Perspectives from FSF Scholars
February 21, 2025
Vol. 20, No. 11

States Should Keep Broadband Internet Services Free From Price Controls

by

Seth L. Cooper *

The Federalist Society Blog
February 20, 2025

On January 15, New York began requiring broadband providers to offer services to customers at below-market prices. Although intended to lower prices for some consumers, there's evidence the state's price control law is undermining competition. Responding to the law's implementation, AT&T announced it would discontinue its fixed wireless broadband service in New York. Satellite provider Starlink petitioned for an exception to the law, implying it will limit services in the state.

The actions by AT&T and Starlink are reminders that imposing price controls in competitive markets creates more problems than it solves. New York's price control law discourages market entry by new providers using innovative technologies. States should reject New York's approach and keep broadband free from price controls.

Promoting competition and targeting subsidies to qualifying low-income residents are better ways for states to ensure all residents have affordable high-speed internet access.

New York's Affordable Broadband Act of 2021 requires broadband providers serving more than 20,000 households in the state to offer internet access plans for $15 or $20 per month, depending on the speeds provided, to certain households with below-average incomes. By some estimates, the law's price controls apply to over one-third of New York households. After being tied up for a few years in litigation, the state prevailed, and the law recently became effective.

New York's price controls force broadband providers to offer services to many households at below-market prices, likely at steep losses. Reported general price offerings for AT&T Internet Air fixed wireless service and Starlink's satellite service are $60 per month and $120 per month, respectively. Not surprisingly, rather than lose money by submitting to government-mandated price cuts, AT&T announced on January 15 that it would discontinue its fixed wireless service in New York. On January 14, Starlink asked for a waiver from the law, implying that it will limit satellite services to less than 20,000 customers in the state if it does not receive a waiver.

In light of economic realities, the responses by AT&T and Starlink to New York's price controls are predictable. When government mandates that goods or services be sold at below-market levels, the supply of those goods or services likely will be reduced and aspiring competitors likely will exit the market.

New York's law undermines market entry by the two most promising innovative technology solutions for increasing competition in the broadband market: fixed wireless and satellite. Over the last two years, the popularity of fixed wireless and satellite has increased significantly. According to data cited in the FCC's *2024 Communications Marketplace Competition Report*, 90% of new broadband subscribers in 2022 chose fixed wireless residential services. Between 2022 and 2023, fixed wireless subscriptions increased 51%, from 4.5 million to 6.8 million. At the end of 2024, AT&T, T-Mobile, and Verizon reportedly had more than 10 million total fixed wireless subscriptions. Meanwhile, Starlink reported that its satellite subscriptions in the U.S. grew to 1.4 million by August 2024, and the number is likely higher now. Notably, fixed wireless and satellite technologies can cost-effectively reach consumers in geographic pockets where broadband access has been entirely lacking or substandard.

Importantly, strong market competition puts downward pressure on consumer prices without undermining private investment and innovation. Competitors that raise prices above demand levels risk losing customers to market rivals. Indeed, the competitive broadband market has outperformed other sectors of the economy in recent years when it comes to consumer prices. According to data in the FCC's 2024 report, in 2022 and 2023, Wireless Telephone Services Consumer Price Index (CPI) prices decreased by 0.5% in 2022 and 0.3% in 2023, while the Telephone overall CPI increased by about 8% and 4.1% in those years. And reports published by USTelecom indicate that inflation-adjusted prices for fixed wireline broadband providers' most popular speed tier decreased 18.1% between March 2022 and March 2023, and decreased 9.4% between March 2023 and March 2024.

But broadband providers cannot reasonably be expected to offer or expand services without the ability to make a sufficient return on investment. Connecting consumers to the internet via sophisticated high-speed communications networks depends on massive up-front and ongoing private capital expenditures. Since 1996, internet service providers have invested over $2.2 trillion in their networks. In 2023 alone, capital expenditures by fixed line and mobile providers totaled $94.7 billion and $30 billion, respectively. Moreover, service profitability is necessary for broadband providers to finance next-generation 5G, fiber, and satellite network upgrades and improve service capabilities. Broadband providers' ability to meet these financial challenges and innovate depends on market freedom to make pricing decisions.

The federal Lifeline program is an existing program intended to help make broadband more affordable for low-income households without price controls. Under the Lifeline program, households with incomes up to 135% of the poverty line can receive $9.25 per month toward their broadband bills. States can establish direct subsidy programs to supplement Lifeline. Also, some broadband providers offer affordability programs. For example, Xfinity's Internet Essentials offers low-income consumers within its territory speeds of up to 75 Mbps for $14.95 per month and up to 100 Mbps for $29.95 per month.

New York's price control policy for broadband services is misguided. Mandating below-market rates might be sold as providing short-term benefits to certain lower-income consumers. But those benefits are outweighed by the harmful consequences of deterring needed investment and reducing competition. Other states should instead promote an environment favorable to competition, investment, and innovation, with targeted subsidies as an option for connecting Americans in need.

Meanwhile, broadband providers have an ongoing legal challenge to New York's price controls. The Second Circuit's April 24 decision in *New York State Telecommunications Association, Inc. v. James* rejected conflict and field preemption claims raised against the broadband rate regulation law. A December 2024 order by the Supreme Court denied a writ of certiorari. However, a petition for rehearing is scheduled for the Court's February 21 conference. The petitioning broadband providers cite the January 2, 2025, decision by the Sixth Circuit in *In re: MCP No. 185* (vacating the FCC's April 2024 order that reclassified broadband services as Title II "telecommunications services" and thereby leaving in place the agency's prior order that classified broadband as a Title I "information service") as presenting intervening circumstances substantial enough to warrant the granting of a rehearing and certiorari.

* Seth L. Cooper is Director of Policy Studies and a Senior Fellow of the Free State Foundation, a free market-oriented think tank in Rockville, MD. The views expressed in this *Perspectives* do not necessarily reflect the views of others on the staff of the Free State Foundation or those affiliated with it. *States Should Keep Broadband Internet Services Free From Price Controls* was published in *The Federalist Society Blog* on February 20, 2025.