

To: BETI State Broadband Offices

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Re: State Activity and Proposals to the ACP Lapse

The below memo details four emerging strategies from states in response to the end of the Affordable Connectivity Program.

Funding for the Affordable Connectivity Program (ACP) expired in May 2024, ending the \$30 per month discount for eligible households (or \$75 for high-cost locations and Tribal lands). State broadband offices and state legislatures have begun crafting plans to address the gaps left in ACP's wake. Importantly, these proposals often do not represent perfect substitutes to ACP or would require additional action to be enacted.

While federal funding from the Broadband Equity, Access, and Deployment (BEAD) program and the Digital Equity Act's State Capacity Grant Program include affordability subsidies on the list of eligible uses, the extent that these programs could be used to recreate ACP is extremely limited. Not only do these funds represent one-time allocations but the portion of these funds able to be used for such an affordability program is explicitly capped, if available at all.

- Under the [BEAD program](#), only funds that are leftover for non-deployment – those available following the state's demonstration that it can reach all unserved and underserved locations within its jurisdiction with deployment projects – are eligible for these purposes. Currently, fewer than [half of all states](#) project having any funding available for non-deployment uses.
- Under the State Capacity Grant Program, any usage of funds to subsidize broadband service [may not exceed 10 percent](#) of the state's total award.

Four alternative strategies have begun to emerge from states seeking to address the affordability challenge posed by the loss of ACP: Recreating ACP at the state-level, contractually requiring a standardized low-cost option, mandating a universal low-cost option, and reforming the state's Lifeline program.

Introducing legislation to establish ACP at a state level

Several states have introduced but not yet passed legislation that would recreate a state-level version of ACP. As written, these proposals would not be exact replicas of ACP, with changes such as different subsidy amounts or eligibility criteria.

- Pennsylvania's legislature has introduced [H.B. 2195](#), which would provide eligible households \$30 each month for internet. If passed, this bill would determine eligibility using the same metrics as the federal ACP program but requires the eligible household to have a child between

five and 18 years of age as well. Funds for the program would come from a non-lapsing fund in the State Treasury.

- As introduced in North Carolina, [S.B. 558](#) would require the state's Department of Commerce to establish a broadband subsidy program of \$15 per month. The proposed legislation mirrored some eligibility requirements of ACP but with a lower income threshold of at least 100% of the federal poverty level but no more than 135%. If passed, the program would be funded by a \$250 million, nonrecurring appropriation from the state's general fund.
- In New York, [S.B. 9103](#) was introduced, which would establish a grant program to provide a \$30 internet subsidy to households receiving federal, state, or local housing assistance.

Contractually requiring a low-cost option

Similar to the requirement under BEAD for providers to offer a low-cost service option, states can require service providers that contract with the state, regardless of the receipt of a deployment subsidy, to have an affordably priced service offering, available to a defined segment of households. In Connecticut's [S.B. 3](#), which passed the Senate and failed in the House, would have required state agencies to procure only from providers who offer services that cost \$40 or less and meet minimum speed requirements to eligible households or ones that previously participated in ACP.

As introduced, California's [S.B. 1179](#), would similarly require state agencies to only enter procurement contracts with providers offering a \$30 plan to households participating in specified public assistance programs: the California Alternate Rates for Energy program, the National School Lunch Program, the State Supplementary Payment Program, the Temporary Assistance for Needy Families program, CalFresh, Covered California, Medi-Cal, and Supplemental Security Income, and persons receiving financial aid for postsecondary education.

Mandating a universal low-cost option

Originally enacted in 2021, New York's [Affordable Broadband Act](#) requires all ISPs operating in the state to provide a low-cost option at \$15 per month plan at 25 Mbps download, or a \$20 per month plan at 200 Mbps for low-income subscribers. Notably, this would apply to all providers operating in the state, not just those contracting with the state or receiving a BEAD award. However, the bill was challenged by the New York State Telecommunication Association and was blocked from going into effect, pending a legal review. In April 2024, the U.S. Court of Appeals for the Second Circuit [ruled in support](#) of the law, which would allow state to begin enforcement later this year. In June 2024, the telecommunication association [announced](#) it would not be filing a petition on the latest decision and had reached a settlement with the state.

However, this decision was announced one day after the FCC's [latest order](#) on Net Neutrality, and some [have argued](#) that that order's reclassification of broadband as a Title II service would preempt the state rule and/or require additional legal scrutiny. Following the decision, Blair Levin, a policy analyst at the firm New Street Research, wrote to investors suggesting that the validity of the Second Circuit's ruling

could hinge on the active legal challenge over the FCC's Net Neutrality order itself, but posited that "if the demise of ACP creates significant pushback from affected customers, we think when legislatures reconvene after the election, more states are likely to look to New York as a model for how to proceed, regardless of the state of that litigation" as [reported by Politico](#).

Reforming state Lifeline/USF programs

A total of [19 states](#) operate their own Lifeline programs, supplementing the \$9.25 [federal subsidy](#) (up to \$34.25 for eligible residents of Tribal Lands). The federal Lifeline program is supported the [Universal Service Fund](#) (USF) and is funded by money collected by a limited pool of telecommunications companies. Importantly, the federal Lifeline program operates with different eligibility requirements than ACP, most notably a lower income threshold of 135% the federal poverty level compared to the 200% level for ACP. Lifeline also does not extend eligibility to households receiving assistance from the same list of federal programs as ACP, notably not including recipients of Pell Grants, the Free and Reduced Lunch Program or School Breakfast Programs including at Community Eligibility Provision schools, and the Special Supplemental Nutritional Program for Women, Infants, and Children Program (WIC).

California, one of the 19 states operating a parallel state-level Lifeline program, is considering changes with the introduction of [A.B. 1588](#). As currently written, this bill would require the state's Public Utilities Commission to provide Lifeline subsidies for standalone and bundled broadband internet services and set rates and charges to fund a defined minimum level of service. The bill would also authorize the commission to consider additional eligibility requirements for households to receive Lifeline subsidies, including similar requirements as ACP such as households receiving free or reduced meals under the National School Lunch Program.

Importantly, the FCC's latest order on net neutrality also has an effect on potential state-level USF reforms. The order "maintains the status quo," [preempting states'](#) ability to impose new state-level contributions on broadband service providers to support state universal service funds. States looking to reform their Lifeline programs will need to monitor the federal policy landscape, including the ongoing federal debate in Congress and the FCC to modernize the USF.