

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

At a session of the Public Service
Commission held in the City of
New York on January 9, 2025

COMMISSIONER PRESENT:

Rory M. Christian, Chair

CASE 24-M-0255 - In the Matter of the Affordable Broadband Act.

CASE 21-M-0290 - In the Matter of Company Exemptions from the
Requirement to Offer a Low-Income Broadband
Product.

ORDER REOPENING PROCEEDING AND REINSTATING TEMPORARY EXEMPTIONS
SUBJECT TO CONDITIONS

(Issued and Effective January 9, 2025)

INTRODUCTION

On April 16, 2021, New York enacted the Affordable Broadband Act (ABA), which, among other things, requires Internet Service Providers (ISPs) operating in New York to offer internet service at certain download speeds to qualifying households at reduced prices.¹ The ABA states that 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

¹ General Business Law (GBL) §399-zzzzz(3) and (4), enacted as part of L.2021, c.56, pt. NN, §1. Generally, the law requires ISPs serving greater than 20,000 subscribing households to offer 25 Megabytes per second (Mbps) broadband service for \$15 per month, inclusive of any recurring taxes and fees, to eligible low-income households. The law also states that any ISP offering service at 200 Mbps for \$20 per month, inclusive of any recurring taxes and fees, is also considered in compliance with the ABA.

effective date (i.e., June 16, 2021), offer high speed broadband service to low-income consumers whose households qualify.² ISPs may receive an exemption from the ABA's requirements if those ISPs provide service to no more than 20,000 households and the Commission determines that compliance with such requirements would result in "unreasonable or unsustainable financial impact on the broadband service provider."³

Subsequent to the enactment of the ABA, certain ISPs (listed hereto in Attachment A) petitioned the Commission for exemptions pursuant to GBL §399-zzzzz(5). A One-Commissioner Order issued May 20, 2021, granted those requests for exemptions on a temporary basis subject to certain conditions.⁴ The One-Commissioner Order directed the Secretary to issue a notice inviting public comment on the criteria and factors that may be considered by the Commission in evaluating what constitutes "unreasonable or unsustainable financial impact on the broadband service provider,"⁵ and directed Department of Public Service (Department) staff to conduct further analysis on the exemption petitions and report its findings to the Commission.

On April 30 and May 6, 2021, a group of trade associations whose members provide broadband internet service to New Yorkers (collectively the Plaintiffs) filed a complaint, followed by a motion for a preliminary injunction, in the United States District Court for the Eastern District of New York

² Id., §399-zzzzz(2).

³ Id., §399-zzzzz(5).

⁴ See Case 21-M-0290, In the Matter of Company Exemptions from the Requirement to Offer a Low-Income Broadband Product, Order Granting Temporary Exemptions (issued May 20, 2021).

⁵ Id., p. 7. A Notice Soliciting Comments was issued on May 28, 2021. Case 21-M-0290, supra, Notice Soliciting Comments (issued May 28, 2021).

(district court), seeking to enjoin the New York State Attorney General (NYSAG) from enforcing the ABA.

On June 11, 2021, during the pendency of the administrative matter in Case 21-M-0290, the district court granted the Plaintiffs' motion for a preliminary injunction, enjoining enforcement of the ABA, ruling, among other things, that it was likely preempted under federal law.⁶ The parties subsequently jointly requested that the district court enter a stipulated final judgment and permanent injunction based on the court's reasoning without prejudice to file an appeal. The district court agreed.

In response to the district court decision, a second One-Commissioner Order, this one dated June 21, 2021, stayed and suspended the pending administrative proceeding before the Commission, including the directive regarding the Secretary's notice in Case 21-M-0290.⁷ The full Commission confirmed the second One-Commissioner Order on July 20, 2021.⁸

Court proceedings continued, and the NYSAG filed an appeal of the district court's decision with the United States Court of Appeals for the Second Circuit. On April 27, 2024, the Second Circuit reversed the district court's permanent injunction, ruling that Plaintiffs' preemption theories were

⁶ New York State Telecommunications Ass'n, et al. v. James, 2:21-cv-2389 (DRH) (E.D.N.Y. June 11, 2021), Docket Nos. 25, 26, Memorandum and Order, Preliminary Injunction Order, pp. 24-31.

⁷ Case 21-M-0290, supra, Order Staying and Suspending Administrative Proceeding (issued June 21, 2021).

⁸ Case 21-M-0290, supra, Confirming Order (issued July 20, 2021).

unavailing.⁹ An appeal of the Second Circuit's decision ensued.¹⁰

On December 16, 2024, the United States Supreme Court denied the Plaintiff's request for further review.¹¹ As part of the litigation, the NYSAG agreed not to enforce the ABA until 30 days after the date when the U.S. Supreme Court decided the writ of Certiorari. Thus, the ABA will once again take effect and may be enforced in New York on January 15, 2025.

As discussed in more detail below, in light of the Second Circuit's reversal of the district court's decision, the U.S. Supreme Court's denial of Certiorari, and the implementation clock, it is necessary and useful to provide timely guidance to ISPs regarding exemptions to the ABA in order to assist ISPs' understanding of whether or not the ABA may impact their operations and financial plans. And, in the wake of other developments at the federal level impacting the affordability of broadband service, it is also important to ensure that qualifying low-income New Yorkers can take advantage

⁹ New York State Telecommunications Ass'n, et al. v. James, 21-1975-cv, Doc. 232-1 (2nd Cir. April 26, 2024). The Second Circuit's decision was not to become effective until it issued a mandate.

¹⁰ Notably, just prior to the Second Circuit's decision, on April 25, 2024, the FCC, voted to reclassify broadband service as a Title II telecommunications service under federal law. A month later, the FCC published the revised regulation in the Federal Register, 89 Fed. Reg. 45404 (May 22, 2024) (to be codified at 47 C.F.R. pts. 8, 20) [hereinafter Safeguarding Order]. Litigation challenges to the FCC rule ensued, and on January 2, 2025, the United States Court of Appeals for the Sixth Circuit ruled that the FCC overstepped its powers when it reclassified broadband service under Title II. In re MCP No. 185, No. 24-3449, 2025 WL 16388 at *1-*3 (6th Cir. Jan. 2, 2025).

¹¹ Case 24-161, NY Telecommunications, et al. v. James, Att'y Gen of NY (U.S. Supreme Court).

of the opportunities and benefits of the ABA as expeditiously as possible. These extraordinary circumstances require a One-Commissioner Order.

Accordingly, pursuant to GBL §399-zzzzz, through this Order the Commission: (1) reopens proceeding 21-M-0290, which the Commission stayed in 2021 as a result of the federal trial court's injunction; (2) reinstates the temporary exemptions previously granted by the May 20, 2021 One-Commissioner Order to all ISPs that requested such relief, provided that these ISPs file verification with the Secretary no later than January 15, 2025, that they currently provide service to fewer than 20,000 households and provide the requisite financial information described below no later than February 15, 2025;¹² and (3) invites any ISPs currently providing service to fewer than 20,000 households and that have not previously applied for a temporary exemption to apply for one no later than Wednesday, January 15, 2025. A temporary exemption will be granted to all petitioners upon a showing that they are currently servicing fewer than 20,000 subscribing households, subject to conditions described below. Such temporary exemptions will expire on February 15, 2025, unless the petitioner has submitted the additional financial information described below.¹³

Any ISP operating in New York not subject to a temporary exemption as described herein must be in compliance with the requirements of GBL §399-zzzzz by Wednesday, January

¹² See "Previously Issued Temporary Exemptions," infra.

¹³ See "New Temporary Exemptions," infra.

15, 2025, or be subject to a potential penalty action in accordance with the ABA.¹⁴

BACKGROUND

On April 16, 2021, following passage by the Legislature, the Governor signed the ABA into law (enacted as GBL §399-zzzzz). GBL §399-zzzzz requires, among other things, for the provision of high-speed "broadband service" to certain low-income consumers.¹⁵ Broadband service for low-income consumers must be provided at a cost of "no more than fifteen dollars per month, inclusive of any recurring taxes and fees ...". GBL §399-zzzzz(3). The NYSAG has sole authority to enforce the ABA.¹⁶

Following enactment of the ABA, the Commission and Department staff took steps to ensure an orderly implementation within the sixty-day time period provided between enactment of the law and its effective date of June 15, 2021.¹⁷ On April 26,

¹⁴ Pursuant to GBL §399-zzzzz(10), "[w]henver 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 ... 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 ..."

¹⁵ The term "broadband service" is defined to 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." GBL §399-zzzzz(1).

¹⁶ GBL §399-zzzzz(10).

¹⁷ GBL §399-zzzzz(2).

2021, Department staff issued a guidance document to assist ISPs in filing for an exemption from the statutory requirements. The guidance included a list of minimum requirements for any exemption request. On May 14, 2021, Department staff provided updated guidance clarifying that, in lieu of the minimum requirements listed in the April 26 guidance, ISPs may file alternative information/support for their respective petitions to adequately demonstrate that they would face undue economic hardship due to the implementation of the ABA. The updated guidance noted that such a showing should demonstrate that the costs of implementing the program, in addition to the estimated lost revenue due to the law, would have a material negative impact on the ISP's financial condition. More than 40 ISPs subsequently filed exemption petitions either on or shortly after May 13, 2021, in Case 21-M-0290.

As an initial step in this process, a One-Commissioner Order, dated May 20, 2021, granted temporary exemptions to all petitioners based upon a threshold finding that each served fewer than 20,000 subscribing households. A list of those ISPs is included in Appendix A attached hereto. The Order directed Department staff to review the filings made by affiliate companies of the ISPs granted temporary exemptions for the purpose of determining compliance with the requirements of GBL §399-zzzzz and consider affiliate company information as part of its review of exemption requests pursuant to GBL §399-zzzzz(5). The Order directed Department staff to conduct a detailed review of each company's financial metrics and substantive justifications for a continued exemption request.¹⁸

The Order provided that an ISP that filed a petition for an exemption after issuance of the Order, but before the

¹⁸ Case 21-M-0290, supra, p. 6.

effective date of the legislation, would not be precluded from the benefit of the temporary exemption provided it met the threshold criteria of providing service to under 20,000 subscribing households. The Order specified that any ISP that filed for an exemption after the legislation took effect would similarly not be precluded from requesting such relief, but a petition for an exemption would not relieve that provider from meeting the requirements of the legislation until such time that the Commission acted on its request.¹⁹

Following issuance of the Order, the Secretary issued a notice seeking comments on the criteria and factors that may be considered by the Commission in evaluating the GBL §399-zzzzz(5) exemptions, including the standard of "unreasonable or unsustainable financial impact on the broadband service provider."²⁰ In addition, since internet speeds that can be delivered to customers using Digital Subscriber Line (DSL) technology depend upon a variety of factors, such as the length of the copper loops serving the customers, the Secretary's notice also sought comments on the applicability of the ABA to internet services that are not capable of reaching consistent speeds of 25 Mbps, excluding dial-up service.²¹

Prior to the statute taking effect, the Plaintiffs commenced an action in federal district court against the NYSAG, seeking injunctive relief and a declaratory judgment, arguing that the ABA conflicts with the implied preemptive effect of both the FCC's Open Internet Order and the Telecommunications Act of 1996, under the Supremacy Clause of the United States

¹⁹ Id.

²⁰ Case 21-M-0290, supra, Notice Soliciting Comments (issued May 28, 2021).

²¹ Id.

Constitution.²² The Plaintiffs moved for a preliminary injunction and, by a Decision and Order dated June 11, 2021, the district court granted Plaintiffs' motion and preliminarily enjoined the NYSAG's enforcement of the ABA based in part on a finding that it was likely that Plaintiffs would succeed on the merits of their claims.

Thereafter, upon request of the parties, the district court issued a stipulated final judgment permanently enjoining enforcement of the ABA based upon the reasoning of its June 11, 2021 decision. The stipulated final judgment preserved the right of the NYSAG to appeal, and NYSAG subsequently filed an appeal to the Second Circuit.

On April 26, 2024, the Second Circuit issued a decision reversing the final judgment of the district court. The Second Circuit concluded that neither of the Plaintiffs' preemption arguments were availing, finding first that "the ABA is not field-preempted by the Communications Act of 1934 (as amended by the Telecommunications Act of 1996), because the Act does not establish a framework of rate regulation that is sufficiently comprehensive to imply that Congress intended to exclude the states from entering the field," and "second, the ABA is not conflict-preempted by the Federal Communications Commission's [FCC's] 2018 order classifying broadband as an information service."²³ According to the Second Circuit, the FCC's 2018 order "stripped the [FCC] of its authority to regulate the rates charged for broadband internet, and a federal agency cannot exclude states from regulating in an area where the agency itself lacks regulatory authority."²⁴ Subsequently,

²² U.S. Const., art. VI, cl. 2.

²³ 21-1975-cv New York State Telecommunications Association, Inc. v. James, April 26, 2024, p. 2.

²⁴ Id.

the Plaintiffs and the NYSAG filed a stipulation agreeing to forgo enforcement of the ABA while the Plaintiffs sought certiorari from the U.S. Supreme Court. During the fall of 2024, the parties briefed various legal issues to the Court.

On December 16, 2024, the U.S. Supreme Court denied the Plaintiffs' petition for certiorari to review the Second Circuit's April 2024 ruling. The effect of the denial was affirmation of the Second Circuit's ruling and reinstatement of the ABA. As part of this most recent phase of the litigation, the NYSAG had agreed not to enforce the ABA until 30 days after the date when the U.S. Supreme Court finally decided the writ of Certiorari. That agreement expires on January 15, 2025, effectively creating a new effective date for the ABA.

Notably, in the time between the district court's June 2021 decision granting Plaintiffs' preliminary injunction motion and today, there were several major developments at the federal level relevant to the ABA.

First were changes involving the Affordable Connectivity Program. On December 31, 2021, the FCC launched the Affordable Connectivity Program (ACP) through the Bipartisan Infrastructure Law. The ACP was a federal program that offered eligible households a discount on monthly internet bills and one-time discounts off the purchase of a laptop, desktop computer, or tablet. The benefit provided a discount of up to \$30 per month toward internet service for eligible households, up to \$75 per month for households on qualifying Tribal lands, and a one-time discount of \$100 off a laptop, tablet, or other device. Congress appropriated \$14.2 billion for the program, but after over two years of offering discounts on internet service and connected devices to low-income households, funding expired and efforts to reauthorize the program in Congress have not been successful. Over 22 million households, including

approximately 1.7 million New York households, received the ACP monthly benefit. Due to the lack of funding, the FCC stopped accepting new ACP applications and enrollments on February 7, 2024, and, effective June 1, 2024, American households no longer received the ACP benefit. For this reason, consumer benefit programs assisting low-income households -- such as the ABA -- are even more critical to ensure that the digital divide for low-income New Yorkers is being addressed.

Second, on May 7, 2024, the FCC released its much-anticipated Declaratory Ruling and Order reclassifying broadband as a Title II telecommunications service under federal law, a move intended to boost federal authority over broadband.²⁵ Litigation ensued and, on January 2, 2025, the United States Court of Appeals for the Sixth Circuit ruled that the FCC overstepped its powers when it reclassified broadband service under Title II.²⁶ In its decision, the Sixth Circuit analyzed statutory text, structure, and historical background to conclude that Congress did not intend to 'shackle' ISPs to "onerous Title II regulation."²⁷ The upshot of the Sixth Circuit's decision is that broadband providers will be considered Title I providers again, further reinforcing the authority of the State of New York to enact and enforce the ABA.

²⁵ In its Order, the FCC expressly declined to categorically preempt all state or local regulation affecting broadband internet access services in the absence of any specific determination that such regulation interferes with its exercise of federal regulatory authority. Safeguarding Order, ¶252. The FCC also ruled that a state affordability program was not a rate regulation. *Id.*, ¶259. As noted, FCC published the order in the Federal Register in late May 2024. 89 Fed. Reg. 45404 (May 22, 2024).

²⁶ *In re MCP No. 185*, No. 24-3449, 2025 WL 16388 at *1-*4 (6th Cir. Jan. 2, 2025).

²⁷ *Id.* at *7.

LEGAL AUTHORITY

GBL §399-zzzzz(2) provides that “[e]very 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 ...” GBL §399-zzzzz(2).²⁸ GBL §399-zzzzz(3) sets the maximum amount an ISP may charge for such service.

GBL §399-zzzzz(5) authorizes the Commission to grant broadband service providers an exemption from GBL §399-zzzzz(2) and (3). Broadband service providers that provide service to no more than 20,000 subscribing households may receive an exemption if the Commission determines compliance “would result in [an] unreasonable or unsustainable financial impact of the broadband service provider.” GLB §399-zzzzz(5).

²⁸ 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.” GBL §399-zzzzz(2).

DISCUSSION

As noted, GBL §399-zzzzz provides the Commission with authority to grant broadband service providers an exemption from its requirements based upon statutory criteria. The Commission and Department staff had already begun implementation of GBL §399-zzzzz when the federal district court issued a permanent injunction, enjoining implementation of the statute. With the Second Circuit and Supreme Court actions, that injunction has now been lifted. Enforcement of the statute can begin again on January 15, 2025. Accordingly, it is appropriate to reopen the previously suspended 21-M-0290 proceeding.

Based on the foregoing, prompt action is now required to provide specific guidance on the status of previously granted temporary exemptions from the requirements of GBL §399-zzzzz. By its terms, GBL §399-zzzzz(2) was to be implemented by ISPs within sixty days after the effective date of the legislation, a date that has long passed. As such, the Commission must address the status of those ISPs that previously sought exemptions.

Previously Issued Temporary Exemptions

As described in the previous One-Commissioner Order, dated May 20, 2021, given the high-level of detail and volume of petitions filed, additional time is needed for a thorough analysis of each ISP's claim to a final exemption from the ABA's requirements, in accordance with GBL §399-zzzzz(5). For this reason, the May 20, 2021 Order granted temporary exemptions while the Commission considered the entirety of ISPs' petitions. Moreover, nearly four years have passed since the initial filing of petitions, and the financial conditions of various ISPs may have evolved since then, rendering it more or less likely that compliance with the ABA would "result in [an] unreasonable or unsustainable financial impact" on any individual ISP. In addition, it is possible that new ISPs may have formed since

2021; to ensure an orderly implementation of the ABA, additional time will be needed for ISPs to request an exemption or, in the alternative, work to implement the requirements of GBL §399-zzzzz(2) and (3) if the Commission ultimately denies their exemption requests.

Therefore, this Order lifts the stay of the temporary exemptions previously granted to ISPs in Case 21-M-0290 (listed in Appendix A attached hereto) and orders that those exemptions will be reinstated and continued. This will allow time for a thorough analysis of each ISP's claim to a final exemption against the ABA's statutory criteria. However, since the information previously filed with the Commission in Case 21-M-0290 is over three-and-a-half years old, this Order directs that each ISP granted a reinstated temporary exemption must file with the Secretary to the Commission an updated demonstration of the number of subscribing broadband households it serves as of December 31, 2024. This filing must include an attestation that the number reported in the exemption filing is consistent with the most recently filed data with the FCC or, in the alternative, include the most recently filed data provided to the FCC. This attestation must be filed with the Secretary to the Commission no later than January 15, 2025. Upon filing, if any ISP is over the threshold of subscribers set forth in GBL §399-zzzzz(5), the temporary exemption is deemed denied. Failure to provide such attestation shall be deemed a revocation of the temporary exemption granted herein, and that ISP shall be required to comply with the requirements of the ABA immediately.

Additionally, having determined that the information previously filed with the Commission in Case 21-M-0290 is outdated, this Order further directs that those ISPs granted temporary exemptions file with the Secretary to the Commission updated financial information as follows: (1) a copy of the

company's audited income statement, balance sheet and statement of cash flows for the company's most recent fiscal year; (2) pro forma income statement, balance sheet and statement of cash flows assuming no impact from the requirement to offer the ABA's low-income broadband service; (3) an estimate of the number of current subscribers eligible for the ABA's low-income service offering; (4) an estimate of the annual financial impact expected due to the requirement to offer the ABA's low-income broadband service, including an estimate of the net revenue loss due to low-income customers switching to the low-income broadband service (i.e., lost revenue less any associated decrease in cost of service to the company) and an estimate of the incremental cost (net of the revenues such customers would pay) to provide the Low-Income Broadband Service to eligible new customers; and 5) any other service offerings that will be available to low-income households during the upcoming year.

Alternatively, as stated by Department staff's guidance document filed in proceeding 21-M-0290, in lieu of the minimum requirements listed above, an ISP may file alternative information/support of its respective petition to adequately demonstrate that it will face undue economic hardship due to the implementation of the ABA. Such a showing should demonstrate that the costs of implementing the program, in addition to the lost revenue estimated due to the law, will have a material negative impact on the ISP's financial condition. This additional information must be filed with the Secretary to the Commission no later than February 15, 2025. Failure to file such information by no later than February 15, 2025, shall be considered a revocation of the temporary exemption granted herein, and that ISP shall be required to comply with the requirements of the ABA immediately.

Department staff is directed to conduct a detailed review of the ISPs' financial metrics and substantive justifications for each exemption request. The Commission will issue an Order on each ISP's request for a permanent exemption at a later date.

New Temporary Exemptions

As noted above, the Commission recognizes that new ISPs may have begun operation since April 2021. Similarly, companies on the cusp of the 20,000-household threshold may have lost subscribers and become potentially eligible for an exemption since April 2021. Those ISPs did not have an opportunity to apply for a temporary exemption as part of the process set up in Case 21-M-0290. In the interest of fairness, the Commission will extend an opportunity to apply for a temporary exemption to additional ISPs.

An ISP serving fewer than 20,000 subscribing households and that has not previously requested a temporary exemption may do so by filing with the Secretary to the Commission a demonstration of the number of subscribing broadband households it serves as of December 31, 2024. This filing must include an attestation that the number reported in the exemption filing is consistent with the data most recently filed with the FCC, or, in the alternative, include the most recently filed data provided to the FCC. This attestation must be filed with the Secretary to the Commission no later than January 15, 2025. Upon filing, if any ISP is over the threshold of subscribing households set forth in GBL §399-zzzzz(5), the temporary exemption is deemed denied. For all ISPs meeting the threshold, a temporary exemption is granted. Department staff is directed to confirm this threshold requirement and report

back to the Commission if any petitioners do not meet the statutory threshold.²⁹

ISPs applying for a new temporary exception pursuant to this Order are further directed to file with the Secretary to the Commission financial information as follows: (1) a copy of the company's audited income statement, balance sheet and statement of cash flows for the company's most recent fiscal year; (2) pro forma income statement, balance sheet and statement of cash flows assuming no impact from the requirement to offer the ABA's low-income broadband service; (3) an estimate of the number of current subscribers eligible for the ABA's low-income service offering; (4) an estimate of the annual financial impact expected due to the requirement to offer the ABA's low-income broadband service, including an estimate of the net revenue loss due to low-income customers switching to the low-income broadband service (i.e., lost revenue less any associated decrease in cost of service to the company) and an estimate of the incremental cost (net of the revenues such customers would pay) to provide the Low-Income Broadband Service to eligible new customers; and 5) any other service offerings that will be available to low-income households during the upcoming year.

Alternatively, as stated by Department staff's guidance document filed in 21-M-0290, in lieu of the minimum requirements listed above, an ISP may file alternative information/support of its respective petition to adequately demonstrate that it will face undue economic hardship due to the implementation of the ABA. Such a showing should demonstrate that the costs of implementing the program, in addition to the lost revenue estimated due to the law, will have a material

²⁹ In making these determinations, Department staff should give consideration to whether affiliated companies' subscribing households should be considered in the aggregate.

negative impact on the ISP's financial condition. This additional information must be filed with the Secretary to the Commission no later than February 15, 2025. Failure to file such information by that date shall be considered a revocation of the grant of the temporary exemption granted herein, and that ISP shall be required to comply with the requirements of the ABA immediately. Finally, any ISP that opts to request a temporary exemption on the basis of a threshold finding (i.e., fewer than 20,000 subscribers) after the issuance of this Order is not precluded from requesting such relief by separate petition. However, an ISP's petition for temporary exemption does not relieve that provider from meeting the requirements of the ABA until such time that the Commission acts on its request. Any such petition must include the necessary information discussed above with regard to subscriber count and financial data.

All other ISPs (i.e., those with more than 20,000 subscribers) must comply with the ABA by January 15, 2025. Failure to comply would be subject to a potential penalty action in accordance with GBL §399-zzzzz(10).³⁰

CONCLUSION

Upon consideration of the relevant facts and for the reasons discussed above, ISPs listed in Appendix A are granted a temporary exemption to allow for the orderly review and evaluation of the next steps of the exemption requests. That process will include timely provision of the necessary

³⁰ A trade association recently submitted a public comment letter advocating further deferral of the enforcement of the ABA. The proposal is rejected. During the litigation before the Supreme Court, the litigants agreed to defer enforcement of the act for 30 days following that Court's action. Additional delay is not warranted. Moreover, the Legislature envisioned implementation within 60 days of the statute's enactment.

information discussed in the body of this Order. New ISPs will have the opportunity to apply on the same terms and for the same reasons. Department staff will review the pertinent information and report its findings to the Commission.

It is ordered:

1. Case 21-M-0290 is reopened.
2. A temporary exemption is granted to the Internet Service Providers listed in Appendix A attached hereto.
3. Those Internet Service Providers described in Appendix A are required to file with the Secretary to the Commission a demonstration of the number of subscribing broadband households they service as of December 31, 2024, no later than January 15, 2025, consistent with the discussion in the body of this Order. In the event any of these Internet Service Providers service more than 20,000 households, they must comply with the requirements of General Business Law (GBL) §399-zzzzz.
4. Any Internet Service Providers granted a temporary exemption, in the attached Appendix A, is required to file the requisite financial information with the Secretary to the Commission no later than February 15, 2025, consistent with the discussion in the body of this Order.
5. Failure to file the required information in Ordering Clauses 3 or 4 will be deemed an automatic revocation of the grant of temporary exemption, and those Internet Service Providers will be required to immediately comply with the requirements of GBL §399-zzzzz.
6. Internet Service Providers not described in Appendix A and servicing fewer than 20,000 subscribing households may apply for a temporary exemption by filing a request for an exemption with the Secretary to the Commission,

along with a demonstration of the number of subscribing broadband households served as of December 31, 2024, no later than January 15, 2025, consistent with the discussion in the body of this Order. In the event any of these Internet Service Providers are determined to service more than 20,000 households, they must with the requirements of General Business Law (GBL) §399-zzzzz. Otherwise, they are granted temporary exemptions.

7. Internet Service Providers not described in Appendix A and granted a temporary exemption pursuant to Ordering Clause 6 must file the requisite financial information with the Secretary to the Commission no later than February 15, 2025, consistent with the discussion in the body of this Order.

8. Failure to file the required information in Ordering Clauses 6 or 7 will be deemed an automatic revocation of the grant of temporary exemption, and those Internet Service Providers will be required to immediately comply with the requirements of GBL §399-zzzzz.

9. All other Internet Service Providers (i.e., those with more than 20,000 subscribers) are required to be in compliance with GBL §399-zzzzz as of January 15, 2025. Failure to comply could subject that ISP to a potential penalty action in accordance with GBL §399-zzzzz(10).

10. In the Secretary's sole discretion, the deadlines set forth in this Order may be extended. Any request for an extension must be in writing, must include a justification for the extension, and must be filed at least two days prior to the affected deadline.

11. The proceedings are continued.

(SIGNED)

Commissioner

APPENDIX A

- Cassadaga Telephone Corporation
- DFT Communications Corporation
- DFT Local Service Corporation d/b/a DFT Select One
- Dunkirk and Fredonia Telephone Company
- Haefele TV, Inc.
- John R. Guzzo, LLC d/b/a Hudson Valley Wireless
- Netsync Internet Service
- Win Win Wireless, LLC
- Adams CATV Inc. d/b/a Adams Cable Service
- Armstrong Telecommunications, Inc.
- Armstrong Telephone Company
- Atlas Connectivity, LLC
- Cable Communications of Willsboro, Inc.
- Catskill Mountain Cablevision, Inc.
- Champlain Telephone Company
- Chazy and Westport Telephone Corporation
- Crown Point Network Technologies, Inc. d/b/a Bridge Point Communication
- CTC Internet, Inc.
- Delhi Telephone Company
- Deposit Telephone Company, Inc.
- Dreamscape Online, LLC/ Oneida County Rural Telephone Company
- DTC Cable, Inc.
- Edwards Telephone Company, Inc.
- Empire Access Corporation
- Empire Long Distance Corporation dba Empire Access
- Empire Telephone Corporation
- Finger Lakes Communications Group Inc. dba Upstate Fiber Networks
- Germantown Telephone Company Inc d/b/a GTel Teleconnections
- Hancock Telephone Company/ Pronet, LLC
- Heart of the Catskills Communications, Inc. dba MTC Cable/Margaretville Telephone Company, Inc.
- Internet@ntc, Inc.
- Keene Valley Video, Inc.
- MHG Telco, LLC d/b/a Impact Internet
- Mid-Hudson Cablevision, Inc.
- Mid-Hudson Data Corp.
- Midtel Cable TV, Inc.
- Midtel Cable TV, Inc. dba MIDTEL
- Newport Telephone Company, Inc.
- Nicholville Telephone, LLC
- OEConnect, LLC/Otsego Electric Cooperative, Inc.
- Ontario Telephone Company, Inc.
- Pattersonville Telephone Company

CASES 24-M-0255 and 21-M-0290

- Pattersonville Telephone Company dba PTC Connect
- Port Byron Telephone Company
- SLIC Network Solutions, Inc.
- Southern Tier Wireless
- State Telephone Company
- Telstar Inc.
- Township Telephone Company, Inc
- Trumansburg Telephone Company, Inc.
- Valstar Inc. d/b/a GTel Teleconnections
- Vernon Telephone Company, Inc.
- Westelcom Network, Inc