

TESTIMONY OF ROBERT PUCKETT, PRESIDENT, NEW YORK STATE
TELECOMMUNICATIONS ASSOCIATION, INC.

JOINT ASSEMBLY AND SENATE TRANSPORTATION BUDGET HEARING

JANUARY 30, 2019

Assembly Ways & Means Chair Weinstein, Senate Finance Chair Krueger, and members of the Joint Transportation Budget Committee.

I thank you for this opportunity to submit testimony for your consideration as you begin to review proposals with respect to the proposed 2019 – 2020 New York State Budget. My name is Robert Puckett, and I am the President of the New York State Telecommunications Association (NYSTA). NYSTA is the State’s leading trade organization representing telecommunications carriers statewide. Originally established in 1921, our members include over forty telecommunications carriers and over 100 suppliers, vendors and others supporting the industry. Our members include larger national carriers such as Verizon, Windstream and CenturyLink as well as smaller, rural carriers. Our member’s networks represent the ‘central nervous system’ of this State’s telecommunications needs in today’s information-based economy.

I am here today to talk specifically about Part S of the transportation, economic development and environmental conservation bill. Part S is such a far-reaching proposal that both the Senate and Assembly considered and rejected last year when the Governor included the same proposal in his 2018 - 2019 proposed budget. This proposal was Part F of the transportation, economic development and environmental conservation bill last year, and both the Assembly and the Senate rejected it in their one-house budget proposals. As a reminder, this proposal would authorize the Department of Transportation to charge a “fiber optic utility” for the use and occupancy of a State highway right of way. As with last year, we oppose the

introduction of a new fee, in essence a tax, for the use of highway rights of way by providers deploying fiber-optic cable. We believe that the fiber-optic tax would discourage deployment of a modern telecommunications infrastructure, as taxes always have a chilling effect on investment. We believe that enacting any policy that discourages investment in the State's infrastructure is bad public policy. This fee would be in addition to the hundreds of millions of dollars that we, and others, currently pay in property taxes for our facilities that are located in the right of way as well as the tens of millions of dollars that are paid each year to DOT in managing ROW work. While not directly related to this new fee proposal, the industry, and ultimately customers, will face additional cost increases due to a recent court ruling by the NY Court of Appeals that now allows local municipalities to impose property taxes on fiber optic cable located in private rights of way.

We find this proposal especially frustrating because the State has a long history of understanding the importance of granting unfettered access to State rights of way to encourage investment and deployment of telecommunication facilities. In the early part of the 20th Century, the State passed the Transportation Corporations Law Article 3, dealing with telegraph and telephone corporations. Specifically, section 27 of that Law states that a telephone corporation “may erect, construct and maintain the necessary fixtures for its lines upon, over or under any of the public roads, streets and highways.” Department of Transportation regulations, specifically 17 NYCRR § 131.3, recognize that policy by stating that telephone corporations “have the legislated grant to occupy certain types of state highway rights-of-way without the payment of a use and occupancy fee.” The statute and regulations reflect the clear and long-established policy of the State to encourage the deployment of communications facilities.

Fiber optic cable is critical to the modernization of telecommunication networks in the

State, regardless of provider. This proposal would have a deterrent effect on continued deployment and modernization of all networks, including the modernization of the wireless networks, which utilize the landline telephone network to carry their traffic. Moreover, the deterrent effect of the proposal would be enhanced because the proposal includes a provision prohibiting any pass-through to customers of the new costs that the State would now impose on providers. If a provider cannot recoup an investment, this will have a chilling effect on further deployment and development of infrastructure. There is not unlimited money to develop infrastructure, so difficult decisions have to be made. If deploying in New York becomes more costly, this will deter investment in New York and undermine interest in developing a fully modernized communications infrastructure.

By seeking to eliminate the rights that currently exist under the Transportation Corporations Law, and in turn, severely disrupting a century old State policy, my member companies feel that this fee would impose a barrier to the expansion of broadband service in the State. The original policies underlying the Transportation Corporations Law are just as valid today as they have been over the past many decades. I am sure all of you have heard from your constituents, including individual residents and businesses, cities, towns or villages, about the importance of, and the need for, a modern telecommunications network capable of providing high speed broadband networks across the state.

Recognizing this, policy makers at the State and local level have developed policies and programs to ensure these goals are met. Key to these efforts was the Legislature's approval of the \$500 million NEW New York Broadband Grant Program in 2015 to spur deployment of advanced broadband networks in unserved and underserved areas of the state.

We know the State understands that access to broadband for all is critical to the State's economy. However, this proposal seems counter to the State's stated goal of broadband for all.

While an attempt is made to ameliorate some of the impact of this new fee structure, as fiber deployment that is a part of the NEW NY Grant Program would be exempt from the new occupancy charges, it is important to note that the Grant Program addresses a mere 3% of housing units within the State, meaning that very few network upgrades would be exempt from this new fee.

This policy would essentially negate a nearly century old policy to exempt telephone corporations from paying to use the State's rights of way. Such an action will have a chilling effect on the continued investment in and deployment of fiber optic technology in the State and run counter to the State's expressed goals and policies to encourage continued investment and advancement of the State's telecommunications infrastructure. This will thwart the State's economic development efforts in today's information age economy; makes New York less competitive in attracting investment dollars; and will ultimately result in higher prices for consumers.

In addition to the fact that we believe this is bad public policy, we also believe that the legislation as drafted is flawed. The term "fiber optic utility" is not defined in the proposal. We believe, it would, as written, apply a new fee (tax) on every telecommunication provider in the State, whether that be landline-based local exchange carriers, cable TV providers, wireless providers, or internet backbone providers, on their existing fiber optic cable that has already been deployed as well as any future deployments of fiber optic cable. However, as "fiber optic utility" is not defined under any section of law or a defined industry term, we are not entirely sure of the intent of this proposal.

In addition, it is our understanding that the justification for this proposal is to allow the DOT to better regulate access to the rights of way. If the concern is truly better regulating access to the rights of way, we are happy to sit down with the DOT and discuss options on how

to accomplish this goal. We do not feel that assessing a new tax will on top of the existing DOT work permit fee effectively address their concern of better regulating access. We feel that this proposal may in fact decrease those who access the rights of way but because fiber optic providers are no longer deploying new networks, which is not something the State wants to encourage. Further, if the true goal is to regulate and better control access to the rights of way, then why is it only applying to fiber optic utilities? Why wouldn't it apply to any provider looking to access the right of way? We think that we could work with DOT to address their access concerns and find a regulatory solution that does not need legislative action that doesn't address the access issue and imposes a new tax on the industry.

It is for these reasons that the New York State Telecommunications Association opposes Part S of the transportation, economic development and environmental conservation bill. I respectfully ask that both houses once again reject this tax that would undo century old policy in New York to the detriment of New York consumers and New York innovation.