

S.2508 / A.3008, Parts OO and QQ

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<p>BILL</p> <p>S.2508 / A.3008, Parts OO and QQ</p>
<p>SUBJECT</p> <p>Moratorium on Utility Termination of Services; Mandates Rates for Low-Income Internet Service</p>
<p>DATE</p> <p>February 19, 2021</p>
<p>OPPOSE</p>

The Business Council of New York State, the state’s leading statewide business and industry association, opposes Part OO and Part QQ of budget bill S.2508 / A.3008 pertaining to legislatively enacting at the state level changes in rate structures for entities covered by the Federal Communications Commission (FCC).

Part OO would amend the public service law prohibiting broadband terminations by providers during periods of state emergencies under certain circumstances.

Part QQ would amend the general business law to create a new legislatively imposed rate structure for low-income broadband customers of \$15 per month inclusive of any recurring taxes and fees such as recurring rental fees for service provider equipment. This program is to take effect within 60 days of the enactment of the law and the \$15 rate is subject to change only once every five years.

There are several reasons why this is the wrong way for New York State to undertake programs broadband providers are already undertaking themselves.

First, federal law explicitly prohibits state regulation of mobile wireless rates, thus prohibiting a state from mandating a particular rate for wireless service such as a legislatively imposed broadband service for low-income customers at the rate of \$15 per month. This prohibition is expressly stated in the federal Communications Act, specifically §332(c)(3) which states “no state or local government shall have any authority to regulate...the rates charged by any commercial mobile service or any private mobile service.” This language explicitly covers all forms of mobile traffic, including broadband service, thus precluding state rate regulation. Further, case law supports this interpretation of the Communications Act in the prohibition of state regulation that would have the effect of regulating wireless rates. Both the FCC and case law contend that state regulators cannot impose regulations that would have an impact on rates including regulation of how bills are calculated. This sort of state regulation –

like the calculation of a \$15 per month broadband rate proposed under this law – is precluded under federal law because such structural calculations are an integral part of rates.

Second, it should be noted that broadband providers in New York State have instituted numerous programs to help those who have experienced financial hardship during the pandemic as well as low-income customers requiring broadband programs, particularly for work and education purposes. Further, many of the providers targeted by this change in law have already taken the “Keep America Connected Pledge” promoted by the Federal Communications Commission and have publicly promised their support to ensure that individuals’ access to communication networks is not impaired in anyway due to the pandemic and resultant emergencies. Additionally, New York State’s broadband providers have already taken significant steps to provide relief to their consumers, without legislation directing them to do so, and will continue providing high-quality, reliable and responsive service during this emergency. In fact, the broadband provider community already offers low-cost broadband packages - across the industry - that actually predate the pandemic.

Finally, in the Consolidated Appropriations Act of 2021, Congress established the Emergency Broadband Connectivity Fund and allocated \$3.2 billion for the Emergency Broadband Benefit Program. Congress has directed the FCC to create an emergency broadband benefit to connect low-income households, especially households with school-aged children, to broadband networks at affordable rates. Broadband providers will be reimbursed up to \$50 per month per low-income household it serves (\$75 per month if the household is on Tribal land). The providers can also be reimbursed up to \$100 for providing the household with a connected device (desktop, laptop, or tablet computer) if the household contributes \$10-\$50 for the device. Plus, Congress is looking to provide an additional \$7.6 billion in funding to schools and libraries to assist with internet connections and remote learning. Respectfully, we ask lawmakers to be patient as this new program is expected to be up and running in the next two months.

For the above reasons, The Business Council opposes Parts OO and Part QQ in the proposed FY 2022 budget legislation.