



April 8, 2026

Senator Beth Mizell
Chair, Committee on Commerce, Consumer Protection & International Affairs
Louisiana State Senate
P.O. Box 94183
Baton Rouge, LA 70804

Re: SB 209 – Provides relative to the Local Government Fair Competition Act

Dear Chair Mizell,

The Advanced Communications Law & Policy Institute (ACLPLP) at New York Law School respectfully submits the following statement for consideration by the Senate Committee on Commerce, Consumer Protection and International Affairs ahead of its hearing on April 8, 2026, during which it will consider Senate Bill 209 (SB 209).

In summary, this letter provides important context for the Committee as it considers SB 209. Since its enactment, the state's Local Government Fair Competition Act (Act) has succeeded in preserving a level playing field among public and private internet service providers (ISPs). The proposed changes to the Act included in SB 209, especially the proposed removal of the prohibition on cross-subsidization by municipal broadband providers, would eliminate key safeguards that have helped maintain fair competition among ISPs of all ilk. Removing those safeguards would negatively impact broadband competition in the state and would come at a time when innovation in the delivery of high-speed internet access is thriving. Consumers across the state have multiple choices for internet access – fiber, cable, fixed wireless, mobile, and satellite – reflecting sustained investment by private ISPs, who are competing fiercely for customers. Upload and download speeds are increasing in direct response to consumer demand for more robust connectivity, and, perhaps most importantly and impressively, prices have barely grown in real terms in a decade. Adopting the changes to the Act proposed in SB 209 would unnecessarily jeopardize these gains and imperil continued investment and innovation by private ISPs in the state.

About the ACLPLP. The ACLPLP is a nationally recognized program with expertise on all legal, regulatory, and public policy matters related to broadband connectivity. Among the issues we regularly track and analyze are those related to the deployment of municipal broadband networks (aka government-owned broadband networks or GONs). The ACLPLP's work on this issue is significant. Indeed, we are regularly sought out by policymakers at every level of

government from across the country – from local officials in Colorado, to state officials in Massachusetts, to Senators in Congress and appointed officials at the Federal Communications Commission, among many others – to offer our expertise and data-driven observations about the good, bad, and ugly of municipal broadband projects.

The Risky Nature of Municipal Broadband. Municipal broadband projects are fraught with risk because they almost always result in networks being built in markets already served by one or more private ISPs. This is what makes municipal broadband both extraordinary and perilous: there are few other instances where a local government chooses to compete head-on with private entities to provide a good or service that is already widely available.

Local governments are poorly equipped to compete with the private sector in the delivery of a complex service like broadband. Building networks requires significant capital, which is usually funded with debt, and acquiring enough customers to financially self-sustain – *i.e.*, to pay debt service, operate the network, maintain it, upgrade it, etc. – is difficult in markets where established ISPs have a long history of providing quality service to customers. As a result, many municipal broadband projects struggle or fail. Indeed, the history of municipal broadband in the United States has been consistently punctuated by costly failures and profound struggles, the latter of which has, at times, resulted in illegal activity by local officials to artificially prop up a municipal network. We have chronicled many of the risks associated with municipal broadband and documented dozens of struggling and failed projects on our website: www.broadbandexpanded.com.

In response to the real risks and potential for spectacular financial failure associated with municipal broadband projects, several forward-looking and fiscally responsible states, including Louisiana, adopted laws to ensure that these projects do not negatively impact consumers, endanger taxpayer resources, or undermine organic market forces.

Louisiana’s Fair Competition Act: Protecting Against the Harms of Cross-Subsidization.

In previous work, the ACLP has spotlighted state laws like the Local Government Fair Competition Act in Louisiana as critical to providing local officials with guidance in their decision-making vis-à-vis municipal broadband projects and to ensuring that GONs compete on a level playing field with private ISPs.

Maintaining a level playing field is essential given the many built-in advantages that municipalities have relative to their private sector counterparts. In addition to having a monopoly over public rights-of-way, access to which is an essential input to broadband network construction, municipalities have the ability and incentive in the absence of guardrails to tap into limitless reserves of funds available to them to prop up their GONs. This is what’s referred to as cross-subsidization, and it is generally prohibited in the context of municipal broadband, particularly when a municipal utility builds and operates a public network. Cross-subsidization in the context of broadband networks deployed by municipal

utilities is especially pertinent in Louisiana, where state's only GON is owned and operated by Lafayette Utilities System (LUS).

Why is this issue so important?

In general, using proceeds from a utility's electric business to subsidize an affiliate business (e.g., a broadband division) has long been prohibited at the federal and state levels. Cross-subsidization leads to higher electric rates, which harm electric customers, who are captive to their utility (i.e., they only have one choice for electric service). Cross-subsidization can also undermine market dynamics if it results in predatory pricing of a broadband offering by the utility. Such below-cost pricing that is subsidized by electric ratepayers is anti-competitive and could drive competitors from a market, leaving customers with fewer choices, worse service, and, eventually, higher prices for broadband.

Why would a utility engage in cross-subsidization? Unlike the provision of electric service, which is considered and treated as a natural monopoly, broadband ISPs must compete for customers. This means that broadband prices are set by the market, not by regulators or the utility. To remain competitive, utilities that offer broadband service must set their prices consistent with what the market dictates. Consequently, unlike their electric business, financial success with broadband is not guaranteed due to competitive pressure from rivals. If a utility fails to generate enough revenue to sustain its broadband business, it could attempt to offset losses by shifting fiber-related costs to the electric department.

How could this happen? The underlying fiber that delivers broadband is typically owned by a utility's electric division, which leases it to the broadband division (the electric division typically uses the fiber for smart grid purposes even though smart grid applications do not require anywhere near the amount of bandwidth provided by a fiber network). Those lease payments are theoretically based on the broadband division's proportionate use of the fiber. However, it does not appear that many, if any, utilities measure the amount of traffic that each division sends over the fiber network; instead, it appears that lease payments are based on estimates of proportionate use that may be adjusted over time. Accordingly, how much a broadband division pays to an electric division for using a fiber network could be based on overly conservative assumptions that justify a lower price than it might otherwise pay. In practice, this could result in higher or lower payments between broadband and electric divisions, which would directly impact both broadband and electric rates.

This is exactly what happened with LUS a few years ago, when an independent audit found that its electric utility unlawfully subsidized its fiber division. The ACLP has written about this dynamic (see <https://broadbandexpanded.com/posts/lusfiberstruggles>) and has profiled LUS Fiber (now LFT Fiber) numerous times in prior work (much of which is available at <https://broadbandexpanded.com/policy/broadbandpolicy>).

The incentive to engage in cross-subsidization appears to be especially compelling for municipal utilities, the leadership of which is usually comprised of and/or accountable to local officials, who, in turn, are accountable to voters. At the same time, these utilities are generally not regulated by state PUCs, leaving them to be “regulated” by their boards of directors and the cities or counties where they operate. Insulating a struggling broadband business by engaging in cross-subsidization could thus be a politically motivated decision rather than one focused on preserving and enhancing consumer welfare.

Reviewing SB 209 in Context. Removing the prohibition on cross-subsidization, along with related audit requirements that would help identify cross-subsidization, as proposed in SB 209, would likely have multiple impacts.

It would permit municipalities to dip into taxpayer funds or captive electric ratepayers on an unlimited basis. This could lead to an increase in electric rates. At the same time, a GON could set broadband prices at a predatory level (*i.e.*, below cost), which would undermine market forces and likely drive private ISPs from the market. In addition, removing the requirement that local governments must make the financial records of their municipal broadband networks available to auditors would make it impossible for the public to gauge the true viability of a municipal broadband project. If a municipality is choosing to heavily cross-subsidize a GON with electric funds or taxpayer resources but is under no obligation to disclose those payments, then it will be impossible to hold those in charge to account for the choices they have made and the impacts those decisions might have had (*e.g.*, higher electric rates, negative impacts on broadband competition, etc.).

In the absence of compelling evidence in support of the proposed changes to the Act, it appears that a primary reason for rolling back the prohibition on cross-subsidization might be to legalize the behavior of LUS, which, as previously noted, was found to have unlawfully subsidized its municipal broadband offering. Does the long-term financial viability of LFT Fiber hinge on the proposed changes in SB 209? If that is the case, then it should be stated plainly.

At the same time, the Committee – and the Legislature in general – should take a step back and determine whether the potential benefits of allowing a municipal broadband system to sustain itself via cross-subsidization are worth the very real costs to consumer welfare. As noted above, consumer welfare could be harmed irreparably if the proposed changes to the Act go into effect. This could happen if private ISPs pull back their investments or stop deploying innovative offerings because they would be forced to compete on an unlevel playing field.

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Thank you for the opportunity to offer this statement. Should you have any questions, please do not hesitate to contact us.

