



The States' Broadband Plan:

Three Suggested Policies to Promote Broadband in the States

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Introduction

State lawmakers face difficult economic challenges. While many Americans worry that job and unemployment numbers remain stubbornly high, citizens look to their elected representatives in the state and federal government to offer sound solutions.

Since 1973, the American Legislative Exchange Council has focused on providing practical policy answers to challenges facing America. State lawmakers can conquer today's economic challenges by refocusing on our nation's founding principles of limited government, free markets and federalism. The states, not Washington, D.C., are in a position to take the lead, restart America's economic engine and put people back to work.

The Exchange Council provides a unique opportunity for state legislators, business leaders and citizen organizations from around the country to develop model policies based on academic research, existing state policy and effective business practices. These policies are the result of task force research and debate, and are intended to be academic documents for individual study. While these state-based policy solutions are meant to facilitate economic

growth, one size does not fit all. Legislators have the opportunity to determine, in consultation with their constituents and legislative colleagues, what works best for their communities.

The American Legislative Exchange Council's Task Force on Communications and Technology is composed of nearly 200 members representing all regions of the country and every segment of industry, who believe that constant, dynamic innovation in communications and technology presents numerous complexities that defy traditional public policy prescriptions. To help policymakers understand the changes underway in the 21st Century economy, the Task Force brings together state legislators, private industry and experts to develop public policies that will promote economic growth, freedom of technology and innovation in the states. The American Legislative Exchange Council Task Force on Communications and Technology is pleased to provide the following three model policies, with hyperlinks to the policy text, to the public and our members as suggestions to spur more economic growth through broadband.

Suggested Policies

- [*Advanced Voice Services Availability Act*](#)
- [*Facilitating Business Rapid Response to State Declared Disasters Act*](#)
- [*Wireless Communications Tower Siting Act*](#)

Advanced Voice Services Availability Act

The best way to address the economic problems facing the country is to increase economic opportunity, investing in and fostering potential growth areas of the economy that hold real promise to create jobs and wealth. Few areas hold as much promise as broadband access to the Internet, especially mobile broadband. Over the past two years, the broadband industry has collectively invested over \$120 billion in research, equipment and people.¹

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economy,” has emerged. Of course, these new products and services require software engineers, designers, artists and subject matter experts to develop the applications. This new sector of the economy also requires scores of people, such as accountants, administrative personnel, salespeople and managers in the back office, to successfully run and service the new businesses. In fact, one study found that

¹ <http://www.broadbandforamerica.com/benefits/economy>

the app-economy has created half a million new jobs to serve the needs of this new economy.²

Broadband has also enabled people who have lost their jobs to search for new employment and learn new skills. There now exist a myriad of websites listing jobs in a navigable and sophisticated format that allows users to search based on their expertise, skills and compensation needs. Additionally, there are websites where the unemployed can acquire new skills and a new knowledge base to make them more qualified for positions. In many cases, people can obtain college and graduate degrees from accredited institutions through online courses over broadband connections.

The growth of broadband has had a real positive impact on the U.S. economy. For example, small communities in the Midwest have lost population as young people migrate to cities in search of better job opportunities. But with the help of broadband, some of these communities have reinvented themselves as “Silicon Prairies” and become launching pads for new businesses by focusing on areas such as application and website development.³ In small cities and towns like Kansas City and Omaha, clusters of startups and tech ventures are forming and growing the local economies.

² <http://www.technet.org/new-tech-net-sponsored-study-nearly-500000-app-economy-jobs-in-united-states-february-7-2012/>

³ <http://online.wsj.com/news/articles/SB10001424127887324073504578109520790985296>

While new products and services are constantly developed on the Internet through broadband, the laws on the books don't account for the

to establish a market-based regulatory framework for Internet protocol-based technologies that broadband increasingly relies

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speed and breadth with which this broadband-enabled innovation takes place. These laws also don't account for the market power in the Internet economy to disrupt monopolies and protect consumers. Unfortunately, policymakers continue to apply 20th Century laws, designed for monopolistic challenges from a bygone era, to 21st Century technologies like broadband. When old laws govern new technologies, costs rise and innovation slows.

upon. To this end, the model Act exempts Internet protocol-based technologies from state utility regulation, and preserves several rights and responsibilities for states and providers, while also respecting the Federal Communications Commission's (FCC) jurisdiction. The Exchange Council's model policy also preserves state authority for resolving interconnection disputes as defined under the federal Telecommunications Act. To date, at least 28 jurisdictions from California to Texas have adopted laws consistent with this model.

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The American Legislative Exchange Council's model *Advanced Voice Services Availability Act* protects Internet freedom and innovation from the threat of overregulation. This policy seeks

Facilitating Business Rapid Response to State Declared Disasters Act

The widespread destruction of broadband communications networks caused by Superstorm Sandy in 2012 highlights the urgent need for policymakers to reexamine not only natural disaster recovery strategies, but also the current tax and regulatory policies that might slow response during these emergencies.

Sandy's toll on the Northeastern United States was breathtaking. The storm left tens of thousands of people in New Jersey and New York without communications for many days and without electricity for several weeks. In New Jersey, Sandy swept away parts of Sea Isle City and floodwaters submerged most of the streets and buildings in the city of Hoboken. In New York, the storm destroyed whole sections of Queens and shut down most of the heavily-used public transportation assets in the region.

For the most part, policymakers focused their efforts on appropriating money to pay for reconstruction in the affected areas, to fortify communications infrastructure and to make disaster preparations for the next big storm. These discussions are appropriate, but narrowly focused on a single aspect of disaster planning.

Instead, policymakers should examine ways to accelerate response and recovery operations in order to restore broadband functionality. This requires policymakers to reexamine the tax and regulatory policies that have historically slowed efforts to respond to natural disasters.

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During natural disasters, many companies enlist temporary resources and personnel from outside the state to help expedite the enormous task of repairing damaged equipment and facilities. Clean-up and repairs often involve the need for out-of-state companies to bring in additional resources and personnel that, prior to the disaster, had no connection to the state. Out-of-state resources, like trucks and utility crews, supplement in-state capabilities and translate to faster responses to disasters.

However, bringing additional resources and personnel into a state opens an out-of-state company to liability for burdensome new taxes and regulations, including business activity

for state and local business-activity tax purposes and business licensing. However, to ensure this policy remains focused solely on improving disaster responses, the policy does

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taxes, unemployment insurance taxes, taxes on equipment and even operational licensing requirements. America's disaster responders should be focused on the task at hand, not wondering whether they need a tax lawyer.

A state's tax nexus requirements are intended for businesses that conduct regular business in the state and for individuals who reside in the state. When the goal of a business is to mitigate a natural disaster's impact and hasten the return to normalcy, it does not make sense to subject companies and employees acting temporarily in the state to render critical assistance to burdensome taxes.

To ensure that companies and their employees focus solely on responding to the needs of the state and its citizens during a disaster, the American Legislative Exchange Council developed as a reference guide for state legislators the *Facilitating Business Rapid Response to State Declared Disaster Act*. The Exchange Council's model policy simply states that activities for repairing damage to critical infrastructure in a state for a reasonable period of time during and after an officially-declared disaster or emergency do not establish nexus

not exempt business from use taxes (i.e. gasoline taxes, hotel taxes, etc.) and the exemption only lasts as long as the disaster period.

There are real world examples supporting this type of policy change in action. In response to Sandy, New Jersey and New York both extended filing deadlines for businesses and individuals involved in response efforts.⁴ New York's Department of Taxation also announced it would not assess corporate franchise taxes, withholding taxes, personal income taxes, or any penalty or interest related to those taxes in certain situations. However, New York's announcement did not apply to sales tax requirements or to any other taxes not specifically discussed in its guidance. To provide businesses with tax certainty, these disaster-focused provisions should be codified in law.

⁴ http://www.tax.ny.gov/bus/multi/sandy_relief.htm

Wireless Communications Tower Siting Act

Americans know well the sense of frustration that comes when their mobile phones drop calls or lose an Internet connection. What they may not know is how burdensome local government rules contribute to the problem.

Poor reception has myriad causes. The distance and line of sight to your wireless provider's nearest cell tower determines the strength of your signal. If you're far away from the nearest tower, or you have objects in between you and the tower, such as trees, hills, or large buildings, then you'll have a much weaker signal, which means a little interference can cause a big signal problem. Weather and construction materials, such as metals and insulation, can also cause interference.

Wireless carriers recognize that poor reception remains an issue and continue to invest billions of dollars in their networks, most notably for cell towers. In 2012, despite the challenging economy, U.S. wireless carriers spent approximately \$10 billion on capital expenditures, which includes new and better cell towers to expand and improve signal coverage.⁵

Carriers would invest more, but there is a barrier to more investment: local zoning rules. These rules govern applications for new towers,

⁵ <http://www.telecompetitor.com/abi-wireless-carriers-capex-stalls-in-2012/>

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adding equipment to existing towers, and placing antennae on existing structures (e.g. office towers). Local zoning rules have dramatically slowed applications for permits to construct or improve cell towers.

The delays have been widespread. According to Internet analyst Larry Downes, FCC "shot clock" rules give state and local governments a 90-day deadline to process applications for co-located wireless facilities, where two or more providers share the tower, and 150 days for new cell towers.⁶ Nearly a quarter of the wireless tower construction and improvement applications nationwide have been pending for more than a year, some for more than three years, and delays are only increasing.

Despite more consumers using cell phones and other mobile devices, local governments add zoning requirements that increase the time it takes to review applications. Local governments have adopted ordinances prohibiting or severely restricting tower height and the

⁶ http://news.cnet.com/8301-1035_3-20102911-94/does-your-iphone-service-suck-blame-city-hall/?tag=topStories

placement of equipment in residential zones, limiting coverage exactly where it's needed most and, ironically, forcing carriers to build more, smaller towers rather than a few tall

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ones.

These delays continue despite new FCC rules and acts of Congress directing local governments to expedite review of wireless tower applications. These delays have real consequences for Americans. The U.S. wireless industry is valued at least \$195.5 billion, which is larger than the agriculture, hotels and lodging, air transportation, and motor vehicle manufacturing industry segments.⁷

Moreover, the Pew Center found that 49 percent of minorities in the U.S. use smartphones.⁸ A lack of adequate cell coverage

⁷ <http://sitefinity.dmz.ctia.org/resource-library/facts-and-infographics/archive/economic-value-wireless-industry>

⁸ <http://www.pewinternet.org/Reports/2012/Digital-differences/Main-Report/The-power-of-mobile.aspx>

threatens to limit access to broadband and slow economic growth and social progress, which will negatively impact job creation, public safety and education.

Several states recognize wireless technology is an essential ingredient to broadband access and future economic and social success. These states are currently implementing policies to hasten the deployment of advanced wireless communications services. The American Legislative Exchange Council developed the *Model Wireless Communications Tower Siting Act* for the purpose of: ensuring (1) the safe and efficient integration of facilities necessary for the provision of broadband and other advanced wireless communications services throughout the community and (2) the ready availability of reliable wireless service to the public and government agencies and first responders, with the intention of furthering the public safety and general welfare.

Laws consistent with the *Model Wireless Communications Tower Siting Act* also respect the rights and responsibilities of local governments and providers. These laws contain a number of provisions to speed construction and improvements of cell towers, such as firm time limits for considering applications and restrictions on unnecessary requirements. Moreover, the intent of this model policy is not to limit or preempt the scope of a zoning authority's review of applications for siting of wireless facilities or wireless support structures. To date, nine states have enacted laws consistent with this model aimed at streamlining wireless tower construction and modifications.

Conclusion

Each of the 50 public utility commissions' divergent rules and proceedings threaten the success of broadband-enabled technologies like Voice over Internet Protocol (VoIP). Applying the existing state wired telephone service rules to the Internet, for example, could mean separate taxes, mandates and government approval for any service change. That would be a disaster for the Internet economy and for the already dismal employment levels.

Policymakers are largely responsible for ensuring that the U.S. has appropriate disaster

response plans in place for devastating storms like Sandy. As discussions about disaster response plans continue, policymakers should learn from recent events like Sandy and seek ways to quicken response time and ensure broadband communications do not go silent.

Americans also increasingly rely on mobile devices and should not have to endure dropped calls. By streamlining local government rules to build or improve cell towers, Americans can look forward to a clearer communications future.