

Written Testimony of Tim Johnson

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“Rural Broadband”

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Thank you for this opportunity to testify about broadband and its importance to rural areas. I am Tim Johnson, Chief Executive Officer of Otsego Electric Cooperative (OEC) and OEConnect, our broadband subsidiary, headquartered in Hartwick, New York. OEC is a member of the New York State Rural Electric Cooperative Association.

OEC, serving ~4,500 meter locations, provides electricity to rural consumers that investor-owned utilities bypassed, partially due to our sparse population. In early 2017, OEC announced its plans to begin offering high-speed, affordable broadband after being awarded grant dollars that helped make the business case to build critical infrastructure to enable our consumer members to fully participate in our 21st century economy. This project fit into our long-term goal of increasing our smart grid capabilities so adding fiber to our electric network is a two-fold benefit to OEC and its members. Ultimately, OEC plans to make internet and voice service available to all of its consumer members¹ and some of our neighbors with fiber at speeds up to 1 Gbps of service with no data caps and at very fair prices. To date we

¹ Final plans include over 1,000 more locations than the original OEC footprint due to the way the program rules worked in the funding programs through which the cooperative has been awarded funding.

have activated fiber to the home (FTTH) broadband service to over 360 consumer members with many more on our waiting list. We will eventually have built over 800 miles of fiber while passing by more than 5,000 locations. This project has been built partly with private funds and partly with the help of the NY Broadband Grants. While we are off to a great start, we have also faced some policy-related challenges and we believe public policymakers can continue to play an important role in helping to support broadband in rural areas.

OEC is part of a broader electric cooperative industry, represented by the National Rural Electric Cooperative Association that serves one in eight Americans and covers 56% of the U.S. landmass. Electric cooperatives are owned by the members they serve and they are uniquely suited to best understand and serve their members' needs. Most electric cooperatives are small businesses; they don't have investors or access to significant capital to help defray the costs of building and maintaining their infrastructure. These costs are borne directly by the farmers, ranchers, small businesses and other residents of the nation's rural communities – including those in 93 percent of the nation's persistent poverty counties.

Electric cooperatives play a vital role in transforming communities.

While our first priority at OEC is to provide reliable, clean and affordable electricity to our members, our commitment to our communities extends well beyond that service. We also provide services that empower local communities to improve their quality of life. As mentioned, that includes participating in efforts to make sure they have access to a robust communications infrastructure including access to quality and affordable broadband that enables rural communities to thrive and compete in an increasingly connected, global marketplace. Economic development, the education of our students to compete with children from urban

areas, agriculture, and healthcare all require robust broadband access in the 21st Century.

Many comparisons are drawn between the lack of access to robust broadband service today and the need for electrification in rural America 80 years ago - with the urban areas of the country well-served, and rural areas being left behind. In part because cooperatives are led by, and belong to, the communities they serve, there is an increasing number of electric cooperatives studying whether they should be part of the solution to close the digital divide. More than 100 electric co-ops, including my own, are currently working toward meaningful and diverse solutions to bridge the digital divide and jump-start local economies. This cooperative commitment is vital for the one-quarter of all rural Americans who still lack access to broadband, compared to less than 2 percent in urban areas.

There is a role for both state and federal policymaking as we all work toward a common goal of closing the digital divide as quickly as possible. Of the topics my testimony covers, OEC stands ready to continue to be a resource to and work with New York state policymakers to address those within the state's purview.

Key Policy Principles for Broadband Infrastructure

Mapping:

More granular and accurate maps showing broadband availability are a key part of reaching all rural Americans with high-speed broadband service. This will enable us to clarify existing gaps in coverage and harmonize the diverse solutions that will be required to help rural Americans keep pace with their urban counterparts.

Several steps are critical to improving the nation's broadband maps:

- More granular data is needed to allow the maps to reflect actual coverage rather than classifying entire census blocks—which are often geographically

large in rural areas—as served or unserved. We have locations that are stuck on “islands” so to speak where awarded Census Blocks allowed service but not to a single household on the same road that was somehow put into another Census Block.

- Inclusion of broadband service performance characteristics such as latency and monthly usage limits would provide important insight to the quality of service broadband which consumers experience. This is an especially important aspect given the large number of rural New Yorkers at over 70,000 locations who only have access to satellite internet service.
- Data accuracy including standardization of data is critical to ensure all providers must adhere to specific guidelines when reporting what areas they can serve. This will allow for a true apples-to-apples comparison, instead of providers submitting the required information several different ways.
- Further data accuracy components should include crowdsourcing and, perhaps most importantly, an easily accessible challenge process to flag issues and further verify the accuracy of maps.

Fortunately, the FCC has recently taken steps on some of these items and we believe that our NY State officials and Congress have a role to play in providing further guidance.

In the immediate term, the FCC is moving forward with having providers submit polygon or “shape files” of where their service areas are. We believe NY should adopt this method as well. This will provide a clearer picture of where coverage is and isn’t than the current method of identifying whole census blocks as served or unserved. While the FCC is continuing their proceeding on data collection, Congress has also been active in this space. In July the Senate Commerce

Committee passed a broadband mapping bill through committee that includes several of the aforementioned components and is supported by electric cooperatives. Additionally, the House Energy & Commerce Subcommittee on Communications & Technology held a legislative hearing a couple of weeks ago to discuss potential legislative solutions to improve our nation's broadband maps. Several pieces of mapping-focused legislation have also been introduced in the House, including companion bills to the Senate's committee-passed bill.

Building Broadband Networks for the Future

Broadband is as needed in rural New York State as other infrastructure systems to support a healthy economy and community. Policymakers in Albany and Washington, D.C., have recognized the importance of rural broadband networks by including increased funding and new programs to promote rural broadband infrastructure.

One of the key objectives for consideration with respect to using these limited funds should be that any broadband funding plans include clear expectations for whomever receives federal or state support. Recipients should be required to construct networks capable of meeting consumer demand over the long-term. In other words, resources should be used to build networks which will be useful for decades. Spending federal or state dollars on broadband networks that will be obsolete in a few years doesn't make financial sense and will leave rural areas behind. Any areas that are not currently being served, or being built out to, with robust, reliable broadband of at least 25/3 Mbps should be eligible for broadband funds in any state and federal broadband program. The highest speed and capacity solutions such as GPON gigabit expandable speed Fiber to the Home projects should be given preference over other less robust technologies. Other considerations affecting the end-user experience, such as latency and data cap

limits which lead to a higher cost and diminished ability to utilize the service, should also be considered in all broadband funding programs.

STATE & LOCAL & OTHER CHALLENGES:

Local Jurisdictional Taxes:

We are very concerned that some of our local municipalities have begun (or might want to begin) assessing and taxing our fiber investments. OEC has estimated this will impose as much as 25% of additional recurring annual costs to serve each end user (based on current proposed assessment by a township). This is very counterproductive because the presence of fiber has been shown to increase the value of real property and economic development opportunities in these areas. A municipality could compound this negative taxing effect because the homeowners and businesses with fiber could be subjected to increased tax assessments as well. This will restrict OEC's ability to develop further in the future. We need state legislation clarifying that fiber assets are exempt from real property taxation.

85/15 Income Rule to Maintain Federal Tax Exempt Status:

As community-focused, member organizations, IRC 501(c)(12) electric cooperatives must comply with the 85-15 member/nonmember income test. No more than 15% of gross income may come from non-member sources in order to remain tax-exempt under federal law. Due to an unintended consequence created by changes to the Internal Revenue Code in the 2017 Tax Cuts and Jobs Act, cooperatives across the country, including OEC, are facing a crisis related to this required income ratio that puts our federal tax-exempt status in jeopardy. The 2017 law contains a provision that counts federal, state and local grants to co-ops as non-member income. Before the law change, under Section IRC Section 118, grants

were defined as a contribution to capital and did not count toward 85-15 calculations. OEC has chosen to accept the state broadband grants we have been awarded, but we are risking our tax-exempt status in the process. For OEC, the train had already left the station when the tax bill arrived. Prior to the discovery of the unintended consequences within the new tax law, our cooperative was awarded \$10 million from New York's broadband program to extend broadband to well over two thousand rural homes and businesses. After finding out about the threat to our tax-exempt status, our cooperative board made the decision to forge ahead on our planned broadband buildout to all co-op consumer members and many of our non-member neighbors because we view access to reliable broadband as an essential quality of life enhancement, for economic development in our community and a matter of fairness to all cooperative members.

Fortunately, a bipartisan legislative solution to this issue has been introduced in the House and Senate. We need your help in supporting this tax law correction. The Revitalizing Underdeveloped Rural Areas and Lands (RURAL) Act (S. 1032/H.R. 2147) was introduced by Senators Rob Portman and Tina Smith and Representatives Terry Sewell and Adrian Smith in April. The Senate bill has 18 cosponsors, while the House bill has 115 cosponsors with more signing on weekly. The legislation will allow co-ops to accept grants without jeopardizing their tax status, but the bill has not yet been scheduled for a vote in the House or Senate. Your assistance in sharing this message at the federal level to encourage Congress to enact this fix is critical and would be greatly appreciated.

CONCLUSION

As I have described, broadband and increased smart grid is vital to the survival and growth of both the communities OEC serves and all of rural New York State. Much progress on broadband deployment has been made over the last few

years and it's important that we address the public policy challenges I've shared to ensure that progress may continue. Electric cooperatives, in particular, are committed to deploying broadband in rural America and investing in these difficult to serve areas other providers are not willing to serve.

National and state broadband programs offer an opportunity to promote broadband development. As part of this effort, our cooperative is ready and willing to continue the conversation about broadband programs and we look forward to working with you to expand all the benefits broadband has to offer so rural New Yorkers will not be left behind.

Thank you for the opportunity to testify, and for your commitment to rural broadband. I look forward to working with you and answering any questions you may have.