

What New York's Affordable Broadband Act Means

An explainer and some commentary on the New York State law [requiring a low-cost Internet access plan for qualifying households](#). The bill was passed and signed by the Governor in 2021.

Act Language	Explanation and commentary
<p>§ 399-zzzzzz. Broadband service for low-income consumers. 1. For the purposes of this section, the term "broadband service" shall mean a mass-market retail service that provides the capability to transmit data to and receive data from all or substantially all internet endpoints, including any capabilities that are incidental to and enable the operation of the communications service provided by a wireline, fixed wireless or satellite service provider, but shall not include dial-up service.</p>	<p>Defines broadband service in this section. This definition includes all connections of any speed, over both wireless and wireline, excluding only dial-up.</p>
<p>2. Every person, business, corporation, or their agents providing or seeking to provide wireline, fixed wireless or satellite broadband service in New York state shall, no later than sixty days after the effective date of this section, offer high speed broadband service to low-income consumers whose household: (a) is eligible for free or reduced-priced lunch through the National School Lunch Program; or (b) is eligible for, or receiving the supplemental nutrition assistance program benefits; or (c) is eligible for, or receiving Medicaid benefits; or (d) is eligible for, or enrolled in senior citizen rent increase exemption; or (e) is eligible for, or enrolled in disability rent increase exemption; or (f) is a recipient of an affordability benefit from a utility. Such low-income broadband service shall provide a minimum download speed equal to the greater of twenty-five megabits per second download speed or the download speed of the provider's existing low-income broadband service sold to customers in the state subject to exceptions adopted by the Public Service Commission where such download speed is not reasonably practicable.</p>	<p>All ISPs offering service are included (see below for exemptions), and have sixty days to comply. A household qualifies if it:</p> <ul style="list-style-type: none"> • is eligible for free or reduced school lunch • is eligible for SNAP • is eligible for Medicaid • is eligible for the senior citizen rent increase exemption • is eligible for the disability rent increase exemption • is a recipient of a utility affordability benefit <p>The minimum service offered to qualifying households will be either 25 Mbps or the download speed of the ISP's existing low-income service, whichever is greater.</p> <p>This bill was written before the FCC updated the national broadband definition to 100/20 Mbps - we would recommend that those seeking to iterate on this law would incorporate the federal definition or set it to the current 100/20 Mbps. Also, this law only discusses the download speeds; we would recommend including upload speed minimums in the definition as well.</p>
<p>3. Broadband service for low-income consumers, as set forth in this section, shall be provided at a cost of no more than fifteen dollars per month, inclusive of any recurring taxes and fees such as recurring rental fees for service provider equipment required to obtain broadband service and usage fees. Broadband service providers shall allow low-income broadband service subscribers to purchase standalone or bundled cable and/or phone services separately. Broadband service providers may, once every five years, and after thirty days' notice to its customers and the department of public service, increase the price of this service by the lesser of the most recent change in the consumer price index or a maximum of two percent per year of the price for such service.</p>	<p>The price for the low-income broadband service is \$15/month with no bundles, though additional services could be available on the side. No additional fees or taxes are allowed.</p> <p>Once every 5 years, ISPs can increase the price for this service with proper notice. The size of the allowed increase is limited.</p>
<p>4. A broadband service provider who offers a high speed broadband service to eligible low-income customers, as such term is used in subdivision two of this section, at a download speed of two hundred megabits per second or greater at a cost of no more than twenty dollars per month, inclusive of any recurring taxes and fees such as recurring rental fees for service provider equipment required to obtain broadband service and usage fees, shall be considered to be in compliance with the requirements of subdivisions two and three of this section. Such providers may, once every two years, and after thirty days' notice to its customers and the department of public service, increase the price of such service by the lesser of the most recent change in the consumer price index or a maximum of two percent per year of the price for such service.</p>	<p>Alternatively, an ISP can offer a 200Mbps download service for \$20/month with no additional fees or taxes or bundled services.</p> <p>In this case, ISPs can increase prices once every two years with proper notice. The size of the price increase is limited.</p>
<p>5. The requirements of subdivisions two and three of this section shall not apply to any broadband service provider providing service to no more than twenty thousand households, if the public service commission determines that compliance with such requirements would result in unreasonable or unsustainable financial impact on the broadband service provider.</p>	<p>The Public Service Commission can offer exemptions to ISPs with fewer than 20,000 residential subscribers.</p>
<p>6. Any contract or agreement for broadband service targeted to low-income consumers provided by an entity described in subdivision two of this section, pursuant to this section or otherwise, shall have the same terms and conditions, other than price and speed set pursuant to this section, as for the regularly priced offerings for similar service provided by such entity.</p>	<p>ISPs will treat customers using this service the same as their other residential customers.</p>
<p>7. Every person, business, corporation, or their agents providing or seeking to provide broadband service in New York State shall make all commercially reasonable efforts to promote and advertise the availability of broadband service for low-income consumers including, but not limited to, the prominent display of, and enrollment procedures for, such service on its website and in any written and commercial promotional materials developed to inform consumers who may be eligible for service pursuant to this section.</p>	<p>ISPs cannot hide this program from the public.</p>
<p>8. Every person, business, corporation, or their agents providing or seeking to provide broadband service in New York State shall annually submit to the department of public service, no later than November fifteenth after the effective date of this act, and annually thereafter, a compliance report setting forth: (a) a description of the service offered pursuant to this section; (b) the number of consumers enrolled in such service; (c) a description of the procedures being used to verify the eligibility of customers receiving such service; (d) a description and samples of the advertising or marketing efforts undertaken to advertise or promote such service; (e) a description of all retail rate products, including pricing, offered by such person, business, corporation, or their agents; (f) a description, including speed and price, of all broadband products offered in the state of new york; and (g) a description of the number of customers in arrears for the payment for broadband service, percentage of customers in arrears that qualify for low-income broadband service, the number of households that have had their service terminated as a result of non-payment, the number of customers whose service was terminated for arrears arising from non-payment for services other than broadband service, and the number of households that have their broadband service restored after being delinquent on their payments; and such other information as the department of public service may require.</p>	<p>ISPs must submit a compliance report once per year. It must include:</p> <ul style="list-style-type: none"> • a description of the service and number of households enrolled in it • how households are verified to be eligible • how the program is advertised • a description of all available rates for Internet access services • a description of how many customers are past due in their bill • the percentage of customers that are past due that qualify for this service • number of households that had service terminated for non-payment • number of households with non-broadband services that were terminated for non-payment • number of households with broadband service restored after having been delinquent on payments • other information as required by the department of public service.
<p>9. The Department of Public Service shall, within two years of the effective date of this section and at least every five years thereafter, undertake a proceeding to determine if the minimum broadband download speed in this section should be increased to the Federal Communications Commission's benchmark broadband download speed, or to another minimum broadband download speed if the Federal Communications Commission has not increased its benchmark by such date. The department of public service shall also: (a) undertake appropriate measures to inform the public about available broadband products, including retail rate product offerings and low-income offerings; and (b) periodically, but no less than once every five years, review eligibility requirements for the low-income service required pursuant to this section, and update such requirements as may be necessary to meet the needs of consumers.</p>	<p>The Department of Public Service will promptly and regularly re-evaluate what the minimum download speed should be.</p> <p>The department will also inform the public about available options and, at least once every 5 years, update the qualifications for eligibility of this program.</p>
<p>10. Whenever there shall be a violation of this section, an application may be made by the Attorney General in the name of the people of the state of New York to a court or justice having jurisdiction by a special proceeding to issue an injunction, and upon notice to the defendant of not less than five days, to enjoin and restrain the continuance of such violation; and if it shall appear to the satisfaction of the court or justice that the defendant has, in fact, violated this section, an injunction may be issued by the court or justice, enjoining and restraining any further violations, without requiring proof that any person has, in fact, been injured or damaged thereby. In any such proceeding, the court may make allowances to the Attorney General as provided in paragraph six of subdivision (a) of section eighty-three hundred three of the civil practice law and rules, and direct restitution. Whenever the court shall determine that a violation of this section has occurred, the court may impose a civil penalty of not more than one thousand dollars per violation. In connection with any such proposed application, the attorney general is authorized to take proof and make a determination of the relevant facts and to issue subpoenas in accordance with the civil practice law and rules.</p>	<p>ISPs violating these rules can be punished.</p> <p>The court can fine violators no more than \$1,000 per violation.</p> <p><i>We believe this means that not having the program would result in one violation per day, but we recommend other states be more clear here.</i></p>

Additional Commentary

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. ILSR may be able to help with this analysis if needed.