



New England Connectivity and
Telecommunications Association

**WRITTEN COMMENTS OF THE NEW ENGLAND CONNECTIVITY &
TELECOMMUNICATIONS ASSOCIATION, INC. REGARDING H.78**

July 13, 2023

Dear Chair Farley-Bouvier, Chair Moore, and Members of the Joint Committee on Advanced Information Technology, the Internet and Cybersecurity,

On behalf of the New England Connectivity and Telecommunications Association (NECTA), I appreciate the opportunity to submit testimony regarding our opposition to **H.78, *An Act relative to assuring a jumpstart in investments in telecoms to preserve access to the internet.*** Below, I detail our industry's serious concerns with this legislation.

Massachusetts is a national leader in broadband deployment with over 98% of residents and businesses in the Commonwealth having access to high-speed broadband infrastructure.¹ The surtaxes and regulations like those included in H.78 would reverse the state's decades-long, proven, and sustainable approach to broadband deployment. At a time when reliable broadband connectivity is more critical than ever, H.78 would undermine the success Massachusetts has achieved in broadband investment, access, and performance, and hinder the ability of private broadband providers to continue to invest in infrastructure and digital equity solutions in the Commonwealth.

H.78 would impose a new tax on consumers to subsidize duplicative municipal broadband infrastructure in areas already served by privately funded, world-class, high-speed broadband. Even setting aside the serious legal and policy problems associated with imposing taxes on broadband services, government owned broadband networks (GONs) are extremely risky financial undertakings for municipalities where private service is already offered. The short history of GONs is littered with projects that took years to get started only to ultimately fail, wasting public dollars and leaving taxpayers on the hook for the remaining bills. Unfortunately, there have already been a number of New England cities and towns, even some here in Massachusetts, that have embarked on the path that H.78 is promoting, only to find themselves mired in financial distress. Given the cost of building and maintaining a broadband network, it is critical that policymakers in Massachusetts understand the risks associated with government owned networks and the poor track record of these types of taxpayer-funded projects.

¹ [Area Summary - Fixed | FCC National Broadband Map](#)

I. Municipal Broadband: Real Costs, Risks and Track Record of Failure

When evaluating the merits of spending taxpayer dollars to finance broadband infrastructure, many factors must be considered beyond the initial deployment. Broadband networks are complex to design, costly to build, and require ongoing maintenance and upgrades to remain viable. Unlike gas, electric and water infrastructure, broadband networks require continuous, expensive capital outlays and network upgrades to keep pace with steadily accelerating consumer demand for new and more bandwidth intensive applications and devices. Private broadband providers have to continuously update and invest in their networks so they remain resilient and secure from cyber threats, and stay ahead of the latest trends in technology. These companies make investments 18 to 24 months in advance of projected consumer trends and spend hundreds of billions of dollars annually on these continuous updates.

Analysis by independent experts illustrates the immense difficulty of sustaining a publicly financed broadband network. A study by Professor Christopher Yoo and coauthor Timothy Pfenninger at the University of Pennsylvania developed a financial assessment of U.S. municipal fiber projects to determine their cash flow status and long-term financial viability.² The authors determined that more than half of the projects were cash flow negative, and the vast majority of those which were cash flow positive would take in excess of 100 years to recoup the tens of millions of dollars in taxpayer monies that it cost for the initial build-out. Further, only two of the nineteen government owned networks studied earn enough revenue to cover the costs of development over 30 to 40 years of useful life, and 11 do not generate enough revenue to even cover their operating expenses. Advocates often point to Chattanooga, Tennessee, as an example of a successful government owned network. However, the reality is that the Chattanooga network was constructed using tens of millions of dollars in federal and state funding, a fact advocates neglect to disclose. As Professor Yoo cautions, “City leaders considering such projects, as well as state and federal officials interested in supporting them, need to understand the documented costs and risks before encouraging new municipal fiber programs to form.”

Just recently in Massachusetts, the municipal broadband networks owned and operated by the Towns of Russell and Braintree could no longer maintain the financial viability needed to operate and chose to sell their networks to Comcast. Both towns faced increasing operational costs and an inability to keep up with needed investments, advancing technology, and declining customer bases, so they chose to sell their networks as an alternative to continue operating.³ The Braintree Electric Light Department’s (BELD) statement explained that a study was conducted, and the results showed that BELD would need to invest millions of dollars in the network to maintain the quality of the service, which would require its customers having to pay significantly higher rates. Officials

² [Municipal Fiber in the United States: An Empirical Assessment of Financial Performance](#) (Pfenninger and Yoo 2017)

³ <https://www.masslive.com/business/2021/12/it-was-a-big-asset-to-the-town-unable-to-keep-up-with-technology-cost-russell-sells-town-cable-tv-system-to-comcast.html>

from Russell similarly cited the private sector’s ability to “continuously invest in their network to meet customers’ current and future needs” as motivating the decision to sell the town’s network.⁴

Before considering placing a surtax on ISPs to fund such highly risky and challenging initiatives, we would urge you to consider recent failed municipal broadband projects both here in Massachusetts and in our neighboring states. These examples are typical of the poor track record of these types of networks and their inability to keep pace with marketplace demand.

Even where broadband projects receive state or federal funds to support initial build-out (as H.78 proposes to do), they still will likely require ongoing taxpayer subsidies to remain sustainable. For example, in Massachusetts, the OpenCape fiber network received \$32 million in federal American Reinvestment Recovery Act (ARRA) funding in 2010 for initial construction and build-out to an area already served by Comcast. Ten years later, the OpenCape network still does not have the customer base it originally projected necessary to remain sustainable. Year after year, OpenCape returns to the legislature requesting more taxpayer dollars to fund its continued maintenance and operation, monies that would be better spent on other needs or even adoption programs and subsidies for low-income families to subscribe to broadband. These government funded broadband networks are important examples and cautionary tales; it is extremely difficult to make these broadband models work when competing with private providers absent continued, substantial investment from taxpayers.

II. Surtax on ISPs

H.78’s proposed surtax of “not less than 50 per cent” on ISP surcharges for Internet access would also be a misguided and legally flawed approach to funding broadband infrastructure. Congress has explicitly prohibited the Commonwealth, or any state, from taxing broadband services through the Internet Tax Freedom Act.⁵ To the extent H.78’s definition of “surcharge” may include any portion of the price broadband customers pay for their broadband service, it would plainly violate the statute and thus be expressly preempted by federal law.

Even looking past this serious legal problem, H.78 also ignores the sound policy embodied by the Internet Tax Freedom Act to promote affordable access to the Internet. Millions of dollars in federal funding has already begun flowing to Massachusetts for broadband through the American Rescue Plan Act (ARPA). And just this week, President Biden announced that the Commonwealth will receive more than \$147 million through the Broadband Equity, Access, and Deployment (BEAD) program created by the bipartisan Infrastructure Investment and Jobs Act.⁶ Placing a surtax on broadband services to fund municipal broadband or for any reason at this time is not only

⁴ <https://www.nexttv.com/news/comcast-buys-two-massachusetts-municipal-broadband-systems>

⁵ See 47 U.S.C. § 151 Note (Moratorium on Internet Taxes), § 1101(a)(1) (“No State or political subdivision thereof may impose . . . [t]axes on Internet access.”).

⁶ <https://www.ntia.doc.gov/press-release/2023/biden-harris-administration-announces-state-allocations-4245-billion-high-speed>.

unnecessary, but also counterproductive to the Commonwealth’s broadband access, affordability, and digital equity goals because any new tax necessarily will increase the price of broadband service.

The federal government is instituting historic programs to help *lower* the cost of broadband. Over 313,535 Massachusetts households are currently benefiting from the federal Affordable Connectivity Program (“ACP”).⁷ NECTA’s member companies are actively participating in ACP and other voluntary affordability programs to help lower bills for low-income families, while continuing to make record investments in their own low-cost broadband plans to ensure every individual has access to affordable high-speed broadband. A new consumer tax on broadband would directly undermine these efforts by increasing the cost of service.

Over the past decade, NECTA’s member companies have invested hundreds of millions of dollars in their networks to deliver robust, reliable high-speed broadband throughout Massachusetts. Internet speeds delivered through these fiber optic networks across the Commonwealth have increased dramatically and, powered by the deployment of advanced 10G technologies, now reach multi-gigabit speeds. These nearly ubiquitous, cutting edge, fiber optic rich networks represent lasting commitments by Internet service providers to invest in Massachusetts’ economy and its consumers. In order to maintain, upgrade, and secure these networks, cable operators and other broadband providers must have the flexibility to make investments to preserve and enhance the quality of service they provide in response to customer demand and to offer innovative solutions to Massachusetts consumers. Given the rapid pace at which these demands and advances evolve, subjecting broadband networks to unnecessary surtaxes and unfounded regulation as proposed in H.78 fundamentally misunderstands the basic principles supporting the service.

III. NECTA Members’ Ongoing Commitment to Net Neutrality Principles

Lastly, regarding the net neutrality provisions included in H.78, NECTA’s members do not block, throttle, or otherwise interfere with the lawful online activity of our customers. They have consistently reaffirmed these commitments since the Federal Communications Commission’s (“FCC”) first articulation of open Internet principles in 2005. It is important to underscore that these commitments are more than a mere pledge. They are a part of our companies’ operating DNA. Further, the FCC’s revised Transparency Rule, adopted in its 2017 Restoring Internet Freedom Order (“*RIF Order*”), expressly requires ISPs to disclose any blocking, throttling, or other conduct that might harm the open Internet—and the FCC has made clear that commitments made by ISPs not to engage in such conduct are legally enforceable by state and federal agencies.⁸ These mandatory disclosures thus represent robust, clear, enforceable commitments to their

⁷ <https://www.usac.org/about/affordable-connectivity-program/acp-enrollment-and-claims-tracker/> (as of July 10, 2023).

⁸ FCC Open Internet Transparency Rule: <https://docs.fcc.gov/public/attachments/DOC-328399A1.pdf>

broadband customers to uphold an open Internet.⁹ Moreover, it is clear that the FCC intends to adopt new net neutrality rules in the near future.

As such, NECTA members continue to call on Congress to codify these protections at the national level under a clear, modern, and enduring law that avoids the regulatory ping-pong of the past decade. These principles should not be enacted in a patchwork style of state-by-state mandates.

IV. Conclusion

In addition to being unlawful, H.78 is seriously misguided in the context of the historic investment from the federal government coming to Massachusetts for broadband. The bill seeks to spur investment and access to the Internet, but it would do precisely the opposite. NECTA urges committee members to reject this legislation and refrain from levying any taxes on broadband providers and consumers in Massachusetts—to fund municipal broadband in areas already served with world-class Internet services, or for any other reason. Doing so would undermine the bipartisan goal of lowering the cost of broadband, and place additional and unnecessary regulatory burdens on companies making significant investments here in the Commonwealth. At a time when ensuring access to reliable, high-speed broadband is so critical, putting needed investment by proven providers at risk would have negative long-term impacts on Massachusetts’s broadband infrastructure.

We thank you for your time and attention to this testimony. Please do not hesitate to reach out with any questions.

Sincerely,

Timothy O. Wilkerson
President

About NECTA

NECTA is a five-state regional trade association representing substantially all private cable telecommunications companies in Massachusetts, Connecticut, New Hampshire, Rhode Island and Vermont. Four NECTA members have a presence in Massachusetts, including Charter Communications, Comcast, Cox Communications, and Breezeline, which is headquartered in Quincy. Together, NECTA members invest over \$1.5 billion annually in the Commonwealth and employ over 6,000 residents throughout New England.

⁹ Breezeline Disclosure: https://atlanticbb.com/sites/default/files/Network_Management_Practices_7_24_19.pdf

Comcast Disclosure: <https://www.xfinity.com/policies/internet-broadband-disclosures>

Charter Disclosure: <https://enterprise.spectrum.com/legal/network-management-disclosure.html>

Cox Communications Disclosure: <https://www.cox.com/aboutus/policies/internet-service-disclosures.html>