NCSL STANDING COMMITTEE ON COMMUNICATIONS, FINANCIAL SERVICES, & INTERSTATE COMMERCE

POLICY DIRECTIVES AND RESOLUTIONS

2018 NCSL Legislative Summit
Los Angeles, California

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COMMITTEE: COMMUNICATIONS, FINANCIAL SERVICES, & INTERSTATE COMMERCE

POLICY: STATE SOVEREIGNTY FOR GAMING

TYPE: AMENDED DIRECTIVE

The National Conference of State Legislatures (NCSL) believes that the federal government must respect the sovereignty of states to allow or prohibit games of chance and skill within their borders.

Internet Gambling

The National Conference of State Legislatures (NCSL) believes the federal government must respect the sovereignty of states to allow or to prohibit Internet gambling by its residents.

The 2011 ruling by the United States Justice Department on the Federal Wire Act of 1961, 18 U.S.C. §1084, clarifies that intra-state online gambling is lawful. Any effort by Congress or the administration to reverse this ruling is preemptive and diminishes the flexibility of state legislatures to be innovative and responsive to the unique needs of the residents of each state.

NCSL requests Congress to consider the perspective of the states as it examines this issue and asks that it involve state legislators in any federal efforts that seek to reform the regulation of online gaming. NCSL strongly opposes any effort by the federal government to overturn the Justice Department’s ruling or consideration of legislation overruling state authority by legalizing or regulating gambling at the federal level. NCSL also requests that federal lawmakers be respectful of state legislatures that prohibit online gaming or other forms of gaming within their state.

Sports Gambling

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The National Conference of State Legislatures (NCSL) believes the federal government must recognize the sovereignty of states to allow or to prohibit sports gambling by its residents.

The “Professional and Amateur Sports Protection Act,” 28 U.S.C. §§ 3701-3704 (PASPA), currently prohibits states from “sponsoring, operating, advertising, or promoting sports gambling,” except for a handful of states grandfathered under the law. The federal ban instituted under the PASPA has not prevented the conduct of illegal sports gambling, but has in effect restricted the ability of all but a few states to regulate and collect revenue from sport gambling wagers estimated to be in the billions of dollars each year, to the detriment of state economies.

On May 14, 2018, the Supreme Court of the United States declared the Professional and Amateur Sports Protection Act (PASPA), 28 U.S.C. §§ 3701-3704, unconstitutional as violative of the Court’s 10th Amendment anti-commandeering jurisprudence. The Court’s judgement on PASPA exemplifies the failings of a one-size-fits-all federal solution to complex questions of policy, regulation and law enforcement. With the shackles of federal preemption removed, states can begin creating innovative and tailored sports gambling policies that represent the will of voters.

The choice to legalize sports wagering is an important policy question, the answer to which is different among our nation’s diverse states. Forcing state policy flexibility and innovation to retreat under threat of federal preemption not only undermines the basic tenants of our nation’s founding documents, but it strains state-federal relations and suppresses the direct will of voters. Conversely, by encouraging state policy innovation and unique legislative solutions, federalism is strengthened and voters are more engaged with the legislative process.

NCSL requests Congress recognize respect the sovereignty of states to regulate and tax sports gambling in the current post-PASPA environment. This includes not preempting states’ legislative authority to legalize, regulate and tax sports gambling.
activities, and repeal the federal ban on sports gambling by enacting legislation that would allow state legislatures to authorize sports gambling by statute. NCSL also requests that federal lawmakers be respectful of state legislatures that chose to maintain their prohibitions on sports gaming or and other forms of gaming within their state.

Daily Fantasy Sports

The National Conference of State Legislatures (NCSL) believes the federal government must respect the sovereignty of states to allow or to prohibit daily fantasy sports by its residents.

The Unlawful Internet Gambling Enforcement Act of 2006 specifically excludes a fantasy or simulation sports game that “has an outcome that reflects the relative knowledge of the participants, or their skill at physical reaction or physical manipulation (but not chance), and, in the case of a fantasy or simulation sports game, has an outcome that is determined predominantly by accumulated statistical results of sporting events”. Therefore, NCSL will oppose any effort by Congress or the administration to diminish the flexibility of state legislatures to be innovative and responsive to the unique laws and regulations of each state.

NCSL strongly opposes any effort by the federal government that would overrule state authority by regulating daily fantasy sports at the federal level. NCSL believes the federal government must recognize the sovereignty of states to regulate and tax daily fantasy sports. NCSL also requests that federal lawmakers be respectful of state legislatures that prohibit daily fantasy sports within their state.
COMMITTEE: COMMUNICATIONS, FINANCIAL SERVICES, & INTERSTATE COMMERCE

POLICY: NCSL URGES THE UNITED STATES CONGRESS TO SWIFTLY PASS THE “STOP ACT”

TYPE: RESOLUTION

WHEREAS, The United States has experienced a significant increase in the illegal use, sale, and trafficking of dangerous and potentially fatal synthetic drugs, including synthetic cannabinoids, opioids, and carfentanils;

WHEREAS, An opioid epidemic is sweeping the United States and has reached crisis proportions, killing thousands of Americans, straining the ability of first responders, and pressuring already critically stressed state and local budgets;

WHEREAS, there are more than 300 synthetic drugs imported into the United States and more than 500 distributed globally, most of them produced in China, according to the United States Department of State;

WHEREAS, the United States Customs and Border Protection has implemented advance electronic manifesting and security screening as a key tool for identifying and intercepting high-risk shipments that may include illegal or dangerous goods such as synthetic drugs;

WHEREAS, the Trade Act of 2002 required the provision of advance electronic manifests and security screening data to the U.S. Customs and Border Patrol on all shipments into the United States except for parcel shipments from foreign posts;

WHEREAS, this gap in security screening of goods entering the U.S. constitutes a threat to U.S. national security;
WHEREAS, a major avenue for the importation of synthetic drugs is the shipment of small parcels through the international mail system via foreign postal services, and such shipments are the only commercial import shipments that do not currently provide advance electronic manifests and security screening data to federal agencies;

WHEREAS, the steady growth of internet commerce and electronic platforms that facilitate online purchases has resulted in an enormous increase in the volume of shipments that are imported into the United States from sellers in other countries;

WHEREAS, the lack of data necessary for the U.S. Customs and Border Patrol to screen imported purchases has made it easier to import illegal products, including opioids and synthetic substances, into the United States; and

NOW, THEREFORE, BE IT RESOLVED, the National Conference of State Legislatures urges the United States Congress to swiftly pass and send to the President’s desk for enactment the Synthetics Trafficking and Overdose Prevention Act ("The STOP Act"), which would require advance electronic data screening of all inbound shipments to the United States to facilitate identification and interception of illegal synthetic drugs and chemicals, and other dangerous, counterfeit or illicit goods.
COMMITTEE: COMMUNICATIONS, FINANCIAL SERVICES, & INTERSTATE COMMERCE

POLICY: NCSL SUPPORTS PASSAGE OF THE FEDERAL DIGITAL GOODS AND SERVICES TAX FAIRNESS ACT

TYPE: RESOLUTION

WHEREAS, digital goods and services are online purchases that are downloaded directly by, or services that are provided electronically to, consumers that can transcend numerous state and local boundaries across the United States; and

WHEREAS, the exponential growth of digital commerce has demonstrated the importance of digital products to the American economy; and

WHEREAS, state policymakers recognize that the continued deployment of broadband infrastructure and adoption of broadband services is vital to economic growth and participation in the global economy; and

WHEREAS, digital goods and services are a major driver of the rapidly growing 21st Century digital economy and as such, fair and rational tax policies are needed that will not impede the continued growth of this segment of the economy; and

WHEREAS, due to the complex nature of the way digital commerce is transacted, current state and local tax laws governing the taxation of sales transactions are outdated and ill equipped to address many of the issues that surface in taxing today’s “borderless” digital economy; and

WHEREAS, as state and local governments continue to seek to modernize their tax base to include various forms of digital commerce, doing so without establishing a national framework could potentially subject consumers to multiple states claiming the
right to tax the same transaction or subject such transactions to discriminatory taxation
at rates higher than the rates imposed on the in-state sales of similar goods or services; and

WHEREAS, establishing a national framework would clearly identify which state and
local jurisdiction can tax a digital transaction, providing much needed certainty to
consumers, providers required to collect such taxes and state and local governments
seeking to tax such goods and services in a fair, uniform and rational manner; and

WHEREAS, establishing a national framework as set forth in the Digital Goods and
Services Tax Fairness Act as introduced in the 114th Congress preserves state
sovereignty as the decision to tax digital commerce or not remains solely with the
states; and

WHEREAS, the Mobile Telecommunications Sourcing Act (P.L. 106-252) established
uniformity in sourcing mobile telecommunications services for state and local tax
purposes using similar concepts to those contained in the Digital Goods and Services
Tax Fairness Act as introduced in the 114th Congress; and

WHEREAS, NCSL has worked with other state and local organizations as well as
members of the Download Fairness Coalition to develop the principles contained in the
legislation and is poised to assist states as needed in complying with the federal
legislation; and

NOW, THEREFORE, BE IT RESOLVED, that the National Conference of State
Legislatures urges Congress to introduce and pass legislation that provides a
framework for the taxation of digital goods and services consistent with NCSL principles
in conjunction with or after consideration of the Remote Transactions Parity Act, to
establish a national framework providing certainty and uniformity for state and local
governments in the taxation of digital goods and services, while protecting consumers
from multiple and discriminatory taxation and supporting the continued growth of the digital economy.
WHEREAS, wireless communication is a critical part of our everyday lives; and

WHEREAS, there were 395 million U.S. wireless subscriber connections in 2016 representing more than a 4.7% increase from 2015 connections and almost 18 million net add year over year; and

WHEREAS, demand for wireless service and bandwidth continues to soar as U.S. consumer data usage continued to climb in 2016 with over 13.72 trillion megabytes (MBs) of data used, 1.66 trillion text messages exchanged, and 277.9 billion MMS messages; and

WHEREAS, the U.S. wireless ecosystem continues to be the recognized global leader in the deployment and adoption of 4th Generation (4G) technology; and

WHEREAS, the U.S. wireless industry is preparing for the deployment of 5th Generation (5G) technology that will unleash further innovation in the agricultural, education, energy, finance, health care, public safety, and transportation sectors; and

WHEREAS, Ericsson forecasts nearly 29 billion connected devices by 2022, including around 18 billion related to Internet of Things (IoT) which will ultimately necessitate wireless carrier network upgrades; and

WHEREAS, U.S. cities are looking to use wireless technology to introduce “Smart City” solutions by employing information and communications technology to improve the efficiency of government services, including transportation and traffic management, public safety, lighting and energy usage, and water and waste management; and
WHEREAS, U.S. wireless carriers continuously strive to buildout their networks to keep pace with the ever-increasing demand for mobile broadband services, including more than $203 billion to improve their coverage and capacity and better serve Americans, with $26.34 billion invested in 2016 alone; and

WHEREAS, the wireless industry’s deployment of network facilities is evolving to meet the demands of the future and therefore includes the use of more small cell or micro-cell equipment; and

WHEREAS, the deployment of wireless infrastructure using both micro cell and macro cell wireless facilities is contingent upon approval by local governments; and

WHEREAS, the streamlining of the permitting process for all wireless facilities would greatly enhance the deployment of such facilities; and

WHEREAS, access to public rights-of-ways for the placement of wireless facilities will enhance broadband deployment and provide additional resources to both state and local governments for a variety of services; and

WHEREAS, in 2009, the Federal Communications Commission promulgated regulations, subsequently upheld by the U.S. Supreme Court, that defined timeframes for state and local action on wireless facilities siting requests, while preserving the authority of states and localities to make the ultimate determination on local zoning and land use policies; and

WHEREAS, in 2012, the President of the United States signed the “Middle Class Tax Relief and Job Creation Act,” which prohibits state and local governments from denying eligible wireless facilities' requests to modify existing wireless towers or base stations if the modification does not substantially change the dimensions of the facility; and

WHEREAS, more than 24 states have recently enacted legislation to assist in expediting the placement of both macro and micro wireless facilities, including the enforcement of the Federal Communications Commission's application processing
timelines;

NOW, THEREFORE, BE IT RESOLVED, that in order to avoid federal preemption, NCSL encourages states to provide regulatory certainty for the deployment of wireless facilities, including micro-cell infrastructure, by streamlining local jurisdiction application processes, allowing access to public rights-of-ways, and adopting a fair fee structure; and

BE IT FURTHER RESOLVED, that NCSL encourages wireless carriers to work cooperatively with all levels of government to modernize laws and regulations in order to facilitate the deployment and timely placement of wireless facilities while maintaining proper local authority over the siting of such facilities.
States Regulation on Cannabis Usage

The National Conference of State Legislatures (NCSL) recognizes that the majority of states and territories have legalized medical cannabis usage. Further, NCSL recognizes that a growing number of states have legalized adult-use recreational cannabis. Many of these states are creating substantial regulatory regimes with respect to the cannabis industry to ensure compliance with the law, prevent diversion into the illegal market and provide transparent financial oversight of licensed businesses.

Harm to Financial Institutions

These new regulatory schemes relating to cannabis have created a significant expansion of the cannabis industry authorized under state law. NCSL acknowledges that due to the expansion of legal cannabis, legitimate business enterprises need access to financial institutions that provide capital, security, efficiency, and record keeping. Despite many states passing their own regulations, cannabis remains illegal at the federal level as a Schedule I drug under the federal Controlled Substances Act. NCSL is concerned that under this law, the federal Bank Secrecy Act and concordant regulations impose substantial administrative and operational burdens, compliance risk and regulatory risk that serve as a barrier to banks and credit unions providing banking services to businesses and individuals involved in the cannabis industry. NCSL believes that this form of federal prohibition on cannabis jeopardizes the financial services industry as well as the cannabis industry. Providing banking services to cannabis related businesses entails additional risk to banks and credit unions because cannabis is a Schedule I drug under the Controlled Substances Act, substantially increasing risk of civil or criminal liability.
Business Protection

Current federal regulations force financial institutions to incur inordinate risk, should they decide to provide banking services to licensed cannabis businesses. The National Conference of State Legislatures recognizes that allowing access to banking services will improve the regulation of cannabis businesses. NCSL recognizes that the current federal guidance for providing financial services to cannabis businesses is insufficient, as it does not change applicable federal laws, imposes significant compliance burdens and is subject to change at any time. NCSL recognizes that without banking options, cannabis related businesses are forced to operate exclusively in cash, while a large and growing cash-only industry attracts criminal activity and creates substantial public safety risks. NCSL acknowledges that a cash-only industry reduces transparency in accounting and makes it difficult for states to implement an effective regulatory regime that ensures compliance. NCSL is concerned with the inability of cannabis related businesses to pay taxes in a form other than cash, which may only be remitted in person. NCSL acknowledges that this creates a substantial burden for state governments to develop new infrastructure to handle the influx of cash and for business owners who may have to travel long distances with large sums of cash. States have been forced to take expensive security measures to mitigate public safety risks to taxpayers utilizing the system, state employees and the public at large. NCSL is concerned that states do not have any control over the enforcement of federal laws and cannot enact legislation that provides banks and credit unions with protections necessary to secure their business interests in light of federal law.

Controlled Substances Act

National Conference of State Legislatures calls on Congress to amend the Controlled Substances Act to remove cannabis from scheduling, thus enabling financial institutions the ability to provide banking services to cannabis related businesses. NCSL additionally acknowledges each of its members will have differing and sometimes conflicting views of cannabis and how to regulate it, but in allowing each state to craft its
own regulations, we may increase transparency, public safety, and economic
development where there is support to do so.
The Internet defies a detailed one-size-fits-all approach to public policy and regulation. America's federal and state lawmakers, as well as policy makers from other countries should be guided by principles that foster the Internet's development while protecting the security and privacy of individual users.

Our nation's state legislatures are well aware of the impact that access to the Internet and electronic commerce have on the economic vitality of our states and communities. State legislatures also recognize that the marketplace for electronic commerce is not just in the United States but is present in the vast global market. State legislatures share the concern of many in Congress that ill-conceived over-regulation and taxation of the Internet and electronic commerce services could harm our nation's ability to compete globally. However, state legislatures also recognize that they have an obligation to act, when and if necessary, to protect the general welfare of their constituents. As the use of the Internet continues to expand, any future or existing regulations must be balanced against market forces in a competitive and technologically neutral manner, as government must not choose the winners or losers of the digital age.

Nothing in this policy statement is to be construed as limiting or affecting the right of any state to regulate alcohol according to its local norms and standards pursuant to the 21st Amendment.

NCSL opposes unnecessary or unwarranted federal legislation or regulation that would impede efforts by states to promote access to the Internet, enhance competition or increased consumer choice or ensure the security of personal information of consumers conducting electronic commerce transactions.
The National Conference of State Legislatures (NCSL) supports the following principles in formulating laws and regulations that impact the Internet and electronic commerce:

**Privacy and Security**

Every American should be empowered to protect their privacy and personal information from intrusion or piracy. While NCSL recognizes that there is a need for Congress to act to establish a national policy to protect the personal information of Americans, state legislatures, in the absence of any action by Congress and the federal government, have moved to fill the void. NCSL calls upon the Congress to enact federal Internet privacy legislation that ensures the security of Americans’ personal information with the least amount of government regulation as possible. However, NCSL opposes federal legislation that seeks to preempt existing state statutes and regulations governing privacy protections and security for non-Internet based transactions.

**Free Speech**

The Internet allows people to communicate and share ideas with others with an ease never before possible. Federal government policy should rigorously protect freedom of speech and expression on the Internet, but not restrict states or local governments from oversight protecting freedom of speech. New technologies should adequately enable individuals, families and schools to protect themselves and students from communications and materials they deem offensive or inappropriate. State law enforcement, with federal assistance and resources, must be able to enforce criminal statutes against predators that use the Internet to harm or abuse children.

**Self-governance**

NCSL requests the Congress to maintain the current self-governance approach that allows the competitive marketplace to drive broadband and broadband-related applications development and deployment. Congress should avoid adopting new mandates and provide the Federal Communications Commission (FCC) with defined and limited authority to oversee, but not proactively intervene in, the broadband Internet marketplace consistent with principles that focus on assessing whether the market
continues to ensure that consumers can:

(1) Receive meaningful information regarding their broadband service plans;

(2) Have access to their choice of legal Internet content, subject to the limits on bandwidth and quality of service of their service plan;

(3) Run applications of their choice, subject to the needs of law enforcement and the limits on bandwidth limits and quality of service of their service plans, as long as they do not harm the provider’s network or interfere with other consumers’ use of the broadband service; and

(4) Be permitted to attach any devices they choose to their broadband connection at the consumer’s premise, so long as they operate within the limits on bandwidth and quality of service of their service plans and do not harm the provider’s network, interfere with other consumers’ use of the broadband service, or enable theft of services.

Consumer Protection

Industry self-regulation has made an important contribution to the development of electronic commerce. Industry technologies and best practices, combined with the enactment of strong state laws which outlaw deceptive practices and fraudulent online behavior, are essential elements in promoting electronic commerce and enhancing consumer protection. Privacy and consumer protection continue to be priority issues in state legislatures.

NCSL supports the efforts of state legislatures to develop new policy initiatives to protect consumers online, especially when the federal government fails to respond to consumers’ concerns. NCSL also recognizes that because of the global nature of the Internet that states must seek cooperative federal action to further enhance consumer protection, privacy and information security. Federal legislation must ensure the authority of state attorneys general to enforce federal statutes protecting consumers. However, NCSL opposes any attempt by Congress to restrict the states’ ability to impose criminal and/or civil penalties for illegal activity that may occur over the Internet.
Growth

Public policies must be designed to foster continuing expansion of useful and affordable bandwidth, encourage development of innovative technologies and promote broad universal access. Federal and state governments must work together to ensure that all Americans, regardless of where they live, have competitive access to high-speed broadband technologies. Government must work to guarantee open and competitive markets for broadband services.

Information Technology

Information technology (IT) is a global industry. A strong American IT industry enhances and strengthens the economic well-being of our states and nation. States and the federal government must work together to ensure a climate that allows America’s IT companies to continue to perform research and technology development, to generate innovative new products and services and to solve customer problems. States must have the unfettered ability to continue to seek ways to use IT to better the lives of their residents. Therefore, NCSL opposes any attempt by the federal government to restrict or penalize states’ efforts to utilize information technology services and products that allow states to provide more efficient government services to residents at lower costs to taxpayers.

Internet Gambling

Congress must respect the sovereignty of states to allow or to prohibit Internet gambling by their residents.

Electronic Commerce and Taxation

Government policies should create a workable infrastructure in which electronic commerce can flourish. Policy makers must resist any temptation to apply tax policy to the Internet in a discriminatory or multiple manner that hinders growth. Government tax systems should treat transactions, including telecommunications and electronic commerce, in a competitively neutral and non-discriminatory manner. The federal
government and America’s industries should work with state legislatures in ensuring
equal tax treatment of all forms of commerce and should encourage state efforts to
achieve simplification and uniformity through the streamlining of state and local sales
and telecommunications tax systems.

NCSL supports the reform of the discriminatory taxation of communications services
and believes that if state and local governments were to take such action, the need for
the federal moratorium on Internet access would cease to exist.

Since 2003 NCSL has maintained a neutral position on the extension of the moratorium
and continues to do so. However, should the moratorium be extended, it is consistent
with NCSL policy that the moratorium be competitively neutral and apply equally to all
media used to access the internet.

VIDEO FRANCHISE REFORM

Innovation and convergence of existing technologies are radically expanding
communications and information services, blurring distinctions between telephone,
Internet services, cable, wireless and satellite. These rapid changes often outpace
abilities of federal, state and local regulatory regimes to adapt. It is important that video
regulatory policy assure that like services are treated alike, investment is encouraged,
and services are in a non-discriminatory manner.

State Administration Will Preserve State Authority

Local jurisdictions are the creation of either state constitutions or law. The powers that
these political subdivisions of the state exercise were granted to them over time by state
legislatures. Those local jurisdictions that have franchise authority have it as a result of
state legislation or the state constitution. Therefore, any attempt by Congress to
preempt current local franchise authority is a preemption of state sovereignty.

While NCSL rarely advocates the consideration of legislation in state legislatures, NCSL
has at times, when states are facing a crisis or a serious threat of federal preemption,
urged state legislatures to take action. NCSL endorses efforts that remove barriers to
entry for or inequity of regulation among video competitors and foster additional
consumer choices in the video marketplace ultimately ensuring competitive neutrality.

Government should encourage competition and consumer choices for broadband and
video services and promote the deployment of broadband services and technologies.

**Fees and Taxation of Video Providers**

Franchise fees today are levied, imposed or collected as a percentage of gross
revenues, used for general revenue purposes and not based on the actual direct and
identifiable costs of any benefit to the entity that pays the fee. To the extent such fees
are intended as payment for use of public rights-of-way, that fee should be limited to the
actual, direct and identifiable cost of such use, and that portion of the fee should be
applied only to those who use the rights-of-way. Franchise fees should be collected and
administered by one central agency per state.
WHEREAS, intellectual property (IP) rights and innovation are primary drivers of job creation and America’s economic growth; and

WHEREAS, over 45 million jobs are directly and indirectly supported by IP-intensive industries, according to the U.S. Department of Commerce 2016 report, as significant drivers of GDP, exports and wages in every state of the Union; and

WHEREAS, IP-intensive industries are responsible for $6.6 trillion in private sector output (GDP); and

WHEREAS, according to the U.S. Chamber of Commerce, the average worker in an IP-intensive industry earns 30 percent higher wages than those of non IP-intensive industries; and

WHEREAS, IP-intensive industries drive American exports accounting for approximately $1 trillion (74 percent of total U.S. exports); and

WHEREAS, given the important role that IP plays in sustaining a long-term economic growth, policymakers should give high priority to fostering innovation and protecting intellectual property; and

WHEREAS, protecting and enforcing the IP rights of businesses are critical to advancing global economic recovery, driving competitiveness and export growth, and
WHEREAS, IP protections, though vital, must be balanced with other priorities, including the right of citizens to access affordable drugs and medical devices and the ability of state governments to contain Medicaid costs; and

WHEREAS, the National Conference of State Legislatures believes that balanced efforts to promote innovation through intellectual property protection and affordable healthcare are critical to improving the nation’s long-term competitiveness in a global market, and to achieving certain socioeconomic improvements in the quality of American life;

NOW, THEREFORE, BE IT RESOLVED, that the National Conference of State Legislatures calls upon all levels of governments to work cooperatively with the private sector, nonprofits, and academia to create, develop and implement robust pro-IP awareness and enforcement; and,

BE IT FURTHER RESOLVED, the National Conference of State Legislatures supports efforts to ensure the Intellectual Property Enforcement Coordinator within the Executive Office of the President has sufficient staff, budget, and authority to fulfill the obligations and achieve the goals outlined in the Prioritizing Resources and Organization for Intellectual Property Act of 2008 (PRO-IP Act) and the National IP Strategy; and

BE IT FURTHER RESOLVED, the National Conference of State Legislatures supports robust and balanced IP protection and enforcement provisions in trade agreements, protecting U.S. jobs and wages while ensuring that excessive monopoly protections do not saddle states or individuals with burdensome costs that limit healthcare options or endanger public health;

BE IT FURTHER RESOLVED, that the National Conference of State Legislatures supports existing efforts to shut down the top illegal rogue websites globally that are willfully selling counterfeit goods and facilitating digital theft; and
BE IT FURTHER RESOLVED, that a copy of this resolution be sent to the President of the United States and all members of the 115th Congress.
COMMITTEE: THE COMMUNICATIONS, FINANCIAL SERVICES, & INTERSTATE COMMERCE

POLICY: REDUCING BARRIERS OF SMART COMMUNITY INFRASTRUCTURE

TYPE: NEW RESOLUTION

WHEREAS, Smart Community technologies can strengthen America’s cities, states and regions by improving the overall quality of life, economic opportunity, and security for those who live in America’s communities; and

WHEREAS, the development and deployment of Smart Community technologies in the communication, energy, and transportation sectors provides new opportunities to increase overall public health and facilitates economic growth across urban and rural communities;

WHEREAS, such Smart Community innovation encompasses a range of technological solutions to modernize and improve the delivery of state and local government services; and

WHEREAS, Smart Community technologies can achieve community goals, such as increasingly clean and efficient transportation, improved energy management, integration of distributed and renewable energy resources, increase access to better quality broadband connectivity and enhanced transportation mobility; and

WHEREAS, partnerships between state and local governments and the private sector can support ‘Smart Community’ innovations across all communities and help overcome resource constraints and impediments, and facilitate the efficient coordination of services; and

WHEREAS, these public-private partnerships can help accelerate Smart Community advancements and new technology deployments that benefit residents and constituents
across cities, states, and regions; and ensure that Smart Community technologies are efficiently integrated and provide maximum benefit to the communities they serve; and

WHEREAS, the infrastructure of the communications, energy, and transportation sectors are not only interconnected, but serve as the foundational elements to enable the deployment of new Smart Community technologies in all communities; and

THEREFORE, agencies, such as the Department of Transportation, Federal Communications Commission, Federal Aviation Administration, the Department of Agriculture and the Department of Energy should fund grant programs and opportunities for state and local governments that support efficient investments in Smart Communities; and

NOW, THEREFORE, BE IT RESOLVED, that the National Conference of State Legislatures believes that policymakers, as well as partners from the communications, energy and transportation sectors, should continue to work at the local, state, and federal levels to develop policies that facilitate and accelerate the development and deployment of Smart Community technologies that can maximize benefits for all communities at the local, state, and regional levels.

NOW, BE IT FURTHER RESOLVED, that the National Conference of State Legislatures supports additional federal funding toward the development of Smart Communities, and that the Department of Transportation should re-launch the 2015 Smart City Challenge, and expand the number of communities eligible to receive awards across the nation.
COMMITTEE: COMMUNICATIONS, FINANCIAL SERVICES, & INTERSTATE COMMERCE

POLICY: SUPPORTING THE DEVELOPMENT OF A BALANCED NATIONAL SPECTRUM POLICY THAT INCLUDES UNLICENSED ACCESS IN THE 5GHZ BAND TO MEET THE DEMAND FOR WIRELESS TECHNOLOGIES

TYPE: RESOLUTION

WHEREAS, states have an interest in policies that preserve and encourage continued private investment to deploy broadband technologies, support small and minority businesses and entrepreneurs’ participation in the digital economy, and equip minority communities with the skills and education to take advantage of these technologies; and

WHEREAS, Wi-Fi spectrum in the 2.4 GHz band has become highly congested, especially in densely populated urban areas making it difficult for Wi-Fi providers to deliver the kinds and quality of service that consumers have come to expect and will only accelerate as the number of wireless devices continues to grow; and

WHEREAS, the 5 GHz band has enormous potential to support continued growth in unlicensed wireless services, including the next generation of Wi-Fi which will create a platform for technological innovation, investment, and economic growth; and

WHEREAS, the Federal Communications Commission (FCC) acknowledges the critical role that next generation Wi-Fi technologies can have on consumers and has agreed to take a first step in the 5 GHz band by adding over 100 MHz of spectrum for Wi-Fi, making it available for indoor and outdoor use; and

WHEREAS, Wi-Fi is essential to unleashing the enormous economic potential of the internet in communities where broadband adoption lags; and

WHEREAS, while according to the Pew Research Center, more Americans are gaining access to broadband in their homes, adoption rates for African Americans and Latinos
still lag those of whites by 10 to 20 percentage points respectively and when accounting
for income only 54 percent of those with a household income under $30,000 had high
speed broadband or a computer at home increasing the importance of Wi-Fi for these
communities; and

WHEREAS, broadband access through Wi-Fi is critical to empowering minority and
minority women entrepreneurs to develop, grow and improve productivity of their
businesses as well as strengthening U.S. competitiveness nationally and worldwide;
and

WHEREAS, unlicensed Wi-Fi is a critical issue that, if left unresolved, will hinder the
broadband industry’s ability to grow, innovate and compete and limiting access to this
important resource will jeopardize consumers ability to access Wi-Fi; and

WHEREAS, NCSL agrees that the proliferation of smartphones, tablets and other
mobile devices with Internet access has grown significantly, placing a greater demand
on both licensed and unlicensed spectrum, and adding additional capacity is essential
to support continued innovation and achieve the potential to transform many different
areas of the American economy by providing a platform for innovation and is likely to
have a substantial impact on jobs, growth and investment; and

WHEREAS, NCSL strongly believes that ensuring the long-term success of unlicensed
services in the 5 GHz band for Wi-Fi will enable the broadband industry to provide
reliable and affordable services to broadband customers, particularly given communities
of colors’ high usage of mobile broadband technology as a primary means of connecting
to the Internet with the majority of these connection now being Wi-Fi connections; and

NOW, THEREFORE, BE IT RESOLVED, that NCSL supports the Federal
Communications Commission’s move to allocate additional 5 GHz band spectrum for
unlicensed use in order to meet increased demand for wireless technologies; and

BE IT FINALLY RESOLVED, that NCSL send a copy of this resolution to the President
of the United States, Members of Congress, the Federal Communications Commission, State Legislatures and Governors.
The 1967 *Bellas Hess* and the 1992 *Quill* Supreme Court decisions denied states the authority to collect sales and use taxes by out-of-state sellers that have no physical presence or nexus in the taxing states, holding that legislation by Congress is required to create such authority and urged Congress to address the issue of remote sales tax collection. One recent report has estimated that states will lose over $23 Billion in uncollected sales tax revenues in 2012, of which $11.4 billion is from electronic commerce. It is estimated in various studies that state and local governments are losing between $8 billion to $35 billion a year in uncollected sales taxes from remote transactions and that annual losses will continue to grow as more commerce is conducted online. This disconnect with remote commerce threatens to erode the viability of the sales tax as a revenue source for state and local governments. States have requested Congressional action, but Congress has failed to close this large loophole in the states' sales and use tax system. Congress' failure over the last 26 years to address the issues raised by the Supreme Court in 1992, resulted in an effort by states to require remote sales tax collection based on economic presence. The first case ready for review by the Supreme Court, *South Dakota v. Wayfair*, resulted in the Court overturning its previous decisions in *Bellas Hess* and *Quill*, which allowed states to require remote sellers to collect sales taxes for purchases made by their residents. *The Wayfair decision by the Supreme Court has made the need for congressional action unnecessary.*

*Having state tax sovereignty returned to the states for sales tax collection, states now have the obligation to act with fairness and transparency in administering the remote sales tax collection system. The responsibility will be on states to ensure that the*
burden to collect sales taxes by remote sellers is no greater than the burden on in state sellers if states are to avoid a preemptive federal framework imposed by Congress. States must work together as partners in the collection of sales taxes or face a call from sellers for federal intervention. Action by state tax departments regarding remote sales tax collection without the consent of the elected policymakers in the state legislature and executive branch should be avoided.

NCSL recognizes that 24 states have enacted legislation to join the Streamlined Sales and Use Tax Agreement (SSUTA), which was recognized by the Supreme Court in the majority opinion as a viable way for states to collect remote sales taxes. While it is an option for the remaining 21 states that have a sales tax, it is not mandatory. However, those 21 states should consider joining SSUTA or consider enacting legislation to work with SSUTA for: a central registration system for remote sellers, a central system for the certification of Certified Software Providers (CSPs), ensure that remote sellers are provided the same compensation as in-state sellers, provide a publicly available taxability and exemption table, and, provide a rates and boundary database in an easily downloadable format.

States won a victory in the U.S. Supreme Court and now they have a responsibility to ensure that sellers are treated with fairness and as good corporate citizens. States should follow the Golden Rule of state tax policy: “Do unto taxpayers in other states as you would have them do unto your taxpayers.” Any state that implements remote sales tax collection irresponsibly will only jeopardize the ability of other states to require remote sales tax collection.

Moreover, NCSL will oppose unnecessary federal legislation that preempts the states’ authority, as granted by the Supreme Court, to collect sales taxes from remote sellers. NCSL calls on Congress to require all sellers, regardless of location, to collect sales taxes and remit them to the state to which they are due. Further, NCSL supports a small business exception.
Acknowledging that the complexity of multiple tax rates places a significant burden on out-of-state sellers, twenty-four states joined the Streamlined Sales Tax and Use Agreement and passed laws to simplify sales and use tax systems, remove burdens to interstate sellers, and collaborate on the collection of taxes due to them.

NCSL calls on Congress to pass legislation overturning the *Bellas Hess* and *Quill* decisions, affirming the states’ sovereign right to enter into such agreements, and granting states the authority denied to them by the Court’s decisions.