

TESTIMONY OF ROBERT PUCKETT, PRESIDENT, NEW YORK STATE  
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JOINT ASSEMBLY AND SENATE LOCAL GOVERNMENT OFFICIALS/GENERAL  
GOVERNMENT BUDGET HEARING

FEBRUARY 5, 2018

Assembly Ways & Means Chair Weinstein, Senate Finance Chair Young, and members of the Joint Local Government Officials/General Government 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 2018 – 2019 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 F of the transportation, economic development and environmental conservation bill. Part F is such a far-reaching proposal that I was not sure if I should be testifying at this budget hearing, the Economic Development budget hearing or the Revenue Budget hearing as this proposal truly impacts all three. Part F has two different parts to it. The first part would authorize the Department of Transportation to charge a fiber optic utility for the use and occupancy of a State highway right of way. The second part

would establish a uniform process for the siting of small cell wireless facilities. We support the small-cell proposal, but 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. Indeed, the two separate provisions pursue policies widely at odds with each other. The small-cell provisions are designed to encourage deployment of modern network infrastructure; the fiber-optic tax would have precisely the opposite effect. Additionally, 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.

In the early part of the 20<sup>th</sup> 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 by a provision prohibiting any pass-through to customers of the new costs that the State would now impose on providers. If implemented, this fee, which is really a tax, would undermine interest in a fully modernized communications infrastructure.

By seeking to eliminate the rights that currently exist under the Transportation Corporations Law, the bill would severely disrupt 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.

As stated in the Governor's budget briefing book with regards to this program, "Access to broadband is a vital resource critically important to the future of the State's economy, and the education and safety of New Yorkers." 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.

In essence, the DOT is proposing to 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.

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