New England Connectivity and Telecommunications Association

WRITTEN COMMENTS OF THE NEW ENGLAND CONNECTIVITY & TELECOMMUNICATIONS ASSOCIATION, INC. REGARDING HOUSE BILL 5446, AN ACT CONCERNING FUNDING FOR COMMUNITY ACCESS TELEVISION, THE CONNECTICUT TELEVISION NETWORK AND LOW-INCOME INTERNET

March 13, 2024

Good afternoon, Chairs Needleman and Steinberg, Vice-Chairs McCrory and Foster, Ranking Members Fazio and Buckbee and Members of the Energy and Technology Committee. My name is Anna Lucey, and I am the Executive Vice President for Legislative and External Affairs for the New England Connectivity and Telecommunications Association ("NECTA"). I appreciate the opportunity to testify and detail our industry's serious concerns with House Bill 5446.

I. Introduction

NECTA is a five-state regional trade association representing substantially all private cable broadband companies in Connecticut, Massachusetts, New Hampshire, Rhode Island, and Vermont, and associate members including NESN, REELZ, and the MLB and NHL Networks. All NECTA cable broadband members have a physical presence in Connecticut, including two Fortune® 100 companies, Charter Communications, which is headquartered in Stamford, and Comcast with a Regional New England headquarters in Berlin and a subsidiary, NBC Sports, headquartered in Stamford, as well as privately held Cox Communications and Breezeline (formerly known as Atlantic Broadband), with a regional office in New London. Connecticut's cable broadband members directly and indirectly employ nearly 16,000 workers and generate $5.7 billion in GDP for the state's economy.[1]

II. The Proposed Expansion of the Gross Earnings Tax

A. House Bill 5446 Violates Federal Law

The federal Internet Tax Freedom Act, 47 U.S.C. § 151, note ("ITFA"), prohibits state and local governments from imposing "taxes on Internet access." The proposal in House Bill 5446 to expand the gross earnings tax squarely runs afoul of the ITFA's prohibition on state taxes on Internet access. The ITFA prohibition applies to taxes on "Internet access," regardless of whether the tax is imposed on a provider of Internet access or a buyer of Internet access, and regardless of the

[1] Economic Impact | NCTA — The Internet & Television Association

terminology used to describe the tax. [2] For these purposes, “tax” means “many charge imposed by any governmental entity for the purpose of generating revenues for governmental purposes and is not a fee imposed for a specific privilege, service, or benefit conferred.”[3] The ITFA prohibition applies to a wide variety of state taxes, with a narrow exception limited only to taxes on net income, capital stock, net worth, or property value.[4]

There is no exception in ITFA for taxes on gross receipts or gross earnings, as proposed in House Bill 5446. While the legislation intends to generate revenue to fund important programs – i.e., community access television operations, the PEG Programming and Educational Technology Investment Account Grant Program, and the Connecticut Television Network – a significant portion of that revenue would come from the expansion of the gross earnings tax to broadband service. If House Bill 5446 were adopted, no part of the gross earnings tax on broadband revenue would ultimately be available to fund PEG programming due to inevitable litigation.

Additionally, the proposed tax would also conflict with federal regulatory law on multiple grounds:

- The Federal Communications Commission has ruled, and courts have since repeatedly reaffirmed, the Cable Act (47 U.S.C. § 521, *et seq*) prohibits state and local governments from imposing cable franchising requirements on non-cable services.[5]
- State or local taxes or fees on broadband also violate the Communications Act (see 47 U.S.C. § 151, *et seq*). Broadband is jurisdictionally interstate service,[6] and it is settled law that the Communications Act “occup[ies] the field” of interstate communications service regulation, “to the exclusion of state law.”[7]
- The bill’s requirement that gross end user revenues include receipts or assessments required by the FCC, or from any other governmental fees, may not withstand a legal challenge. Recently, the Washington Supreme Court held that the state is barred by the U.S. Constitution’s Supremacy Clause from collecting sales tax on a program administering payments for the Federal Communications Commission, such as Lifeline Programs. Therefore, assessing taxes on any charges or assessments required by the federal government is not permissible.

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[2] ITFA §§ 1101(a)(1), 1105.

[3] ITFA § 1105(8).

[4] *Id.*

[5] See 47 U.S.C. § 76.43; 47 U.S.C. §§ 544(a), (b)(1) (prohibiting such requirements for “information services”); id. §§ 522(7)(C), 541(b)(3)(D) (prohibiting such requirements for “telecommunications services”); Third 621 Order ¶¶ 64-79; City of Eugene, 998 F.3d at 715-16; Comcast of Oregon II, Inc. v. City of Beaverton, 609 F.Supp.3d 1136, 1150-57 (D. Or. 2022).

[6] RIF Order ¶ 199; Protecting and Promoting the Open Internet, Report and Order on Remand, Declaratory Ruling, and Order, 30 FCC Rcd. 5601 ¶ 431 (2015); N.Y. State Telecoms. Ass’n v. James, 544 F.Supp.3d 269, 285 (E.D.N.Y 2021).

[7] N.Y. State Telecoms. Ass’n, 544 F.Supp.3d at 285-88 (citing 47 U.S.C. § 152(a); Ivy Broad. Co. v. AT&T Co., 391 F.2d 486, 490-91 (2d Cir. 1968); Capital Cities Cable, Inc. v. Crisp, 467 U.S. 691, 699- 700 (1984))

Because a material portion of the revenue to be generated by House Bill 5446 violates federal law, NECTA respectfully asks the proposal be tabled.

B. House Bill 5446 is Poor Policy and Would Hamper Broadband Deployment

More generally, House Bill 5446 if enacted would jeopardize Connecticut's place as a national leader in broadband deployment by signaling hostility to providers *and* users of Internet access by increasing costs and distorting markets. Through light-touch regulation and a predictable tax structure, Connecticut created a market favorable for widespread broadband investment. Connecticut currently ranks 2nd among states in BroadbandNow's annual rankings of internet coverage, speed and availability, with 99% of people having access to 100Mbps broadband.[8] Not only can Connecticut boast of its near-universal broadband coverage, but the state also has a robust competitive landscape providing consumers with a choice of high-speed broadband options at a range of price points. In addition, this proposal would also increase the costs for Connecticut sports fans that subscribe to our members' sports network streaming services hitting consumers right at the start of the MLB World Series and while the 2024 NFL season is fully under way.

Sections 1 and 2 of HB 5446 would expand the gross earnings tax currently assessed upon video programming to include Internet access as well as other services such as Voice over Internet Protocol and cellular voice services. This would impact mobile, residential, and business voice services. Small businesses are 43% of the country's GDP and employs over half of the American workforce.[9] Although small businesses are beginning to recover from inflation impacts, things are still tough.[10] It is perplexing as to why Connecticut wants to increase the cost of doing business in the state in addition to adding costs to all consumers. In no uncertain terms, these sections would upend the predictable market for broadband investment and hurt consumers without a demonstrated benefit due to clear federal preemption, as previously discussed.

When it comes to delivering high-speed broadband, the cable broadband industry is a success story in Connecticut and across the United States, helping to grow the economy while remaining affordable to consumers. The price of home internet service has remained stable and affordable, while the average broadband speeds have surged more than 40%.[11][12] When inflation hit American families post-pandemic, price increases for used cars jumped 37%, gasoline skyrocketed nearly 50%, and groceries climbed about 7% relative to the previous year, but the price of internet service remained steady not mirroring these radical price spikes. According to the Bureau of Labor Statistics Consumer Price Index (CPI), the cost of internet services increased by only 2.6% in

[8] Internet Access in Connecticut: Stats & Figures (broadbandnow.com)

[9] https://www.uschamber.com/small-business/small-business-data-center#:~:text=Small%20business%20drives%20the%20U.S.,and%20customers%20to%20each%20other.

[10] https://www.uschamber.com/small-business/small-business-weekly-forecast

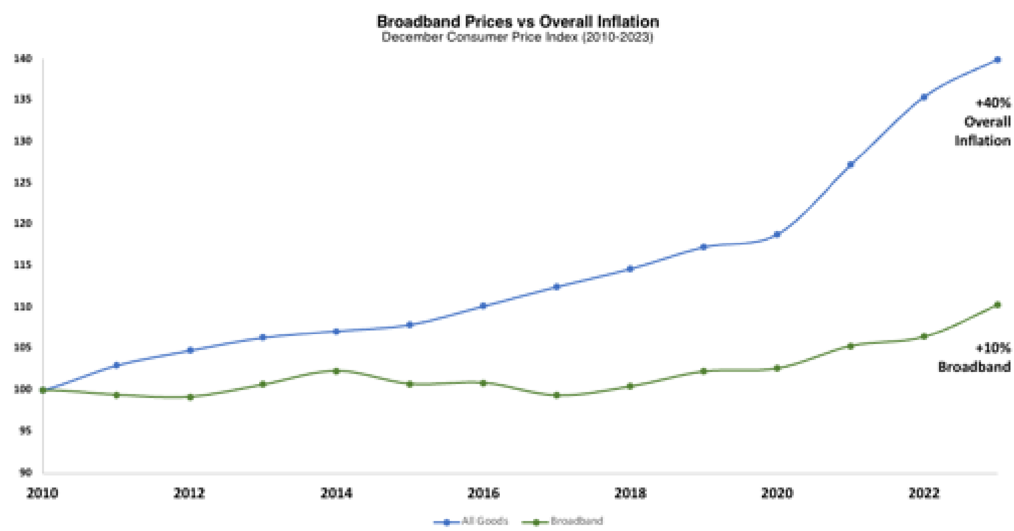
[11] https://www.ncta.com/broadband-affordability

[12] Comcast increased their speeds again to Connecticut subscribers this month. https://www.courant.com/2024/03/07/a-ct-internet-provider-is-raising-speeds-at-no-additional-charge-heres-what-to-know/

December 2021 relative to the previous year, well below the overall year-over-year inflation rate of 7%.[13]

Broadband is also a productive and growing industry that fuels the overall economy. In addition to all the direct employees who conduct innovative research, design and build networks, secure the networks from cyberthreats, do community outreach and customer service, etc., for every individual directly employed by a cable provider, 2.8 additional jobs were supported in other areas within the U.S.—a jobs multiplier of 3.8.[14] And the downstream economics impacts do not end there. High-speed broadband allows younger generations to stay in their communities by providing remote work options; provides more opportunities for education and job growth; and even benefits the healthcare industry by making telehealth possible.[15] With the constant investments and contributions made be NECTA members, imposing a tax on services slows growth with no tangible benefits to consumers.

Broadband Prices Trend Well Below Inflation



[13] https://www.ncta.com/whats-new/broadband-prices-are-trailing-far-behind-inflation

[14] https://www.ncta.com/sites/default/files/2023-10/OxfordEconomicsReport2023.pdf

[15] https://www.coxexpansionimpact.com/

Finally, part of the taxes collected from the gross earnings would be segregated and used to pay for PEG programming. This is unfair to consumers who only pay to access the internet as they would be subsidizing a video service that they cannot access without a cable subscription. There is no reasonable justification for lawmakers to impose higher costs on Connecticut consumers for other, non-cable services.

Thanks to the light-touch regulatory structure Connecticut established, NECTA's members are in Connecticut to serve its residents and compete with other Internet service providers. In addition to its questionable legality, a tax on internet services sends the wrong signal for investment, stifling growth, and ultimately harming consumers.

III. Property Tax Changes

The net effect of Connecticut's carefully crafted scheme of taxation, which included allowing for an exemption of cable systems from state property taxes while continuing to pay gross earnings on video services as well as sales tax, resulted in the investments made by NECTA members in their networks and products, including top-of-the-line video services. The framework has been in place for cable systems since 1965.[16] To upset the delicate balance that put Connecticut on the path to widespread investment by cable providers reverses decades of tax policy that benefitted consumers and companies alike.

IV. Subscriber Counts

Section 5 would define a "subscriber" of video programming in a household unit of multi-use dwellings (MDU) as an "individual subscriber" regardless of specific agreements with the owner of such MDU. It would also authorize the authority to retroactively correct subscriber counts based on this new defined term. NECTA members lawfully and accurately report subscriber numbers. In remitting funds to non-profit PEG access managers, NECTA members accurately count MDU subscribers on an Equivalent Billing Unit basis, consistent with longstanding FCC requirements and practices.[17] Altering the federally approved subscriber count method and applying it retroactively (the bill does not specify a term of retroactivity) creates unforeseen liabilities for previously lawful conduct and would deny NECTA members' fundamental due process.

V. Affordable Broadband Report

NECTA shares the Committee's concern for the continuation of affordable broadband programs in Connecticut. NECTA's members are longstanding industry leaders in offering affordable broadband. All of our members participate in the federal Affordable Connectivity Program (ACP) and continue to offer low-cost broadband programs to low-income households, as they did even before the COVID-19 pandemic. When combined with the ACP benefit, our members' voluntary low-income offerings have made high-speed broadband effectively *free* to eligible households.

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[16] See Pub. Act No. 169, § 1 (1965)

[17] See, e.g., Comcast Responses to Interrogatories PURA-1 through PURA-43, Docket No. 22-06-26, at 10-11 (Nov. 11, 2022) ("Comcast Interrogatory Responses") (response to PURA-8).

While we strongly agree that public and private programs offering affordable broadband to low-income households are essential in closing the digital divide for the more than one in five Americans who do not subscribe to broadband service at home, we disagree with the proposal by the Committee to create a state affordable broadband program that would be funded from the internet tax created by sections 1 and 2.

NECTA members already offer low-cost, high speed internet service, computer and in-home equipment, digital literacy training, and technology centers across the country to increase broadband adoption for individuals and families who need it most. Private broadband providers have invested over a billion dollars in programs to help low-income individuals get connected to the high-speed internet service available at their home.

Finally, the ACP has not yet come to an end, and while our members must comply with the FCC's "wind-down" of the program, we continue to urge Congress to reauthorize the ACP and, even after the program ends, NECTA members will continue to offer low-cost plans to subscribers, like they have been doing. But if Congress fails to act, the surest path for Connecticut to close the digital divide's adoption gap without impacting the Connecticut families' budgets with new taxes is to build on the success of the ACP program with the abundant funding available under BEAD.

Connecticut is on track to receive $144 million through the federal Broadband, Equity, Access, and Deployment (BEAD) program. At the same time, the state is among the best-served states in the country, with 100/20 Mbps wireline fixed broadband already available to 97.95% of Connecticut residents.[18] After completing the primary BEAD deployment grant efforts, Connecticut is expected to have a substantial amount of funding available for secondary uses, including digital equity and broadband adoption. The IIJA makes clear that deploying broadband is only the first step in closing the digital divide, but not the last. That's why Congress ensured that every state would receive at least $100 million in BEAD funding, regardless of how many (or how few) homes and businesses in the state lacked service. Indeed, the BEAD Notice of Funding Opportunity released by NTIA expressly identifies broadband subscription subsidies as an allowed use of broadband funding.

Using substantial available BEAD funding for broadband deployment purposes is one of the most effective ways to maximize the impact of federal BEAD funding in Connecticut. While broadband is affordable for the vast majority of Connecticut residents, using BEAD funds to directly reach those families that struggle to afford broadband will allow the state to focus those funds where they are needed most. The state's digital equity plan already provides a roadmap to bridge the digital divide and open opportunities for everyone in Connecticut. NECTA members are here to work with the state to close this digital divide.

VI. Public Access Costs

We are at a moment in time when Connecticut consumers have never had more content choices and that is especially true of local content. In sum, since 2007, CT consumers have become the producers in their communities of their own local content. For example, towns and schools now

[18] https://docs.fcc.gov/public/attachments/DOC-400675A1.pdf

cover local meetings themselves. In addition, today Facebook/Meta, YouTube, and other digital platforms provide daily offerings of local information in our communities. All of it is available immediately, without having to wait for a scheduled TV program, and all of it is free.

Moreover, since 2020, there has been widespread adoption of Zoom-type applications to make the production of professional grade content even easier, more efficient, and less expensive. More than ever, the delivery and uploading of content is now not based in a brick-and-mortar studio, but in the technology that rests between one's hand and the cloud. Virtual studios have replaced physical spaces that drain operating costs for heating, electricity, snow removal, leases, maintenance, and in some cases, mortgages.

Some access providers embracing these efficiencies refused the PURA PEG increases last year because they were running surpluses. Others reporting dire fiscal situations now, may need to acknowledge that their budget answers lie outside of finding new taxes at the legislature to support their legacy brick-and-mortar production operations, but in embracing consolidation, virtual production technologies, and other efficiencies to keep pace with the Connecticut consumer options, and preference, for free local online content.

VII. Conclusion

Introducing a gross earnings tax into the internet ecosystem impacting services consumers clearly want in their homes is not only illegal, but harms Connecticut consumers at a time when household budgets are already strained. In a state with top high speed broadband availability rates, nation-leading speeds and numerous low-cost adoption plans readily available for over 99 percent of all residents, Connecticut does not need to enact legislation that would undercut the capital market for broadband and disincentivize investment by Internet service providers also while hurting broadband consumers. We look forward to the state executing its digital equity plan under the BEAD program and remain willing, ready, and able partners.

Sincerely,

Anna P. Lucey
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NECTA