



BEFORE THE 2018 NEW YORK STATE JOINT LEGISLATIVE BUDGET HEARING
ON LOCAL GOVERNMENT
Albany, New York

Written Testimony of the New York State Wireless Association, Inc.

December 2, 2018

Introduction

The New York State Wireless Association, Inc. (“NYSWA”) appreciates the opportunity to submit written comments to the Joint Legislative Hearing on Local Government, regarding Part F of the Transportation and Economic Development Article VII Bill, of the 2018-19 Executive Budget proposal (TED Part F). Section 3 of TED Part F titled “Small Wireless Facilities Deployment” would amend Article 13-E of the General Municipal Law.

Bill Support

NYSWA supports TED Part F, Section 3 and the proposed small cell amendment to Article 13-E of the General Municipal Law. The legislation would spur significant infrastructure investment and accelerate mobile 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.

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 wireless infrastructure service professionals.

Mobile Broadband Services

In today’s world, fast & 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 communications experience. One of the most crucial innovations 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 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 or other structure. Installation types and sizes vary based on the network demand being served and include self-contained single carrier units, distributed antenna 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 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 wireless 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 throughout New York related to:

- Access requirements to public rights of way;
- Permits for the attachment of small cell facilities to utility poles (the requirements for which are also inconsistent with the permit requirements for other telecommunications uses such as cable attachments including Wi-Fi);
- 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.

Wireless companies interested in investing in New York and deploying small cells to enhance wireless 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 numerous instances of either moratoria or excessive municipal access and attachment fees intended to generate municipal revenue contrary to federal laws. Thus, depending on a municipality's approach to small cell facilities deployment, our members have 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.

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 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 both utility pole and municipal infrastructure 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 defined 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 New York residents are advanced. Delivering access to the most advanced wireless technologies, services and information across the entire state 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 F Section 3 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 city 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 municipal zoning authority over towers and larger wireless facilities; and
- 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.

Enactment of this measure will spur significant infrastructure investment in the state resulting in enhanced and improved wireless services currently provided, while also laying a significant foundation for the next generation of wireless services to be deployed in New York. At least 12 other states eager to attract this investment have already enacted small cell legislation. Many other states are in the process of enacting similar legislation now. Without such legislation, consumers in many parts of New York will likely be deprived of the many benefits that small cell technology brings.

NYSWA Concerns with Draft State Public Right of Way Fee Legislation

Article 13-E as amended would significantly encourage broadband deployment and bring substantial benefits to New York consumers and municipalities. Yet, other proposed amendments to the state highway and transportation corporation laws, if intended to create and permit a new tax or revenue based compensation model for fiber optic lines in State owned public rights of way, could detract significantly from this major step forward for small cell

facilities. While on its face a portion of the Bill language seeks to exempt New NY Broadband Program grantees from any such obligations, these amendments could also be interpreted to expand New York State Department of Transportation (“DOT”) authority and permit it to assess a tax/fee on fiber optic access and occupancy of the State’s public rights of way in a manner that would drastically modify the state’s longstanding approach to use of public rights of way the State manages. This portion of the Bill could potentially and significantly impede broadband and small cell deployments in New York.

Deployment of fiber optic lines to each small cell facility (whether aerial or underground) is a necessary component for almost all, if not all small cell deployments. Fiber is the principal means by which the telecommunications equipment at each small cell facility location is connected back to the network of each wireless operator. Fiber is one of the ways that wireless speeds are increased and latency is reduced for current and new mobile applications that will depend on small cell wireless facilities.

Any new authority that the draft provisions in TED Part F Sections 1 and 2 may grant DOT to levy millions of dollars in taxes or impose revenue based compensation models for access to State rights of way would be inconsistent with federal laws that apply to companies deploying fiber optic cables used to bring broadband and other innovative services to New York consumers. Those costs for backbone fiber would also be uniquely incurred in the very areas of New York where deployment of small cell wireless facilities is most prevalent and which require access to fiber. To keep New York competitive, the State should be encouraging – and not deterring - private investment that promises to bring the latest technologies to New York citizens and businesses. As such, consistent with Section 3 of the Bill, the State should simply clarify that the DOT may recover the costs of managing access to public rights of way DOT manages for telecommunications and other infrastructure purposes and as already provided for in current law.

Conclusion

The wireless industry is on target to invest \$275 billion* in networks and in the build out of 5G 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 urges that proposed changes to the Highway Law and the Transportations Corporations Law set forth in Sections 1 and 2 of Part F be eliminated or clarified in the TED proposal and strongly supports the enactment of Article 13-E of the General Municipal Law and Small Wireless Facilities Deployment.

Respectfully Submitted,
On Behalf of the Board of Directors



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