

Congress of the United States
Washington, DC 20515

February 10, 2023

The Honorable Kathy Hochul
Governor of New York State
New York State Capitol
Albany, NY 12224

Dear Governor Hochul:

As members of the New York Congressional Delegation, we write to you a third time to urge you to terminate a New York State Department of Transportation (DOT) policy that severely impedes the deployment of fiber optic cable across rural areas of our state. We first wrote you regarding this important issue inhibiting the deployment of broadband service on November 30, 2021, we followed up a second time on July 7, 2022, and have not received any official response to date. The policy currently in place within your DOT continues to contradict your often stated goal of ensuring all New Yorkers have critical access to broadband.

Prior to August 2020, the DOT required any entity seeking a highway work permit to complete DOT Form PERM 32, the *Highway Work Permit Application for Utility*.¹ This form applied to all who sought to perform work along a state highway until introduction of the new DOT Form PERM 75, *Consolidated Application and Permit for Highway Work and Use & Occupancy for Fiber Optic Facilities and Supporting Infrastructure*.²

The PERM 75 exclusively applies to fiber optic facilities and infrastructure. It requires an independently contracted third party to inspect and survey the state right-of-way and requires the permittee to identify the state right-of-way within which the permittee fiber optic facility will be placed. The PERM 32, which applies to all other projects along a state right-of-way, does not require the services of a licensed surveyor for any other entity seeking a highway work permit.

While DOT has recently made some narrow progress on this issue with their updated PERM 75 form that creates a pilot program to remove the Licensed Land Surveyor stamped survey requirement for aerial installations on existing poles, this progress is incomplete and dreadfully slow.³ The current speed at which the Albany bureaucracy is churning is unacceptable, as every day this survey requirement continues is a day the DOT is prohibiting New Yorkers living in rural areas from accessing high-speed internet.

This DOT policy continues to unfairly discriminate against deployment of fiber optic cable in rural communities by imposing undue administrative and financial burdens on broadband

¹ PERM 32, New York State Department of Transportation, Highway Work Permit Application for Utility (December 12, 2015)

² PERM 75, New York State Department of Transportation, Consolidated Application and Permit for Highway Work and Use & Occupancy for Fiber Optic Facilities and Supporting Infrastructure (November 23, 2021)

³ PERM 75, New York State Department of Transportation, Consolidated Application and Permit for Highway Work and Use & Occupancy for Fiber Optic Facilities and Supporting Infrastructure (February 1, 2023)

providers. The PERM 75 survey oftentimes costs providers anywhere between \$5,000 to \$15,000 per mile, which creates a competitive disadvantage for companies seeking to deploy fiber in Upstate New York and the North Country. Further, the policy dictates private surveyors must disclose the location of state rights-of-way, despite the fact the DOT should already be aware of this information.

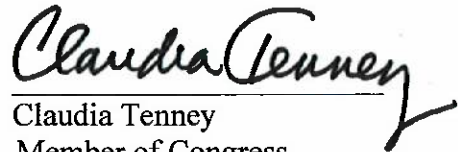
The DOT cites their authority for this discriminatory treatment of fiber optic facility buildout as falling under Highway Law §10(24)e and Transportation Corporations Law §7. However, no language in either section requires an independently contracted inspection or places the burden of identifying the state right-of-way within which the fiber optic facility will be placed on the permittee.

We urge you to take immediate action to terminate this policy. A pilot program that only addresses part of the issue is an unacceptable answer, as this policy will continue to disproportionately impair our rural fiber providers and rural New Yorkers. We must start empowering our broadband providers to innovate, grow, and continue the drive towards connecting every New Yorker to high-speed internet at prices they can afford.

Sincerely,



Elise M. Stefanik
Member of Congress



Claudia Tenney
Member of Congress



Michael V. Lawler
Member of Congress



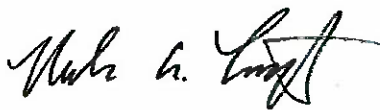
Nick Lalota
Member of Congress



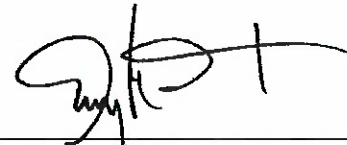
Marcus J. Molinaro
Member of Congress



Brandon Williams
Member of Congress



Nick Langworthy
Member of Congress



Anthony D'Esposito
Member of Congress