



April 3, 2024

The Honorable Andrea Stewart-Cousins President Pro Tempore and Senate Majority Leader 330 CAP Albany, NY 12247

The Honorable Carl Heastie Speaker of the New York State Assembly LOB 932 Albany, NY 12248

RE: Support for Amending the FY24-25 Budget to Limit Municipal Assistance Program Funding to Unserved and Underserved Locations

Dear Majority Leader Stewart-Cousins and Speaker Heastie,

Please accept this letter in support of the proposed budget amendment to Section 8 of Part MMM of Chapter 58 of 2022, which, if enacted, would limit the allocation of funds from the Municipal Assistance Program (MAP), administered by the New York State ConnectALL Office (CAO), to unserved and underserved locations. The ACLP at New York Law School, which has extensively studied and tracked broadband connectivity issues in the state for two decades, is confident that, by making this small but necessary adjustment, New York would greatly enhance its ability to close its digital divide once and for all.

On January 30, 2024, the ACLP <u>testified</u> during a Joint Legislative Budget Hearing on Economic Development. After praising the state for its longstanding leadership on broadband policy issues, our testimony warned that failure to limit MAP funding to unserved and underserved locations would likely leave thousands of New Yorkers without broadband access. This is an unacceptable outcome, especially when the state has more than \$1 billion on hand for supporting broadband expansion to every corner of the state.

How could this happen? The number of unserved and underserved locations in the state, as well as the associated costs of bringing broadband service to them, is imprecise and continues to shift. Accordingly, the State should precisely target available funds to ensure that broadband is deployed to these locations.

In September 2023, the CAO <u>projected</u> that \$665 million from the federal Broadband Equity, Access and Deployment program (BEAD), an additional \$50 million from the State, and a 25% match from subgrantees will likely be insufficient to bring broadband service to each

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of the 114,377 addresses in the state that are unable to access broadband at speeds of at least 25/3 Mbps (aka unserved) and the 35,012 addresses that are unable to access a broadband connection of at least 100/20 Mbps (aka underserved). Six months later, the CAO <u>claimed</u> there were approximately 95,000 unserved and underserved addresses with the "final number of locations subject to change." In addition, the CAO estimated that it would cost upwards of \$1 billion to serve these remaining unserved and underserved locations. Yet, ESD Commissioner Hope Knight, in testimony during the January 30 budget hearing, stated that the \$228 million in MAP funding will support broadband expansion in areas where broadband is already available. It is <u>well documented</u> that using scarce grant funding to support deployment of duplicative broadband networks is wasteful, especially when there are other, more pressing needs in the state.

For these reasons, the ACLP is heartened by the swift legislative response to these issues, which would clarify that available MAP resources must be used in unserved and underserved locations only. Failure to adopt the proposed amendment will likely lead to outcomes where residents in remote parts of the state remain without adequate broadband service while residents in other parts of the state see the deployment of an additional broadband network backed by an MAP grant. The proposed amendment squarely and succinctly addresses this issue and should be adopted.

The amendment would also ensure that the state does not encourage widespread pursuit of municipal broadband deployment. The <u>history of municipal broadband</u> in the U.S. is littered with failed and failing networks. These projects tend to struggle because they are almost always built in served markets where they must compete with incumbent ISPs. To the extent a municipality wishes to build and operate a retail broadband network in competition with private ISPs, it should be prepared to bear all associated financial and operational risks. By subsidizing the construction of municipal broadband in served markets, the CAO, and, by extension, the legislature, would sanction overbuilding and effectively make the state a guarantor of those projects. Unless the state is willing to bail out struggling municipal broadband networks in perpetuity, it must limit MAP allocations to unserved and underserved locations.

It is our understanding that the proposed amendment has received bipartisan support from a diverse array of state and local officials and other stakeholders. This speaks to the urgent need to clarify that all available broadband infrastructure funding must focus only on bringing service to unserved and underserved locations. For these reasons, the ACLP supports adoption of the proposed amendment.

Kind regards,

<u>/s/</u> Michael J. Santorelli, Director