April 10, 2026

Hon. Michelle L. Phillips
Secretary to the Commission
New York State Public Service Commission
Agency Building 3
Albany, NY 12223-1350

RE: Comments Regarding Case No. 22-M-0313 – In the Matter of the Commission's Broadband Study and Mapping Pursuant to the Broadband Connectivity Act.

Dear Ms. Phillips,

The ACLP at New York Law School respectfully submits the following comments in the above-referenced proceeding.

Should you have any questions, please do not hesitate to contact us.

Kind regards,

/s/
Michael J. Santorelli, Director

/s/
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The ACLP respectfully offers the following comments regarding the status of broadband connectivity in New York. After providing a summary of recent data regarding the availability and adoption of broadband in the state, these comments then offer policy takeaways and recommendations for further bolstering connectivity.

1. Broadband Availability in New York State is Robust Due to Continued Investment, Innovation, and Competition Among Private ISPs

High-speed internet access delivered via a multiplicity of platforms is available across New York State.

- According to the latest FCC data, between June 2022 and June 2025, terrestrial broadband availability in the state – i.e., service of at least 100/20 Mbps delivered via a wire (cable, fiber, etc.) or fixed wireless (FWA) to a broadband serviceable location (BSL) – increased from 94.6% to 96.2%.[1]

- Cable broadband access has long been widely available across the state, passing some 89% of BSLs, a figure that has held steady over the last several years.

- The largest source of growth in terrestrial broadband availability came from:

    - Increased fiber deployment: two-thirds of BSLs in the state can now access a fiber connection if they wish, up from about half in 2022, and

    - Rapid growth in FWA, the availability of which tripled between 2022 and 2025.[2]

- Including 5G mobile broadband and satellite service in these figures increases broadband availability significantly, pushing it to nearly 100%.

As a result of burgeoning broadband availability across a variety of platforms, competition has increased markedly.

- In 2022, less than half – 49.5% – of the BSLs in the state had access to at least two choices of terrestrial broadband providers.[3] That figure grew to 70.6% by June 2025.[4] Including satellite in this analysis increases the percentage of BSLs with at least two choices of terrestrial providers plus satellite to 96.2%.[5]

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[1] ACLP Analysis of FCC BDC data (on file).

[2] Id.

[3] Id.

[4] Id.

[5] Id.

These significant gains in broadband availability and competition have come before any of the state's grant-funded broadband projects have come online. This underscores the continued importance of private sector investment and innovation, which has driven organic growth across the sector. These gains have come despite, not because of, unnecessarily burdensome and interventionist actions by the state in the recent past (these actions and recommendations for undoing them are discussed in section 3).

Nevertheless, grant-funded projects, notably those receiving BEAD funding, will play key roles in further narrowing the digital divide.

- Based on the ACLP's analysis of all available data, 125,985 BSLs in the state lack 100/20 Mbps terrestrial broadband service (out of a total of 1.566M BSLs in the state). The state's ConnectALL office has indicated it will award $391M in BEAD grants to 11 subgrantees across 21 projects, which will bring broadband to 53,918 BSLs.

- After including other enforceable commitments (e.g., those funded via RDOF or programs backed by Capital Projects Fund (CPF)) and removing extraneous locations from the map, after BEAD ends, some 19,066 BSLs may remain without a terrestrial broadband connection.[6]

- Projects receiving CPF funds via the state's Municipal Infrastructure Program (MIP) and Affordable Housing Connectivity Program (AHCP) will play marginal roles in plugging availability gaps. Indeed, only 6,694 BSLs in the state will be served via enforceable commitments, only some of which are funded via the MIP and AHCP. This is because the state chose to invest its CPF allocation of $220M+ in programs that are resulting in significant overbuilding.[7] Section 3 addresses the myriad implications of this choice and recommends needed policy responses.

In sum, the data make clear that broadband is widely available across New York State, with only a few pockets of unserved and underserved areas remaining. Such robust availability and competition are due to the continued investment by private ISPs of all ilk.

2. Challenges Remain on the Demand-Side

To the extent challenges remain in the state vis-à-vis broadband connectivity, they are most evident on the demand-side.

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[6] Id.

[7] The ACLP has been closely tracking the extent to which MIP will result in overbuilding. *See, e.g.,* Michael Santorelli and Alex Karras, *New York Doubles Down on Broadband Overbuilding,* Nov. 13, 2025, Broadband Expanded Blog, https://broadbandexpanded.com/posts/nymip2 ("*New York Doubles Down on Broadband Overbuilding*"). In February 2026, the ACLP submitted FOIL requests to ESD for data regarding potential overbuilding in the AHCP. As of this writing, those requests are still pending.

- According to the ACLP's analysis of the most recent Census data, broadband adoption has plateaued in recent years.

- Adoption rates of wired broadband services (e.g., cable, fiber) increased from 72% in 2017 to 77.5% in 2024.[8] However, adoption rates have been stuck at 77% since 2021.

- When internet access services of any kind, including mobile, are included, the adoption rate increases to 93.1%.[9] This rate has increased by several percentage points over the last few years, rising from 86.2% in 2019 to 93.1% in 2026, suggesting that more consumers are demanding and adopting wireless alternatives like FWA and mobile 5G to meet their connectivity needs.[10]

- Adoption rates continue to vary depending on several factors. Notably, lower income households adopt broadband at a lower rate than higher income households, mirroring a trend that has been evident since the term "digital divide" was first coined in the mid-1990s.

- Census data indicates that the adoption gaps long evident among different demographics appear to have closed considerably. Broadband adoption among White and Asian households is on par with the adoption rate among Black and Hispanic households.

Questions also remain about whether there are sufficient resources available in the state to deliver targeted digital literacy training and to equip all users with the skills needed to understand the pros, cons, and potentials dangers associated with new technologies like AI.

3. Policy Takeaways and Recommendations

The preceding analysis, along with the ACLP's ongoing tracking of all broadband-related activities across the state, inform the following policy takeaways and observations.

New York State Must Implement Policies That Support Rather than Impede or Discourage Private Investment in Broadband Deployment. As discussed in section 1, all available data make clear that the robustness of broadband availability and competition in the state is due entirely to the continued investment and innovation of private ISPs. As a foundational matter, laws, regulations, and policies in the state must recognize and reflect this dynamic if New York wishes to continue fostering such an intensely competitive and

[8] ACLP Analysis of FCC BDC data (on file).

[9] Id.

[10] Id.

vibrant marketplace for high-speed internet access. Unfortunately, as discussed more fully below, the state in recent years has chosen a different path, one that is defined by unnecessarily interventionist approaches and burdensome policies that threaten to undermine or reverse the organic gains by the private sector described above.

The MIP Program Has Engaged in Wasteful Overbuilding and Should be Monitored Closely. Via its Municipal Infrastructure Program (MIP), New York State has leveraged nearly $300M in federal and state funding to support municipal fiber projects across the state. As detailed at length in previous ACLP analyses, these projects have overbuilt existing broadband infrastructure at a very high rate. Indeed, based on data obtained by the ACLP via FOIL requests, across the first 13 projects that received MIP funding, the resulting networks will pass a total of 85,755 locations, of which only 9,664, or 11%, are unserved or underserved by broadband.[11] This means that that these projects will overbuild existing broadband networks at 89% of the locations passed.[12]

Overbuilding is wasteful because it uses scarce public funds to provide that which is already available in communities. It is doubly wasteful in New York given the amount of unserved and underserved households that remain. By choosing to use CPF funds to engage in massive overbuilding, New York State has chosen to provide 75,000+ households with an *additional* broadband option while the 52,918 unserved and underserved households that will be served via BEAD must wait for those projects to reach them. CPF projects must be completed by the end of this year, while BEAD projects, which are still awaiting formal approvals, must be completed within 4 years. So, in theory, by the end of 2026, 75,000+ locations in the state will have access to a second or third (or fourth or fifth) broadband option while the nearly 53,000 locations to be served by BEAD might have to wait until 2030 for a single broadband option. And neither BEAD nor CPF-funded projects will reach the 19,000+ locations that will remain unserved or under-served once BEAD ends.

It remains to be seen whether the MIP projects will meet the federal statutory deadline for completion by the end of this year. The state has already canceled one MIP project – a $26M award for Cortland and Cayuga counties – because of concerns about its ability to meet the deadline.[13] In addition, there is evidence that many of these projects are running over-budget, and several have adjusted their scope (e.g., lowering the number of locations to be served), presumably to make meeting the deadline easier.

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[11] *New York Doubles Down on Broadband Overbuilding*.

[12] Id.

[13] Michael Santorelli and Alex Karras, *New York Continues to Use Federal Funds for Overbuilding,* Feb. 18, 2026, Broadband Expanded Blog, https://broadbandexpanded.com/posts/nycortlandoverbuild.

For example, in 2024, Governor Hochul announced an MIP award in the amount of $2.4M for a project in Franklin County that would "reach more than 1,600 homes and businesses."[14] However, during a recent meeting of the Board of Directors of Empire State Development, which houses ConnectALL, it was indicated by the broadband office that the Franklin County project now requires a grant in the amount of $5.8M to serve only 600 locations.[15] The other 1,000 locations will be served with a network built after the December 2026 statutory deadline and will "be funded entirely though a post-disbursement equity contribution by SLICFiber as the private sector partner."[16]

Similar adjustments have been made to several other MIP projects, as well as those funded via the AHCP. In the past, the ACLP urged the legislature to exercise its oversight authority to ensure that these projects do not become financial albatrosses for taxpayers.[17] To date, the legislature has failed to heed this call. In the absence of robust legislative oversight, the ACLP respectfully urges the PSC, to the extent its authority allows, to fill this void and monitor these projects to ensure that public funds are not squandered.

In its 2026 Broadband Report, the PSC Must Acknowledge the Myriad Downsides of the Affordable Broadband Act. In its *2025 Report on the Availability, Reliability, and Cost of High-Speed Broadband Services in New York State*, the PSC noted that:

> "…the State has made significant strides in advancing broadband affordability and access, particularly with the implementation of the [Affordable Broadband Act]. This legislation has provided a strong framework for expanding access to low-cost broadband options for eligible households across the State. As a result, more eligible households now have access to discounted service plans. The State is far better positioned today to support low-income residents in securing affordable internet service than it was just a year ago."

Respectfully, the PSC gives the ABA too much credit and fails to see or account for its myriad downsides. Indeed, by any objective analysis, the ABA has failed to deliver meaningful results and has instead cost the state more than it has gained.

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[14] Press release: https://www.governor.ny.gov/news/governor-hochul-awards-more-70-million-through-connectall-municipal-infrastructure-grant.

[15] ESD Board Packet, March 26, 2026, p. 252, https://esd.ny.gov/sites/default/files/media/document/032626-ESD-Board-Materials-posting.pdf#page=252.

[16] Id.

[17] Testimony of Michael J. Santorelli Director, Advanced Communications Law & Policy Institute New York Law School, Before the New York State Senate Finance Committee and Assembly Ways and Means Committee – Joint Legislative Budget Hearing on Economic Development, January 30, 2024, https://www.nysenate.gov/sites/default/files/admin/structure/media/manage/filefile/a/2024-01/advanced-communications-law-_-policy-institute-aclp.pdf.

In its 2026 Broadband Report, the PSC should acknowledge the following about the ABA:

- *The ABA has had negative impacts on broadband availability and competition*. Once it went into effect, an ISP opted to leave the state rather than comply with its burdensome requirements.[18] This is a clear cause-and-effect of the law that should be acknowledged.

- *The ABA is largely duplicative*. Prior to enforcement of the ABA in January 2025, multiple ISPs in the state, notably Charter, Verizon, and Altice, already offered low-cost broadband plans to qualifying low-income households. Given the sizeable service footprints of these entities, coupled with the carveouts in the ABA for small ISPs, it is unclear just how impactful the ABA has been vis-à-vis providing customers with new options for low-cost service.

- *Carveouts in the ABA acknowledge that its requirements are burdensome*. The ABA exempts ISPs with fewer than 20,000 customers from its rate regulatory scheme upon a showing that compliance would cause "unreasonable or unsustainable financial impact on the broadband service provider."[19] In November 2025, the PSC granted this exemption for 67 ISPs in the state, leaving 28 ISPs that must comply.[20]

- *The ABA has jeopardized the state's BEAD allocation*. As of March 26, 2026, the state had yet to fully execute its BEAD agreement with NTIA.[21] One possible impediment to this last step in the process before BEAD funds can be formally allocated to subgrantees is the existence of the ABA. NTIA has made clear that it will not release funds to states where BEAD-funded projects will have their rates regulated.[22] New York is the only state in the country with a broadband rate regulation law. It is possible that NTIA will withhold New York's BEAD funds until the state repeals the law. If the state does not, then NTIA might withhold its allocation indefinitely.

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[18] *See* Emily Barnes, *AT&T Ends Broadband Service in NY as Affordable Broadband Act Begins,* Jan. 24, 2025, The Journal News, https://www.lohud.com/story/news/2025/01/24/att-ends-broadband-service-new-york-as-affordable-broadband-act-begins/77922989007.

[19] GBL §399-zzzzz(5).

[20] CASE 24-M-0255 – In the Matter of the Affordable Broadband Act, Order Approving Requests for Further Exemptions Subject to Conditions, Nov. 13, 2025.

[21] NTIA BEAD Progress Dashboard, https://www.ntia.gov/funding-programs/internet-all/broadband-equity-access-and-deployment-bead-program/progress-dashboard.

[22] NTIA BEAD FAQ v.20 (April 2026), #3.29, https://broadbandusa.ntia.gov/sites/default/files/2026-04/BEAD_FAQs_v20.pdf.

- *There is little data showing that the ABA has been impactful*. A recent analysis by the Benton Institute found that the ABA appears to have had only a marginal impact on low-income broadband subscribership in its first year.[23]

These data points must be reflected in the 2026 Broadband Report.

The PSC Should Recommend that State Policy Focus on Facilitating BEAD Construction and Encouraging Continued Private Investment and Network Deployment. Myriad practical barriers continue to impede the swift and cost-effective deployment of broadband networks in New York. These generally revolve around the processes and costs implicated by ISP access to utility poles; the need to acquire permits from localities and other entities; and the many issues around accessing public and private rights-of-way. The state has addressed some of these in the recent past, but numerous opportunities remain to enhance efficiencies and reduce the costs associated with utility pole access and permitting.

In its BEAD Final Proposal, ConnectALL indicated that its work to address these kinds of barriers remains "in progress."[24] The PSC should call on the legislature to examine how it might respond to these issues and provide workable solutions in the near-term. In addition, the PSC should encourage ConnectALL to adopt NTIA's BEAD Terms and Conditions without amendment. The updated General Terms and Conditions would require New York to adopt practices and procedures that would streamline and harmonize processes for poles, ROW, and permitting.[25] The upshot of adopting and implementing these conditions is twofold. First, they will help to lower administrative costs and hasten deployment of BEAD-funded projects. Second, they will provide state officials with a template for longer term reforms that are needed to modernize pole, permitting, and ROW policies in the state.

State Action is Needed to Address Critical Demand-Side Issues. As detailed above, and as echoed by the PSC in previous Broadband Reports, stubborn challenges remain on the demand-side in New York.

Focusing policy responses solely on the cost of a broadband subscription under the amorphous mantle of "affordability" has not helped to increase broadband adoptions rates in a sustainable way. Indeed, as noted above, broadband adoption rates have barely budged over the last few years, including during the time when the federal EBB and ACP programs were in effect. Those programs, when combined with existing low-cost programs

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[23] *Is New York's Affordable Broadband Act Working?,* April 1, 2026, Benton Institute, https://www.benton.org/blog/new-york-affordable-broadband-act-working.

[24] New York, BEAD Final Proposal (draft as of Sept. 2025), https://broadband.ny.gov/system/files/documents/2025/09/connectall-final-proposal-draft-for-public-comment.pdf.

[25] General Terms and Conditions for the NTIA BEAD Program Funds (updated Nov. 2025), https://broadbandusa.ntia.gov/sites/default/files/2026-01/BEAD_GTCs_11_18_2025.pdf.

maintained by ISPs, promised to provide high-speed internet access for free to qualifying low-income households. Adoption rates, however, did not increase, highlighting a core aspect of broadband adoption that policymakers tend to ignore: if non-adopters do not see broadband as relevant, they will view it as unaffordable at any price, even when it's free.

The state has developed a comprehensive digital equity plan[26] and, in the absence of federal funding to operationalize it, has invested some resources – $6M+ – to deploy digital literacy outreach and training programs.[27] The state is to be commended for taking these steps, but significantly more resources are needed to bring more people online. The most impactful efforts are those that operate at the hyperlocal level, with individuals providing tailored training services to digital holdouts in trusted environments. The PSC should call on the legislature to provide additional resources for demand-side activities.

[26] New York State Digital Equity Plan (June 2024), https://broadband.ny.gov/system/files/documents/2024/06/final_new-york-state-digital-equity-plan-accessible.pdf.
[27] ConnectALL, Digital Capacity Grant Program, https://broadband.ny.gov/digital-equity-program-capacity-grant.