



State of New York

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Department of State
Secretary of State

State of New York

Executive Chamber

No. 22

EXECUTIVE ORDER

ESTABLISHING A BROADBAND DEVELOPMENT AND DEPLOYMENT COUNCIL

WHEREAS, New York State recognizes the importance of universal deployment of broadband to ensure the welfare of New York's citizens and economy by stimulating economic development, increasing learning opportunities and connecting all New Yorkers to the wide array of resources available online, including government services; and

WHEREAS, access to broadband infrastructure is necessary to remedy the United State's current ranking as 15th among industrialized nations for broadband adoption and because of this, the American Recovery and Reinvestment Act of 2009 (ARRA) included over \$7 billion in federal stimulus funding for broadband development and deployment to unserved and underserved communities throughout the nation; and

WHEREAS, New York State, through the efforts of its Chief Information Officer and other governmental, academic and business leaders, has been engaged in a universal broadband initiative which has begun developing a broadband strategy and identifying broadband projects, laying the groundwork for the further development and deployment of broadband around the State, and positioning New York to receive ARRA funding necessary to meet the goal of universal affordable, high-speed and high-capacity broadband for all New Yorkers; and

WHEREAS, expansion of broadband can yield significant economic and quality of life benefits; and

WHEREAS, coordinated State action and public-private partnerships are needed to increase investment in, promote demand for, stimulate adoption of, and remove barriers to the development of universally deployed world-class high-capacity and high-speed broadband networks, providing services to business and residential consumers in all areas of the State at affordable prices; and

WHEREAS, establishment of the New York State Broadband Development and Deployment Council (Council), building on the initiatives and achievements of the New York State Council for Universal Broadband, which it replaces, is necessary to guide the State as it invests ARRA funds, so that all New Yorkers can become full participants in the information age.

NOW, THEREFORE, I, David A. Paterson, Governor of the State of New York, by virtue of the authority vested in me by the Constitution and Laws of the State of New York do hereby order as follows:

A. Definitions

1. "Broadband" means the transmission of information, between or among points specified by the user, with or without change in the form or content of the information as sent and received, at minimum rates of transmission defined by the Federal Communications Commission as "broadband," or at those synchronous upstream and downstream transmission rates as may be recommended by the Council from time to time.

2. "Broadband infrastructure" means all equipment, facilities, services and programs including all changes, modifications, and expansions to existing facilities, as well as the customer premises equipment used to provide broadband, and any software integral to or related to the operations, support, facilitation, or interconnection of such equipment, including upgrades, and any installation, operations and support, maintenance, training and other functions required to support, maintain and upgrade the delivery of broadband service to citizens and businesses.

3. "Broadband service" means the offering of broadband directly to the public or to such classes of users as to be readily available directly to the public, regardless of the facilities used with or without a fee.

4. "Distressed area" means:

(a) a census tract or tracts or block numbering area or areas or such census tract or block numbering area contiguous thereto which, according to the most recent census data available, has:

- (i) a poverty rate of at least twenty percent for the year to which the data relates or at least twenty percent of households receiving public assistance; and
- (ii) an unemployment rate of at least one and a quarter times the statewide unemployment rate for the year to which the data relates; or

(b) a city, town, village or county within a city with a population of one million or more for which each of the following are fifty-five per cent or less of the statewide average:

- (i) the ratio of the full value property wealth, as determined by the Office of the State Comptroller in the year for which the most recent census data is available, per resident to the statewide average full value property wealth per resident; and
- (ii) the ratio of the income per resident; as shown in the year for which the most recent census data is available to the statewide average income per resident.

5. "Underserved area" means any part of a municipality without readily and generally available retail consumer access to at least two or more nonaffiliated facilities-based wired or fixed wireless broadband telecommunications services providers. For purposes of this subdivision, wireless broadband telecommunications services shall not include satellite service.

6. "Unserved area" means any part of a municipality without readily and generally available retail consumer access to a facilities-based wired or fixed wireless broadband telecommunications services provider. For the purposes of this subdivision, wireless broadband telecommunications services shall not include satellite service.

7. "Underserved subscriber" means a retail consumer residing in a dwelling located in an unserved or underserved urban or rural area.

B. Broadband Development and Deployment Council

1. There is hereby established the Broadband Development and Deployment Council, consisting of thirteen members.

2. Seven members of the Council shall be the following individuals or their designees: the New York State Chief Information Officer, the Chairperson of the Public Service Commission, the Commissioner of the Department of Economic Development, the Commissioner of the Department of Transportation, the Executive Director of the New York State Foundation for Science, Technology and Innovation, the Director of the Division of the Budget, and the Director of the Office of Cyber Security and Critical Infrastructure Coordination.

3. The remaining six members shall be appointed by the Governor as follows: one on the recommendation of the Majority Leader of the Senate, one on the recommendation of the Speaker of the Assembly, and four without prior recommendation. Through these appointments, the Governor will provide for representation on the Council of private industry, elected municipal officials and members of the public.

4. The Governor shall designate a Chairperson from among the members.

5. A majority of the appointed members of the Council shall constitute a quorum, and all recommendations of the Council shall require approval of a majority of the members of the Council. Members of the Council shall serve without compensation, but shall be reimbursed for all actual and necessary expenses incurred in the performance of their duties. No member of the Council shall be disqualified from holding any public office or employment, nor shall he or she forfeit any such office or employment by virtue of his or her appointment hereunder.

6. The Council shall create any such broadband technical committees it needs to assist in its work, to be comprised of interested individuals and entities, including but not limited to civic groups, industry representatives and local governments.

C. Duties and Purpose

1. The Council shall promote the long term growth and enhancement of the delivery of broadband services to residential, business, educational, medical, commercial, nonprofit, and governmental entities that includes unserved, underserved and distressed areas within the State, at rates that are affordable.

2. The Council shall continue the work of the New York State Council for Universal Broadband, focusing on developing, recommending and implementing strategies and policies to improve our broadband rankings in the United States and globally to stimulate our economy and recapture our global competitiveness.

3. The Council shall advise the Governor concerning proposed legislation, the development and application of strategies to increase the deployment of broadband infrastructure and broadband service, identify and advise on state, federal and private sector funding opportunities, and, based on data received from other State agencies and interested stakeholders, develop broadband policy within the State. The Council shall also advise the Governor concerning the State's application for funding provided by the ARRA for broadband development and deployment.

4. The Council may request the assistance of the Office of Cyber Security and Critical Infrastructure Coordination ("CSCIC") to: (i) accumulate and map data relating to the existing broadband infrastructure, including conduit space, dark fiber, and leased assets; and (ii) create and maintain a comprehensive database, including information such as speed, carrier, capacity, coverage, backhaul capacity, and infrastructure technology, in support of the activities of the Council.

D. Reporting

1. The Council shall submit an annual report no later than May fifteenth of each year to the Governor and the Legislature, including:

- (a) an analysis of how best to foster a variety of high-speed internet access alternatives for citizens and businesses;
- (b) an analysis of how best to increase the participation of stakeholders in such alternatives, including the public and private sector, not-for-profit organizations and other non-governmental organizations, and higher education institutions;
- (c) proposed strategies for continued broadband deployment and adoption efforts, as well as further development of advanced telecommunications applications;
- (d) recommendations on methods for maximizing the State's research and development capacity at universities and in the private sector for developing advanced telecommunications applications and services, and recommendations on incentives to stimulate the demand for and development of these applications and services;
- (e) an identification of barriers that hinder the advancement of technology entrepreneurship in the State;
- (f) an evaluation of programs around the State designed to advance digital literacy and computer access;
- (g) a summary of efforts to expand the availability of government services offered on-line ("e-Government"); and
- (h) a description of the State's use of ARRA funds for broadband development.

2. The Council shall also submit a report on or before December 31, 2009 to the Governor and the Legislature that determines the location of all underserved and unserved areas of the State. The report shall also determine the location of all areas of the State, by census tract, that qualify as "distressed areas," and either do or do not have generally and readily commercially available retail access to broadband wireline facilities and/or fixed-wireless broadband facilities. The report shall, furthermore, assess and set forth with specificity the aggregate unmet demand for broadband services in unserved, underserved and distressed areas by census tract and by block, lot or other uniquely identifiable administrative characteristic. The report shall estimate the amount of broadband connectivity that would need to be built or offered in such areas to meet the unmet demand first in unserved areas and next in underserved areas. Such report shall be used to create a map in standard format to be determined by the New York geographic information systems clearinghouse and CSCIC, and consistent with any security protocols established by CSCIC, such map shall be a fully three-dimensional representation of all broadband resources within the State.

E. Cooperation

Every agency, department, office, division or public authority of this State shall cooperate with the Council and furnish such information and assistance as they determine is reasonably necessary to accomplish the purpose of the executive order.



GIVEN under my hand and the Privy Seal of the
State in the City of Albany this fifth day
of June in the year two thousand nine.

BY THE GOVERNOR

Lawrence Schwarty

Secretary to the Governor

David A. Paterson