

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

At a session of the Public Service
Commission held in the City of
Albany on March 19, 2026

COMMISSIONERS PRESENT:

Rory M. Christian, Chair
James S. Alesi
David J. Valesky
John B. Maggiore
Uchenna S. Bright
Denise M. Sheehan
Radina R. Valova

CASE 25-M-0200 - Proceeding on Motion of the Commission
Concerning Broadband Download Speeds Under the
Affordable Broadband Act.

ORDER MAINTAINING THE AFFORDABLE BROADBAND ACT'S MINIMUM
DOWNLOAD SPEED AND GRANTING AN EXCEPTION FOR DIGITAL SUBSCRIBER
LINE TECHNOLOGY

(Issued and Effective March 20, 2026)

BY THE COMMISSION:

INTRODUCTION

The Affordable Broadband Act (ABA) addresses the provision of low-income broadband service in New York State, including a requirement for certain Internet Service Providers (ISPs) to offer broadband service at specific download speeds and prices to qualifying households¹ and for the Department of

¹ General Business Law (GBL) §399-zzzzz(3) and (4) requires ISPs with greater than 20,000 customers to offer at least 25 Megabits per second (Mbps) broadband service download speed for \$15 per month. An ISP offering 200 Mbps for \$20 per month is also considered to be in compliance with the ABA. Qualifying ISPs are not, however, required to offer both services at the same time under the ABA.

Public Service (Department) to undertake a proceeding to consider faster minimum download speeds. Specifically, the ABA requires the Department to, within two years of the effective date of the ABA and at least every five years thereafter, undertake a proceeding to determine if the minimum broadband download speed should be increased to the Federal Communications Commission's (FCC) benchmark for broadband download speed or to another minimum broadband download speed if the FCC has not increased its benchmark by such date.²

On April 24, 2025, the Public Service Commission (Commission)³ initiated this proceeding to determine whether the minimum broadband download speed should be increased to the FCC's benchmark for broadband download speed, or to another minimum broadband download speed.⁴ The Commission also sought input on whether Digital Subscriber Line (DSL) technology should be exempt from the requirements of the ABA.⁵ A Secretary's Notice Inviting Comment (Notice) was issued on May 20, 2025, seeking comments by July 28, 2025.

Through this Order, pursuant to GBL §399-zzzzz(2) and (9), the Commission determines that: (1) the ABA's minimum broadband download speed will, subject to the next minimum download speed review, remain at 25 Mbps, as established by the ABA; and (2) DSL technology is excepted from the requirements of

² GBL §399-zzzzz(9).

³ Although the ABA refers to the "Department," the Commission, as the decision-making entity within the Department, can take action to review and increase the required minimum broadband download speed.

⁴ Case 25-M-0200, Order Initiating a Proceeding to Determine the Appropriate Minimum Download Speed Pursuant to the Affordable Broadband Act (issued April 24, 2025) (April 24, 2025 Order).

⁵ GBL §399-zzzzz(2).

the ABA, including the requirement to provide low-income service at 25 Mbps.

BACKGROUND

On April 16, 2021, the Governor signed the ABA into law. Following enactment, the Commission and Department staff took steps to ensure an orderly implementation of the ABA for ISPs operating in New York,⁶ including issuance of a One-Commissioner Order, on May 20, 2021, in Case 21-M-0290, which granted temporary exemptions to all qualifying ISPs based upon a threshold finding that each served fewer than 20,000 subscribers.⁷ Shortly thereafter a group of Plaintiffs commenced an action in the United States Eastern District Court for New York against the New York State Attorney General (NYSAG), seeking injunctive relief and a declaratory judgment against the ABA.⁸ During the pendency of the administrative matter, the Eastern District Court issued a preliminary injunction, and later final judgment, enjoining enforcement of the ABA. As a result, the Commission suspended its pending administrative proceeding, as well as a May 28, 2021 Secretary's Notice for Comment.⁹

Following an appeal of the Eastern District Court's injunction, on April 26, 2024, the United States Court of Appeals, Second Circuit issued a decision reversing the final

⁶ GBL §399-zzzzz(2).

⁷ 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). See also GBL §399-zzzzz(5).

⁸ Under GBL §399-zzzzz(10), the NYSAG has sole enforcement authority for the ABA.

⁹ Case 21-M-0290, supra, Order Staying and Suspending Administrative Proceeding (issued June 21, 2021).

judgment of the Eastern District Court.¹⁰ Thereafter, on December 16, 2024, the United States Supreme Court denied the Plaintiffs' Petition for Certiorari to review the Second Circuit's April 2024 ruling. The effect of the Supreme Court's denial was an affirmation of the Second Circuit's ruling and reinstatement of the ABA in New York.¹¹ The ABA took effect on January 15, 2025, following the expiration of a stipulation as part of litigation.¹²

After reinstatement, the Commission resumed administration of the ABA. Through a January 9, 2025 One-Commissioner Order, the Commission, among other things, (1) reopened the proceeding in Case 21-M-0290; (2) granted temporary exemptions to certain ISPs that had previously requested exemptions, subject to conditions; (3) directed those ISPs to file the requisite financial information; and (4) ordered any ISP with more than 20,000 subscribers to be in compliance with the ABA as of January 15, 2025.¹³ Thereafter, the Commission considered the financial information provided by certain ISPs and granted further exemptions, subject to conditions, pursuant to GBL §399-zzzzz(5). These proceedings are ongoing and require biennial filings from the exempt ISPs to determine whether those

¹⁰ 21-1975-cv New York State Telecommunications Association, Inc. v. James, April 26, 2024.

¹¹ On February 24, 2025, the United States Supreme Court denied a rehearing request by the Plaintiffs.

¹² Case 24-M-0255, In the Matter of the Affordable Broadband Act, and 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 January 9, 2025), p. 4.

¹³ Id.

exemptions should continue annually based on updated financial and subscriber information.¹⁴

To address the ABA's separate requirement pertaining to the appropriate minimum broadband download speed under GBL §399-zzzzz(9), the Commission initiated this proceeding.¹⁵ The Commission's April 24, 2025 Order recognized that, during the pendency of the court litigation and the Commission's administrative actions, the FCC's March 14, 2024 Order adopted, as part of its annual assessment on high-speed broadband, a benchmark for high-speed fixed broadband to download speeds of 100 Mbps and upload speeds of 20 Mbps from the previous 25/3 Mbps benchmark set in 2015.¹⁶ The Commission noted that it was appropriate to initiate a proceeding to determine if the minimum broadband download speed should be increased under the ABA and directed the Secretary to issue the Notice on increasing the minimum broadband download speed of 25 Mbps, consistent with the FCC's benchmark, or to another minimum broadband download speed in accordance with GBL §399-zzzzz(9).

The April 24, 2025 Order also stated that it may consider additional matters set forth in GBL §399-zzzzz, including but not limited to, whether internet speeds delivered to customers using DSL technology should be subject to the ABA's requirements, and whether the ABA is applicable to ISPs whose services are not capable of reaching consistent speeds of 25 Mbps, excluding dial-up service.

¹⁴ Id., Order Approving Requests for Further Exemptions Subject to Conditions (issued November 14, 2025).

¹⁵ See, n. 3, supra.

¹⁶ In the Matter of Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, GN Docket No. 22-270, (rel. March 18, 2024).

NOTICE OF PROPOSED RULE MAKING

Pursuant to the State Administrative Procedure Act (SAPA) §202(1), a Notice of Proposed Rulemaking was published in the State Register on May 28, 2025 [SAPA No. 25-M-0200SP1]. The time for submission of comments pursuant to the SAPA Notice expired on July 28, 2025. Moreover, in the Secretary's Notice, comments were solicited by July 28, 2025. The comments received are addressed below.

LEGAL AUTHORITY

General Business Law §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) further states that "[s]uch 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."

General Business Law §399-zzzzz(9) explicitly states that 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."

SUMMARY OF COMMENTS

Comments were filed by the Cable Telecommunications Association of New York, Inc. (CTANY); Comcast of New York, LLC (Comcast); CTIA - The Wireless Association (CTIA); Frontier New York Operating Companies;¹⁷ New York State Digital Equity Network (NYSDEN); New York State Telecommunications Association (NYSTA); Public Utility Law Project of New York (PULP); USTelecom-The Broadband Association (USTelecom); Verizon New York Inc. (Verizon); Windstream New York, Inc. and Windstream Communications, LLC (Windstream); and WISPA - Broadband Without Boundaries (WISPA).
Cable Telecommunications Association of New York, Inc.

CTANY's member companies, Altice USA, Inc. and Charter Communications, Inc., provide high-speed broadband, advanced video, voice, and mobile communications services to residential and commercial customers in New York State. CTANY expresses its

¹⁷ Filed on behalf of Frontier Telephone of Rochester, Inc., Frontier Communications of Seneca-Gorham, Inc., Ogden Telephone Company, Frontier Communications of Sylvan Lake, Inc., Frontier Communications of New York, Inc., Citizens Telecommunications Company of New York, Inc., Citizens Telecommunications Company of New York, Inc., and Frontier Communications of Ausable Valley, Inc.

opposition to increasing the ABA's minimum download speed, given the existing low-cost broadband offerings, and requests the Commission defer consideration of a potential speed increase until close of the two-year review period contemplated by the ABA.¹⁸ CTANY notes that Altice and Charter offer broadband plans for low-income households that exceed the minimum download speed required by the ABA.¹⁹ CTANY contends that increasing the minimum download speed at the current price cap of \$15 is not sustainable and would create economic misalignment, particularly in rural and high cost areas, and that mandating higher speeds at this early stage in the ABA's implementation would destabilize the balance intended by the statute.²⁰

Comcast of New York, LLC

Comcast comments on the proposal related to broadband download speed and states that "increas[ing] the minimum download speed required under [the ABA] from 25 Mbps to 100 Mbps while retaining the current \$15 mandatory price would be ill-advised and inconsistent with Comcast's comprehensive, multi-state affordability efforts."²¹ Comcast notes that cable providers and ISPs already offer several low-income options that exceed 25 Mbps and expresses concern that increasing the minimum speed will reduce customer choice and competition in New York.²²

In addition, Comcast contends that the proposal to increase minimum download speed to four times the current speed at the same price of \$15 fails to take inflation into consideration and would be economically unsustainable.²³

¹⁸ CTANY Comments, pp. 2-4.

¹⁹ Id., pp. 2-3.

²⁰ Id., pp. 5-7

²¹ Comcast Comments, p. 1.

²² Id., pp. 2-5.

²³ Id., pp. 6-7.

Moreover, Comcast asserts that an increase to minimum download speed is premature in light of the ABA's actual implementation in January 2025 and requests the Commission defer consideration of a speed increase until closer to the end of the two-year period contemplated by the ABA.²⁴

CTIA - The Wireless Association

CTIA is an association that represents the interests of wireless communications companies, including wireless providers, device manufacturers, suppliers and content companies. CTIA's comments focus on 5G mobile and Fixed Wireless Access (5G FWA) service which, CTIA states, is being rolled out throughout the United States, particularly in rural communities, and serves as a competitive alternative to terrestrial broadband service.²⁵ CTIA requests that the Commission affirm that broadband service providers are not required to expand or enhance existing broadband offerings geographically, that the ABA does not apply to 5G FWA or, in the alternative, that 5G FWA providers be granted an exception from the ABA since it would not be reasonably practicable for 5G FWA providers to consistently provide the minimum broadband download speed, if it were increased to 100 Mbps.²⁶

CTIA explains that 5G FWA service is provided over mobile networks and broadband speeds fluctuate due to network demands and natural and artificial obstacles, and asserts that extensive network modifications would be needed to comply with a speed guarantee.²⁷ CTIA also contends that federal law would preempt a mandated guaranteed minimum level of service under the

²⁴ Comcast Comments, pp. 5, 7.

²⁵ CTIA Comments, p. 3.

²⁶ Id., pp. 3-4, 7-13.

²⁷ Id., pp. 5-7.

ABA.²⁸ CTIA concludes that if the Commission increases the ABA download speeds to the FCC benchmark of 100 Mbps, the legal, regulatory and operational aspects of 5G FWA should be acknowledged and 5G FWA service should not be required to provide a speed guarantee.²⁹

Frontier New York Operating Companies

Comments submitted by Frontier on behalf of its New York operating companies, referred to as Frontier New York, focus on the limitations of DSL technology and request that the Commission grant an exemption from the ABA for Frontier New York's DSL service or, alternatively, find that DSL services are not subject to the ABA's requirements.³⁰ Frontier New York describes its diverse and variable service territories within the State and explains that it offers high-speed broadband over a fiber-optic network,³¹ but in certain areas, Frontier New York can offer internet access only over copper lines using DSL technology.³² Frontier New York offers DSL service to customers on a "best efforts" basis at a single monthly rate and contends that it is not technologically possible or reasonably practicable to consistently deliver high speed broadband service of 25 Mbps over DSL technology.³³ Frontier New York comments that the ABA does not require providers to change their networks to meet a minimum speed threshold but, instead, is intended to reduce the price of existing high speed broadband for qualified

²⁸ Id., pp. 14-18.

²⁹ Id., p. 18.

³⁰ Frontier New York Comments, pp. 1-2.

³¹ Frontier New York states that it offers 200 Mbps Frontier Fiber, which provides 200 Mbps download and upload speeds to qualified low-income customers for \$19.99 per month, in compliance with the ABA.

³² Frontier New York Comments, p. 2.

³³ Id., pp. 3-4.

low-income customers.³⁴ Frontier New York concludes that “any interpretation of the ABA to require 25 Mbps speeds from all internet access services is unreasonable and impracticable” and the Commission should use its statutory authority to exempt such services from the requirements of the ABA.³⁵

New York State Digital Equity Network

NYSDEN is a coalition of regional networks, nonprofit organizations, practitioners and advocates for digital equity in New York State. NYSDEN comments that the Commission should require equitable pricing and service options for all communities, prohibit discrimination, and adopt a Statewide, flat-rate broadband plan that provides 200 Mbps download speed and 25 Mbps upload speed, priced at \$15 per month.³⁶ In addition, NYSDEN comments that the Commission should research and design State-level subsidy options for ISPs, provide a financial incentive for qualifying households to participate in the 200 Mbps affordability plans, and condition public investment or partnership on providers offering equitable plans statewide.³⁷ NYSDEN also comments that the Commission should require standard, user-friendly enrollment processes, along with plain language and multilingual communication materials for plans offered under the ABA, and require enrollment reporting by ISPs.³⁸

Further, to address the digital divide, NYSDEN recommends that the Department collaborate with the New York State ConnectALL Office to prioritize principles of digital

³⁴ Id., p. 5.

³⁵ Id.

³⁶ NYSDEN Comments, pp. 1, 2-3.

³⁷ Id., p. 2.

³⁸ Id., p. 4.

equity, engage in local infrastructure by funding and embedding community-based digital navigator programs, requiring ISPs to collaborate with local outreach partners, and support multilingual and culturally responsible communication strategies.³⁹

New York State Telecommunications Association

NYSTA, an association of telecommunications carriers,⁴⁰ provides comments on the application of the ABA to DSL-based service. NYSTA notes that its members provide a variety of broadband technology, including fiber-to-the-premises technology, LTE/5G, and legacy DSL. With respect to DSL service, NYSTA contends that DSL technology "cannot reliably deliver speeds above approximately 15 Mbps due to inherent limitations of copper loop plant within some of our member companies' networks."⁴¹ NYSTA notes that most of its member companies no longer accept DSL orders and the majority of members' customers have access to higher speed alternatives.⁴² NYSTA requests that the Commission confirm that DSL services are excluded from the ABA's obligations and that NYSTA members who provide DSL services are exempt from the ABA.⁴³ In addition, NYSTA notes that it does not take a position on the minimum broadband download speed.⁴⁴

³⁹ Id., pp. 3-4.

⁴⁰ NYSTA's membership is comprised of numerous telecommunications carriers operating in New York State, including incumbent local exchange carriers (ILECs) and competitive LECs (CLECs).

⁴¹ NYSTA Comments, p. 1.

⁴² Id.

⁴³ Id., p. 2.

⁴⁴ Id., p. 1.

Public Utility Law Project of New York

In its comments, PULP addresses broadband speed and raises various proposals aimed at customer protection. Specifically, PULP recommends adoption of a single Statewide plan that provides an increased download speed of at least 200 Mbps, at a cost of \$15 per month.⁴⁵ PULP notes that certain ISPs charge an additional fee for WiFi to low-income customers, which PULP contends "effectively makes the \$15 plan more like \$25 for the average low-income consumer"⁴⁶ With respect to speed, PULP recommends the Commission and the NYSAG's Office should institute periodic speed audits "[t]o guarantee that households actually receive the advertised performance."⁴⁷

In addition, PULP contends that there are several issues with enrollment in low-income broadband programs, including awareness gaps, limited language access or inaccessible portals, burdensome verification requirements, difficulty navigating to low-income programs on ISP websites, potential upselling to low-income customers, and barriers caused by enrollment forms that must be printed and mailed to the ISP.⁴⁸ PULP recommends creation of a centralized, enrollment portal that complies with web content accessible guidelines, alternative enrollment methods, such as phone and in-person, and training for customer service representatives to prevent upselling.⁴⁹

⁴⁵ PULP Comments, p. 2.

⁴⁶ Id.

⁴⁷ Id.

⁴⁸ Id., p. 3.

⁴⁹ Id.

USTelecom—The Broadband Association (USTelecom)

USTelecom is a trade association representing providers and suppliers, within the communications industry, that provide services including broadband, voice, data, and video over wireline and wireless networks. USTelecom comments that DSL technology has known technical limitations and cannot deliver consistent speeds and, therefore, should not be a covered service under the ABA.⁵⁰ In addition, USTelecom notes that many providers are currently overbuilding their legacy networks with next generation fiber infrastructure and DSL is outdated and nearing end-of-life.⁵¹

Verizon New York Inc.

Verizon's comments concern its DSL-based internet access service and contend that this service is not subject to the requirements of the ABA or, in the alternative, that the Commission should exempt DSL, and other services not capable of consistently meeting the minimum speed threshold, from the ABA.⁵² Verizon explains that, in parts of the State, it offers high-speed broadband internet service of its fiber-to-the-premises network and broadband internet access over the LTE or 5G fixed wireless technology; low-income broadband service is offered to qualified consumers in locations where the fiber-based and fixed wireless-based service is provided.⁵³ Verizon contends that the ABA only requires ISPs to offer high-speed broadband to qualified low-income customers at the addresses where high-speed broadband service is available.⁵⁴

⁵⁰ USTelecom Comments, pp. 2-4.

⁵¹ Id., p. 3.

⁵² Verizon Comments, pp. 1, 3-7.

⁵³ Id., p. 1.

⁵⁴ Id., pp. 3-4.

With respect to DSL service, Verizon provides legacy DSL-based service to a "limited and declining number of customers."⁵⁵ Verizon notes that DSL technology is not capable of "routinely providing speeds greater than about 15 Mbps"⁵⁶ and does not meet the definition of "high speed broadband service" under the ABA.⁵⁷ Verizon concludes that DSL service is not covered by the ABA and should be exempt as a service that cannot achieve the minimum 25 Mbps download speed required by the ABA.⁵⁸

Windstream New York, Inc. and Windstream Communications, LLC

Windstream's comments contend that DSL should be excluded from the requirements of the ABA. Windstream describes the technological limitations of DSL service, which is transmitted over the same copper telephone lines as legacy telephone service, and notes that the copper system "struggles with the heavy load of DSL broadband, especially over long distances."⁵⁹ Windstream explains that the DSL "signal weakens as it travels further from the central office's Digital Subscriber Line Access Multiplexer (DSLAM), ... resulting in a noticeable drop in bandwidth and speed for customers."⁶⁰ Windstream estimates that approximately 15 percent of its active DSL customers in New York do not receive the minimum speed required by the ABA, due to distance from a DSLAM, but notes that the majority of these customers have access to high-speed broadband through competitor providers.⁶¹ Windstream contends that providers should not be required to continue investing in DSL

⁵⁵ Id., p. 2.

⁵⁶ Id.

⁵⁷ Id., pp. 3-5.

⁵⁸ Id., pp. 5-7.

⁵⁹ Windstream Comments, p. 1.

⁶⁰ Id., pp. 1-2.

⁶¹ Id., p. 2.

infrastructure and that DSL service should be excluded from the ABA's requirements.⁶²

WISPA - Broadband Without Boundaries

WISPA, an industry association of broadband providers and vendors, comments regarding the appropriate broadband speed threshold and notes that the cost to provide service is "substantially higher" than the ABA's requirement to provide 25 Mbps at a cost of \$15 per month to low-income consumers.⁶³ WISPA contends that the minimum speed of 25 Mbps is adequate for basic internet service and the ABA's provision for 200 Mbps at \$20 per month "already incentivizes low-income customers to prefer the higher-speed plan, further raising transport costs for ISPs, which they cannot recover."⁶⁴ WISPA concludes that the Commission should maintain the minimum download speed of 25 Mbps, at a cost of \$15 per month, for low-income households.

DISCUSSION

The ABA, among other things, requires ISPs with over 20,000 customers operating in New York State to offer high-speed broadband service, of at least 25 Mbps download speed, for \$15 per month to qualifying low-income customers. GBL §399-zzzzz(2) authorizes the Commission to adopt exceptions where such download speed is not "reasonably practicable." In addition, GBL §399-zzzzz(9) requires the Commission to undertake a proceeding to determine if the minimum broadband download speed should be increased to the FCC's benchmark broadband download speed or to another minimum broadband download speed.

⁶² Id., pp. 2-3.

⁶³ WISPA Comments, p. 2.

⁶⁴ Id.

The Order commencing this proceeding set forth the following issues that the Commission is now considering: (1) whether to modify the ABA's designated minimum download speed of 25 Mbps, to be consistent with the FCC's benchmark, or to another minimum broadband download speed; and (2) whether internet speeds delivered to customers using DSL technology should be subject to the ABA's requirements and whether the ABA is applicable to ISPs whose services are not capable of reaching consistent speeds of 25 Mbps. As noted above, a variety of stakeholders, including ISPs, industry trade associations, and consumer advocates filed comments. In addition, commenters raised certain additional issues, which will be addressed below.

For the reasons discussed below, the Commission determines that the ABA's minimum broadband download speed should remain at the current minimum speed of 25 Mbps established pursuant to the statute, subject to further review within three years, and that DSL technology should be exempt from the requirements of the ABA, including the requirement to provide low-income service at 25 Mbps.

Minimum Download Speed

Although the ABA was enacted in April 2021, the law previously faced three years of litigation, and, therefore, implementation was delayed, and the law did not actually take effect until January 15, 2025. The Commission's Order Reopening Proceeding and Reinstating Temporary Exemptions Subject to Conditions was issued on January 9, 2025, in Cases 24-M-0255 and 21-M-0290, and further exemptions were not approved for certain ISPs until November 14, 2025. As such, the relevant Commission cases and consideration of further exemptions on the basis of financial impact have only just been resolved by the Commission. In addition, 2025 marks the first full year of required compliance filings and Commission review. ABA-compliant ISPs

are required to submit updated information biennially to the Commission for further review and to ensure additional compliance by November 15th.⁶⁵ Accordingly, the administrative framework necessary to evaluate the ABA's practical effects is still developing.

In light of the timing and nascent implementation of the ABA, the Commission concludes that it is reasonable to maintain the current minimum download speed pursuant to the ABA (i.e., 25 Mbps) until the next download speed review. This will provide additional time for the Commission to assess compliance and obtain additional input.

Moreover, the vast majority of public comments urge the Commission to allow more time to implement the ABA before increasing the minimum download speed. Two commenters call on the Commission to align the ABA with the FCC's revised standard, however, on this record, there is insufficient evidence to justify increasing the ABA's minimum broadband download speed at this time. Nevertheless, the Commission encourages ISPs to evaluate their respective service offerings and consider increasing the speeds of their respective low-income products beyond the ABA's minimum 25 Mbps. As noted in the comments, several ISPs already offer broadband plans for low-income customers that exceed the ABA's minimum download speed of 25 Mbps.⁶⁶ In a 2024 analysis, Department staff identified that approximately 93 percent of the State was covered by the three

⁶⁵ See, n. 12, supra, Ordering Clause 2.

⁶⁶ CTANY Comments, pp. 2-3.

largest ISPs⁶⁷ - Charter,⁶⁸ Altice,⁶⁹ and Verizon⁷⁰ - all of which offer plans that exceed the ABA's minimum speed requirements. In addition, for an incremental cost of \$5 per month, the ABA also allows an ISP to offer a 200 Mbps service for \$20 per month. In total, there are currently 16 ISPs in New York offering an ABA-compliant product.

Finally, although the ABA requires the Commission to review the minimum broadband download speed within two years and at least every five years thereafter,⁷¹ given the dynamic and competitive environment of broadband service in New York, the Commission concludes that the next review of the ABA's minimum download speed should occur within three years of the issuance of this Order. Broadband technology, consumer usage patterns, and speed benchmarks continue to evolve. A three-year review will allow sufficient time to evaluate the statute's real-world effects and allow the Department to thoroughly assess ISP compliance, public interest, and market implications.

ABA's Applicability to DSL Service

Turning to the applicability of the ABA to DSL service, GBL §399-zzzzz(1) defines broadband service as "a mass-market retail service that provides the capability to transmit

⁶⁷ See Case 22-M-0303, In the Matter of the Commission's Broadband Study and Mapping Pursuant to the Broadband Connectivity Act, New York State Department of Public Service Staff Report on the Current Opportunities to Access Low-Income Broadband Programs in New York State (rel. September 24, 2024).

⁶⁸ Charter's ABA-compliant product, Spectrum Internet Assist, offers 50 Mbps service at \$15/month.

⁶⁹ Altice's ABA-compliant product, Optimum Internet Advantage, offers 50 Mbps service at \$14.99/month.

⁷⁰ Verizon's ABA-compliant product, Verizon Forward, offers 300 Mbps service at \$20/month.

⁷¹ GBL §399-zzzzz(9).

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." DSL service is provided over copper-based networks, which are the same copper lines that support legacy technology, including Plain Old Telephone Service (POTS).

The Commission finds that DSL falls within the ABA's definition of "broadband service" as a wireline service. However, DSL service has several limitations that call into question whether it is sufficient to offer high-speed broadband service in accordance with GBL §399-zzzzz(2). As many of the comments note, data upload and download speeds for DSL depend on the length and condition of the copper loops.⁷² The copper lines serve as an electrical conduit for basic technology and cannot sustain bandwidth over long distances. Signal degradation that occurs with copper lines significantly impairs the transmission of data over long distances; the further away a customer is from a central office, the slower DSL broadband speed will be due to attenuation. Several commenters also noted that DSL cannot consistently deliver speeds above 15 Mbps and emphasized that DSL cannot reliably deliver the minimum 25 Mbps required by the ABA.⁷³ Moreover, comments from NYSTA note that copper-based networks are vulnerable to environmental conditions and, as a result, the DSL service provided over copper loops is

⁷² Verizon Comments, p. 2; USTelecom Comments, p. 2; Windstream Comments, pp. 1-2.

⁷³ NYSTA Comments, p. 1; Verizon Comments, p. 2; USTelecom Comments, p. 2; Frontier New York Comments, pp. 1, 2, 4; Windstream Comments, pp. 1-2.

unreliable.⁷⁴ Verizon's comments explain that "copper loops are inherently more susceptible to service disruptions due to weather events, corrosion, and other environmental factors," when compared with fiber-based networks and fixed wireless service.⁷⁵

Several commenters, including Verizon, Frontier New York and NYSTA, contend that upgrading DSL to 25 Mbps would require a "complete network overhaul,"⁷⁶ including new architecture, equipment at central offices and in the field, different operations support systems and new processes, which would divert significant time and resources from ISPs efforts to advance newer technologies.⁷⁷ The commenters contend that it simply unreasonable for ISPs to endeavor to upgrade and convert DSL architecture, particularly when there are faster and more reliable options for customers. In addition, several commenters note that DSL-serviced customers are declining and that DSL is provided as a legacy service to existing DSL customers and is not offered for new customers.⁷⁸

The ABA provides that the requirement for ISPs to provide low-income broadband service with a minimum download speed of 25 Mbps is "subject to exceptions adopted by the [Commission] where such download speed is not reasonably practicable."⁷⁹ Such an exception is warranted for DSL service. Internet speeds that can be delivered to customers using DSL depend upon a variety of factors, such as the length of the

⁷⁴ NYSTA Comments, p. 2.

⁷⁵ Verizon Comments, p. 3.

⁷⁶ NYSTA Comments, p. 2.

⁷⁷ Verizon Comments, pp. 2-3; Frontier New York Comments, p. 3; Windstream Comments, pp. 2-3; NYSTA Comments, p. 2.

⁷⁸ See Verizon Comments, p. 2; NYSTA Comments, p. 1.

⁷⁹ GBL §399-zzzzz(2).

copper loops serving customers. The speed of DSL service depends largely on the distance from the DSLAM to the customer premises, which is often significant. As a result, the speeds realized by DSL customers vary widely by location, as well as by the capacity of equipment, customer modems, the condition of inside wire, and other factors. Given the technological limitations and lack of reliability of DSL, the Commission concludes that it is not reasonably practicable for DSL service to provide "high speed broadband service," as defined by the ABA.⁸⁰

However, this exception applies only to providers that solely provide DSL and/or those geographic areas of an ISP's territory where the only internet service is DSL-based service.⁸¹ The Commission agrees with Verizon's contention that "providers must offer high-speed broadband service to low-income customers only at the addresses where they offer that type of service to customers generally."⁸² To be clear, ISPs that provide fiber-based internet service are obligated to comply with the ABA and provide low-income product offerings for the areas in which they have high-speed internet architecture in place. As a result, the Commission finds that DSL services are not subject to the requirements of the ABA, including the requirement to provide low-income broadband service at a minimum speed of 25 Mbps.

⁸⁰ Verizon filed a motion for an exemption for its DSL service pursuant to GBL §399-zzzzz(2) on May 17, 2021, revised on May 18, 2021, in Case 21-M-0290, In the Matter of Company Exemptions from the Requirement to Offer a Low-Income Broadband Product. Given the determination herein, Verizon's May 18, 2021 Motion in Case 21-M-0290 is deemed moot.

⁸¹ Both Verizon and Frontier note that in certain, limited parts of each service territory, they provide only DSL. See Frontier Comments, p. 2; Verizon Comments, p. 3.

⁸² Verizon Comments, p. 3.

With respect to ISPs whose services, other than DSL, are not capable of reaching consistent speeds of 25 Mbps, the April 24, 2025 Order and the Notice requested comments on this matter, however, the record does not contain any such requests for an exception. The Commission is authorized under GBL §399-zzzzz(2) to except certain services where the minimum download speed under the ABA is not "reasonably practicable." The Commission notes that CTIA, in its comments, requested an exemption of its 5G FWA service if the Commission were to increase the minimum download speed to 100 Mbps.⁸³ Since the Commission does not adopt an increase to the minimum download speed under the ABA at this time, CTIA's request is moot. The Commission takes no position on CTIA's contentions that the ABA is inapplicable to 5G FWA, generally, and notes that CTIA's comments filed in the record of this case acknowledges that "5G FWA service is a 'broadband service' within the meaning of the statute."⁸⁴

Additional Issues from Commenters

With respect to the additional issues raised in the comments, the Commission agrees with comments from PULP and NYSDEN regarding the importance of clear customer communication and agrees that the enrollment process should not be overly

⁸³ CTIA Comments, pp. 4, 11. CTIA does not state whether its 5G FWA service complies with the ABA's current standard of 25 Mbps download speed.

⁸⁴ CTIA Comments, p. 9, 11, 12. CTIA states that "[a]ny standard adopted under the ABA that requires wireless providers to offer guaranteed broadband speeds that they otherwise chose not to offer would conflict with Congress's decision to make broadband internet access service a Title I interstate information service exempt from common carrier regulation at the state or federal level." See CTIA Comments, p. 17. CTIA does not state whether the 5G FWA service current offerings would conflict with the ABA's minimum download speed of 25 Mbps.

prescriptive for customers. ISPs are encouraged to provide information regarding enrollment on their websites and to allow enrollment through numerous methods, including on the ISP website, by phone, by paper form, and any additional enrollment methods the ISP deems appropriate. In fact, GBL §399-zzzzz(7) specifically states that "[e]very 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."

Moreover, pursuant to GBL §399-zzzzz(8), "[e]very 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; (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."

In addition, the Commission discourages upselling of low-income customers inquiring about the programs set forth in the ABA. However, the Commission notes that ISPs are not rate regulated and it is beyond the Commission's review to require ISPs to create a centralized enrollment portal or develop communication materials, as PULP and NYSDEN suggest. Similarly, the Commission acknowledges NYSDEN's comment regarding digital equity and notes that the Commission does not have the authority to design or implement financial subsidies for customers or ISPs. Nevertheless, Department staff engages collaboratively with stakeholders and government entities to further the principles of digital equity and should endeavor to continue those efforts.

CONCLUSION

By this Order, the Commission determines, pursuant to GBL §399-zzzzz(2) and (9), that the ABA's minimum broadband download speed remain at the current speeds of 25 Mbps as established by the statute, and that DSL technology is excepted from the requirements of the ABA, including the requirement to provide low-income services at 25 Mbps.

The Commission orders:

1. Pursuant to General Business Law (GBL) §399-zzzzz(9) and (2), the minimum download speed for broadband service under the Affordable Broadband Act (ABA) shall be 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 New York State, subject to the next review of the ABA's minimum download speed which is expected to occur within three years of the issuance of this Order.

2. Pursuant to GBL §399-zzzzz(2), Digital Subscriber Line technology services are excepted from the requirements of the ABA consistent with the discussion in the body of this Order.

3. 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 three days prior to the affected deadline.

4. This proceeding is continued.

By the Commission,

(SIGNED)

MICHELLE L. PHILLIPS
Secretary