March 5, 2018

Dear Majority Leader Flanagan:

The New York State Conference of Mayors and the individual mayors listed below write to express our strong opposition to Article VII, Part F of the Transportation, Economic Development and Environmental Conservation (“TED”) budget proposal. This legislation would amend the General Municipal Law to add a new Article 13-E entitled, “Small Wireless Facilities Deployment,” which would severely restrict local governments’ authority to regulate wireless facilities by granting wireless service providers unfettered rights of access to the municipal right-of-way (ROW) and mandating a one-size-fits-all application procedure for wireless facilities installed in the ROW. In addition to this letter, we have enclosed detailed objections to the budget proposal for your review. While NYCOM supports universal high-speed internet access for all New Yorkers, the means by which this legislation mandates the installation of wireless facilities is fatally flawed and not in the public interest.

Significantly, this bill would usurp local government authority to address the public safety and aesthetic concerns related to the installment of such facilities by providing for default approval of wireless installations. Such a standard could put the public’s health, safety, and welfare at risk by allowing wireless providers to begin installing and operating equipment that has not been inspected to ensure that (a) the structure on which it has been attached can safely handle the load or (b) the equipment was installed in compliance with the Uniform Fire Prevention and Building Code. Moreover, this legislation uses overly broad and vague language and expands the definition of collocation installments to such an extent that it will create confusion and uncertainty that will lead to counterproductive litigation.

This legislation also seeks to limit how much a municipality may charge a wireless provider when renting space on municipally owned structures, and requires all ROW users be charged in the same way, irrespective of use. Prohibiting exclusive agreements in the public ROW will have a chilling effect on shared services by eliminating the incentive for local governments to work together to provide broadband access to discrete communities, and will stymie smart technology projects. Furthermore, compelling local governments to charge below-market rates for the use of public structures will harm taxpayers and foster the already inequitable deployment of broadband technologies. Lastly, this state budget proposal is misplaced as it has no state fiscal impact, yet it will have a tremendous impact on local budgets by mandating a statewide fee structure that will prevent local governments from fully recovering the costs associated with reviewing siting applications. The unbounded financial impact of this legislation is also evidenced by its prohibition against indemnification and preventing municipalities from requiring that such ROW users obtain insurance naming the municipality an additional insured.
Achieving broadband ubiquity is an important and necessary goal for all municipalities in New York State. However, forcing local governments to abdicate their authority to protect and maintain public rights-of-way and preventing cities and villages from receiving a fair return for rented space on municipally owned infrastructure is simply untenable. For the aforementioned reasons, NYCOM vigorously opposes this legislation and urges you to quickly and completely reject this proposal.

Sincerely,

[Signature]

Peter A. Baynes, NYCOM Executive Director
Enclosure

Additional co-signers:

Mayor Kathy Sheehan, City of Albany
Mayor Randy Casale, City of Beacon
Mayor Richard C. David, City of Binghamton
Mayor Byron Brown, City of Buffalo
Mayor Ellen Polimeni, City of Canandaigua
Mayor William M. Boland Jr., City of Corning
Mayor John J. Buckley, City of Hornell
Mayor Svante Myrick, City of Ithaca
Mayor Samuel Teresi, City of Jamestown
Mayor Steven T. Noble, City of Kingston
Mayor Anne E. McCaffrey, City of Lockport
Mayor Noam Bramson, City of New Rochelle
Mayor Bill de Blasio, City of New York
Mayor William Aiello, City of Olean
Mayor Gary Herzog, City of Oneonta
Mayor Rob Rolison, City of Poughkeepsie
Mayor Lovely Warren, City of Rochester
Mayor Jacqueline M. Izzo, City of Rome
Mayor Josh Cohn, City of Rye
Mayor Meg Kelly, City of Saratoga Springs
Mayor Gary McCarthy, City of Schenectady
Mayor Ben Walsh, City of Syracuse
Mayor Patrick Madden, City of Troy
Mayor Michael Manning, City of Watervliet
Mayor Thomas M. Roach, City of White Plains
Mayor Philip Gigante, Village of Airmont
Mayor Dennis M. Siry, Village of Amityville
Mayor Howard “Hub” Frawley, Village of Angola
Mayor Bonnie Aggar Bennett, Village of Aurora
Mayor Philip C. Wade, Village of Bainbridge
Mayor Richard A Clarke, Village of Baldwinsville
Mayor Paul Rupp, Village of Bayville
Mayor Terrance E. Schmelzer, Village of Belmont
Mayor Bob Sandak, Village of Belle Terre
Mayor Richard L. Frost, Village of Brocton
Mayor Mary Marvin, Village of Bronxville
Mayor Carmen Bogle, Village of Cambridge
Mayor Patricia J. Butler-Rhoades, Village of Camillus
Mayor Benjamin Weinstock, Village of Cedarhurst
Mayor Scott Schrecengost, Village of Celoron
Mayor Lawrence Schmidlapp, Village of Centre Island
Mayor Gregory R Martin, Village of Champlain
Mayor Valerie Rust, Village of Chaumont
Mayor Gerald Fremouw, Village of Clyde
Mayor Brendan G. Coyne, Village of Cornwall-on-Hudson
Mayor Mark R. Evans, Village of Coxsackie
Mayor Michele Miller, Village of Cuba
Mayor Janet M. Zando, Village of Defreeriet
Mayor Frederick L. Cratsley, Jr., Village of Dundee
Mayor Allan A. Kasprzak, Village of East Aurora
Mayor Robert T. Tackman, Village of East Syracuse
Mayor Christopher DeCola, Village of Elbridge
Mayor Robert Williams, Village of Elmsford
Mayor Ralph Ekstrand, Village of Farmingdale
Mayor Jere R. Hoisington, Village of Farnham
Mayor Mark Olson, Village of Fayetteville
Mayor James J. Miccio, Village of Fishkill
Mayor Robert McNamara, Village of Flower Hill
Mayor Athanasia Landis MD, Village of Fredonia
Mayor Robert T. Kennedy, Village of Freeport
Mayor Kyle Roddy, Village of Goshen
Mayor Thomas J. Moses, Sr., Village of Hamburg
Mayor RuthAnn Loveless, Village of Hamilton
Mayor Stephen Welle, Village of Harriman
Mayor Michael F. Kohut, Village of Haverstraw
Mayor Richard Milne, Village of Honeoye Falls
Mayor Brian Smith, Village of Irvington
Mayor Allan M. Dorman, Village of Islandia
Mayor Gregory Deemie, Village of Johnson City
Mayor Richard M. Platten, Village of Jordan
Mayor James Dunham, Village of Kinderhook
Mayor Robert M. Blais, Village of Lake George
Mayor Cara Birrittieri, Village of Lakewood
Mayor William C. Schroeder, Village of Lancaster
Mayor Robert W. Fagiola, Village of Lattingtown
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Mayor Daniel F. DeVita, Village of Laurel Hollow
Mayor Alan C. Beach, Village of Lynbrook
Mayor Paul Whorral, Village of Manlius
Mayor Lori Cashel, Village of Mannsville
Mayor John P. Curtin, Village of Marcellus
Mayor Timmy J. Currier, Village of Massena
Mayor Megan Grenier, Village of Menands
Mayor Rodney Brown, Village of Millbrook
Mayor Peter Quick, Village Mill Neck
Mayor Scott P. Strauss, Village of Mineola
Mayor William F. Brazill, Village of Minoa
Mayor Gina D. Picinich, Village of Mount Kisco
Mayor Frank M. Provo, Village of Mount Morris
Mayor William P. O’Neill, Village of Nelsonville
Mayor Jonathan Taylor, Village of Newark
Mayor Vincent George, Village of North Collins
Mayor Marvin Natis, Village of North Hills
Mayor Gary Butterfield, Village of North Syracuse
Mayor Dr. Don Hammond, Village of Nyack
Mayor Michael Levine, Village of Old Field
Mayor Victoria Garity, Village of Ossining
Mayor Terry Stark, Village of Oxford
Mayor Charles R. Goulding, Village of Oyster Bay Cove
Mayor Ralph Foster, Village of Painted Post
Mayor Paul V. Pontieri, Village of Patchogue
Mayor Rick Hauser, Village of Perry
Mayor Robert C. Corby, Village of Pittsford
Mayor Barbara Donno, Village of Plandome Manor
Mayor Brett Yagel, Village of Pomona
Mayor Ronald E. Wilson, Village of Port Byron

Mayor Richard A. Falanka, Village of Port Chester
Mayor Heather M. Collins, Village of Port Leyden
Mayor Angel L. Rodriguez, Village of Pulaski
Mayor Peter Sartorius, Village of Quogue
Mayor Francis X. Murray, Village of Rockville Centre
Mayor Louis Badolato, Village of Roslyn Harbor
Mayor Paul Rosenberg, Village of Rye Brook
Mayor Molly Reilly, Village of Sackets Harbor
Mayor Donald Louchheim, Village of Sagaponack
Mayor Martin Hubbard, Village of Skaneateles
Mayor Dave McDowell, Village of Sodus Point
Mayor Gary Penders, Village of Spencerport
Mayor William Krebs, Village of Springville
Mayor Mike Onorato, Village of Stewart Manor
Mayor Steven Weinberg, Village of Thomaston
Mayor A. Martin Petrovic, Village of Trumansburg
Mayor Steven A. Ecklund, Village of Tuckahoe
Mayor Melissa Flint-Morgan, Village of Tully
Mayor Elliot S. Conway, Village of Upper Brookville
Mayor Jake Briggs, Village of Van Etten
Mayor Darrell D Byerts, Village of Webster
Mayor Marshall F. Katz, Village of Wesley Hills
Mayor Scott M. Burto, Village of West Carthage
Mayor Gary Vegliante, Village of West Hampton Dunes
Mayor Peter I. Cavallaro, Village of Westbury
Mayor Michael VandeVelde, Village of Westfield
Mayor Ryan Reynolds, Village of Whitney Point
Mayor Dan DeLano, Village of Williamsville
Mayor Michael Queenan, Village of Woodbury
NYCOM

Background on the "Small Wireless Facilities Deployment" proposed mandate
Article VII, Part F of TED A.9508-S.7508

Summary. This legislation would amend the General Municipal Law to add a new Article 13-E entitled, "Small Wireless Facilities Deployment," which would severely restrict local governments' authority to regulate wireless facilities by granting wireless service providers unfettered rights of access to the municipal right-of-way (ROW) and mandate specific application procedures for wireless facilities installed in the ROW. Not only would this legislation impair public safety, right-of-way management, and zoning regulation, but this proposal would also inhibit the expansion of smart city technology and other innovations that cities and villages hope to deploy to increase connectivity and economic development opportunities in their respective communities. Requiring municipalities to surrender control of their public rights-of-way will not address the need for rural broadband deployment to close the digital divide. Furthermore, this legislation will lead to the inefficient allocation of resources and the continued disproportionate distribution of telecommunications service that has already resulted in underserving lower income communities.

Specifically, this legislation will have serious adverse impacts on municipalities throughout the State by:

• Eliminating public safeguards that ensure appropriate and attractive installations;
• Threatening public safety by allowing minimally regulated telecommunications facilities to be installed in the right-of-way without adequate municipal review and approval;
• Preventing cities and villages from being properly compensated for a private entity's use of its valuable municipal property;
• Discouraging inter-municipal broadband projects, joint use agreements, and innovative connectivity collaboration; and
• Forcing municipalities to rush infrastructure approvals that may be unsafe or improper for the area proposed.

Specific Objections. Although the proposal is detrimental to local governments in many ways, these impacts in particular should be highlighted:

1) The proposal adopts a 60-day "shot clock" that is far more narrow than current federal regulations limiting the time local governments have to process infrastructure applications. The time period does not allow for extensions where voluminous or complex applications are submitted and deems granted permit requests when local governments cannot respond under the shot clock time table. Simply granting wireless providers authority to install and operate equipment that has not been inspected to ensure (a) that the structure on which it has been attached can safely handle the load or (b) that the equipment was installed in compliance with the Uniform Fire Prevention and Building Code is inconsistent with local governments' interest in the public's health, safety, and welfare.
2) The proposal strips cities and villages of their ability to exercise essential police powers by prohibiting municipalities from regulating or preventing wireless facilities installments in the municipal right-of-way:

   a) The proposal allows, as of right, a telecommunications installer to install new poles in the right-of-way up to 50 feet in height with antennas extending an additional 10 feet, for a total of 60-foot installations. Due to the extreme winter conditions throughout the state, some cities and villages have enacted local laws preventing poles from exceeding 35 feet in height to protect against ice shedding. Also, excessively tall poles in the right-of-way and the placement of additional new poles are a hazard to pedestrians and motorists because of the excessive excavation requirements during installation, extreme fall line impacts, obstruction of the right-of-way for pedestrian and handicapped access, and general increased accident risk from bulky installations in the right-of-way. Such health, safety, and welfare decisions must be made at the local level.

   b) The legislation allows, as of right, equipment installations on poles where the equipment is up to twenty-eight cubic feet in volume (the size of a refrigerator or approximately 127 pizza boxes) and the antenna structure is six cubic feet in volume (approximately the size of 27 pizza boxes). Such volume calculations exclude "ancillary equipment" that will also be attached to the pole which have no size limitations. Under the proposal, these massive, unattractive, and potentially unsafe installations can be erected without the ability to regulate them whatsoever, posing a potential disaster to public safety and to the aesthetics of cities and villages, especially in historic districts.

3) The proposal requires municipalities to charge other public entities and municipal corporations the same rate to use the right-of-way as they would charge a private entity, such as Verizon or AT&T. This provision will actively prevent municipal collaboration, thwart the deployment of fiber networks, and act as a deterrent to "smart cities" and school connectivity initiatives. Similarly, this legislation will prevent municipalities from leveraging access to municipal rights-of-way in underserved communities as a way of promoting broadband access for all residents by offering lower rates and fees for wireless facilities installations in low income areas.

4) The proposal prohibits municipalities from engaging in exclusive use agreements with telecommunications providers on municipally owned poles. This would effectively prevent cities and villages from installing smart poles containing embedded telecommunications facilities. These poles would improve the aesthetics of installations while still encouraging fast and efficient deployment of wireless services, but because such poles are single-carrier poles, such an initiative would be prohibited under this bill.

5) The proposal provides the telecommunications industry with egregious benefits that are proscribed by the State’s Constitutional prohibition against gifting by limiting a municipality's fees to the wildly unrealistic rate of $20 per year for any pole installation. This is an arbitrary figure unrelated to the market value of the public space being used. The national market rate is approximately $2,500. Valuable municipal assets, such as municipally owned utility poles, purchased with taxpayers’ dollars, should not and cannot be given away for a private company’s for-profit use without adequate compensation.
6) The proposal will have unbounded financial impacts on local governments:
   a) The legislation provides that application fees may only be imposed when the total fee
does not exceed $100 for each of the first five applications and $50 for remaining
applications. The City of Rochester recently assessed the actual permit review costs
associated with telecommunications applications and found that the City spends
$2,000 per application. Therefore, despite the proposal claiming to reimburse
municipalities for the direct and actual costs of application review, cities and village
will lose money on each application they receive under this legislation.

   b) The proposal prohibits local governments from requiring insurance from a
   telecommunications installer and exempts them from any negligence associated with
installations. Such a provision is egregious and offensive, as there is no adequate
justification for encouraging substandard work and making companies
unaccountable for their actions. These provisions endanger the people of New York
State and put all the risk of these installations on the municipalities who, under the
terms of this legislation, have absolutely no say in their design, installation, or
requirements.

   c) The proposal prohibits local governments from requiring internet service providers to
   indemnify the locality and prevents municipalities from requiring providers obtain
   insurance naming the municipality an additional insured.

7) The proposal is poorly drafted and contains overly broad language that will lead to confusion
   and counterproductive litigation. Additionally, the Federal Communications Commission is
   in the process of implementing new rulemaking related to broadband deployment and small
   wireless attachments. State action is therefore premature and will complicate the regulatory
   landscape, which will also lead to misinterpretations, challenges, and lawsuits.

**Conclusion.** Allowing telecommunications companies to install their equipment without
adequate municipal review puts municipal facilities at risk and jeopardizes the safety of public
rights-of-way and the pedestrians and motorists that use them. NYCOM recognizes the
importance of broadband deployment and realizes that achieving broadband ubiquity is an
important and necessary goal for all municipalities in New York State. However, forcing local
governments to abdicate their authority to protect and maintain public rights-of-way and
preventing cities and villages from receiving a fair return for rented space on municipally owned
infrastructure is simply untenable. For the aforementioned reasons, NYCOM vigorously
opposes this legislation and urges you to quickly and completely reject this proposal.