

**STATEMENT OF PRINCIPLES FOR
ELECTRONIC COMMUNICATIONS PRIVACY ACT REFORM**

WHEREAS, it is the mission of the American Legislative Exchange Council (ALEC) to advance the principles of free markets, limited government, and federalism, and;

WHEREAS, it is the mission of ALEC's Task Force for Communications and Technology to advance these principles in order to promote economic growth, freedom of technology, and innovation through public policy, and;

WHEREAS, the federal Electronic Communications Privacy Act (ECPA) is the primary federal law that specifies standards for law enforcement access to electronic communications and associated data, affording important privacy protections to subscribers of emerging wireless and Internet technologies, and;

WHEREAS, the statute has not undergone a significant revision since it was enacted in 1986, and;

WHEREAS, technology has advanced dramatically since 1986, and ECPA has been outpaced, and;

WHEREAS, ECPA is now a patchwork of confusing standards that have been interpreted inconsistently by the courts, creating uncertainty for both service providers and law enforcement agencies, and;

WHEREAS, ECPA can no longer be applied in a clear and consistent way, and, consequently, the vast amount of personal information generated by today's digital communication services may no longer be adequately protected, and;

WHEREAS, ECPA must be flexible enough to allow law enforcement agencies and services providers to work effectively together to combat increasingly sophisticated criminals, and;
WHEREAS, ALEC is a member of Digital Due Process, a diverse coalition of privacy advocates, major companies and think tanks, working together, and;

THEREFORE, LET IT BE RESOLVED, that ALEC supports the Digital Due Process goal of simplifying, clarifying, and unifying the ECPA standards, providing stronger privacy protections for communications and associated data in response to changes in technology and new services and usage patterns, while preserving the legal tools necessary for government agencies to enforce the laws, respond to emergency circumstances and protect the public, and;

LET IT BE FURTHER RESOLVED, that ALEC supports the following guiding principles developed by Digital Due Process in regards to reforming ECPA:

- A governmental entity may require an entity covered by ECPA (a provider of wire or electronic communication service or a provider of remote computing service) to disclose communications that are not readily accessible to the public only with a search warrant issued based on a showing of probable cause, regardless of the age of the communications, the means or status of their storage or the provider's access to or use of the communications in its normal business operations.
- A governmental entity may access, or may require a covered entity to provide, prospectively or retrospectively, location information regarding a mobile communications device only with a warrant issued based on a showing of probable cause.
- A governmental entity may access, or may require a covered entity to provide, prospectively or in real time, dialed number information, email to and from information or other data currently covered by the authority for pen registers and trap and trace devices only after judicial review and a court finding that the governmental entity has made a showing at least as strong as the showing under 18 U.S.C. 2703(d).
- Where the Stored Communications Act authorizes a subpoena to acquire information, a governmental entity may use such subpoenas only for information related to a specified account(s) or individual(s). All non-particularized requests must be subject to judicial approval.