

Congress of the United States
Washington, DC 20515

July 7, 2022

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

Dear Governor Hochul:

We again write urging you to terminate a New York State Department of Transportation (DOT) policy that severely inhibits the deployment of fiber optic cable across rural areas of our state. We first wrote you regarding this important issue on November 30, 2021 and have not received any response to date. The policy currently in place within your New York State DOT is not aligned with your often stated goal of ensuring all New Yorkers have critical access to broadband.

Prior to August 2020, the New York State 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's 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.

This DOT policy requiring a survey by private surveyors in PERM 75 unfairly discriminates against deployment of fiber optic cable in rural communities by imposing undue administrative and financial burdens on broadband providers. The PERM 75 survey oftentimes costs providers upwards of \$5,000 to \$15,000 per mile required for the survey, 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.

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)

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 provides for a required independently contracted inspection. Instead, it places the burden on identifying the state right-of-way on the permittee.

We urge you to take immediate action to terminate this policy. It disproportionately impairs our rural fiber providers and rural residents when we should instead be 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



Lee Zeldin
Member of Congress



Claudia Tenney
Member of Congress



Chris Jacobs
Member of Congress



John Katko
Member of Congress

CC: NY State Department of Transportation Commissioner Marie Therese Dominguez