

ELISE M. STEFANIK
21ST DISTRICT, NEW YORK

318 CANNON HOUSE OFFICE BUILDING
WASHINGTON, DC 20515
(202) 225-4611
stefanik.house.gov

Congress of the United States
House of Representatives
Washington, DC 20515-3221

**HOUSE ARMED SERVICES
COMMITTEE**
SUBCOMMITTEE ON INTELLIGENCE, EMERGING
THREATS AND CAPABILITIES, RANKING MEMBER
SUBCOMMITTEE ON READINESS
**HOUSE COMMITTEE ON EDUCATION
AND LABOR**
SUBCOMMITTEE ON HIGHER
EDUCATION AND WORKFORCE INVESTMENT
SUBCOMMITTEE ON CIVIL RIGHTS
AND HUMAN SERVICES
**HOUSE PERMANENT SELECT
COMMITTEE ON INTELLIGENCE**

October 14, 2021

The Honorable Jessica Rosenworcel
Acting Chairwoman
Federal Communications Commission
45 L Street, S.E.
Washington, DC 20554

Dear Acting Chairwoman Rosenworcel:

I write to you requesting the Federal Communications Commission (FCC) take action to facilitate fiber deployment in all rural areas of New York State. As you have often stated, access to high-speed broadband is a necessity for all Americans, especially those in rural areas.

Broadband providers face significant challenges to deploy fiber across rural America, and I thank you and former Chairman Pai for your work to advance our shared goal of ensuring all those who choose to call rural America home have the access to high-speed Internet they deserve. However, despite the progress that has been made, regulatory barriers continue to prevent unserved areas from getting broadband and inhibit the true potential of public and private investment.

Unfortunately, current New York State law runs counter to our shared goal of closing the digital divide. A provision in the Consolidated Highway Laws of New York State provides authority to the New York State Department of Transportation to impose exorbitant and discriminatory fees on providers seeking to install, operate, or maintain fiber optic cable lines that run along, or pass through, State Rights-of-Way^[1]. This fee schedule is discriminatory in nature as it narrowly applies to fiber projects but not to any other type of communications project utilizing other technologies, such as coaxial cable, along or through State-Rights-of-Way. Moreover, the state law is discriminatory because it exempts fiber providers from the fee if the project is funded through the New York Broadband Program.

This authority originated as a provision in the 2019-2020 New York State budget, largely without public consideration during the New York State budget process. Following initial implementation of the fee, a bipartisan, bicameral group of nine state lawmakers from Upstate New York wrote then-Governor Cuomo requesting he terminate continued application of the fee.

As you know, the FCC has regulatory authority to preempt state laws that conflict with its Federal law. Section 253 of the Communications Act of 1934 provides “no State or local statute or

^[1] Article 2, Section 10, Subsection 24-e of the Consolidated Highway Laws of New York State

regulation, or other State or local legal requirement, may prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service”.[²] It is clear this New York State fiber optic fee structure constitutes an effective prohibition on service in violation of Section 253 and the FCC’s longstanding standard under *California Payphone*.^[3] I request the FCC immediately investigate this New York State law and preempt the continued enforcement of this unlawful and discriminatory fiber optic fee.

I look forward to working with you to address this important issue and ensure that all Americans, especially those living the rural New York communities that I represent, have access to the high-speed, affordable broadband they need in today’s world.

Sincerely,



Elise M. Stefanik
Member of Congress

CC: The Honorable Brendan Carr
The Honorable Geoffrey Starks
The Honorable Nathan Simington

[²] 47 U.S. Code § 253(a)

[³] *California Payphone Association Petition for Preemption of Ordinance No. 576 NS of the City of Huntington Park, California Pursuant to Section 253(d) of the Communications Act of 1934*, Memorandum Opinion and Order, 12 FCC Rcd 14191, 14206 ¶ 31 (1997).