

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

At a session of the Public Service
Commission held in the City of
Albany on June 21, 2021

COMMISSIONER PRESENT:

John B. Howard, Interim Chair

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

ORDER STAYING AND SUSPENDING
ADMINISTRATIVE PROCEEDING

(Issued and Effective June 21, 2021)

INTRODUCTION AND BACKGROUND

On May 20, 2021, a One-Commissioner Order was issued granting a temporary exemption to certain Internet Service Providers (ISPs) that filed exemption applications pursuant to General Business Law (GBL) §399-zzzzz(5) and directing the Secretary to issue a Notice for Comment (Notice) on issues relevant to GBL §399-zzzzz exemptions.¹

During the pendency of the administrative matter, the United States District Court for the Eastern District for New York subsequently issued a preliminary injunction enjoining the enforcement of GBL §399-zzzzz, also referred to as the New York Affordable Broadband Act (ABA),² in response to plaintiffs' civil

¹ 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) (May 20, 2021 Order). An erratum notice was issued on May 27, 2021, with a Revised Appendix A.

² The provision was enacted by L. 2021, Ch. 56, Part NN.

complaint and motion for preliminary injunction pursuant to Fed. R. Civ. P. 65. 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).

This Order today suspends the pending administrative proceeding before the Commission and, in addition, suspends the Secretary's May 28, 2021 Notice for Comment.

DISCUSSION AND CONCLUSION

As discussed in more detail in the May 20, 2021 Order, the Affordable Broadband Act requires ISPs to offer a \$15 broadband plan to qualifying New Yorkers (enacted as General Business Law Section 399-zzzzz). GBL §399-zzzzz requires, among other things, the provision of high-speed broadband service to certain low-income consumers.³

The May 20, 2021 Order granted certain temporary exemptions. In addition, that Order recognized that the legislation provides for the Commission to determine if an ISP's compliance with GBL §399-zzzzz(2) and (3) "would result in unreasonable or unsustainable financial impact on the broadband service provider"⁴ in order for an exemption to be granted, but does not provide any further criteria. As such, the Secretary issued a Notice for Comment (Notice) on the criteria and factors that may be considered in evaluating each request for an exemption. The Secretary's Notice also sought comment on the applicability of GBL §399-zzzzz to internet services, i.e., Digital Subscriber Line (DSL) technology, that may not be capable of reaching consistent speeds of 25 Megabits per second

³ GBL §399-zzzzz(2).

⁴ GBL §399-zzzzz(5).

(Mbps), excluding dial-up service. The Secretary's Notice requested comments on or before June 25, 2021.

I note that subsequent to the May 20, 2021 Order, the United States District Court for the Eastern District for New York issued a preliminary injunction enjoining the enforcement of the New York Affordable Broadband Act, GBL §399-zzzzz (as enacted by L. 2021, Ch. 56, Part NN), in response to plaintiffs' civil complaint and motion for preliminary injunction pursuant to Fed. R. Civ. P. 65. 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).

In light of the District Court's June 11, 2021 order, I hereby stay and suspend (1) the May 20, 2021 Order, (2) the May 28, 2021 Secretary's Notice, and (3) this administrative proceeding, pending further developments or court orders.

It is ordered:

1. The One-Commissioner Order issued on May 21, 2021, in this proceeding, is stayed and suspended.
2. The Secretary Notice for Comment issued on May 28, 2021, in this proceeding, is stayed and suspended.
3. This proceeding is stayed and suspended.

(SIGNED)

Commissioner