

S.3184 (Mayer) / A.5180 (Benedetto)

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BILL S.3184 (Mayer) / A.5180 (Benedetto)
SUBJECT Creates the "E-Let's Expand Access to Remote Now (E- LEARN) Act"
DATE March 01, 2021
OPPOSE

The Business Council of New York State, the state's leading statewide business and industry association, opposes this legislation that would amend the State education, finance, public service, and tax laws to create the "E-Let's Expand Access to Remote Now (E-LEARN) Act. The bill would establish a system of assessments on broadband providers, paid into an E-LEARN fund, for the purposes of providing discounted internet access to students and schools.

There are several reasons why this is the wrong way for New York State to undertake programs broadband providers are already undertaking themselves. While we recognize the importance of access to affordable broadband service, particularly for students, financially burdening one segment of a highly competitive industry is not the right way to go about it.

New York State's communications providers are already investing billions of dollars a year to build a modern communication system in this state. The E-LEARN assessment in the bill would, if passed into law, take away from those efforts. Further, the bill runs contrary to systems utilized under the "Broadband for All" program under which grants have been established to expand broadband access and infrastructure, and spread the burden of support across the competitive markets. Rather than an assessment on providers, previous state programs have used state incentives to assist in furthering access to benefit all consumers.

The bill also precludes recoupment of costs due to a "no-pass through" provision. This, combined with the lack of an income qualifications, prohibits a true cost assessment.

While the bill memo contends that this state law is "narrowly tailored to address the argument that federal preemption overrides state's ability to regulate many aspects of telecommunications companies' businesses" this bill still raises serious doubt about constitutionality. The bill does impact rates both by mandating certain levels for retail rates and forbidding rate increases. 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.”

It should also 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 S.3184/A.5180 and urges its defeat.