

**Declaration of Jim Baase
(Exhibit A)**

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK**

NEW YORK STATE
TELECOMMUNICATIONS ASSOCIATION,
INC., CTIA – THE WIRELESS
ASSOCIATION, ACA CONNECTS –
AMERICA’S COMMUNICATIONS
ASSOCIATION, USTELECOM – THE
BROADBAND ASSOCIATION, NTCA –
THE RURAL BROADBAND ASSOCIATION,
and SATELLITE BROADCASTING &
COMMUNICATIONS ASSOCIATION, on
behalf of their respective members,

Plaintiffs,

v.

LETITIA A. JAMES, in her official capacity as
Attorney General of New York,

Defendant.

Case No. 2:21-cv-2389-DRH-AKT

**DECLARATION OF JIM BAASE IN SUPPORT OF
PLAINTIFFS’ MOTION FOR PRELIMINARY INJUNCTION**

I, Jim Baase, declare as follows.

1. I, Jim Baase, am Chief Operating Officer for Empire Telephone Corporation (“Empire Telephone”). In that role, I am responsible for operating both Empire Telephone (an incumbent local exchange company) and its affiliate Empire Long Distance Corporation (a competitive local exchange company) (together, “Empire”), both of which provide broadband Internet access service to customers in parts of New York.

2. I submit this declaration to describe the harms that Empire would incur if Part NN of New York State Budget Bill S2506-C (the “Rate Regulation”) took effect on June 15, 2021, as scheduled.

3. Empire provides service in eight counties in New York: Chemung, Genesee, Livingston, Ontario, Schulyer, Seneca, Steuben, and Yates Counties. Empire has invested more than \$60 million in its network and added over 80 employees in the last seven years to serve customers in these counties.

4. The median household income in each of these counties is well below the national median. A large percentage — from 47 percent to 62 percent — of the households in several of the largest school districts within Empire’s service area are eligible for the National School Lunch Program.

5. Because of the predominantly low-income population that Empire serves, a large number of its current and potential broadband customers would qualify for discounted service under the Rate Regulation. Providing broadband service at the discounts the Rate Regulation mandates would have several significant negative effects on Empire’s business.

6. First, Empire has qualified to receive an \$11.3 million grant from the USDA to provide service to unserved and underserved households in Livingston County. The project would involve Empire — at a total cost of more than \$15 million — building more than 330 miles of fiber optic network that would be capable of serving nearly 1,100 homes. However, if the Rate Regulation goes into effect, Empire will most likely turn down the grant and cancel the project. Even with the grant money, Empire could not afford to invest in this buildout because a large percentage of its potential customers would be eligible for the discounted monthly rates under the Rate Regulation.

7. Second, Empire recently purchased from another provider \$530,000 of fiber optic facilities, which require an annual maintenance cost of \$46,000, as part of a planned entry into the Binghamton and Broome County markets. Empire has also hired two technicians and rented

space in five buildings with an annual rental cost of \$36,000. Empire will invest another \$600,000 in the near term and had planned to invest \$7 to 8 million over the next three to four years to build out the network to reach the City of Binghamton. If the Rate Regulation takes effect, Empire will scale back this project to the near term investment and abandon the plans to build out to the smaller villages and town along this new fiber route as well as limit our build out in the City of Binghamton.

8. Third, I estimate that, if the Rate Regulation takes effect, Empire would suffer a net income loss of approximately \$2 million per year. With such losses, Empire would be forced to substantially reduce its costs in order to maintain profitability. Empire could not afford to continue growing its business in New York, would cease other investments, and would need to reduce the size of its workforce accordingly.

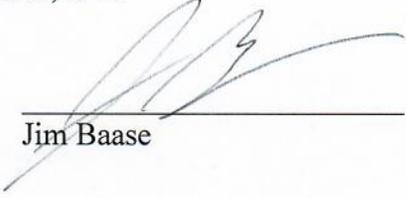
9. Fourth, compliance with the Rate Regulation would render it infeasible to build and maintain our extensive rural service network. Empire Telephone serves just over five customers per mile, on average. Empire Telephone provides service over wires and fiber optic cable that are attached to utility poles and for which it must pay pole rental charges at state set rates. The annual cost to Empire Telephone — just for pole rentals — is nearly \$1800 per mile. If half of its customers qualify for discounted service under the Rate Regulation — a reasonable assumption given the economic characteristics of the counties in which Empire Telephone operates — annual revenues from Empire Telephone's customers would be approximately \$2,000 on a per mile basis (\$50/month from half the customers; \$15/month from the other half). In other words, approximately 90 percent of Empire Telephone's revenues would go to pay a single cost — pole rentals — leaving it with insufficient revenue to cover the various other costs — such as customer service, engineering, network maintenance, and operating taxes — that

Empire Telephone incurs in providing service. These shortfalls would force Empire Telephone to restructure its business further, harming its service and its customers, costing it substantial goodwill that it has built up over generations.

10. Finally, although Empire currently provides broadband to fewer than 20,000 households — and, therefore, is eligible for an exception from the Rate Regulation from the New York Department of Public Service (“DPS”) — the DPS has not yet announced the standards it will use to decide whether to grant such exceptions. In addition, under Empire’s current expansion plans, I anticipate that Empire would serve more than 20,000 households within two years, at which point Empire would be subject to the Rate Regulation. Because the investments described above are made and anticipated to be recouped over a period longer than two years, even if Empire obtained an exception from the Commission, Empire would still likely abandon those investments and need to restructure its business to avoid the harms the Rate Regulation would impose.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed this 26th day of April, 2021 in Victor, NY.



Jim Baase