
INFORMATION TECHNOLOGY AND COMMUNICATIONS (2012)

7.00 Introduction

A. Information Technology and Communications

Local officials have traditionally been leading proponents of the development of new and emerging technologies and NLC supports federal policies that promote universal access, technological innovation, competition, and implementation of new services. For local communities, the existence of an affordable and modern communications infrastructure means rapid dissemination of and efficient access to information, increased productivity, new economic development opportunities, and an improved quality of life. Communications and information technology have become integral to efficient, equitable, and affordable health care, social services, public safety, education and job training, transportation and other lifeline services. *(In this chapter, unless specifically noted, the word telecommunications shall include voice, video, data, and all other services delivered over cable, telephone, fiber-optic, wireless and all other platforms.)*

B. Local Authority

NLC supports a balanced approach to telecommunications policy that allows new technologies to flourish while preserving traditional local regulatory authority. In particular, federal policies should not undermine the ability of municipal officials to protect the health, safety and welfare of their residents by diminishing local authority to manage public rights-of-way, to zone, to collect just and fair compensation for the use of public assets, or to work cooperatively with the private sector to offer broadband services. Regulation and oversight of basic telecommunication services are important prerogatives for local officials to advance community interests, including the provision of high quality basic services that meet local needs and are available at affordable rates to all consumers.

7.01 National Broadband Policy

NLC advocates for all levels of government (local, state, and federal) to facilitate the deployment of broadband networks and services through policies and regulations that favor government and private sector investments and further encourage development.

NLC supports federal proposals that promote community/municipal broadband that preserves the authority of local governments to act in the interest of their citizens by offering broadband internet access, and preempts states from barring local governments from offering such services in their communities.

Recognizing the varying needs of communities, NLC urges the creation of national standards for broadband connection speeds that support rich internet applications needed by our communities, are internationally competitive, and allow for technological advancement.

7.02 Municipal Oversight

A. Rights of Way

Public rights-of-way are properties owned by the citizens of a municipality that are managed by local governments for the benefit of those citizens. Proper management is essential for transportation of people, goods and services and for utilities including power, clean water, stormwater, sanitary sewer and telecommunications. Municipal governments engage in a variety of activities related to rights-of-way to protect the public safety and welfare, to minimize service disruptions to the public, to protect public investments in rights-of-way, to assure the proper placement of service lines, to regulate the placement of service facilities and to realize the value of this public asset. Underlying these municipal roles and control is the fact that the use of publicly-owned rights-of-way is a privilege, not a right. Use of municipal rights-of-way is not an entitlement flowing from the Federal Telecommunications Act. Local governments are legally and ethically obligated to control and charge for the use of rights-of-way. Moreover, the federal government must not mandate to local governments that the various users of rights-of-way (sewer, electricity, cable etc.) be treated in precisely the same fashion, given that these industries place dissimilar demands and risks on the rights-of-way.

Municipalities, authorized to manage and receive compensation for commercial use of the public rights of way, may conduct a number of activities to achieve their management goals, including, but not limited to, the granting of franchises and licenses, the promulgation of construction, restoration and maintenance standards, the levying of taxes, the charging of fees, the levying of rental charges and the issuance of permits. The federal government should take no actions which restrict the authority of municipalities in these areas.

As telecommunications and other services (that utilize public rights-of-way) are offered by different providers, and as services are bundled together or separated (segmented) in different ways, cities need the ability to adjust their regulations to the new provider environment. The federal government should remove federal barriers to this adjustment process by municipalities. Federal law should not preempt municipal regulations which require advance notification to the municipality of the offering of new services (using the rights-of-way) or when the use

of existing facilities within the rights-of-way are converted to new uses. In addition service providers should be encouraged to deploy new technologies and not withhold implementation to the detriment of a community.

Federal law should make clear that rent and other payments based on market value for public property, including rights-of-way, are appropriate and legal. Municipalities must have the authority to assess fees reflective of just and reasonable compensation for the use of public rights-of-way. There should be no federal limitation on the ability of a franchising authority to impose appropriate franchise fees for the provision of non-cable services or the provision of service by any provider of telecommunications services and its affiliates, or multi-channel video programming distributors using public property or public rights-of-ways. Moreover, franchising authorities should be able to assess a franchise fee on all operations of the service provider, or any other provider of cable or any other telecommunications system capacity, as any such use constitutes a valuable right for which a city should receive fair compensation.

Municipal requirements for users of the rights-of-way including but not necessarily limited to the following should be clearly recognized in federal law as appropriate exercises of municipal authority:

- Posting bonds;
- Notifying the municipality of excavations;
- Notifying the municipality of time, place, and manner of entry into rights-of-way;
- Complying with municipality requirements regarding excavation methods;
- Participating in the costs of street reconstruction;
- Qualification requirements for contractors and subcontractors;
- Demonstrating ability to guarantee the quality of restoration work;
- Complying with regulations specifying the frequency of when a street can be excavated; or
- Being subject to special assessments for street paving.

The type of requirements listed above should never be classified under federal law as illegally discriminatory practices or as barriers to market entry.

B. Land Use and Zoning

1. General

The Federal Government must not preempt or restrict zoning authority and other local land use laws or requirements applied in a non-discriminatory and timely manner that regulate the location, placement, size, appearance, screening or siting of transmission and receiving facilities and any other communications facilities such as satellite dishes, radio towers, broadcast

facilities, microwave facilities, equipment housing and similar facilities. (*See Related Policy under CED Section 3.07 (A) Land Use*)

2. Adjudication

Disputes over local zoning and land use matters must be adjudicated by the state courts and not the FCC.

3. Exclusive Remedy for Personal Communications Facilities

NLC supports judicial decisions and legislation that express the clear Congressional intent to preclude application of damages and attorney fee remedies against local and state governments under federal civil rights statutes for violations of section 704.

4. Notice from FCC

A copy of each application filed with the Federal Communications Commission, for construction of broadcast transmission facilities, must be provided concurrently by the applicant to all units of general purpose local government impacted by the proposed facilities, and at a minimum all those located within 20 miles of the proposed facility.

5. Radio Frequency Radiation Emissions

The federal government has established standards for radio frequency emissions. Local governments must be permitted to monitor and enforce these standards.

6. Interference with Public Safety Communications

Local governments must have the authority under federal law to enforce zero-tolerance standards for interference with public safety communications.

C. Telephone Services

NLC opposes federal efforts to curb the ability of local officials to collect local telecommunications taxes. NLC opposes efforts to classify wireline digital subscriber lines (DSL) as an information service, thereby removing DSL platforms from under current regulation under Title II of the *1996 Telecommunications Act*.

D. Internet-Based Services

The Internet is providing both new opportunities and new regulatory challenges. Local governments must have the ability to exercise their legitimate authority to regulate service and collect revenue from telecommunications providers, including companies that operate or provide Internet services within their jurisdictions. Since broadband networks and the Internet will increasingly emerge as the delivery mechanism for telecommunications services, NLC is concerned about the adverse consequences of efforts to exempt all broadband Internet access services from municipal oversight. In particular, NLC opposes efforts to classify telecommunications, including standard voice services, as information services because the carrier has used Internet protocols for some or all of the transmission of

the service or because the service is routed over the Internet or is otherwise associated with the Internet.

NLC disagrees with federal efforts to classify or re-classify VoIP services as information services - what has historically been known as telecommunications, cellular or cable services - simply because a service provider uses Internet protocols for some or all of the transmission of the service. The federal government should not preempt the ability of local governments to regulate and/or impose taxes and fees on communications companies doing business within their community simply because of the technology employed to code the transmission of a voice, video or data signal. NLC believes that all VoIP providers should be required to incorporate those technologies as a part of their basic offerings that ensure full and effective access by all households of 911 emergency services and E911 location technology.

E. Cable Modem Services

Municipal regulation of cable television is essential for many reasons, including management of public rights-of-way and protection of consumer interests. NLC believes cable modem service should be classified as a “cable” service, not as an information service, thereby subjecting the service to municipal oversight.

F. Satellite and Wireless Services

NLC opposes federal actions that have the direct or indirect effect of preempting legitimate state and local authorities from collecting revenues from wireless services transactions, sales, or other means.

7.03 Consumer Protection

Municipalities have a fundamental responsibility to protect the public health, welfare and safety through the exercise of police powers vested in them by action of their residents or the operation of state law. Through such mechanisms as: direct provision of services, franchising, permitting, and licensing, municipal governments have and maintain oversight over multiple communication systems, which are essential to this objective.

A. Media Ownership

The public interest is best served by the availability of a diverse range of viewpoints. Federal laws and regulations must ensure a competitive framework that preserves the independence and quality of local media markets and provides the public with different perspectives, services and programming.

Government regulation is required to ensure the continued presence of smaller, independently owned media outlets in markets where there would be little or no market pressure to provide for independent journalism and reporting. Media outlets that make use of valuable,

publicly owned resources such as radio frequency spectrum and local rights-of-way must be regulated by a government entity to ensure that those public resources are used in the public interest rather than just in the media outlet owner’s private interest.

B. Telephone Competition

Section 251 of the Telecommunications Act of 1996 requires incumbent telephone providers to open up their networks and enable competitors to lease parts of the network. Unbundled network element platforms grant competitors access to individual elements of the incumbent networks in order to provide competitive services. NLC opposes federal deregulatory efforts that might hinder competition at the local level and ultimately affect consumer choices and services rates.

C. Privacy

1. Privacy and Consumer Protection

Federal law must not limit the ability of municipalities to protect consumers from the misuse of personally-identifiable information. The consequences to individuals from the use and misuse of personal information and shifting public expectations for information privacy should be at the forefront of federal policy decision-making. The collection, maintenance, use and dissemination of personal information have been facilitated by the vast capabilities of modern information technology.

2. Privacy and Public Records

Local governments have an important role as collectors and caretakers of vital information about the people and communities they govern. This information is a unique resource used by governments to plan and deliver services and, under state and local guidelines, by citizens and the private sector to enhance educational, social and economic objectives.

NLC opposes any federal law or regulation, which would limit a municipality’s discretion in determining what information, held by a municipality, should be made available electronically.

A municipal government should have no legal exposure under federal law or regulation if a municipality makes information, which is public under its state law, available to any member of the public.

To safeguard municipal interests and promote expanded use of innovative information technologies, municipalities should never be required by federal law or regulation to provide data electronically, or in an electronic format that involves a significant development cost without reasonable compensation for, at minimum, the marginal cost of providing the service. Cities should be allowed to provide information in the format that is generally employed to meet the needs of the

municipality, which may not necessarily be in the form that a requester desires.

D. Abusive Practices – Unsolicited Communications

NLC supports federal efforts to curtail unsolicited communications, including, but not limited to, phone calls, faxes, e-mails, pop-up Internet ads and abandoned phone calls, except in situations where an established business relationship exists. In addition to being a nuisance, the costs of such unsolicited communications are often passed on to consumers and businesses. However, federal actions, such as national “do not call” registries, should not preempt or weaken existing state or local laws.

E. Abusive Practices – Unsolicited Wireless Communications

NLC encourages federal action to eliminate unsolicited wireless communications, including, but not limited to, phone calls and text messages, except in situations where an established business relationship exists. In addition to being a nuisance, the costs of such unsolicited communications are fully paid for by the recipient.

7.04 Universal Availability of Telecommunications Services

A. Principles

Telecommunications services are no longer bound to a single, exclusive engineering or physical delivery mechanism. Convergence refers to delivering services over non-traditional platforms, utilizing multiple technologies to deliver a particular service, and delivering multiple services over a single platform. A common example is telephone (voice) and data delivered by cable. Past regulatory regimes – applied to specific communications services, delivered via specific technologies – will be irrelevant and unworkable in a market where “cable companies,” “phone companies,” and their competitors deliver packages of comparable services via different technologies.

Implementing the principles of universal availability requires participation from the private, non-profit and governmental sectors. The private sector's role is to meet consumer demands by innovation and engaging actively in the market through product and service development and support. The non-profit sector may provide support for individuals that are not adequately served by the market or government programs.

Governmental programs are required in this area because the market cannot fully meet local, state and national objectives. Barriers of geography, technology, settlement patterns, poverty and other factors stand in the way. All levels of government have a role in ensuring universal availability. Despite the move to de-regulate services, states, through their public utility regulatory structures, have significant and changing roles in this area.

Municipal and other local governments can make significant contributions to universal availability through community needs analysis, regulation, financing, franchising, direct provision of services, progressive management of city properties including rights-of-way and a variety of other means. The federal government must not preempt municipal authority to act in the interest of its citizens, especially where fully competitive and affordable services do not exist.

The federal government, because of its scale and geographic scope, has a unique role in providing redistribution of service costs so that a national system of universal affordable access exists. These roles are critical in order to bridge gaps between universal service and what the private sector provides in response to the market.

B. Recommended Federal Actions

In order to carry out this central role in ensuring affordable access, the federal government should encourage the provision of universal availability through regulation, tax policies, incentives and other means. Such programs could include financial and technical assistance to local governments.

Among the specific actions and programs that the federal government should implement to promote universal access are the following:

- The e-rate program, providing communications assistance to schools (K-12, adult services) and libraries, operated by the Federal Communications Commission and funded by universal service fund contributions.
- Matching grants to provide additional sites for telecommunication services access by the public in municipal facilities, including, but not limited to, city buildings, community centers, housing authorities, parks and recreation sites and other community facilities.
- Technology grants for municipal governments without financial resources for technology acquisition. These modernization grants should be targeted to bring municipalities to a basic level of municipal service with eligibility based on a number of factors including size and per capita income. It should particularly address the needs of small municipalities with low-income populations.
- Tax credits to providers that deploy broadband services in underserved areas.
- Tax credits for donations of technology by individuals and other entities.
- Aid to entities that refurbish, distribute and provide technical support for donated technology equipment to underserved populations.
- Classification of a greater range of advanced telecommunications services as essential (basic) and thus eligible for subsidization.

- Classification of cable modem service as a “cable” service, thereby subjecting the service to municipal oversight in regard to many aspects of universal service.
- Technology-neutral eligibility for subsidies to advance universal service. Services provided with wires, cables, wireless or any other means, which can meet defined performance criteria, should be eligible for support programs.

While federal policies should be designed to maximize the availability of all services throughout the country, federal programs, to support affordable access to the following services, should be a priority:

- Capacity for all households and businesses to be connected to the Internet;
- All schools should have the capacity of high speed connection to the Internet;
- Every public library should have a connection to the Internet;
- All households should have a connection to 911 services; and
- A lifeline package of affordable telecommunications services should be available to all households.

C. Financing of Universal Availability

All providers of telecommunications services should contribute to programs of universal telecommunication services on an equitable and non-discriminatory basis. Programs to support universal service should be predictable and sufficient to meet documented and projected needs. Such programs should be accorded resources and a priority in federal policy consistent with their status as a basic, essential service.

D. Network Neutrality

The federal government should mandate compliance with the following principles by all companies owning networks or offering Internet access, regardless of technology they employ:

- Internet users and creators of services should have unrestricted access to and use of their choice of lawful Internet content, applications, and services;
- Internet users are entitled to connect their choice of legal devices to the network;
- While network owners define the cost and technical limits of their service, consumers must receive meaningful information regarding their service plans, including but not limited to information about anticipated upload and download speeds;
- Each of these principles should apply regardless of an Internet user’s income, race, geographic location, or disability; and
- Enforcement of these principles and similar principles are essential to ensure that the public receives the maximum diversity of information and the maximum competition among providers of services, equipment, content, and Internet access.

7.05 Spectrum

A. General

The electronic spectrum is the collective term for the categories of radiation ranging from very low frequency infra-sonics to very high frequency cosmic rays. While the electromagnetic spectrum also encompasses infrared, visible light, ultraviolet, x-rays, and gamma rays the portions of the spectrum primarily regulated by the federal government and the chief focus of this policy are those covering radio and microwave spectrum which are used for communications purposes. Spectrum is a finite non-renewable natural resource owned by the people and managed by the government.

The federal government must allocate sufficient telecommunications spectrum to municipalities for public safety use in order to enhance inter-operable communications among public safety and service agencies, and to ensure the ability of local governments to meet their responsibilities for public safety and emergency services. The federal government must also involve cities as it develops standards for the delivery of emergency information on cable systems.

If federal reallocation of radio spectrum forces a municipality to change frequencies, channels, or both to preserve their public safety and emergency communications services, there should be fair compensation made for transfer costs. Such compensation should include all costs reasonably incurred by the municipality, including, but not necessarily limited to, new equipment and infrastructure for broadcasting under a different frequency, and additional personnel and training.

B. Spectrum Fees

The federal government should discontinue its practice of selling the spectrum. The federal government should instead lease or rent the spectrum. This change will allow the federal government to assure users sufficient time to recover investments and at the same time provide the federal government the authority to reallocate this public resource, spectrum, as technologies and public needs evolve.

Localities must not be preempted from collecting revenue from consumers of services provided through use of the spectrum.

Municipalities do not have the financial resources to compete equally with the private sector for spectrum space, and since local government public safety communications are not revenue producing services, municipalities should be exempt from any fees imposed by the federal government for spectrum, or from any system of auctioning for spectrum space.

NLC opposes the sale of spectrum. Any federal receipts generated by access to spectrum should be set-aside in a federal trust fund, with protections equivalent to the highway trust fund. Such funds should be used to finance communications technology with priority given to:

- Payment to state and local government agencies to address and correct issues of interference between private spectrum users and public safety communication;
- Public safety and domestic security communications; and
- Creation of a Digital Opportunity Investment Trust charged with promoting and investing in educational and civic uses of digital technology.

C. Spectrum Management Issues

The federal government should establish a comprehensive spectrum management master plan that includes input from all stakeholders, including local government, which provides that:

- Any non-governmental user of spectrum should have a “use or lose” condition attached to its allocation which requires the user to return the allocation to the federal government if not put into use within three years;
- The federal government must establish as the highest priority for federal spectrum administration guaranteed, “interference-free”, interoperable domestic public safety and defense communications;
- Enforcement to eliminate “interference” is the province of the federal government. The federal government must staff, fund and operate its enforcement and complaint response functions to ensure prompt resolution of reported problems;
- In order to promote the preceding two objectives, the federal government should create a system of joint (collaborative) jurisdiction with state and local governments to enforce non-interference conditions within local jurisdictions;
- The federal government will initiate eminent domain or other procedures to reclaim spectrum which is determined necessary for public protection and security needs;
- A continuous dedicated stream of federal funding for public protection and safety communication is established;
- The federal government will work collaboratively with local governments to increase security of telecommunications infrastructure used to remotely control water and power facilities and other public utility systems which may be attractive potential targets for acts of terrorism;
- Within the Cabinet-level Department of Homeland Security a position of Coordinator for Public Protection and Safety Communications should be established by the federal government; and

- The federal government should vigorously encourage compliance with requirements for enhanced 911 location technology in personal communications systems, granting waivers to carrier compliance time schedules sparingly.

D. Spectrum Allocation for Low Power Over-the-Air Transmission

NLC urges the federal government to promote universal access by giving priority to municipalities for government access programming on low-power channels and radio bands when opportunities arise to re-allocate and license spectrum space. In addition, the federal government must provide adequate spectrum for translator facilities to promote the availability of “free broadcast” reception wherever feasible.

E. Instructional Televised Fixed Services

The federal government should require the licensee/applicant to provide a commitment of community public service as a prerequisite to any instructional televised fixed services licenses, leasing, resale or granting of broadcast spectrum space.

7.06 Wireline Telecommunications Providers

Within this section, the phrase “telecommunications providers” is intended to cover wireline telecommunication providers that historically provided telephony and/or television services. The phrase “municipalities” is intended to cover both municipalities and franchise authorities, other than municipalities, where applicable.

A. Federal/Local Jurisdiction over Wireline Telecommunications Providers

Federal jurisdiction should be limited to matters expressly and unambiguously designated by statute as federal matters. All other matters should be left to local and state control; municipalities should have primary authority over local and other related intrastate matters. Federal laws and regulations should recognize, respect, and not restrict local government authority.

Municipal regulation of wireline telecommunications systems is essential for several reasons:

- To manage use of the valuable and limited public rights-of-way;
- To protect consumer interests;
- To foster public, educational, and government (“PEG”) use of the system; and
- To protect the community’s needs and interests for which their rights-of-way are being occupied.

As authorities exercising police power to promote public health, safety and welfare, municipalities should be responsible for local matters such as:

- Management and control of the public rights-of-way;
- Consumer protection and enforcement of meaningful customer service standards, consumer choice, competitive consumer pricing;
- Continuity of service in cases of transfer, assignment, abandonment or termination;
- The use of municipally-owned/controlled facilities, including, but not limited to municipal services, poles, and conduits (and the fees for such use);
- Determining whether to require universal, nondiscriminatory service availability to subscribers; and
- Determining the use of franchise fees.

B. Wireline Telecommunications Provider Competition

Federal policies should encourage the development of multiple, competitive wireline telecommunications providers.

Municipalities must not be prevented from installing and operating municipally owned wireline telecommunications systems.

C. Franchise Granting and Administration

Municipalities should be permitted to consider any issues affecting the local public interest – including, but not limited to, the ability and willingness to provide service, PEG access requirements and universal service – in determining whether it is “reasonable” to deny a franchise request. Moreover, municipalities should have the right to consider the following issues relating to franchise administration:

- Impact of a franchise decision on competition in the local marketplace, and deny a franchise requests to providers that would restrict competition
- Franchise awards, modifications, time extensions, transfers, renewals, revocations, enforcement and administration;
- Prior approval or disapproval of transfers;
- The inspection of books and accounts, the conduct of audits; and
- Enforcement of service quality standards.

1. Franchise Renewals

Franchise renewals should be handled in accordance with applicable local law.

Federal law should:

- Allow municipalities to consider competitive renewal proposals at the time of renewal and to grant the franchise to a competitor that will better

serve the community, provided that a locality is not required to grant an incumbent’s bid;

- Provide municipalities with authority to review all elements of the operators’ past performance without regard to transfers of ownership during the franchise term;
- Limit administrative and procedural complexities and establish an “arbitrary and capricious” standard for judicial review of a locality’s renewal decision;
- Provide adequate time periods for making a renewal decision; and
- Permit municipalities to deny renewal requests if a telecommunications system operator is not in substantial compliance with material franchise requirements or has provided inadequate service, regardless of whether a locality had notice of, or provided a telecommunications system operator notice of, franchise violations or inadequate service of notice of such violations.

2. Franchise Transfers

Federal law should not limit a municipality’s ability to disapprove a proposed transfer upon any reasonable grounds, including, but not limited to: (a) a finding of past failure to comply with the franchise; (b) a refusal by the transferee to agree to reasonable business terms or comply with the terms of the franchise in the future; or (c) a finding of economic non-viability (as reflected in the purchase price and the economic impact of these acquisition costs on the community). Federal law should not limit a municipality’s ability to collect all information necessary to fully review a buyer’s qualifications, and should not place unreasonably short time limits on such review.

D. Franchise Fees

Municipalities must be paid fair and reasonable compensation for use of their rights of way. Such amounts should not be limited to the cost of maintaining the rights of way. In addition, payments made for, or in support of the use of PEG facilities, equipment and services, or for institutional networks (I-Nets) should not be considered franchise fees.

With equity and competitive fairness as a framework, municipalities should continue to have the right to own, operate, manage or lease any other voice and data services without a franchise and in competition with franchised providers of such services.

E. Rate Regulation

All traditional cable video services (including charges for installation, equipment, and other related services), should be regulated except for programming offered on a per-channel or per-program basis that is not supported by revenues from advertisements.

1. Rate Structure and Service Options

Federal law should allow a municipality to require a uniform rate structure throughout a franchise area on a nondiscriminatory basis. Uniform rates help ensure the availability of a minimum level of service to low-income, disabled and elderly persons.

Federal law should allow a municipality to require video operators to provide lifeline service at regulated rates or to offer discounts on its services to low-income, disabled and elderly persons.

2. Defining “Effective Competition” for Rate Making

A telecommunications system should be considered subject to “effective competition” under federal law and thereby free from rate regulation if and only if it can prove that it faces direct and meaningful competition throughout the service area of the system, for all features of the telecommunications system.

F. Billing Practices

Federal laws should not permit telecommunications system operators to itemize franchise fees, PEG access and other franchise costs. Existing laws should be repealed or, at a minimum, amended to permit municipalities to require the complete itemization of all costs, including costs attributable to programming, operations and debt service. At a minimum, federal law should be clarified to prohibit telecommunications system operators from passing through as a line item on subscriber bills franchise revenues generated by non-subscriber revenue.

- Franchise fees, PEG access, and other franchise costs should be accurately itemized and classified by federal law as a charge upon the telecommunications system operator’s total gross revenues, and not as an additional charge upon subscribers.
- Telecommunications system operators should be prohibited by federal law from treating such fees or costs as a “pass-through” to subscribers and thus evading payment of franchise fees on 100 percent of their gross revenues.
- Telecommunications system operators should be required by federal law to quote rates inclusive of such fees and costs in all communications, including advertisements and other promotional materials.

G. Consumer Protection

1. Customer Service and Consumer Protection

Federal law should allow municipalities to enact and enforce more rigorous customer service standards than federal standards.

2. Rate Complaints

Federal requirements should not restrict the ability of any individual subscriber from filing complaints directly with the FCC about expanded basic tier rates.

H. Public Access Channels

Federal law should require telecommunications providers offering channel-based programming, regardless of the means of distribution, to meet PEG access obligations as determined by municipalities.

Federal law should: (a) authorize municipalities to require telecommunications providers to provide both operating and capital support for access facilities, equipment, staffing, and maintenance at levels sufficient to ensure the viability of access without any limitations or credits against franchise fees; (b) not limit franchising authorities ability to designate entities to provide access services; and (c) provide liability protection wherever a municipality, access entity, or telecommunications provider does not exercise editorial control over content.

I. Technical and Signal Standards

1. Equipment Specification

NLC supports federal law that allows local municipalities to include facilities and equipment requirements in negotiated franchise agreements. Any federal law that prevents municipalities from prohibiting, conditioning, or restricting the use of any type of equipment used by a telecommunications provider should be repealed.

2. Minimum Standards

NLC supports minimum, national, signal quality technical standards established by the FCC and updated periodically to reflect improvements in technology. A municipality should be allowed to enforce the FCC’s standards or apply to the FCC for a waiver to impose more stringent standards. The FCC must establish standards to ensure compatibility between telecommunications services and consumer electronics equipment. The federal government should consult regularly with major associations of general-purpose local governments and industry representatives on revisions of the federal standards to keep them current as new technologies evolve.

3. Emergency Notices

The federal government must ensure that homes and businesses have access to the same emergency information as is offered by the Emergency Alert System, without regard to which telecommunications technology is used to serve a location.

J. Channel Control and Placement

1. Local Authority over Channels

Municipalities should be permitted under federal law to enforce programming and programming-related requirements contained in franchise agreements, including, for example, the number of channels that must be carried on any tier, requirements for PEG channel capacity, and a lifeline service tier requirement.

2. *Must-Carry Requirements*

NLC feels that federal “must-carry” requirements serve important goals, such as promoting the viewership of public broadcasting systems and preserving the nation’s system of free over-the-air broadcast service.

NLC supports federal law that prohibits broadcasters from using available PEG channels to transmit must-carry signals without a municipality’s approval. Such approval should be obtained in advance of the use of unused PEG channels and such use of PEG channels should be temporary.

3. *Channel Placement and Numbering for Cable*

Municipalities should not be precluded by federal law or regulation from regulating the placement and numbering of access channels to better protect consumers. Municipalities should also be authorized to prohibit any changes in channel assignments on tiers subject to rate regulation unless approved by the municipality.

Changes in alignment for services not subject to rate regulation (e.g., pay-per-view and premium programming) should be preceded by reasonable notice to the municipality and subscribers.

K. Market Share and Ownership Structure

NLC believes that a robust, open, diverse, and competitive market for information is essential to self-governance, and supports policies that ensure diverse ownership of media outlets.

1. *Market Share*

The federal government should limit the percentage of households nationwide served by a telecommunications provider and its affiliates to not more than 25 percent of the nation’s subscribers. The federal government should consider whether to impose limits on the number of subscribers served by a telecommunications provider and its affiliates.

2. *Subsidiary or “Common Carrier”*

As previously separate telecommunications technologies converge, NLC supports federal law that allows telephone companies, (“telcos”) to own and operate cable systems, “open video systems” services, and similar services. This promotes increased competition and facilitates innovation, subject to local cable franchising requirements and appropriate regulatory conditions and safeguards.

Through the franchising process, municipalities must be able to ensure, among other things, that a local exchange carrier providing cable service, or a local exchange carrier that permits others to transmit cable service via its telecommunications facilities or network, which crosses the public rights-of-way, is subject to those franchise-related requirements that the franchising authority deems appropriate, including, but not limited to: franchise fees; customer service standards; technical standards for signal

quality; procedures for reviewing requests for transfers of ownership or control; regulation of rates in areas not subject to “effective competition”; requirements for facilities, equipment and services; requirements for PEG access channel capacity, facilities and support; and universal service.

3. *Non-Integrated Ownership*

If any company provides video or other content services over its facilities, the system must be franchised and regulated in accordance with Title VI of the Communications Act. A telecommunications provider with a dominant market share of any service should be prohibited from cross-subsidizing its video or other content services with revenues received from rate-payers and should be required to set up a separate subsidiary for its content operations and vice versa. There should be a strict limit on the number of programming services carried on the system in which the telecommunications provider has a direct or indirect interest.

The federal government and municipalities have the authority to and should restrict the number of channels on a cable system that can be occupied by programmers affiliated with the telecommunications provider, and should restrict telecommunications providers from entering into exclusive programming contracts and discriminating among programmers.

4. *Integrated Ownership*

With respect to an integrated corporation that provides both content and the underlying telecommunications transport, a municipality should be authorized through the franchise process to regulate all matters affecting local community needs and interest, including, for example: consumer protection; customer service; PEG access; minimum requirements for video system facilities and equipment; rate regulation in areas not subject to effective competition; nondiscriminatory service throughout a franchise area; and compensation to the franchising authority through payment of a franchise fee.

L. Municipal Liability Exposure and Franchise Administration

1. *First Amendment*

NLC is opposed to challenges of government regulation on First Amendment or other constitutional grounds brought by cable operators, or other communications and information service providers. When municipal regulation is challenged on First Amendment grounds, NLC encourages recognition of the following principles:

- Current television distribution facilities are predominantly a natural monopoly;
- Wireline telecommunications service providers generally make permanent and extensive use of the public’s rights-of-way;
- Public, educational, and governmental (“PEG”) access promotes the First Amendment interests of the public;

- Universal service promotes the First Amendment interests of the public;
- The First Amendment interests of the public and municipalities, in assuring programming diversity and a vigorous marketplace of ideas, outweigh the telecommunications providers' First Amendment interest in providing cable service; and
- Television is a unique media of expression that requires a different First Amendment standard from that applied to the print medium, but similar to that applied to the broadcast medium. Further these unique media of expression are evolving and should be routinely monitored.

2. Damages Immunity

Some local governments have been threatened with extraordinary monetary judgments in lawsuits by telecommunications providers that challenge the fundamental right to exercise regulatory jurisdiction authorized by federal, state or local laws or regulations. NLC supports the damages immunity provisions in the federal cable act. To the extent that local government damages immunity provisions are not clearly set forth in other sections of the *Federal Telecommunications Act of 1996*, they should be clarified. For example, the legislation should preclude the award of attorney fees and costs against municipalities.

M. Institutional Networks

Telecommunications policies on the national levels should encourage and support municipalities in the development and operation of Institutional Networks (“I-Nets”). I-Nets are an integral part of the local telecommunications infrastructure, providing valuable alternative video, voice, and data services to local governments, schools, hospitals, other public institutions, and the public. Furthermore, they can serve as a critical gateway to other telecommunications networks. The creation of innovative services on I-Nets can be a catalyst for the broader deployment of advanced telecommunications services within the community.

I-Nets promote the full and effective use of local networks while at the same time permitting service providers to offer important benefits to the community in return for the use of public rights-of-way.

7.07 Broadcasting

A. Minority Opportunities in Communications

NLC generally opposes non-competitive broadcast ownership caps that may facilitate concentrated ownership by a limited number of individuals. NLC will work to protect diversity in broadcast ownership, which, in turn, will promote and protect universal access. More broadly, NLC urges the communications industry to develop tangible franchise or related ownership relationships, or otherwise establish genuine business relationships with minority and female-owned businesses.

B. Low Power Television and Low Power FM Radio

1. Support for Low Power Television (LPTV)

Federal LPTV policy must promote and give priority to local government and public service programming, encourage diversity in programming, and maximize opportunity for local competition among LPTV stations.

2. Ownership Opportunities

NLC also encourages LPTV ownership by women, local governments, small businesses and minorities. Federal restrictions on trafficking, the rapid resale of recently acquired broadcasting licenses, should be established to preserve minority, female, small business, and local ownership.

3. Low Power FM Radio

NLC encourages the development of low power FM radio broadcasting service to provide opportunities for new entrants, including those for women and minorities into broadcast ownership. Low power FM radio broadcast programming can address local problems, needs and interests.

4. Benefits to Consumers

Low-power television can increase audience access to programming in under-served areas, enhance competition, and expand media ownership opportunities for women, minorities, and small businesses.

Related, NLC urges the Federal Communications Commission (FCC) to uphold the concept of universal access by rescinding rules on FM translator services that limit (i) revenue-generation options available to translator stations, and (ii) allowable power output for translators, thereby limiting program choices available to small and rural communities.

C. Fairness Doctrine

The federal “fairness doctrine” and related doctrines such as the “equal time” media access requirement for candidates should be enacted into law and strengthened by requiring full and effective FCC enforcement. The “fairness doctrine” was established in 1949 through federal regulation to foster debate on public issues and ensure the public airing of different points of view on controversial issues, but it was revoked in 1987 by the FCC.

7.08 Satellite Services

A. Public Interest Requirements

Satellite companies should not be exempt from public interest requirements such as public, education and government (PEG) channels.

7.09 Miscellaneous

A. Slamming

NLC supports efforts to address the significant increase in the unauthorized change of consumer telephone service, a practice known as slamming. This unauthorized change can have a negative impact on consumers of telecommunications services who not only lose the right to subscribe to their carrier of choice, but also might be subject to lower quality service or higher rates.

