



**Testimony in support of Act Relating to Affordable Broadband Service ([H. 121](#))**

**House Committee on Energy and Digital Infrastructure Hearing (4/24)**

Submitted by Sean Gonsalves, Associate Director for Communications, Community Broadband Networks Initiative, Institute for Local Self-Reliance

Dear Representative Kathleen James and Committee members,

Thank you for allowing me the opportunity to offer a few remarks and observations on a matter crucial to the state's effort in ensuring every resident in Vermont has access to high performance Internet service.

My name is Sean Gonsalves, Associate Director for Communications with the Community Broadband Networks initiative at the [Institute for Local Self-Reliance](#) (ILSR). The Community Broadband Networks initiative at ILSR has been tracking, documenting, and analyzing community broadband expansion efforts across the nation – and telecom policy more generally – for the past 17 years.

As part of that work, we recently published an [in-depth report](#) on the history and development of Vermont's Communications Union Districts and have closely documented the work of the Vermont Community Broadband Board over the past several years.

Today's hearing on the act relating to affordable broadband service ([H. 121](#)), as introduced by Representative Chris Morrow, is itself testimony to the state's commitment to exploring ways for every Vermonter to meaningfully participate in our digital economy and take full advantage of the multitude of life-enhancing benefits that come with reliable Internet connectivity – from employment and educational opportunities to telehealth access and access to online public and private services.

The Committee's work is also in keeping with the spirit animating the Vermont CUD model – one focused on the benefit of the end-user, fostering needed competition in a monopoly-dominated broadband market, while recognizing Internet access as a public good.

Our view on the nexus between Internet access and affordability is straightforward: if it's not affordable, it's not accessible. Therefore, we consider well-crafted legislation that incentivizes a low-cost option for home Internet subscribers to be both wise and necessary.

Necessary for the reasons already stated and wise because Congress failed to continue funding the federal Affordable Connectivity Program, which offered eligible households a \$30/month voucher to pay for Internet service. The ACP program, as you all are well aware, expired almost exactly a year ago today.

Despite the vigorous efforts of digital inclusion advocates, public interest groups, and numerous members of Congress, there is no ACP 2.0 on the political horizon.

## **BACKGROUND**

Before sharing a few thoughts and observations on specific provisions being considered in the bill the committee is contemplating, permit me to offer some important context. And perhaps the most relevant being: whatever this committee decides has the potential to offer relief for up to 40% of Vermont households.

Not long after the ACP was established in 2021 by the bipartisan infrastructure law, the Community Broadband team at ILSR created an [ACP dashboard](#) that tracked both enrollment and spending down to the zip code level for every state in the nation. Using federal data, our dashboard indicated that 115,000 households in Vermont were ACP eligible with nearly 26,000 households using the ACP benefit when the program expired.

In the absence of Congressional action to address the broadband affordability crisis beyond the now depleted ACP appropriation, several states have moved to step into the breach.

The first state to do so was the state of New York, where lawmakers there passed the Affordable Broadband Act requiring Internet service providers (ISPs) with 20,000 or more subscribers to offer 25 Megabits per second (Mbps) broadband service for \$15/month to eligible low-income households – though it should be noted there is a provision that allows for a price increase once every two years with proper notice.

The law also gives ISPs an alternative. They can offer a 200 Mbps service for \$20/month with no additional fees, taxes, or bundled services.

The ABA in New York was signed into law in April of 2021 but was immediately challenged in court and appealed all the way up to the US Supreme Court. The case was finally settled in December 2024 when the high court declined to intervene on a US Appeals Court decision that upheld the law. So the ABA in New York did not go into effect until January of this year.

With the legal questions now settled, several states – of which Vermont was among the first – have filed similar legislation modeled on the ABA. As of today (excepting New York) affordable broadband legislation has been filed in four states: Vermont, Massachusetts, California, and most recently Maryland.

## **FOR CONSIDERATION**

The enactment and roll-out of the New York law is instructive and can serve as a baseline or bellwether for other states to consider in deciding what specific provisions might be included or improved upon in states with not-quite-the-same market and demographics.

I'd like to point to several key aspects of the ABA we think are worth considering juxtaposed to the bill now before you:

*Targeted legislation:* The New York law, which defines broadband as any Internet connection of

any speed over both wireless and wireline technologies, specifies that the \$15/month mandate applies to all ISPs. Crucially, however, the law offers a waiver exemption to ISPs with less than 20,000 subscribers.

Aware of the need for more choice and competition to support a properly functioning broadband market, lawmakers in New York were keen to provide a carve-out for small providers who might be unduly burdened by a low-cost mandate.

The law created an exemption for ISPs serving fewer than 20,000 subscribers, which we believe is an important policy to ensure that these requirements fall on companies that are of sufficient scale to absorb significant numbers of low-income subscribers. There are many small rural providers that may not be able to afford to offer this service because they are already stretched thin by the challenges of operating in areas with much higher operating costs.

States should be mindful of the difficult economics of operating telecommunications networks, where having fewer than 5,000 subscribers is challenging in the best circumstances and decent margins generally only exist above 20,000 subscribers (though there are exceptions). These challenges are especially obvious in remote areas but can also be present in urban areas of significant poverty.

Using federal or state data, it is not difficult to find the percentage of households in any state that are passed by the largest providers. And, states may actually wish to use passings rather than subscribers in deciding which ISPs are required to participate. ISPs that reach a large population should be much better equipped to internally cross-subsidize to cover qualifying households that choose the low-cost option.

In creating a low-income program, a state may even find it is able to reach more than 90% of the eligible households by imposing the requirement solely on ISPs with more than 100,000 passings (or some similar number of subscribers), ensuring that the focus of these programs falls on the ISPs that have the most resources to resolve the challenge.

The “magic number” for a waiver exemption that would be ideal for Vermont, or any state for that matter, we cannot say with any certainty, as it would vary depending on specific market and demographic conditions.

To be clear, ILSR is not suggesting Vermont’s bill should include the 20,000 subscriber number enacted in New York’s law. The Goldilocks zone would be one that exempted small independent ISPs and Vermont’s CUDs.

Proponents of similar legislation in California are considering whether proposed legislation will include an exemption for ISPs with 100,000 or more subscribers – and whether the number should rather be tied to locations passed instead of subscribers.

*Speed needs:* The New York law requires the low-cost option to be 25 Megabits per second (Mbps). That benchmark was chosen to mirror the federal minimum broadband speed definition at the time the law was written. Since then, the FCC officially raised that standard to 120 Mbps download/20 Mbps upload. Proposed legislation in Massachusetts follows the new standard and we believe it should be the baseline for proposed legislation in other states as well.

*Enrollment and verification:* This is where things can get tricky. The New York law did not create an independent enrollment and verification process, leaving it to the ISPs to enroll and verify eligible households.

We are hearing from advocates on the ground working to assist eligible households in New York with enrollment that the roll-out of the law has been slow and difficult, hampered by:

- ISPs not doing any promotional work or outreach to encourage enrollment.
- Seniors having an incredibly difficult time seeing the tiny enrollment link on ISP websites
- Applications only being made available in PDF form, which then need to be printed and mailed in.

Additionally, we are hearing numerous anecdotes that inquiries about the program are being answered by customer service reps unaware that the law even exists, as there is no mandate in the law requiring ISPs to train company representatives on how it works.

Even in instances where qualified subscribers have been successfully enrolled there seems to be major issues around the time it takes to process applications.

Advocates in New York tell us they would like to see the law amended to address these issues by:

- The creation of a centralized portal for verification/enrollment.
- The ability for eligible households to apply online.
- Reasonable time constraints to ensure timely responses throughout the application process.
- Requirement that ISPs promote the offering.
- Establishment of an appeals process (if the appeal process was external and effective, a verification process internal to ISPs could work. But without an external appeal process, advocates say eligibility verification should not be left solely to ISPs) .

One final note regarding the New York law: as best as we can tell, there is no official number yet of how many eligible state residents are benefiting from the \$15/month offering. The law does require an annual compliance report but outside of those yet-to-be submitted reports by ISPs, it's not clear to us how that number is being tracked.

As might be expected with proposed legislation seeking to mandate a low-cost plan, the large ISPs operating in New York were in fierce opposition. Not only did trade groups representing big industry players seek to have the courts overturn the law – even after the Supreme Court declined to intervene – opposition lawyers filed another request with the high court asking it to reconsider its decision to not intervene. That request has also been denied.

However, in the wake of the New York law going into effect, AT&T promptly announced it would withdraw its 5G home Internet service in New York, even though it's only available to about 2 percent of state residents. Beyond that, the opposition in New York may have been somewhat muted as the largest incumbent provider in the state (Charter Communications) – even prior to the law being passed – was under a merger agreement with the state that required the company to offer a \$15/month plan for qualifying households.

In Massachusetts, soon after a similar bill was proposed the New England Connectivity and Telecommunications Association (NECTA), a group which includes Comcast and Charter, voiced its opposition, referring to the bill as “unnecessary” and “counterproductive” “rate regulation.”

Also, some observers have suggested such bills could face push-back from the Trump administration’s Federal Communications Commission as Chairman Brendan Carr may move to restrict states that interfere with the agency’s light-touch approach to broadband regulation.

Challenges aside, we believe the aim of this bill supports the state’s intention to provide universal Internet connectivity. In order to do that, addressing the affordability crisis is paramount because, as noted earlier in this testimony: if it’s not affordable, it’s not accessible. Thank you to Committee Chair and Committee members for inviting ILSR to participate in such a vital deliberation.

Sincerely,

Sean Gonsalves, Associate Director for Communications

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