TELECOMMUNICATIONS & 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.

The expanding communications system 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 is vital to meet this growing responsibility. It is therefore imperative 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

1. 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.

2. 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, which forms the framework for the nation’s communications policy, acknowledges the balance between federal, primarily through the Federal Communications Commission, 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 when such services are unavailable or are made prohibitively expensive by the lack of adequate competition. Counties, however, should not use their economic capacity to unfairly compete with private sector providers.

3. Financial Assistance for Enhanced Telecommunications Capacity: Telecommunications play an important role in county government operations and the delivery of services. Counties use advanced telecommunications systems for a full range of public, and law enforcement services. Some counties are developing their own institutional communications networks to link varies county departments and agencies. Nothing in federal policy should undermine the ability of counties to develop such infrastructure.
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.

4. Public Safety Frequencies: Public safety communications is one of the most important elements of county law enforcement and emergency response capabilities. NACo believes that the Federal Communications Commission should assure that public safety frequency bands are not subject to interference from commercial operations on nearby frequencies, and that any future allocation of public safety frequency bands be designed to avoid any such conflicts. NACo supports the FCC maintaining authority over public safety spectrum management, rather than transferring authority to the National Telecommunications and Information Administration.

5. Wireless E911: The National Association of Counties encourages the timely deployment and implementation of Wireless Enhanced 911 for a nationwide, seamless communications infrastructure for the delivery emergency services as envisioned by the “Wireless Communications and Public Safety Act of 1999 (911 Act)”.

6. Communications Assistance for Law Enforcement Act (CALEA): The ability of law enforcement to have access to systems providing voice communications to enforce our laws is extremely important to help deter criminal and terrorist activity. All platforms, regardless of technology should provide such access as required by CALEA.

7. Interoperability: Communications inter-operability, for both voice and data, is critical to coordinate the response to disasters and joint law enforcement efforts. This is important between agencies of local government, as well as, between 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.

8. Wireless Communications Facilities Siting: Counties have a regulatory role regarding the siting of tower and antenna facilities. Section 704 of the 1996 Telecommunications Act details the procedures for shared authority for siting personal wireless 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.

Counts must have the ability to investigate complaints and verify compliance and local taxpayers should not bear the costs of these investigations. 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.

9. Television Towers: There was no intent in the 1996 Telecommunications Act to apply Section 704 to the deployment of broadcast transmission facilities. It is the interest of local governments for broadcasters to convert to digital television, as quickly as possible, in order to free additional spectrum for public safety purposes. 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.

10. Emergency Services Communications: 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.

11. Media Consolidation Cross Ownership and Local Services: 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.

12. Rights of Way: Counties own substantial amounts of public rights-of-way, which many telecommunication providers want to 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 a franchise agreement with local government which 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 for granting a franchise.

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.

13. Cable Television: Cable television exerts an enormous influence on the lives and culture of many county residents and is becoming an essential source of information. Federal law is clear that counties may, through the franchising process, monitor the performance of 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, cable television services, and to enact laws which encourage greater competition for the cable franchises and in the cable industry, and which encourage the availability of fiber optic cable as rapidly and as widespread as possible, so that rural areas have the same capabilities as urban areas.

Cable 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 cable operators.
- immunities from monetary damages when local government actions are consistent with the Cable Act of 1984.
- the ability to terminate a cable operator 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.
- cable operators must lease cable to whomever wants to offer competitive programming.
- all programming which is available on cable must be available to other technologies such as satellite.
- the ability to require PEG (Public, Education,
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Government) channels as part of the franchise agreement.
• the ability to require universal cable 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 customers of “non-subscriber” revenue, such as advertising and other commissions, and opposes the itemization of franchise fees stemming from such actions.

14. 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.

15. Broadband Deployment: NACo strongly supports legislation and administrative policies that help counties attract broadband services regardless of population. This includes supporting legislation that provides tax credits to telecommunications providers that develop broadband in rural and under-served 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 should also support Federal legislation and policies and programs that make training and computers available to low-income communities so that their residents can take advantage of broadband service. To encourage access, consumer choice, competition and diversity, NACo believes any customer of a high-speed Internet service should be allowed to have access to any ISP of their choice.

16. Universal Service: NACo supports the goals of national universal service to assure the affordability of communications service in parts of the country where it would otherwise be more expensive. NACo supports both “Lifeline” and “Linkup” as tools to implement universal access for low-income and limited access individuals. The Federal Communications Commission and state utility commissions should provide guidance as to what services should be eligible for support from the Universal Service Fund, and the sources of additional funding should the Congress find such that an expansion of eligible services is warranted.

NACo opposes any abuse of the Universal Service Fund by any level of government for non-eligible activities or projects. NACo opposes any federal actions to preempt state universal service programs.

17. E-rate: NACo supports the “E-rate program to provide affordable access by citizens to the services and information available on the Internet. The E-rate was enacted as part of the Telecommunications Act of 1996 as part of the Universal Service Program (which makes telephone service available and affordable to almost all Americans). The E-rate provides discounts to public and private schools, libraries and consortia on telecommunications services, Internet access and internal networking equipment and facilities. NACo opposes any misuse of E-rate funding by any jurisdiction.

18. On-line Privacy and security: As counties expand their “e-governance” initiatives, more personal information will be collected, stored, and potentially, made available to the public through county website. 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.

19. **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 Federal Communications Commission, 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.

20. **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: 1) maximize the degree to which unclassified GIS data from various sources can be made electronically available; and 2) 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.
Resolution on Preserving Local Video Franchising Authority

**Issue:** Preserving local video franchising authority

**Adopted policy:** NACo supports existing authority requiring local franchises for the build-out of video services, and would oppose legislative efforts to mandate statewide or national franchises, particularly for new entrants.

**Background:** Under Title XI of the Communications Act, local governments were given the authority to require cable companies to obtain a local franchise for the build-out of their cable systems. All cable companies have complied with this requirement and have entered into franchise agreements. These agreements often contain specific programming requirements, build-out schedules, consumer protections, the public, educational and governmental channels made available on the system — among other important local requirements. They are also required to pay a franchise fee to local government up to five percent of gross revenues from their basic cable tier.

As technology has changed to an Internet Protocol (IP) enabled world, traditional phone companies will soon have the ability to provide video services similar, if not exactly like, current cable offerings. In order to speed deployment, they have expressed an interest in obtaining a “national franchise”, or a “statewide” franchise to bypass the time needed to negotiate individual franchise agreements with local governments. In hearings, Members of Congress have indicated a willingness to consider this approach. The cable industry has responded that while they have such agreements, and expect new entrants to meet the same requirements, if the franchising structure is changed, they would want to be treated the same.

**Fiscal/Urban/Rural Impacts:** They could be considerable. If the current franchising structure is changed, there could be substantial decreases in franchise fees, consumer protection could be compromised, and local influence over programming could be lost.

Resolution on Consumer Protections in Wireless Billing

**Issue:** Consumer Protections in Wireless Billing, including full disclosure of “plan change triggers”

**Adopted policy:** NACo supports full and obvious disclosure of all service charges in wireless billing and any potential changes to wireless calling plans that can be triggered through the passive payment of charges.

**Background:** County governments are often the first line of defense for consumers. While the FCC has recently extended their “Truth-in Billing” requirements to wireless phones (March 10, 2005), their requirements deal more with how charges are explained and how they are presented to the consumer. The typical consumer rarely reads all the fine print on the bill they receive each month, and some wireless carriers have used this deficiency to their advantage by making service plan changes effective if the consumer does not specifically “opt-out” of the changes. If the consumer does not challenge the change, and pays the bill, the changes are considered accepted. The use of this fine print trigger mechanism has significant implications for consumers.

**Fiscal/Urban/Rural Impacts:** TBD.