S T A T E  O F  N E W  Y O R K

4523--B

2013-2014 Regular Sessions

I N  S E N A T E

April 8, 2013

Introduced by Sen. TKACZYK -- read twice and ordered printed, and when printed to be committed to the Committee on Infrastructure and Capital Investment -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- recommitted to the Committee on Infrastructure and Capital Investment in accordance with Senate Rule 6, sec. 8 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the tax law, in relation to creating a tax credit for people who deliver broadband services to a target group of subscribers; and providing for the repeal of such provisions upon expiration thereof

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. This act shall be known and may be cited as the "Broadband Internet Access Act of 2014".

S 2. Legislative intent. The telecommunications revolution is transforming virtually every aspect of American life. Encouraging rapid development of broadband infrastructure, and ensuring the ubiquitous availability of current and next generation broadband capacity, is an urgent priority of the legislature. Increasing the speed at which Americans can access the internet is necessary to ensure the economic expansion of the state of New York. End users from all parts of the state, including urban, rural and low income areas, should be afforded a choice among carriers, high-speed access to a wide array of audio and data applications, and the opportunity to take advantage of the prospects created by the deployment and use of current and next generation broadband facilities. Accordingly, it is appropriate for the legislature to take action to accelerate the deployment of current and next generation broadband capability in the state of New York.

S 3. The tax law is amended by adding a new section 41 to read as follows:

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets [ ] is old law to be omitted.

LBD09969-06-4

S 41. BROADBAND DEVELOPMENT TAX CREDIT. (A) A PROVIDER OF TELECOMMUNICATIONS SERVICES, WHO IS SUBJECT TO TAXATION UNDER ARTICLE NINE OF THIS CHAPTER, SHALL BE ALLOWED A CREDIT AGAINST THE TAXES IMPOSED BY SUCH ARTICLE. SUCH CREDIT SHALL BE DETERMINED AS FOLLOWS:

(1) A PROVIDER SHALL BE ALLOWED A CURRENT GENERATION BROADBAND CREDIT EQUAL TO TEN PERCENT OF THE QUALIFIED EXPENDITURES INCURRED WITH RESPECT TO QUALIFIED EQUIPMENT OF A TELECOMMUNICATIONS PROVIDER DELIVERING CURRENT GENERATION BROADBAND SERVICES TO RURAL SUBSCRIBERS OR UNDERSERVED SUBSCRIBERS. SUCH CREDIT SHALL ONLY APPLY TO THAT PART OF THE SERVICE BUILT:

(A) FROM THE NODE TO THE HOME;

(B) FROM THE "POINT OF PRESENCE" TO THE HOME; OR

(C) FROM THE CENTRAL OFFICE TO THE HOME.

(2) A PROVIDER SHALL BE ALLOWED A NEXT GENERATION BROADBAND CREDIT EQUAL TO TWENTY PERCENT OF THE QUALIFIED EXPENDITURES INCURRED WITH RESPECT TO QUALIFIED EQUIPMENT OF A TELECOMMUNICATIONS PROVIDER DELIVERING NEXT GENERATION BROADBAND SERVICES TO RURAL SUBSCRIBERS, UNDERSERVED SUBSCRIBERS, OR ANY RESIDENTIAL SUBSCRIBER. SUCH CREDIT SHALL ONLY APPLY TO THAT SERVICE BUILT:

(A) FROM THE NODE TO THE HOME;

(B) FROM THE "POINT OF PRESENCE" TO THE HOME; OR

(C) FROM THE CENTRAL OFFICE TO THE HOME.

(B)(1) A TELECOMMUNICATIONS SERVICES PROVIDER SHALL BE ALLOWED TO TAKE THE CREDIT PROVIDED FOR IN SUBDIVISION (A) OF THIS SECTION IN THE FIRST TAXABLE YEAR IN WHICH:

(A) CURRENT GENERATION BROADBAND SERVICES ARE DELIVERED THROUGH SUCH EQUIPMENT TO RURAL SUBSCRIBERS OR UNDERSERVED SUBSCRIBERS; OR

(B) NEXT GENERATION BROADBAND SERVICES ARE DELIVERED THROUGH SUCH EQUIPMENT TO RURAL SUBSCRIBERS, UNDERSERVED SUBSCRIBERS, OR ANY OTHER RESIDENTIAL SUBSCRIBERS.

(2) FOR PURPOSES OF THIS SUBDIVISION, THE DELIVERY OF CURRENT GENERATION BROADBAND SERVICES OR NEXT GENERATION BROADBAND SERVICES THROUGH QUALIFIED EQUIPMENT OCCURS WHEN SUCH CLASS OF SERVICE IS PURCHASED BY AND PROVIDED TO AT LEAST TEN PERCENT OF THE SUBSCRIBERS DESCRIBED IN THIS SUBDIVISION, WHERE SUCH EQUIPMENT IS CAPABLE OF SERVING SUCH SUBSCRIBERS THROUGH THE LEGAL OR CONTRACTUAL AREA ACCESS RIGHTS OR OBLIGATIONS OF THE PROVIDER.

(C)(1) FOR PURPOSES OF DETERMINING THE CURRENT GENERATION BROADBAND CREDIT UNDER SUBDIVISION (A) OF THIS SECTION WITH RESPECT TO QUALIFIED EQUIPMENT THROUGH WHICH CURRENT GENERATION BROADBAND SERVICES ARE DELIVERED, IF THE QUALIFIED EQUIPMENT IS CAPABLE OF SERVING BOTH THE SUBSCRIBERS DESCRIBED UNDER PARAGRAPH ONE OF SUBDIVISION (A) OF THIS SECTION AND OTHER SUBSCRIBERS, THE QUALIFIED EXPENDITURES SHALL BE MULTIPLIED BY A FRACTION:

(A) THE NUMERATOR OF WHICH IS THE SUM OF THE TOTAL POTENTIAL SUBSCRIBER POPULATIONS WITHIN THE RURAL AREAS AND THE UNDERSERVED AREAS THAT THE EQUIPMENT IS CAPABLE OF SERVING WITH CURRENT GENERATION BROADBAND SERVICES; AND

(B) THE DENOMINATOR OF WHICH IS THE TOTAL POTENTIAL SUBSCRIBER POPULATION OF THE AREA THAT THE EQUIPMENT IS CAPABLE OF SERVING WITH CURRENT GENERATION BROADBAND SERVICES.

(2) FOR PURPOSES OF DETERMINING THE NEXT GENERATION BROADBAND CREDIT UNDER SUBDIVISION (A) OF THIS SECTION WITH RESPECT TO QUALIFIED EQUIPMENT THROUGH WHICH NEXT GENERATION BROADBAND SERVICES ARE DELIVERED, IF THE QUALIFIED EQUIPMENT IS CAPABLE OF SERVING BOTH THE SUBSCRIBERS DESCRIBED UNDER PARAGRAPH TWO OF SUBDIVISION (A) OF THIS SECTION AND

OTHER SUBSCRIBERS, THE QUALIFIED EXPENDITURES SHALL BE MULTIPLIED BY A FRACTION:

(A) THE NUMERATOR OF WHICH IS THE SUM OF: (I) THE TOTAL POTENTIAL SUBSCRIBER POPULATIONS WITHIN THE RURAL AREAS AND THE UNDERSERVED AREAS THAT THE EQUIPMENT IS CAPABLE OF SERVING WITH NEXT GENERATION BROADBAND SERVICES AND (II) THE TOTAL POTENTIAL SUBSCRIBER POPULATION OF THE AREA CONSISTING ONLY OF RESIDENTIAL SUBSCRIBERS NOT DESCRIBED IN CLAUSE (I) OF THIS SUBPARAGRAPH THAT THE EQUIPMENT IS CAPABLE OF SERVING WITH NEXT GENERATION BROADBAND SERVICES; AND

(B) THE DENOMINATOR OF WHICH IS THE TOTAL POTENTIAL SUBSCRIBER POPULATION OF THE AREA THAT THE EQUIPMENT IS CAPABLE OF SERVING WITH NEXT GENERATION BROADBAND SERVICES.

(D) FOR PURPOSES OF THIS SECTION, THE FOLLOWING WORDS SHALL HAVE THE FOLLOWING MEANINGS:

(1) "CURRENT GENERATION BROADBAND SERVICE" SHALL MEAN THE TRANSMISSION OF SIGNALS AT A RATE OF AT LEAST TEN MILLION BITS PER SECOND TO THE SUBSCRIBER AND AT LEAST ONE MILLION BITS PER SECOND FROM THE SUBSCRIBER.

(2) "NEXT GENERATION BROADBAND SERVICE" SHALL MEAN THE TRANSMISSION OF SIGNALS AT A RATE OF AT LEAST TWENTY MILLION BITS PER SECOND TO THE SUBSCRIBER AND AT LEAST FIVE MILLION BITS PER SECOND FROM THE SUBSCRIBER.

(3) "NONRESIDENTIAL SUBSCRIBER" SHALL MEAN A PERSON WHO PURCHASES BROADBAND SERVICES WHICH ARE DELIVERED TO THE PERMANENT PLACE OF BUSINESS OF SUCH PERSON.

(4) "PERSON" SHALL MEAN AN INDIVIDUAL, CORPORATION, PARTNERSHIP, ASSOCIATION, GOVERNMENTAL ENTITY, OR ANY OTHER LEGAL ENTITY.

(5) "QUALIFIED EQUIPMENT" SHALL MEAN THE EQUIPMENT OF A TELECOMMUNICATIONS PROVIDER THAT IS CAPABLE OF PROVIDING CURRENT GENERATION BROADBAND SERVICES OR NEXT GENERATION BROADBAND SERVICES AT ANY TIME, AND WITHOUT REGARD TO ANY PARTICULAR TRANSMISSION MEDIUM OR TECHNOLOGY, TO EACH SUBSCRIBER WHO IS UTILIZING SUCH SERVICES.

(6) "QUALIFIED EXPENDITURE" SHALL MEAN ANY AMOUNT CHARGEABLE TO CAPITAL ACCOUNT WITH RESPECT TO THE PURCHASE AND INSTALLATION OF QUALIFIED EQUIPMENT (INCLUDING ANY UPGRADES THERETO).

(7) "RESIDENTIAL SUBSCRIBER" SHALL MEAN AN INDIVIDUAL WHO PURCHASES BROADBAND SERVICES WHICH ARE DELIVERED TO SUCH INDIVIDUAL'S DWELLING.

(8) "RURAL AREA" SHALL MEAN ANY CENSUS TRACT WHICH:

(A) IS NOT WITHIN TEN MILES OF ANY INCORPORATED OR CENSUS DESIGNATED PLACE CONTAINING MORE THAN SEVENTY THOUSAND PEOPLE, AND

(B) IS NOT WITHIN A COUNTY OR COUNTY EQUIVALENT WHICH HAS AN OVERALL POPULATION DENSITY OF MORE THAN EIGHT HUNDRED PEOPLE PER SQUARE MILE OF LAND.

(9) "RURAL SUBSCRIBER" SHALL MEAN A RESIDENTIAL SUBSCRIBER RESIDING IN A DWELLING LOCATED IN A RURAL AREA OR NONRESIDENTIAL SUBSCRIBER MAINTAINING A PERMANENT PLACE OF BUSINESS LOCATED IN A RURAL AREA.

(10) "SUBSCRIBER" SHALL MEAN A PERSON WHO PURCHASES OR RECEIVES CURRENT GENERATION BROADBAND SERVICES OR NEXT GENERATION BROADBAND SERVICES.

(11) "TELECOMMUNICATIONS PROVIDER" OR "PROVIDER" SHALL MEAN A PERSON, OR AN AFFILIATE OF SUCH PERSON, EITHER OF WHICH FOR COMPENSATION DEPLOYS FACILITIES USED DIRECTLY OR INDIRECTLY IN THE PROVISIONS OF INTRASTATE, INTERSTATE OR INTERNATIONAL TELECOMMUNICATIONS, WHETHER ON A COMMON CARRIAGE, PRIVATE CARRIAGE, WHOLESALE, OR RETAIL BASIS.

(12) "TOTAL POTENTIAL SUBSCRIBER POPULATION" SHALL MEAN, WITH RESPECT TO ANY AREA AND BASED ON THE MOST RECENT CENSUS DATA, THE TOTAL NUMBER OF POTENTIAL RESIDENTIAL SUBSCRIBERS RESIDING IN DWELLINGS LOCATED IN

SUCH AREA AND POTENTIAL NONRESIDENTIAL SUBSCRIBERS MAINTAINING PERMANENT PLACES OF BUSINESS LOCATED IN SUCH AREA.

(13) "UNDERSERVED AREA" SHALL MEAN ANY CENSUS TRACT WHICH IS LOCATED IN:

(A) AN EMPOWERMENT ZONE OR ENTERPRISE COMMUNITY DESIGNATED UNDER SECTION 1391 OF THE UNITED STATES INTERNAL REVENUE CODE OF 1986;

(B) A RENEWAL COMMUNITY DESIGNATED UNDER SECTION 1400E OF THE UNITED STATES INTERNAL REVENUE CODE OF 1986; OR

(C) A LOW-INCOME COMMUNITY DESIGNATED UNDER SECTION 45D OF THE UNITED STATES INTERNAL REVENUE CODE OF 1986.

(14) "UNDERSERVED SUBSCRIBER" SHALL MEAN A RESIDENTIAL SUBSCRIBER RESIDING IN A DWELLING LOCATED IN AN UNDERSERVED AREA OR NONRESIDENTIAL SUBSCRIBER MAINTAINING A PERMANENT PLACE OF BUSINESS LOCATED IN AN UNDERSERVED AREA.

(15) "NODE" SHALL MEAN THE CABINET AND EQUIPMENT, INCLUDING POWER SUPPLY, FANS, GAS GENERATORS, BATTERIES AND OPTICAL TO ELECTRICAL CONVERTERS, LOCATED IN THE NEIGHBORHOODS WHICH SERVE HOMES, BUSINESSES, AND INSTITUTIONS, AND WHICH IS THE POINT WHERE FIBER FACILITIES AND COAXIAL FACILITIES ARE CONNECTED.

(16) "POINT OF PRESENCE" SHALL MEAN THE SPECIFIC LOCATION WITHIN A LOCAL ACCESS TRANSPORT AREA WHERE A CONNECTION TO THE INTERNET TERMINATES AND/OR ORIGINATES ITS SERVICE, AND SUCH PHYSICAL LOCATION HOUSES SERVERS, ROUTERS, ATM SWITCHES, AND OTHER DEVICES BY WHICH A COMMUNICATIONS CARRIER ALLOWS OTHER CARRIERS TO ACCESS ITS NETWORK.

(17) "CENTRAL OFFICE" SHALL MEAN AN OFFICE IN A LOCALITY TO WHICH SUBSCRIBER HOME AND BUSINESS LINES ARE CONNECTED ON WHAT IS CALLED A LOCAL LOOP, CONTAINING SWITCHING EQUIPMENT THAT CAN SWITCH CALLS LOCALLY OR TO LONG-DISTANCE CARRIER PHONE OFFICES.

(E) THE TOTAL FISCAL IMPACT OF THE RURAL BROADBAND DEVELOPMENT TAX CREDIT SHALL NOT EXCEED ONE HUNDRED MILLION DOLLARS EACH YEAR.

S 4. This act shall take effect on the ninetieth day after it shall have become a law and shall expire and be deemed repealed March 31, 2018.