

**BEFORE THE JOINT LEGISLATIVE PUBLIC HEARING ON THE 2019-2020
EXECUTIVE BUDGET PROPOSAL: TOPIC LOCAL GOVERNMENT**

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Written Testimony of the New York State Wireless Association in Favor of
S.7508-A.9508 (TED Article VII Budget Bill – Part BB

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Introduction

The New York State Wireless Association, Inc. (“NYSWA”) appreciates the opportunity to submit written comments to the Joint Legislative Public Hearing on Local Government. Our comments are focused on Part BB of the Transportation and Economic Development Article VII Bills, S.7508 and A.9508, Sections 1 and 2 of TED Part BB titled “Small Wireless Facilities Deployment” would amend Article 13-E of the General Municipal Law.

Bill Support

NYSWA supports TED Part BB, Section 1 and 2, and the proposed small cell amendment to Article 13-E of the General Municipal Law. The legislation would spur significant infrastructure investment and accelerate wireless broadband deployment in New York by establishing a uniform process with appropriate and reasonable nondiscriminatory fees for the installation of small cell wireless facilities including those placed in public rights of way. The measure incorporates smart public policy that will help maintain New York’s status as a competitive leader in the nation’s technology landscape.

This bill would also authorize the Commissioner of the Department of Transportation to enter into statewide master license agreements with wireless providers for the use and occupancy of State

owned right of ways for the installation of communications facilities. This provision will lead to faster next-generation wireless broadband deployment.

NYSWA

NYSWA is an all-volunteer state based wireless industry trade association. NYSWA was founded in part to “provide an official forum for the cultivation of relationships and exchange of ideas between wireless telecommunications professionals, government officials and the public.” Our members include wireless carriers, tower and other wireless infrastructure companies, distributed antenna system and small cell integrators, fiber providers, architect and engineering firms, radio frequency technicians, construction firms, surveyors, real estate acquisition companies and other telecommunications infrastructure service professionals.

Mobile Broadband Services

In today’s world, fast and reliable mobile internet connectivity has become a crucial part of everyday life—for businesses and consumers alike. As mobile technology has become more widely available and affordable, consumers are using their smart devices more than ever before. Email, video-chatting, posting to social networks, streaming music at home or on-the-go, and managing business operations on smart devices from almost anywhere are all part of today’s mobile society. Ongoing development of new technologies that are dependent on mobile broadband such as smart city applications, public safety interoperability, telemedicine and in education are part of the rapid and ever-expanding evolution of services to the public.

Mobile Network Demand

Current and projected increases in data demands are putting pressure on the capacity of today’s mobile networks. The wireless industry is continually developing innovative ways to enhance networks, prepare for the next generation of technologies and services and provide a better mobile experience. One of the most crucial solutions to meet the incredible demand for enhanced network coverage and capacity is the deployment of small cell technologies and infrastructure.

What are Small Cells and Why are they Needed

Traditional macro cell sites, which are typically installations on free-standing towers, buildings, water tanks or other tall structures, remain critical to wireless network coverage. However, these macro cell sites alone cannot handle the explosion in wireless data usage and demand being placed on today's modern broadband networks. To keep up with surging demands, wireless operators are engaged now in "network densification," which generally means placing additional wireless infrastructure in proximity to where the demand is being generated for added network capacity and coverage.

For purposes of this testimony, small cells are broadly defined as antennas and equipment typically installed on utility poles or street lights in public rights of way or on the sides or roof of a building. Installation types and sizes vary based on the network demand being served and include self-contained single carrier units, distributed antennas systems or remote radios deployed in various settings. Each small cell typically serves a small geographic area not more than a quarter mile from the installation. Small wireless facilities all serve to improve coverage and capacity in current 4G LTE services and soon to be deployed 5G wireless networks. Additional information on what small cells are and why they are needed is available from WIA -The Wireless Infrastructure Association, of which NYSWA is a member. <https://wia.org/resource-library/>.

The wireless industry continues to invest in and deploy small cell wireless infrastructure throughout the United States. Small cells are essential for wireless carriers to bolster network capacity and to better meet surging demand for more data and faster connectivity and to prepare networks for the next generation of technologies and services—like 5G, the Internet of Things, next-gen public safety, and smart cities. Small cell infrastructure will play a key role in delivering the network flexibility and reliability New Yorkers depend on in today's tech-driven world and will also help to lay the necessary foundation for 5G deployment and next generation technologies and services.

Current Municipal Approaches to Small Cell Deployments in New York Vary

The wireless infrastructure ecosystem is ready to continue capital investment in and expansion of broadband networks across New York to keep pace with current consumer and business demand

and enable the technologies and services of the future. As wireless carriers look to deploy small cell facilities in more and more places, many of our members nonetheless report inconsistent municipal regulations and ordinances across the state of New York related to:

- Access requirements to public rights of way;
- Permits for the attachment of small cell facilities to utility poles (the requirements which are also inconsistent with the permit requirements for other telecommunications uses such as cable attachments including WiFi);
- Processes for decision making related to installations of small cells on municipal infrastructure in public rights of way;
- The costs and fees charged for access to public rights of way and attachments to utility poles; and
- In some cases, requirements for zoning of small cell deployments under outdated tower regulations despite their planned deployment on utility poles in the public rights of way that have never historically required zoning approvals.

Consumers across the state continue to demand – at increasing levels – access to wireless products and services. Consumers and first responders throughout the state rely on wireless broadband services and are constantly asking wireless providers to expand and upgrade their networks to provide higher performance services with more innovative capabilities and greater reliability.

Wireless companies interested in investing in New York and deploying small cells to enhance wireless broadband networks must navigate a complicated and inconsistent patch-work of municipal regulations and ordinances for the over 1500 jurisdictions in the State. The lack of a uniform consistent statewide regulatory approach can also result in local approaches that vastly differ, from something as simple as a right of way access permit from the municipal highway superintendent for a small cell attachment to a utility pole to highly discretionary proceedings with public hearings before city councils, town boards and village boards of trustees.

Concerns Over Certain Municipal Approaches to Small Cell Deployment in New York

Many of the access and regulatory processes that municipalities seek to impose across the state can be burdensome, yield long delays, and can even involve litigation in some cases. Many times,

municipalities assert that they have unfettered legislative discretion with respect to small cell deployments despite federal laws which limit municipal authority. Specifically, while federal law allows states and municipalities to manage the public rights of way, it prohibits them from imposing requirements on the deployment of small cell infrastructure in public rights of way that effectively prohibit such deployment. Some of the municipal processes our members have encountered rise to that level. Our members have also reported several instances of either moratoria or excessive municipal access and attachment fees intended to generate municipal revenue contrary to federal laws. Some local governments have enacted local laws that have effectively prevented wireless carriers from deploying small cells. Thus, depending on a municipality's approach to small cell facilities deployment, our members have certainly experienced barriers and continue to experience barriers in several jurisdictions, all of which slow the pace at which the wireless industry can make the significant infrastructure investment necessary to bring the public faster speeds, increased data capacity and newer technologies through the infrastructure needed for such services.

As the industry looks to deploy small cell facilities in more and more places, carriers and tower developers face inconsistent municipal regulations and ordinances throughout New York. For example, the costs and fees charged for access to public rights of way and attachments to municipally-owned poles can be \$1500 annually and higher per location. Charges in states outside of New York are significantly less (\$0-50). The wireless industry must navigate a complicated and inconsistent patchwork of municipal regulations and ordinances for the over 1500 jurisdictions in the state. Procedures can range from something as simple as obtaining a permit from the municipal highway superintendent to complex proceedings involving public hearings before city councils, town boards and village boards of trustees.

Benefits of a Statewide Legislative Framework for Small Wireless Facilities

Informal polling of our members has revealed that the wireless industry's concerns over certain municipal approaches to small cell deployments in New York are not isolated or limited geographically to any one area of the State. Many communities from downstate to upstate are actively amending public right of way access requirements and, fee schedules, and adopting highly discretionary zoning processes for small cells. In these instances, the wireless infrastructure

industry has shared information and communicated with municipalities on the need for small cell facilities, balanced approaches to access and permitting requirements and the need for reasonable, non-discriminatory, cost-based fees associated with utility pole and municipal attachments.

NYSWA supports creating a statewide regulatory framework for municipal authority over small cell wireless facilities, which should include more predictable processes and reasonable non-discriminatory cost-based compensation for small cell deployments and statewide standards for permits within certain size and volume thresholds. It is in the overall public's best interest to legislate in a manner that balances state and municipal authority over small cell facilities to ensure that the benefits to communities and state residents are advanced. Delivering access to the most advanced wireless technologies, services and information supports economic development, municipal services and the well-being of the people of the State of New York who rely on mobile broadband every day.

Proposed New York State Small Wireless Facility Legislation

The legislation in TED Part BB, Sections 1 and 2, lays out a straight-forward and transparent path for establishing a statewide regulatory environment that would promote investment and facilitate deployment of small cells in New York communities. This legislation will:

- Grant wireless operators and infrastructure companies access to public rights of way for construction and maintenance of wireless infrastructure on reasonable, non-discriminatory terms and conditions relative to other types of communications entities.
- Grant wireless operators and infrastructure companies the ability to attach small cells to utility poles and municipal infrastructure, such as: light poles, traffic signals and the sides of building and rooftops.
- Avoid protracted municipal regulatory proceedings that can be costly for all parties and that lose sight of and often deprioritize the overall public interest in the deployment of small cells for mobile broadband services.
- Incorporate physical size and dimensional limitations on what constitutes a small cell facility while continuing to provide for existing municipal zoning authority over towers and macro cellular facilities.

- Ensure that the rates and fees paid to municipalities in exchange for access to public rights of way and municipal infrastructure located in the street are established at a level that reasonably compensate the municipalities yet also encourages wireless operators and infrastructure companies to continue the investment in small cell deployment here in New York.

30 States and Puerto Rico have passed statewide, streamlined small cell legislation to encourage deployment

There will be more and faster deployment where the obstacles are lower; we all understand this. For example, that is the very reason New York heavily taxes cigarettes and erects obstacles to their purchase by minors—so there will be less of it. Unfortunately for New York, the indisputable fact is that 30 states and Puerto Rico have already passed statewide legislation to streamline small cell deployment. Illinois and Ohio have put laws on the books, as have southern states that are siphoning away our population, our jobs, and our tax base, like Arizona, Florida, North Carolina, Texas, and Virginia. Closer home, Vermont and Connecticut have streamlined, statewide, predictable processes in use today – all to encourage deployment of next-generation wireless networks.

Local Municipal Control over ROW permitting is retained

Local governments will still retain ultimate control over Right of Way permitting under this proposal. Under the proposal they can reject 100% of the applications that fail to satisfy existing, applicable review criteria, such as:

- The Uniform Fire Prevention and Building Code;
- The National Electrical Code;
- The National Safety Electric Code;
- The Vehicular and Pedestrian safety codes apply, such as the Manual on Uniform Traffic Control Devices;
- The Occupational Safety and Health Administration (OSHA) requirements;
- The Americans with Disabilities Act;
- The Federal Aviation Administration (FAA) marking, lighting, and clearance regulations

- The Federal Communications Commission rules and oversight;
- Generally applicable safety and traffic encroachment permitting requirements;
- Generally applicable ROW restoration regulations; and
- Street opening and excavation permitting requirements.

Enactment of this measure will spur significant infrastructure investment in the state resulting in enhanced and improved wireless services currently provided, while also paving the way and laying a significant foundation for the next generation of broadband mobile services to be deployed in New York. Other states eager to attract this investment have already enacted small cell legislation and many with others in the process of enacting it now. Without such legislation, consumers and small businesses in many parts of New York will likely be deprived of the many benefits that small cell technology brings.

Conclusion

The wireless industry is on target to invest \$275 billion* in networks and in the build out of 5G broadband technology over the next 7 years. The provisions of the Executive Budget related to “*Small Wireless Facilities Deployment*” will competitively position New York to receive as much of that investment as possible. The greater the investment, the more jobs, more GDP growth and more access to cutting-edge technology will be stimulated. For all these reasons, NYSWA strongly supports the enactment of Article 13-E on Small Wireless Facilities Deployment.

* <https://newsroom.accenture.com/news/new-research-from-accenture-strategy-highlights-economic-and-societal-impact-of-investing-in-5g-infrastructure.htm>