent phone companies' trunks, making it virtually impossible to implement a workable E911 service. The Telecommunications Act of 1996 gave states the regulatory authority to make certain that wireline and wireless carriers have access to the necessary information and infrastructure to provide E911 service. States must continue to have this authority over VoIP providers, in order to ensure Internet phone services can provide E911 services. Moreover, if VoIP providers develop their own E911 systems that do not properly connect with each state E911 system, the

nation could end up with a patchwork of E911 systems that do not interconnect. To maintain a seamless and ubiquitous national E911 system, states must have regulatory authority to collect E911 fees on Internet phone services and make certain all voice services can interconnect with the state's E911 system.

In addition, state and local law enforcement agencies rely heavily on electronic surveillance to investigate and prosecute criminals. National communications policy should not unwittingly hinder law enforcement efforts by creating technological safe havens to communicate and plot criminal activity. Consequently, Governors support congressional efforts to extend necessary components of the Communications Assistance for Law Enforcement Act of 1994 (CALEA) to all advanced communications.

Consumer Protection

Before consumers fully accept, adopt, and substitute Internet-enabled services for traditional phone and video services, they must feel confident and trust these new services. This confidence and trust can only grow if consumers have a practical way to resolve common complaints, service outages, and deceptive behavior. States have a long track record for ensuring consumer protection and are more accessible to businesses, consumers, and communications companies than are federal officials. States have quickly responded to consumer complaints on traditional phone services by developing innovative programs, like the "do not call list," which became widely popular and was eventually implemented on the federal level. States should retain the regulatory flexibility and enforcement authority to effectively and creatively respond to consumer concerns.

Universal Service

In order for states and the nation to take full advantage of new Internet-enabled services, affordable broadband access must be available in all "corners of a state." Twenty-four states have

instituted their own state universal service funds that now total \$1.9 billion. States collect state universal service funds fees on intrastate phone services to help keep phone costs down in rural and urban areas, and make broadband connections more affordable where competition does not exist. Governors feel that any changes to the communications law should not hamper a state's ability to continue its state universal service fund or prevent states from developing new state universal service programs to supplement the federal plan.

Competition

Governors welcome and support competition in local communications markets. When a competitive market does not exist, states should retain the authority to ensure nondiscriminatory access to essential facilities, prevent incumbents from using market power to stifle competition and innovation, and maintain safeguards when market forces fail. Recently, the Federal Communications Commission overturned four states' actions aimed at allowing consumers to purchase broadband Digital Subscriber Line (DSL) service from a telecommunications company without also requiring the consumer to purchase traditional voice service from the same provider. Known as "naked DSL," these state actions would have added to consumer choice. After all, why would consumers who are required to buy traditional phone service with their broadband access then purchase Internet phone service?

States have the resources and expertise to quickly respond to situations where access to local networks is used to stifle new technologies from taking root. Over the past eight years, states have used their resources and expertise to monitor and ensure fair competitive behavior in local markets. Governors feel states should continue to have flexible regulatory authority to promote competition within local markets and protect nascent technologies from anti-competitive behavior.

Conclusion

The 1996 Act ushered in a new era of cooperative federalism in communications. This framework took into account responsibilities based on competencies. The federal government was given the authority to develop national communications goals, while states were given regulatory flexibility and enforcement powers to quickly respond to consumer complaints, manage public safety networks, protect consumers when market forces fail, and help ensure universal and affordable access to communications. Governors look forward to working with Congress to build upon our federal-state partnership and use our collective strengths as a basis for a new regulatory structure.

Thank you for the opportunity to share NGA's position on the state role in the future of communications policy. I would be happy to respond to any questions you may have.