

INSIDE *A*LEC

A PUBLICATION OF THE AMERICAN LEGISLATIVE EXCHANGE COUNCIL

COMMUNICATIONS AND TECHNOLOGY EDITION

**Free Market Policy Reforms for our
Dynamic Communications Sector**
By The Honorable Marsha Blackburn, TN (CD-7)

**The Smartphone Meets the Fourth
Amendment**
By The Honorable Garry Smith, SC (HD-27)

Connecting Students to Opportunities
By Lyndsay O'Herrick, Comcast

**"Big Data" and IT Efficiency:
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By C. Stevens Seale, SAP America

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The Council provides legislators
with viewpoints and discussions on
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LEADERSHIP PROFILES



Public Sector Chairman Profile:
The Honorable Blair Thoreson, ND (HD-44)
Chairman - Task Force on Communications and Technology

BLAIR THORESON is a member of the North Dakota House of Representatives, representing the 44th Legislative District in Fargo, ND since 1998. He serves as Chairman of the Government Operations Division of the House Appropriations Committee and serves on the Administrative Rules, Budget Section and Information Technology Committees.

Representative Thoreson is a small business owner. He previously spent 14 years employed in the telecommunications industry. Thoreson has a B.S. in Communications from North Dakota State University and a Masters of Management from the University of Mary. Rep. Thoreson and his wife, Jennifer, have two children.



Private Sector Chairman Profile:
Mr. Bartlett Cleland, Resident Fellow
Institute for Policy Innovation
Chairman - Task Force on Communications and Technology

BARTLETT CLELAND is a Resident Fellow with the Institute for Policy Innovation (IPI). The IPI is a free-market organization dedicated to promoting lower taxes, fewer regulations and a smaller, less-intrusive federal government. At IPI, Cleland's responsibilities include oversight of all technology and related studies, including communications policy, intellectual property, online taxation and regulation. He also serves as the Managing Principal at Madery Bridge Associates, a public policy strategy and communications organization.

Previously, Mr. Cleland was one of the primary U.S. Senate staff driving the *Digital Millennium Copyright Act*, the *Internet Tax Freedom Act* and encryption and "supercomputer" export controls. During his tenure on the Hill, Cleland worked on all legislation before the Senate Judiciary Committee regarding copyright policy.

After leaving the U.S. Senate, Mr. Cleland represented the software industry as the Associate General Counsel and Vice President of Software at the Information Technology Association of America. He also once served on the Internet Safety Technical Task Force, a group comprised of leading Internet businesses and organizations formed by 49 state attorneys general to focus on identifying effective online safety tools and technologies.

Mr. Cleland graduated from Millikin University with a B.S. in Philosophy and Business Administration. He received his Masters of Business Administration, as well as his law degree with a specialization in international and comparative law, from St. Louis University. Mr. Cleland is admitted to the Missouri bar.



An Introduction to the Task Force on Communications and Technology

With nearly 200 members representing all parts of the country and every segment of industry, the Task Force on Communications and Technology believes 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 policy experts to develop public policies that promote economic growth, freedom of technology and innovation in the states.

The task force focuses on: 1) broadband deployment and adoption; 2) protecting consumer choice in privacy; 3) promoting new forms of e-commerce; and 4) growing the high-tech sector. Five subcommittees study Broadband; E-Commerce; Information Technology; Innovation; and Consumer Protection, Critical Infrastructure and Security Technologies to thoroughly investigate topics of interest to the states.

ACCOMPLISHMENTS

Through nonpartisan research and analysis, the task force has helped members accomplish the following:

- Twenty-nine states have enacted laws based on model Voice over Internet Protocol policy to promote deployment of advanced communications technologies. These policies were passed in Arkansas, Delaware, Kansas, Nevada and Wyoming in 2013.
- Eleven states have adopted laws based, at least in part, on the model *Wireless Tower Siting Act* to streamline local zoning and permitting requirements to speed deployment of advanced wireless broadband networks. These policies were passed in North Carolina, New Hampshire, Missouri, and Washington in 2013.
- Twenty states have heeded advice to protect taxpayers from waste, fraud, and abuse by adopting model policies to require fair competition, transparency and voter approval for government-owned broadband systems.
- In 2013, the task force published a report entitled, *Abuse and Misuse of Personal Information: Trends and Issues in Privacy*, which examined concerns about online privacy and the use of biometric information. *Abuse and Misuse of Personal Information* was widely acclaimed by members and scholars.
- The task force published a well-received op-ed in the *Wall Street Journal* detailing state cybersecurity efforts in Michigan and Virginia to protect constituent information and critical infrastructure from hackers, as well as an op-ed in the *Daily Caller* about growing the mobile app economy.

THE YEAR AHEAD

In the months ahead, the task force will host briefings on topics including broadband promotion, privacy and surveillance, mobile health, and online education, among others. The task force is also currently at work on an effort to research and promote investment in broadband.

If you have questions or are interested in learning more about the Task Force on Communications and Technology, please contact the director, John Stephenson (571-482-5046, jstephenson@alec.org).



Free Market Policy Reforms for our Dynamic Communications Sector

BY THE HONORABLE MARSHA BLACKBURN, TN (CD-7)

There's no question that America is the envy of the world when it comes to leading what some are calling "the knowledge economy." But unfortunately, we will only continue to remain the global champion in the technology and communications space—a place of unparalleled innovation—if we aggressively advance conservative policy solutions to the challenges that confront us.

That's why I've proposed several ideas that deserve attention from anyone who doesn't want big government to stifle our communications industry, a growing sector that represents nearly one-sixth of the U.S. economy. And the stakes are high for conservatives in the tech and telecom policy arena as technology is revolutionizing nearly every sector of the economy it touches, from transportation, to health care, to education and beyond. We are living in an age where the Internet has the potential to change our daily lives for the better, but only if we make the right policy decisions.

There's no question we must improve our cybersecurity posture across the board, **but adding new layers of federal regulation creates a false sense of security.**

One of our biggest challenges will undoubtedly be updating our obsolete telecommunications law framework to make it relevant to the current marketplace. We've made some improvements to the law, but 1996 was the last time the Communications Act got a fundamental overhaul—to say a lot has changed since the mid-90s would be an understatement. New communications services are governed by old rules based on outdated assumptions. The result is weak investment, greater uncertainty, fewer consumer choices and less competition.

The law currently segregates various communications services based on the delivery platform rather than on end use, which is defined as the digital product or service a consumer receives. But no one can argue technology hasn't evolved to a point where different communications platforms offer a similar suite of voice, video and data services. Some say it's a bold endeavor to overhaul and modernize our laws to rationalize today's competitive marketplace, but conservatives must be proactive to enable and enhance consumer welfare, remove unnecessary regulations and beat back special government preferences that force us to look backward instead of forward.

Further challenging the health of the tech industry is the Federal Communications Commission's (FCC) regulatory addiction and pen-


chant for picking winners and losers in the free market. Instead of focusing like a laser on deploying more spectrum into the commercial market to help meet consumers' and communities' exploding demand for mobile broadband, the FCC is fixated on growing its jurisdictional footprint and expanding its influence in other areas.

Some examples of the FCC's misplacement of priorities include their so-called net neutrality regulations, the Lifeline "Obamaphone" welfare program, and various taxpayer funded subsidies that crowd-out the private sector. In short, we need greater transparency and better process at the FCC. But more importantly, we should insist on greater regulatory restraint at the agency where new rules should complement market regulation only when true harms and market failures are accurately quantified.

Another area where the federal government has focused a lot of attention is cybersecurity. According to the Government Accountability Office, over a five year span, cyber attacks grew by 650% and cost our economy almost \$400 billion each year. Our citizens' privacy is stripped, business plans are stolen and government sites get hacked. Today's cyber criminals, and the states that sponsor them, are developing new ways to hit us even harder. They want to tap deeper into our military applications, trade secrets, start-up technologies, communication systems, personal information and a whole range of data and property that could easily be used to undermine our personal safety and competitiveness in global markets.

The Strengthening and Enhancing Cybersecurity by Using Research, Education, Information and Technology Act of 2013 (SECURE IT Act) is a non-regulatory solution that I've proposed. It would provide our government, business community and citizens with the tools, protocols and resources needed to protect themselves from those who wish us harm.

This incentive-based approach is preferable because the solutions that typically characterize Washington policymaking—more spending, difficult rules, and extra bureaucrats—will not be effective. There's no question we must improve our cybersecurity posture across the board, but adding new layers of federal regulation creates a false sense of security. Instead, we need to put American businesses in the driver's seat and hold the government more accountable.

Whether it comes to overhauling our antiquated communications laws, reforming the FCC, unleashing spectrum into the private market or bolstering our cyber defenses, let's seize this opportunity to lead in the communications policy arena. Conservatives must advance new ideas if we aspire to continue leading the knowledge economy. Let's unleash the American entrepreneurial spirit with Constitutional principles that put markets—not politics—at the center of these crucial debates. 



THE HONORABLE MARSHA BLACKBURN represents the 7th District of Tennessee in the United States House of Representatives. Prior to being elected to the U.S. House of Representatives, Congressman Blackburn served in the Tennessee State Senate.



THE SMARTPHONE

Meets

THE FOURTH AMENDMENT

BY THE HONORABLE GARRY SMITH, SC (HD-27)

THE DAILY CALLER

This article was first published in the Daily Caller on September 9th, 2013

Many of us are never far from our cell phones. We certainly never leave home without them and landlines are becoming an anachronism. But, for all their utility, cell phones are poorly locked portals that lead directly into our private lives.

Cell phones, particularly the newer smartphones, are so useful precisely because they have the ability to store and retrieve an incredible amount of data anytime, anywhere. Almost everything about our families is stored on our smartphones: photographs, email and voice messages, schedules, text messages, and even Internet browsing histories are available to anyone with the skill and equipment to break into these devices. More importantly, smartphones can provide access to bank and credit card accounts, and even medical data. As a result, new challenges are presented for laws that protect personal information from theft or unauthorized search.

It is no wonder, then, that electronic communications privacy is becoming more important by the day. As technology advances, so does the ability of intruders to capture our sensitive financial and personal data for criminal purposes. At the same time, while law enforcement has a public interest in gaining access to the data used by criminals in the commission of their crimes, citizens have a constitutional right to be free from government agents rifling through their personal data at will.

Cell phone tracking by law enforcement is becoming an important crime-fighting tool, but a recent U.S. Supreme Court ruling asserted that a GPS tracking device placed on a suspect's car violated his Fourth Amendment rights. The ruling did not directly involve cell phones, but since all smartphones have a built-in GPS, it raises questions about the standards for cell phone tracking as well.

Citizens need to be protected from invasions of privacy by thieves and they need to know how far the government can go in accessing their personal lives. Moreover, law enforcement and businesses need certainty about the rules for accessing personal data. While Congress and some states have taken steps to provide protections, new technology frequently outpaces the law; for example, the most "recent" federal law governing searching electronic communications was adopted in 1986.

Because these issues are important to citizens throughout the country, the matter has been taken up by the American Legislative Exchange Council (ALEC), which is a national conference of state legislators who meet regularly to share ideas on potential model policies that address today's top economic issues. Through ALEC, I have been working with legislators from around the country to develop model policies to protect citizens both from technologically advanced thieves and from uncertainties in the nation's search and seizure laws.

As a member of the ALEC Communications & Technology Task Force, I have been able to spend time with civil liberties groups, technology companies, law enforcement and scholars to discuss the many challenges presented by these issues. This task force has been instrumental in debating and drafting model policy known as the model

Electronic Data Privacy Protection Act, which we will finalize in the months ahead and make available to the public at www.alec.org.

A growing concern requiring consideration by legislatures everywhere is how much access police should be given to a person's cell phone data before being required to obtain a search warrant.

Presently, only four states have laws requiring police to obtain a warrant before "searching" a cell phone. In 21 states, including South Carolina, police are free to search any cell phone in the possession of a person at the time of their arrest.


The courts are struggling with these questions as well. In December 2009, the Ohio Supreme Court held that even if a cell phone is lawfully seized when someone is arrested, the Fourth Amendment generally prohibits the police from searching the contents without a warrant. The Fourth Circuit U.S. Court of Appeals, which includes South Carolina, however, has held that police may search a cell phone incident to a lawful arrest.

Lawmakers need to give the courts some guidance about how far we want to go. The South Carolina Legislature has already begun addressing these issues. In 2012, I sponsored legislation (H4459) which provided that information contained or stored in a cell phone or similar wireless communications device is not subject to a police search

Citizens need to be protected from invasions of privacy by thieves and they need to know **how far the government can go in accessing their personal lives.**

without a warrant. This bill was merged with other legislation but failed to pass the House by the end of the session. I plan to try again in the next session.

Three other states—Maine, Montana and Texas—have already acted to protect their citizens' privacy by passing laws that require warrants for accessing smartphone location data and content. The model I am developing with the help of ALEC draws heavily from these laws.

Smartphones have dramatically changed our lives, mostly for the better, and their utility has made them indispensable. It will certainly have renewed interest as the privacy of our personal and business communications becomes ever more critical. 



THE HONORABLE GARRY SMITH represents the 27th District of South Carolina in South Carolina's House of Representatives.



*“Whether it is online activity or biometric identification, **we do not have to sacrifice privacy to enjoy new products and services.**”*



*“**Biometrics is not a panacea to privacy and security.** In fact, it presents its own privacy challenges.”*



*“Only through **careful consideration** policymakers be able to protect constituents and innovation.”*

SPECIAL REPORT **ABUSE AND MISUSE OF PERSONAL**

*“Whether law enforcement or self-regulation, the focus of actions to protect individuals’ privacy have been largely on **ensuring consumers have sufficient notice and choice** when it comes to making decisions about privacy.”*

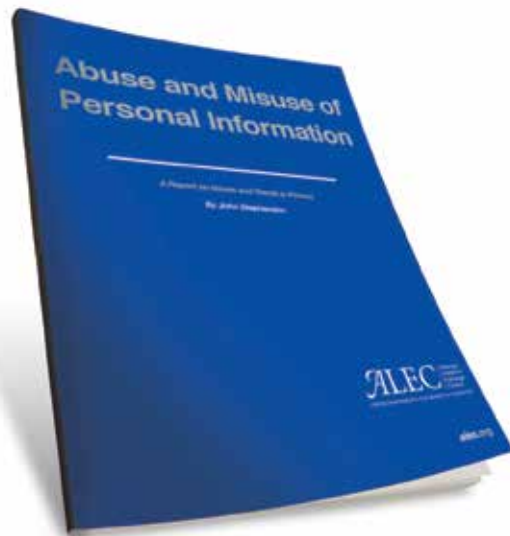
"What we once considered private information, such as a birth date or a family photo, is **now information we make available to the entire world via the Internet.**"

"If history is any guide, rushed solutions typically turn out to be **unworkable and costly complications.**"

n will
their

INFORMATION

Abuse and Misuse of Personal Information, a new report from the Task Force on Communications and Technology, lays out the challenges of privacy policy in the 21st century.




The advent of the camera in the 19th century incited widespread panic regarding the state of personal privacy. Today, 21st century advancements like the Internet and biometric identification pose similar concerns for state policymakers.

Abuse and Misuse of Personal Information provides lawmakers a guide to protect individual privacy while allowing technological innovation. Policymakers often feel compelled to react to media reports detailing inappropriate use of biometric information or constituent concerns over online tracking. Rushed proposals can produce unworkable policies and limit consumer choice and benefit. Instead, it is imperative for policymakers to exercise caution as they seek solutions to ease privacy concerns.

Solving privacy issues first begins with defining privacy itself. For a teenager active on social media platforms like Facebook or Twitter, private information may not include birthdates, family photos, or residential locations. However, many individuals guard such information as highly personal. The subjective and ever-evolving nature of privacy, coupled with technologies that enable widespread dissemination of personal information, complicates today's privacy issues.

Privacy is further complicated on the Internet because of the culture of openness and information sharing. Similarly, the economics of the Internet requires use of personal data. Free websites do not charge money because they sell advertising that is targeted based on user data.

Privacy concerns will remain as technology continues to advance, but real privacy solutions that balance between protecting privacy and preserving innovation are possible. There is no need to sacrifice privacy to enjoy technology, and *Abuse and Misuse of Personal Information* will help lawmakers protect both their constituents' privacy and the innovations they depend on.

For more information on this report, visit www.alec.org. 

Connecting Students to Opportunities

BY LYNDASAY O'HERRICK, COMCAST

Over the past few years, Comcast has put forth a concerted effort to work with educational leaders from around the country. Through that work, I have been a part of many discussions about what "21st century skills", "college and career readiness" and "global workforce development" means for today's students. Education leaders everywhere are trying to figure out what that secret sauce is to ensuring that the students of today are graduating from high school with the necessary skills to innovate and compete for the jobs of the future. The one consistent trend is

that the Internet is the future of learning. The Internet is transforming education and how children learn both at home and at school, and has ushered in a new wave of skills that are essential for students to be successful in the 21st century workforce.

Access to the Internet at school is no longer sufficient. Broadband connectivity at home is critical to complete assignments and stay on top of schoolwork. I remember in junior high school spending one class period a day on a computer learning how to type on the keyboard. Now, my 11- and 12-year-old niece and nephew are taking their iPod touch to class for instructional purposes, and accessing broadband at home to complete their homework, collaborate with



Internet Essentials Keeps Getting Better

- 1.2 million visits to the Internet Essentials websites
- 2 million Public Service Announcements valued at more than \$25 million
- 1.5 Mbps to 5 Mbps speed increase for our Internet Essentials families
- 27 million materials distributed to schools and partners
- 7,000 community and government partners & 4,000 school district partners
- 18,000 subsidized computers purchased by Internet Essentials families

fellow students after school, and access online research materials. Even my 3- and 4-year-old nieces are using iPads in preschool to learn about shapes and colors, and accessing those same Internet-enabled apps at home to continue practicing and showing their parents what they've learned.

But lack of access to the Internet at home is causing a disparity for far too many students. Earlier this year, the Pew Internet & American Life Project released a report which showed there is a digital divide that is impacting the progress we can make in incorporating online learning platforms into student curriculae. A survey of nearly 2,500 middle and high school teachers found that 79 percent of students are asked by teachers to access and download assignments from a website. However, eighty-four percent of the teachers were concerned about the increased disparities between low- and high-income students and school districts. Comcast has witnessed this problem in our

service area: in some higher-income areas, more than 90 percent of households have Internet service, while in lower-income areas, less than 15 or 20 percent of households do.

In these lower-income areas, particularly regarding students who qualify for free or reduced priced school lunch, many families simply cannot afford to have Internet access at home. This means students cannot access the online supplemental reading, submit papers online, or communicate electronically with fellow students when group projects require collaborating outside of the classroom. For parents, lack of connectivity means they cannot stay on top of their students' academic performance by monitoring grades online.

Internet Essentials is our company's initiative to help break down those learning barriers in the communities we serve. *Internet Essentials* is the nation's largest and most comprehensive broadband adoption program. Families who live within the communities we serve and that have at least one child receiving a free or reduced price lunch through the National School Lunch Program are eligible to receive home broadband service for less than \$10 dollars per month; the option to purchase an Internet-ready computer for less than \$150; and multiple options to access free digital literacy training in print, online, and in-person. To provide a bit of context regarding the scale of this program, Comcast is offering *Internet Essentials* in every single community across the 39 states and the District of Columbia where we provide residential Internet service.

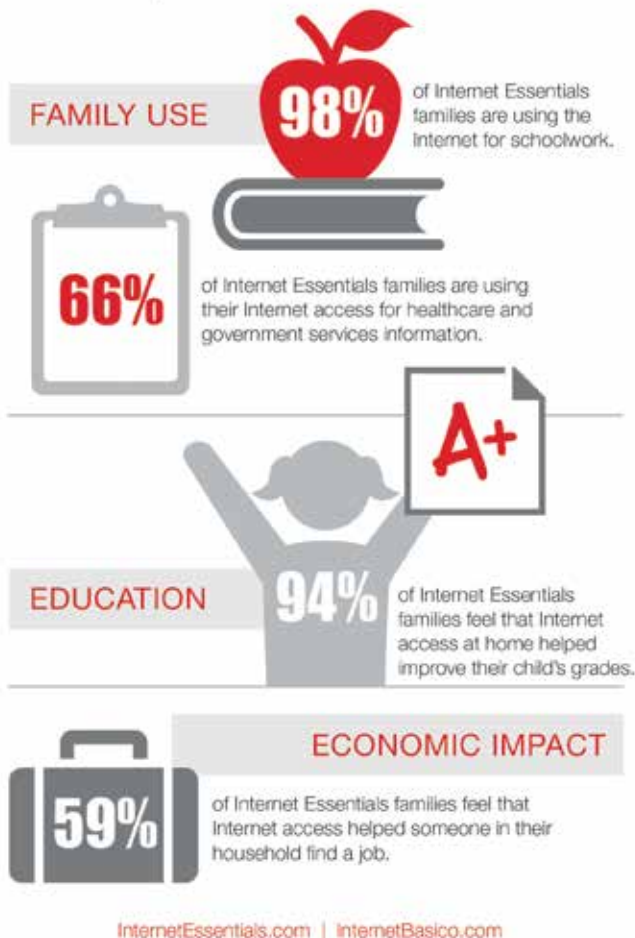
In the first 22 months of our *Internet Essentials* program, we've connected more than 220,000 families (or 900,000 Americans) to the power of the Internet at home, most for the very first time. To put that in perspective, that's about the population of Jacksonville, FL or San Francisco, CA. Through the *Internet Essentials* program, nearly 20,000 people have attended free, in-person digital literacy training; and more than 18,000 subsidized computers have been sold at less than \$150 each. We have also worked with 30,000 schools and developed partnerships with 7,000 community-based organizations, government agencies, and federal, state, and local elected officials. But *Internet Essentials* is not just about broadband adoption for students. It's also about what broadband can do for families, from finding and applying for a job online, to accessing vital healthcare and government resources and helping families save money.

Home broadband connectivity helps encourage engaging, relevant and personalized learning experiences for all learners that mirror students' daily lives and the reality of their futures. We look forward to continuing our efforts through strong public-private partnerships to reach our shared goal of improved educational opportunities for all.



OPPORTUNITY FOR EVERY FAMILY ONLINE AND RIGHT AT HOME.

Internet Essentials is helping our communities compete in the 21st century.



LYNDSAY O'HERRICK is a manager of Government Affairs at Comcast, where she manages key relationships within the company's intergovernmental association and third-party portfolios.

Real Choice

COMPETITION AMONG AMERICAN BROADBAND PROVIDERS IS ROBUST AND THE CHOICES AVAILABLE ARE GROWING.

#1 

Netherlands

#2 

Belgium



#3 **United States**

The U.S. has the OECD's third highest rate of choice across different wired technologies.

68% 2010

82% 2012

In 2012, **82%** of the U.S. population had a choice of at least four wireless broadband providers—up from 68% in 2010.



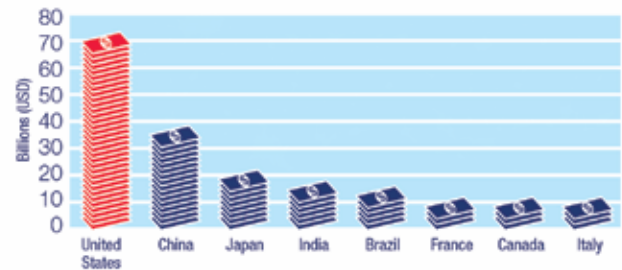
Drives Investment, Growth

MASSIVE PRIVATE INVESTMENT IN BROADBAND INFRASTRUCTURE

\$70 Billion

The U.S. leads the world in telecommunications investment, having invested \$70 billion in 2010 alone; China, which is second on the list, invested half that amount, or \$34 billion. **Five of the top 20 nonfinancial companies that invest in America are broadband providers.**

INVESTMENT IN TELECOMMUNICATIONS, 2010



BROADBAND IN AMERICA: LEADING AMERICA INTO THE FUTURE

Growth and Jobs

BROADBAND IS ENABLING AND GROWING THE AMERICAN ECONOMY.



\$1.2 Trillion Invested

From 1996 to 2011, Internet providers have invested nearly \$1.2 trillion in American Internet infrastructure.



6.3 Million Jobs

The broadband Internet industry and the related ICT industries support 6.3 million jobs annually in the U.S. and as new businesses are built, new jobs are coming with them.



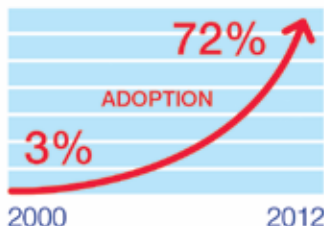
750,000+ Americans

The app economy now employs more than 750,000 Americans—up from zero in 2007.

The state of American broadband is fast, ubiquitous and affordable. Moreover, it's enabling our economy through innovation, private investment and job creation. **Any way you measure it—speed, pricing, adoption and competition—the United States is a world leader in broadband Internet.**

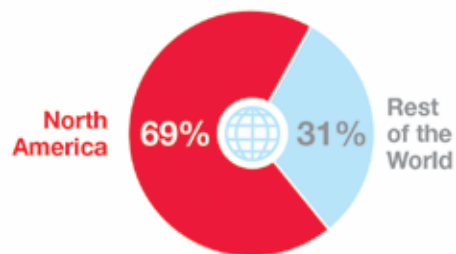
Increasing Adoption

NEARLY ALL AMERICANS HAVE ACCESS TO BROADBAND, AND MORE THAN EVER ARE ADOPTING IT.



Nearly three-quarters of Americans (72%) now subscribe to broadband Internet according to NTIA—exponentially more than the 3% of Americans that had a broadband Internet connection in 2000.

North America leads the world in LTE adoption with 69% of worldwide subscriptions.





TEAR-OFF SECTION

In Transition: Communications Policymaking for the Broadband Era

BY CHARLES M. DAVIDSON & MICHAEL J. SANTORELLI,
ADVANCED COMMUNICATIONS LAW & POLICY INSTITUTE, NYU

The telecommunications sector in the United States is undergoing a historic transition—one that holds much potential for consumers and states generally. Gone are the days when households and firms relied on plain old telephone service (POTS) to stay in touch or conduct business. New communi-


cations platforms, built around the Internet Protocol (IP), support a broad array of services that are rapidly transforming every facet of modern life and commerce. Broadband networks of both the wired (cable, fiber) and wireless (3G, 4G) variety serve as the foundation for many of these platforms, which are providing consumers with more feature-rich, reliable, resilient and affordable communication options. The “telephone network,” that nationwide system of copper wires that delivers POTS, is quickly becoming an analog relic in an all-digital world.

This IP transition is driven by constantly-evolving consumer demand for non-POTS services. The data tell a compelling story about its scale, scope and speed (see chart). But for as much as consumers have demonstrated a preference for hanging up on POTS, the legal and regulatory apparatus that was built around this service over the last century continues to linger. The practical impact is that, in a majority of states, service providers remain obligated to provide basic telephone service regardless of consumer demand or the nature of new networks. Many such obligations are exacting, increasingly expensive to meet and reflective only of the market conditions that prevailed when they were

	2000	2005	2012/2013
POTS Lines	188 million	161 million	101 million
Wireless Subs.	101 million	203 million	326 million
VoIP Connections	<200,000	4.5 million	39 million
Broadband Lines	7.1 million	43.6 million	243 million
Broadband Adoption Rate	3%	33%	70%

Sources: FCC; Pew; NTIA; Telegeography; CTIA

Continued on page 19



Do you know an Alumnus of the American Legislative Exchange Council?

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Thousands of former state legislative members have moved on to another elective office, retired, or been term-limited and no longer participate with our organization. In fact, most ALEC members know of at least two or three former state legislators who are no longer involved in government relations and would love to remain active in the ALEC family attend events and provide general support for Jeffersonian Principles.

Please encourage your former colleagues to continue to support limited government, free markets and federalism with the American Legislative Exchange Council by going to www.alec.org/membership/alumni, or contact Marie Vulaj at (571) 482-5025 or email mvulaj@alec.org.

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Continued from page 16

forged over a century ago. They also stand in diametric opposition to the minimalist regulatory frameworks for broadband and wireless services, which have fostered incredible growth and innovation in these spaces over the last two decades.

SEIZING THE OPPORTUNITY TO REFORM

States, of course, are not without recourse. Indeed, state legislatures are increasingly seizing the opportunity to modernize laws and regulations impacting the provision of communications services within their borders in an effort to develop a set of rules that more accurately reflects the realities of the modern marketplace. In general, these efforts have typically involved some combination of: (1) rolling back the “legacy” rules for POTS; (2) clarifying light-touch regulatory approaches to inherently borderless services like wireless and broadband; (3) streamlining rules to facilitate continued deployment of advanced communications networks; and (4) removing barriers to more robust broadband adoption and use. This paving the way for new networks, new technologies, and new investment is good news for consumers, states, and the economy as a whole.

To date, a majority of the states have begun to reform their communications laws in these ways. Since 2009, 27 states have enacted some POTS-related reform, and new or additional legislation has been proposed or is pending in numerous others (see table). These efforts have ranged from sweeping bills eliminating the full suite of service obligations for plain old telephone service to more piecemeal laws that have repealed myriad related requirements, including rules regarding tariffing and quality of service, as well as the removal of jurisdiction from many utility commissions. They have also included the express deregulation of IP-enabled services like broadband and VoIP. Progress on this particular issue has been relatively swift and expansive: since Florida became the first state in the nation to deregulate these services in 2005, well over 20 states have followed suit. In addition, 19 states have adopted legislation limiting the ability of municipalities to build government-owned broadband networks (GONs). These costly and risky endeavors undermine market-based competition and tend to fail in rather spectacular fashion.

LEARNING FROM EXPERIENCE

These and other reform efforts offer a number of useful lessons for policymakers contemplating regulatory modernization in their states. Three in particular stand out:

First, there is a range of strategies for pursuing reform. Some states, like Kansas and Wisconsin, were able to enact relatively comprehensive reform packages that, among other things, rolled back dozens of legacy requirements for plain old telephone service while also clarifying the minimalist scope of state rules impacting IP-enabled services. Other states, however, like Florida and Ohio, implemented reform on a more piecemeal basis, focusing on discrete elements in separate packages of bills. Florida, for example, modernized its policies via separate bills passed in 2005, 2009 and 2011.

Second, there is an opportunity going forward for reform efforts to squarely address the real-world issues associated with the IP transi-

Reform Legislation Enacted (2009-13)	Reform Legislation Introduced or Pending (2012-13)	VoIP Deregulation (to date)	GONs Legislation (to date)
AL, AR, CA, DE, FL, GA, ID, IL, IN, KS, LA, ME, MI, MO, MS, MT, NE, NH, NC, ND, OH, TN, TX, VA, VT, WI, WY	AZ, CO, CT, IN, IA, KS, KY, MA, MN, MO, MS, NM, NY, NV, RI, TX	AL, AR, CA, DE, FL, GA, IL, IN, KS, MA, MD, ME, MI, MO, NC, NH, NJ, NV, OH, PA, RI, SC, TN, TX, VA, WI	AL, AR, CO, FL, LA, MI, MN, MO, NE, NV, NC, PA, SC, TN, TX, UT, VA, WA, WI

Sources: NRRI; authors’ analysis

tion. For those states that have yet to begin modernizing regulation, or that have only just begun the reform process, the advancement of advanced communications networks requires concerted, reform-oriented action by policymakers at every level of government in order to facilitate this epochal shift. Specific actions include not only the repeal of many antiquated POTS-era rules for telephony, but also the implementation of forward-looking policies that can encourage continued investment, innovation and competition throughout the broadband ecosystem. To this end, part of the reform calculus might involve adjusting the contours of local authority to influence the build-out and maintenance of broadband networks. Such efforts could encompass legislation bolstering how cities manage their rights-of-way, streamlining how localities approve wireless siting proposals, and creating a rational process for cities to follow when considering a government-owned-network.

Third, state legislators of all political persuasions are well-positioned to address key demand-side issues, including low levels of broadband adoption in certain communities, under-developed digital literacy skills and removal of barriers to more robust use of new technologies generally in key sectors like education, energy and health-care. These critical issues often become lost in more bellicose debates over supply-side and regulatory issues, but, in the grand scheme, are much too important to overlook.

Balanced, forward-looking and flexible approaches to communications policymaking in the broadband era have yielded the best results for consumers, service providers and local economies. While significant progress on many fronts has already been made, much remains to be done. Fortunately, successful reform efforts offer numerous best practices for policymakers to adapt for use in their states.

CHARLES M. DAVIDSON AND MICHAEL J. SANTORELLI are Directors of the Advanced Communications Law & Policy Institute (ACLP) at New York Law School. Charles formerly served in state government in Florida, including as an advisor on technology matters in the legislature and governor’s office and as a commissioner on the state’s Public Service Commission. Michael formerly served as lead staffer for telecommunications issues in the New York City Council.

“Big Data” and IT Efficiency: What it Means for States

BY C. STEVENS SEALE, SAP AMERICA, PRIVATE ENTERPRISE ADVISORY COUNCIL CHAIRMAN

In our state capitals, policy makers are grappling with the need to cut spending and make government smaller and more efficient, both immediately and long-term.

While state budget negotiators have focused on presumed future tradeoffs between revenues and spending, those same policy makers are not giving enough attention to the radical efficiency and service improvements that can be achieved with innovative technology.

Trends such as cloud computing, social media and “big data” analytics are enabling business and government to accomplish much more than was possible even two (2) years ago.

In particular, “big data” analytics offers state governments enhanced capability to capture highly useful information from the oceans of data being generated by more and more people and machines. A recent study released by the TechAmerica Foundation revealed that 87 percent of federal IT officials and 75 percent of state IT officials think “big data” can have real and immediate impacts on how governments operate.

TO CITE ONLY A FEW EXAMPLES:

- **Improper payments:** The Technology CEO Council estimates that data-analytics tools, common in the private sector for detecting credit card fraud could raise the rate at which errors are identified in federal and state payments, saving \$200 billion over 10 years.
- **Better health care:** Faster, more powerful analyses of health care data could result in better treatments and save up to \$165 billion a year, by one estimate. Greater use of electronic health records and automated business processes will also be critical in restraining the spiraling costs of health care, whether under Obamacare or any other alternative that may be implemented.
- **Streamlining government supply chains:** The state of Virginia consolidated its procurement process and saved taxpayers at least \$338 million over 10 years through greater price competition, consolidated buying power, and a more efficient, cloud-based platform.
- **Revenue collection:** Every year, state governments face a large gap between what is owed and what is paid under existing tax law. The “tax gap” costs states an estimated 16% of total tax liability, or literally billions of dollars. The Florida Department of Revenue implemented better systems to identify tax cheats and captured \$1 billion over 10 years.
- **Improving schools:** State institutions of higher education are looking for ways to improve student retention rates and capture lost revenue. With better data manage-





ment and analytics, the University of Kentucky improved its graduation rate from 60% to 70% over a 10-year period, capturing approximately \$11 million in additional tuition revenue. Cutting-edge software can also help educational institutions better track the performance of individual students and the effectiveness of teachers in the classroom, while improving reporting and transparency, and reducing the burden on specialized IT staff.

- **Disaster recovery:** We are beginning to see a new category of mobile apps, empowering citizens to provide real-time information about power outages, damaged property, availability of shelters and supplies, and more.


The potential for better efficiency and results using the latest technology is almost limitless. More powerful data analytics can help identify at-risk families and children sooner and chart a personalized path to better outcomes. Analytics can actually predict crime and infrastructure failures from historic patterns in diverse sets of data. Better technology can reduce the time needed for honest citizens to get licenses and permits; and it can prevent waste, fraud and abuse in government spending before it occurs, not after.

If these kinds of efficiencies were pursued by government decision-makers more vigorously, we could avoid almost a trillion dollars in spending cuts or tax increases at the federal level, and untold billions at the state level. Budget stalemates would be broken, we'd have more fiscally responsible governments and we'd get better services in the bargain.

WHAT CAN STATE GOVERNMENTS DO TO TAKE BETTER ADVANTAGE OF TECHNOLOGY?

- **Focus on faster, more agile, incremental progress using commercial, off-the-shelf technology.** Incremental change is less costly and less likely to get out of control. It delivers value in weeks and months, not years.
- **Foster an atmosphere that allows “co-innovation.”** Governors and legislators should make it clear that public-private collaboration is to be encouraged, not feared and avoided. A favorable climate for business-government collaboration also spurs the growth of local technology companies, which in turn brings higher wages and job growth as well.

At a time when all levels of government are at the fiscal crossroads—and when we also face rapid demographic changes and enormous challenges in the world around us—technology offers many solutions to make government more effective and efficient.

By focusing more effort on rapid-ROI technology solutions, and by working more closely with the private sector, state officials can help bring about the vision of a smaller, more effective government for all Americans. 



C. STEVENS SEALE represents SAP America as chairman of the Private Enterprise Advisory Council for the American Legislative Exchange Council.

For Virginians, Instant Vital Records Access at a Location Near You

BY THE HONORABLE STEPHEN D. NEWMAN, VA (SD-23)

Beginning March 1, 2014, Virginians will be able to purchase a certified copy of their birth certificates from their local Department of Motor Vehicles office. This program will revolutionize the way we serve our constituents in Virginia and is the result of a partnership between the Virginia Department of Motor Vehicles and the Virginia Department of Health, made possible by legislation I sponsored during the 2013 Virginia General Assembly Session.

One of the basic tenets of modern government is that all citizens should have equal access to the services their government provides, regardless of where they live. Yet, I often ask myself why a Virginian living in my district should be forced to drive more than 100 miles to obtain a copy of their birth certificate or other vital records in person. Currently, more than 9,000 Virginians each month are served by the Virginia Division of Vital Records (housed within the Department of Health). Many of these customers must make the trip to the Division's sole office, located in Richmond, Virginia, to purchase documents they need (usually immediately) to obtain crucial government services. For some, the trip can take longer than seven hours. Surely, I hoped, we could do better than this.

Prior to this legislation, Virginia DMV had already taken action to alleviate some of this burden. Birth certificates are the primary means for citizens to prove that they are legally present in the United States, which is a prerequisite to obtaining a new driver's license or ID card (or restoring one lost because of revocation, suspension, or expiration). However, many customers fail to bring this document with them to DMV. In the past, DMV had no alternative but to turn the customer away. In an attempt to solve this problem, DMV has joined the Electronic Verification of Vital Events (EVVE) network, which allows the agency to electronically verify the birth certificates of customers born in Virginia and 31 other participating states. Still, what of the citizen who needs a physical copy of his or her birth certificate for other uses?

With the implementation of my legislation (Senate Bill 1039), these customers will be able to leave a DMV office with that physical copy. Beginning on March 1, 2014, Virginians will be able to purchase Virginia birth certificates from 1912 to the present. Beginning on January 1, 2015, they will be able to purchase all other Virginia birth, death, marriage and divorce records from any of the Virginia DMV's 75 brick and mortar offices around the Commonwealth (plus another five mobile "offices on wheels"). Each transaction will be secure and confidential, and the identity and personal records of our citizens will have the highest level of protection.

Fortunately, the modern DMV is not your father's DMV. Lines are much shorter and more efficient, with new automation and the availability to purchase many products online. Less volume means our


DMVs can focus on true customer service programs such as vital records. I believe government should find ways to serve the people, not the other way around.

Virginia's DMV has a history of successful interagency partnerships, pairing up with the Department of Game and Inland Fisheries to sell hunting and fishing licenses and boat titles, as well as the Department of Veteran's Services to sell the popular Virginia veteran's ID cards. Under the leadership of Commissioner Richard Holcomb, DMV has



truly proven to be exemplars of government efficiency and customer-focused service. Together with the Virginia Department of Health, under the strong leadership of Dr. Cynthia Romero, I know that this partnership will be tremendously successful, both for their agencies and the people of Virginia.

We aren't finished improving government services, however. In the future, I hope to see Virginians who live as far away as Loudoun, Wise and Accomack Counties have convenient access to all parts of their state government as someone living in downtown Richmond.

It is an example I encourage all of my colleagues to follow. 

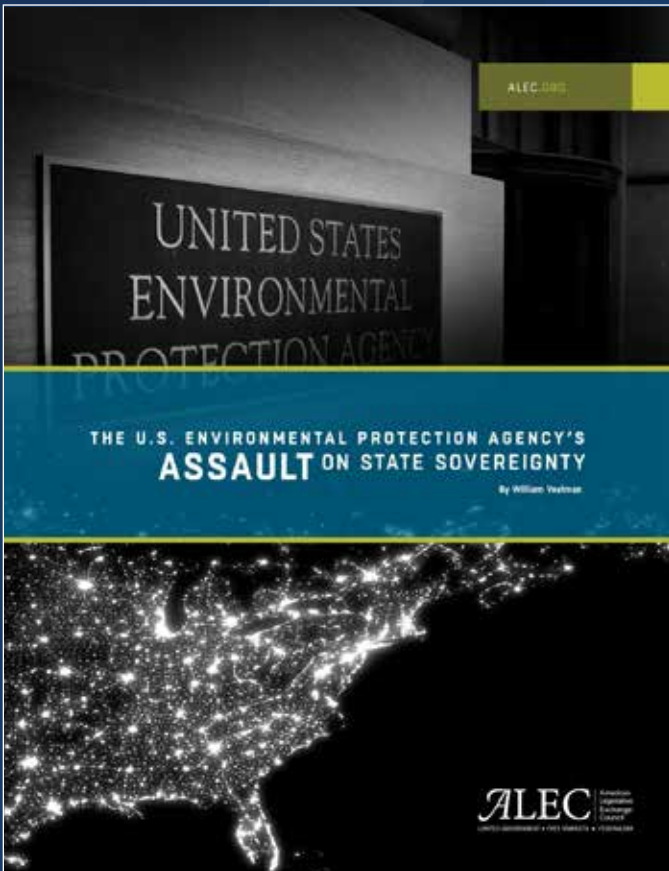


THE HONORABLE STEPHEN D. NEWMAN has represented Virginia's 23rd Senate District since 1996. He serves on the Committees on Finance, Rules, Commerce and Labor, and Education and Health, and is Chairman of the Committee on Transportation.



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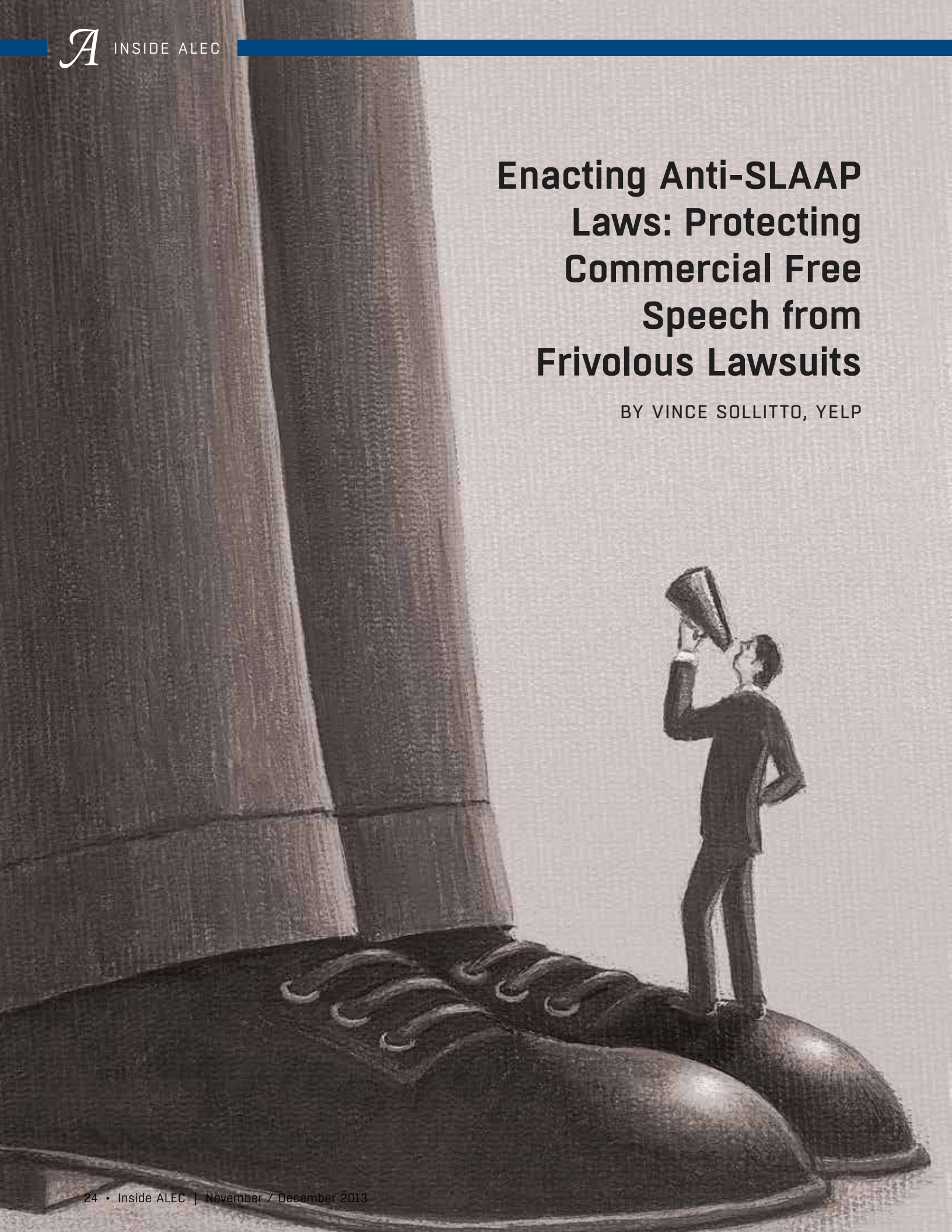
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Enacting Anti-SLAAP Laws: Protecting Commercial Free Speech from Frivolous Lawsuits

BY VINCE SOLLITTO, YELP



WHY STATES NEED ANTI-SLAPP LAWS: TO PROTECT INFORMATION IN THE MARKETPLACE

Much of neo-classical economics assumes perfect information exists in a free market, yet in the real world, things can be less transparent. The Internet is improving this ideal-versus-real-world dynamic by creating information feedback loops, which brings us much closer to (nearly) perfect information for consumers. Free markets are only truly free when information in the marketplace is maximized, and consumers clearly benefit when more information is available to them.

By providing a forum for consumer reviews of virtually any business, Yelp—a review website and smartphone and tablet app that connects over 100 million customers per month with “Main Street” small businesses—helps consumers make informed buying decisions and provides local small businesses with free, online, word-of-mouth exposure, democratizing the marketplace and promoting a level playing field. Since 2004, Yelp has provided a platform that empowers individuals to contribute information to the marketplace. The market results have been dramatic: a recent Harvard Business School study showed that a one-point increase in a business’s Yelp rating can lead to a 9 percent increase in revenue.

A strategic lawsuit against public participation (SLAPP) is a lawsuit that is intended to censor, intimidate, and silence critics by **burdening them with the cost of a legal defense until they abandon their criticism or opposition.**

Yelp’s story represents only a tiny part of a seismic shift in how individuals both consume and create information. Fifteen years ago, Facebook, Google+, Pinterest, Twitter, Instagram and Wikipedia didn’t exist. Today, it’s hard to imagine a world without these platforms where individuals can share content online (better known as social media and “Web 2.0”). Over the last decade, consumers have become mini-media organizations.

SLAPPS

A strategic lawsuit against public participation (SLAPP) is a lawsuit that is intended to censor, intimidate, and silence critics by burdening them with the cost of a legal defense until they abandon their criticism or opposition. The typical SLAPP plaintiff does not normally expect to win the lawsuit. The plaintiff’s goals are accomplished if the defendant succumbs to fear, intimidation, mounting legal costs or simple exhaustion and abandons the criticism. A strategic lawsuit against public participation may also intimidate others from participating in the debate. A SLAPP is often preceded by a legal threat. The

difficulty lies in the fact that plaintiffs do not present themselves to the court admitting their intent is to censor, intimidate or silence their critics. Strategic lawsuits against public participation have become a menace in state courts across the country.

UNSUCCESSFUL ANTI-SLAPP EFFORTS AT THE FEDERAL LEVEL


Recent federal legislation appeared to recognize this danger and sought to address it—albeit too narrowly in scope. On Aug. 2, 2012, Senator Jon Kyl (AZ) introduced the *Free Press Act* of 2012 in the Senate (S.3493) to “protect first amendment rights of journalists and internet service providers by preventing States and the United States from allowing meritless lawsuits arising from acts in furtherance of those rights, commonly called ‘Strategic Lawsuits Against Public Participation’ or ‘SLAPPs’, and for other purposes.” The Kyl bill would have only protected formal journalists – not recognizing that the vast majority of content produced on the Internet today is by ordinary citizens and not traditional journalists – and even this narrow bill failed to advance.

THE SOLUTION: ANTI-SLAPP LAWS IN THE STATES

During a presentation to the American Legislative Exchange Council’s Task Force on Civil Justice at the August annual meeting in Chicago, Ms. Laura Prather (Haynes & Boone) outlined the components of one of the strongest state anti-SLAPP laws in the country. The state? Texas.

Texas’s anti-SLAPP law has several important components. First, it provides a motion to dismiss a lawsuit after as little as 60 days when the lawsuit is targeted at the exercise of First Amendment rights. Second, it is applicable to anyone, so long as they are speaking out on a “matter of public concern.” This includes not just traditional media, such as journalists and professional bloggers, but also individuals who contribute reviews of businesses or comments on websites.

Lawyers hoping to intimidate SLAPP defendants rely on a protracted and expensive discovery process, which is why Texas’s law includes a stay of discovery. Another important component of the Texas law is a “loser pays” provision – this establishes an economic disincentive for litigious plaintiffs to continue using the courts as a weapon against liberty.

To learn more about state anti-SLAPP laws and whether citizens in your state are protected, visit <http://anti-slapp.org>. 



VINCE SOLLITTO joined Yelp in 2009. He is responsible for overseeing all corporate communications and government relations. Vince has nearly 20 years of experience in communications in technology and politics. He was Vice President of Communications at PayPal, from the launch of the service until its sale to eBay. Most recently, he led communications efforts at search start-up Cuil, and the California Chamber of Commerce before that. Vince has also served as a spokesman for California Governor Arnold Schwarzenegger, a US Senator, a Congressman and the US House Homeland Security Committee. He has a B.A. in public policy studies and political science from Duke University.

Concerns About Federalism Prompt ALEC Filing with Supreme Court

The American Legislative Exchange Council urged the U.S. Supreme Court to hear a case that will help determine whether there are, in fact, constitutional protections from the ability of states to impose tax burdens on other states. On September 19, 2013, ALEC filed an *amicus curiae* (“friend of the court”) brief as part of a petition for a *writ of certiorari* to the Supreme Court to hear a challenge to a New York state law enacted in 2008 that considers an out-of-state company to be an in-state resident for tax collection purposes if the company receives a referral for a commission from any in-state resident marketing “affiliates.”


“There is a disturbing trend of states giving themselves the power to reach beyond state lines and into the pockets of non-citizens,” said Rep. Blair Thoreson of North Dakota, Co-Chairman of the American Legislative Exchange Council’s Task Force on Communications and Technology. “Hopefully this filing by ALEC will encourage the Supreme Court to provide some clarity as to the due process rights of the states and the people in these matters.”

Task Force Co-Chairman Bartlett Cleland, of the Institute for Policy Innovation added, “The threat to the commercial Internet and to our constitutional rights from extraterritorial assertions of power by the government cannot be overstated. The Supreme Court needs to hear this case immediately to reaffirm the physical presence rule to protect our rights and to ensure the Internet continues to grow and improve human welfare.”

Article I, Section 8 of the U.S. Constitution provides that “Congress shall have the power...to regulate commerce...among the several states.” Under a long line of Supreme Court rulings, states are prohibited from placing “undue burdens on interstate commerce.” In the context of state taxation of interstate commerce, the Supreme Court held in *Quill Corp v. North Dakota* (1992) that businesses lacking a “substantial nexus” or link to a state through a physical presence or an employee or agent cannot be subject to that state’s sales and use tax requirements. Accordingly, states are barred from imposing tax collection duties on out-of-state businesses where such businesses’ only connections to the state involve the use of common carriers, such as the mail service or the licensing of software to an in-state resident.

Members of the Task Force on Communications and Technology are not the only ones concerned about the case and its impact. “ALEC’s research in *Rich States, Poor States* highlights how states are in direct competition for jobs, capital and economic vitality,” said New Hampshire Rep. Ken Weyler, Chairman of the American Legislative Exchange Council’s Tax Force on Tax and Fiscal Policy. “In my home state,” he adds, “we are proud of our ‘New Hampshire Advantage,’ which features no state income or sales taxes. However, our small businesses are increasingly being threatened by revenue-hungry tax departments in other states. This sort of taxation threatens to cripple the very job creators that will lead the way out of America’s economic malaise.”

The American Legislative Exchange supports constitutional nexus requirements for state taxation obligations and opposes extraterritorial state taxation obligations where such nexus is lacking. In particular, the Exchange Council model policy, *21st Century Commercial Nexus Act*, expressly reaffirms the Quill decision and provides standards consistent with Quill’s nexus requirements. State sovereignty concerns about extraterritorial taxation are also embodied in the ALEC model policy *Sales and Use Tax Collection Protection Act* (2009). Additionally, tax collection obligations without a physical presence run contrary to existing Exchange Council model policies.

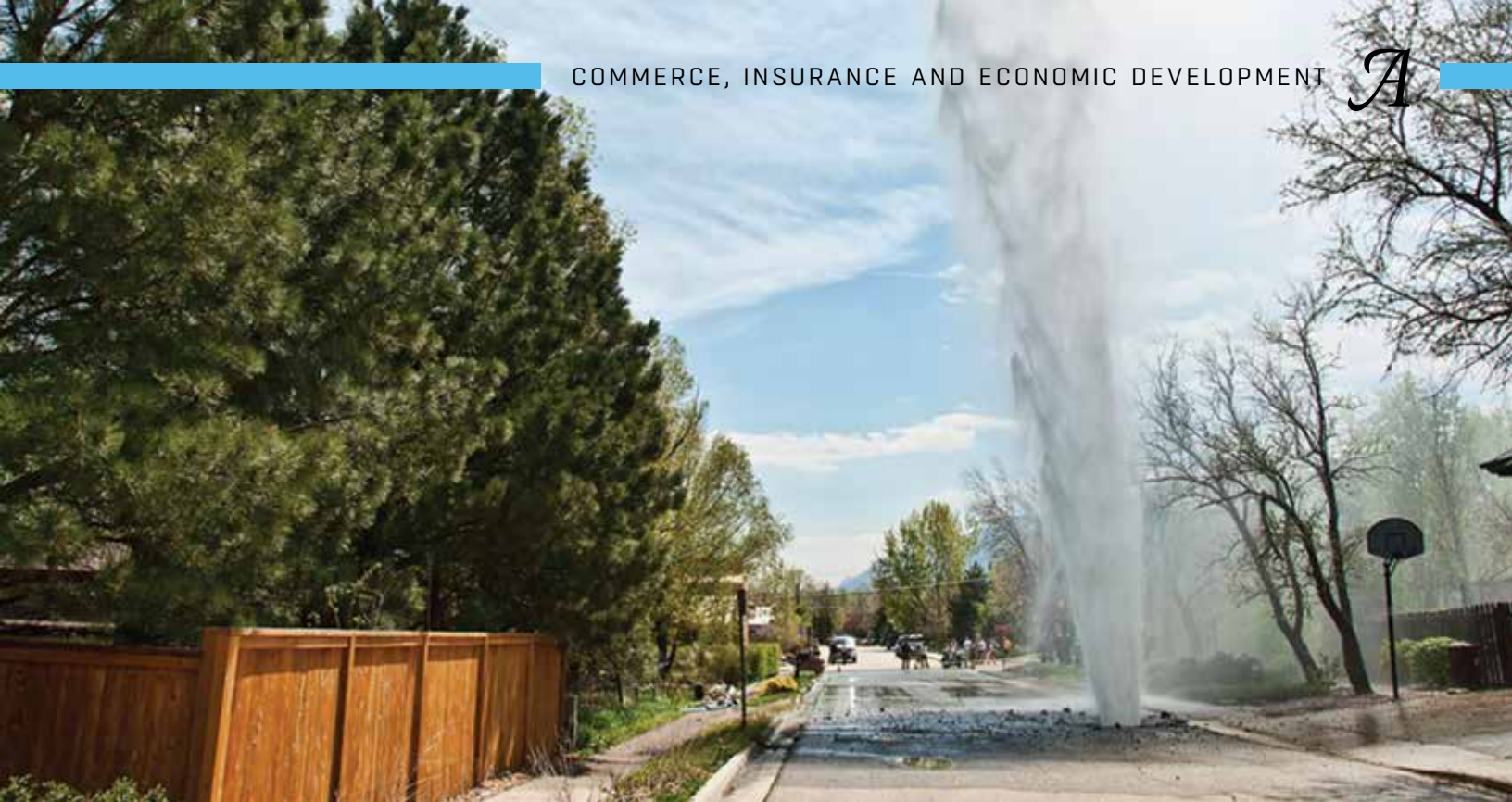
If the court agrees to hear the case in the months ahead, there will be an additional opportunity for the American Legislative Exchange Council to weigh in on the debate. 

“There is a disturbing trend of states giving themselves the power to reach beyond state lines and into the pockets of non-citizens. **Hopefully this filing by ALEC will encourage the Supreme Court to provide some clarity as to the due process rights of the states and the people in these matters.**”

The Honorable Blair Thoreson,
North Dakota

“The threat to the commercial Internet and **to our constitutional rights from extraterritorial assertions of power by the government** cannot be overstated.”

Bartlett Cleland,
Institute for Policy Innovation



Lowering Costs in Water Infrastructure through Procurement Reform: A Solution for State Governments

BY CARA SULLIVAN, AMERICAN LEGISLATIVE EXCHANGE COUNCIL

Every year in North America, 300,000 water main breaks threaten the safety of the nation's communities, disrupt business activity and place enormous financial burdens on states already struggling to balance budgets. Decisions on how to deal with the estimated \$3.8 trillion worth of necessary upgrades to the nation's water infrastructure will have profound fiscal impacts on states and municipalities.

In a new report titled, *Lowering Costs in Water Infrastructure through Procurement Reform: A Strategy for State Governments*, Dr. Bonner Cohen discusses how open and competitive procurement practices can help policymakers make desperately needed updates to water infrastructure at the lowest cost to taxpayers.


Competition is a fundamental component of a functioning free market and leads to the most effective delivery of goods and services. With regard to underground water and wastewater infrastructure, competition is obstructed as some products and technologies are excluded from consideration, despite meeting standards set by the American Society for Testing and Materials, as well as the American Water Works Association.

Allowing for the consideration of all proven and accepted materials will introduce competition and help states and municipalities make

procurement decisions that will provide the best water infrastructure for taxpayer dollars. For example, the state of New York could potentially save \$1.55 billion over the next 20 years if the state switched to competitive bidding processes for its water infrastructure.

Open procurement processes do not mandate the use of a specific product, nor do they attempt to dictate which products are superior. Open procurement and bidding policies simply enable government agencies to consider all viable materials. Such policies demonstrate the free-market axiom that competition leads to lower prices and higher quality goods.

As policymakers look for ways to replace aging water infrastructure, they should allow for the consideration of all proven materials in the procurement process. Such broader considerations will lead to lower costs and a longer lasting infrastructure.

To find out more about *Lowering Costs in Water Infrastructure through Procurement Reform: A Strategy for State Governments*, download your free copy at alec.org/water-infrastructure. 



CARA SULLIVAN is the director of the Task Force on Commerce, Insurance and Economic Development at the American Legislative Exchange Council.

2900 Crystal Drive, Suite 600
Arlington, VA 22202
www.alec.org

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MAY 1- 2, 2014

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