

## POLICY GUIDANCE ON HARDSHIP EXCEPTIONS TO ISP SERVICE COMMITMENTS

**Purpose:** This document provides policy guidance for Internet Service Provider (“ISP”) under the New NY Broadband Program (“Program Guidance”) to address identified exceptions – i.e. circumstances in which an ISP will be released from an infrastructure buildout obligation based on demonstrated hardship, as determined by ConnectALL in the authorized exercise of its discretion. This Policy Guidance aims to rectify discrepancies, enhance transparency, and ensure competitive support for digital infrastructure in unserved and underserved areas.

This policy guidance seeks to balance the operational realities faced by ISPs with the need to expand broadband access to all residents, notwithstanding geographic and infrastructure challenges. By establishing clear expectations and processes for documenting and addressing service challenges, this policy aims to foster a cooperative environment where ISPs can efficiently address service requests, ensuring that no New York resident is left behind in our increasingly digital society.

**Scope:** This guidance applies to all ISPs contracted under the New NY Broadband Program.

### Definitions:

**Access Issues:** Circumstances where physical or legal barriers (such as lack of ownership, easements, license rights, etc.) prevent ISPs from accessing a location to provide broadband services.

**Broadband Serviceable Location:** A business or residential location in the United States at which fixed broadband Internet access service is, or can be, installed. Broadband Serviceable Locations are categorized as 1) residential parcels 2) non-residential parcels 3) mass-market broadband locations versus non-mass market broadband locations

**ConnectALL Field Verification:** The procedure by which ConnectALL or their authorized designee verifies the accuracy of broadband service availability and infrastructure presence in their area with on-site inspections, to ensure that data is reflective of actual service conditions.

**County Validation:** The process through which ConnectALL confirms the accuracy of broadband service and infrastructure information within their jurisdiction through reviews of ISPs submissions, local record(s) and public input.

**Public Electric Service Validation:** The process where electric utility providers confirm the existence and adequacy of electrical infrastructure to support broadband services, or the feasibility of establishing such infrastructure.

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**Enterprise Locations:** Non-residential locations that serve business operations, requiring different service considerations than Broadband Serviceable Locations.

**Infrastructure Needs Assessment:** An Infrastructure Needs Assessment is a comprehensive evaluation conducted by the ISP to determine the infrastructure required to deliver broadband services in a specific area. This assessment considers existing infrastructure, geographical and logistical challenges, community needs, and regulatory requirements. The purpose is to identify the most effective and feasible method of providing service, whether through conventional means or by utilizing exceptions where necessary.

**Internet Service Providers Attestation:** A written declaration by the ISPs certifying the accuracy of their broadband service, supported by technical data and methodologies used in determining coverage areas.

**Long Drops:** Premises that require more than the standard length of installation for service connection, specifically over 300 feet from the nearest network node due to the increased costs and complexity of installation.

- **Standard Drop Length:** Up to 300 feet from the nearest road. A home within this distance will have an installation fee of \$49.
- **Installation Time Frame:** Regardless of the distance, the ISP must complete the installation within 10 business days.
- Installation costs where the distance is greater than 300 feet from the nearest road may incur an additional reasonable cost.
- The ISP is responsible for ensuring the installation all the way to the termination point conforms with NESC requirements regardless of who performs the installation.

**Maximum Buffer Requirement:** Providers of fixed wired broadband are required to report service availability within prescribed distances from the aggregation points to serviced premises, factoring in a mandated drop distance not exceeding 300 feet.

**No Access Location:** Locations where entry for broadband infrastructure installation is legally restricted or refused by landowners, or a geographic area within a town, neighborhood, rural area, or street that lacks physical access for installation of infrastructure necessary for deployment of broadband services.

**No Public Electrical Service Location:** A geographic area within a town, neighborhood, rural area, or street that lacks access to Public Electric Service power infrastructure necessary for the operation of broadband services. Electric Service may be pole mounted, underground, primary voltage, or secondary voltage.

**Other:** Locations without certificates of occupancy unsuitable for standard broadband deployment, such as cemeteries, campsites, electric substations, locations requiring the installation of cable across rivers or lakes, water storage facilities, barns, and hunting and fishing cabins.

A hunting or fishing cabin may have a “general permit” issued by a park or municipal agency but is used for only occasional occupancy and primarily for hunting, fishing, or similar purposes.

**Pre-emptive Buildouts:** Infrastructure development initiatives undertaken by ISPs prior to receiving service orders from residents within a designated service area, particularly in No Electric Service Locations.

## Policy Guidance & Deployment Solutions:

### Exception Criteria for Internet Service Providers Deployment Obligations:

ISPs are not required to conduct pre-emptive infrastructure buildouts in areas that meet the following exception criteria. These exceptions recognize the impracticality and potential economic infeasibility infrastructure development in these areas.

### Neutrality and Fairness:

This policy is crafted to maintain neutrality and fairness, acknowledging the historical challenges and constraints faced by ISPs in deploying infrastructure in locations without public electric service. It highlights the necessity of providing broadband access to residents in these locations, supporting universal service and digital inclusion objectives.

### Implementation and Compliance:

ISPs are encouraged to establish transparent and efficient procedures for requesting exceptions and processing Infrastructure Needs Assessments. These assessments are critical evaluations conducted to determine the specific infrastructure requirements necessary to provide services in an area, considering both existing facilities and potential obstacles.

### *Types of Supporting Evidence:*

To substantiate the need for exceptions and validate the assessments, ISPs should provide various forms of evidence including:

- **ISP Attestation:** A formal declaration by the ISP confirming the details of the infrastructure scenario and the necessity for exceptions.
- **ConnectALL Field Verification:** An on-site verification process conducted by representatives from ConnectALL to confirm the physical and logistical details reported by the provider.
- **County and Electric Utility Validations:** Confirmations from local county authorities and electric utilities to verify the current state of infrastructure and future development plans that may impact broadband development.

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### *Monitoring Compliance:*

Compliance with these procedures will be monitored through regular reports submitted by the ISPs. These reports must detail the efforts undertaken and challenges encountered in servicing areas without public electric service, including the rationale for any exceptions claimed and the outcomes of the Infrastructure Needs Assessment. The reports should also include documentation of the evidence types listed above to support the providers assessments and actions.

### Third-Party Installations

*Exception:* ISPs are excepted from deploying broadband infrastructure in cases where installation involves a third party without an easement (not the original signatory). This situation must be documented as a basis for the exception.

- *Service Request Fulfillment:* ISPs should assess the feasibility of service provision on a case-by-case basis when third-party installations are involved. Providers should document all efforts to negotiate easements or access rights and explore alternative solutions to overcome access barriers. If service provision is deemed infeasible due to lack of easement or access rights, this should be clearly communicated to the customer along with supporting documentation.
- *Implementation and Compliance:* ISPs must maintain detailed records of all instances where third-party installations prevent service provision. This documentation should include attempts to negotiate easements, alternative solutions explored, and the reasons for infeasibility. Regular audits should be conducted to ensure compliance with these procedures and to verify the accuracy of the records maintained.

### Competitive Service

*Exception:* ISPs are excepted from providing broadband services under the New NY Broadband Program if a competitor offers a similar service at the same price (e.g., a \$60/month program offers 100 Mbps download speed). This would qualify as a valid exception due to the lack of benefit.

- *Service Request Fulfillment:* ISPs should perform a competitive analysis to determine if a similar service is available at the same price as from a competitor. If such a service exists, the provider should document the findings and communicate the rationale for the exception to the customer, including details of the competitive service available.
- *Implementation and Compliance:* ISPs must document all competitive analyses conducted to justify service exceptions. This documentation should include details of the competing service, pricing, and performance metrics. Regular reviews should be conducted to ensure that the competitive analysis is up-to-date and accurate. Compliance with this policy should be monitored through periodic audits.

### Enterprise Locations

**Exception:** ISPs may not be obligated to provide broadband infrastructure to enterprise locations if such locations require specialized services.

- **Service Request Fulfillment:** ISPs are encouraged to collaborate with enterprises to understand their specific broadband needs and deliver tailored solutions that align with their business models and operational requirements.
- **Implementation and Compliance:** ISPs must keep records of specialized infrastructure deployments, customer service agreements, and justifications for any exceptions to standard deployment requirements.

## No Access

**Exception:** ISPs are not obligated to install broadband infrastructure where legal barriers exist, or property owners explicitly refuse access.

- **Service Request Fulfillment:** This exception respects property rights and encourages ISPs to explore alternatives to circumvent access barriers, especially prevalent in rural areas where landowners may deny access for field surveys by tree trimmers, contractors, or grantee employees. ISPs should proactively pursue various strategies such as negotiating easements, leasing the use of private property, or devising alternative solutions to gain necessary land access. In instances where ISPs are unable to secure permission to access private property, it may be beneficial for ConnectALL to intervene and facilitate a resolution. This proactive approach is crucial as access issues can significantly impact the ability to provide service to numerous customers seeking connectivity.
- **Implementation and Compliance:** ISPs must document each instance of access denial, including reasons and descriptions of efforts to provide service.

## Long Drops

**Exception:** Situations where site conditions will incur an unreasonable cost for the ISP may qualify for a waiver.

- **Service Request Fulfillment:** ISPs should assess the feasibility of servicing each long drop request on a case-by-case basis.
- **Implementation and Compliance:** ISPs must maintain a log of long drop locations, challenges, solutions explored, and the outcomes.

## Areas with No Public Electric Service

**Exception:** ISPs are excepted from deploying broadband infrastructure in areas without any Public Electric Service infrastructure.

- **Service Request Fulfillment:** Installing and operating broadband technology generally requires electrical power, and absence of it renders deployment technically challenging and economically impractical.
- **Implementation and Compliance:** ISPs should verify the absence of power infrastructure through assessments and collaborative checks with electric utility providers. Documentation must support the non-existence of power lines or plans for future electrical grid expansions that could support broadband deployment.

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- ISPs are not required to undertake Pre-emptive Buildouts in locations where public electric service infrastructure is absent.

### Areas with Private Electric Service Infrastructure

**Exception:** ISPs are not required to undertake Pre-emptive Buildouts in locations where public electric service infrastructure is absent. However, in areas where residents have private electric service, ISPs are obligated to deploy broadband infrastructure. Installation costs along public roads to the property line are the responsibility of the ISP. Inside the property line, the Long Drop cost provisions apply.

### Other Exception Areas

**Exception:** ISPs are excepted from providing broadband infrastructure to areas classified under “other” where installation is either impractical due to the nature of the location, or the area is not intended for regular occupancy or residential use.

- **Service Request Fulfillment:** If services are requested in an “Other” exception area, ISPs should evaluate the request contextually, considering the purpose and frequency of use of the location, and propose feasible connectivity solutions or justify the exception based on the area’s distinctive characteristics.
- **Implementation and Compliance:** ISPs must document the rationale for classifying a location as an “Other” exception area, including a description of the location’s usage and characteristics that preclude standard service.

### Exception Conditions and Future Servicing

While recognizing the exceptions provided for specific conditions, ISPs are also tasked with ensuring that infrastructure development accounts for potential future broadband needs. This includes the installation of dark fiber or alternative conduit along primary roads, in currently unserved or underserved areas. This preemptive strategy ensures that the physical groundwork will support quick activation of services when conditions become favorable or when demand rises.

- **Infrastructure Extension Requirement:** ISPs should extend broadband infrastructure from poles supporting primary voltage, running underground cables or conduits down streets even if immediate service activation is not feasible. This approach not only prepares the area for future development but also minimizes disruptions by avoiding the need for repeated excavations.
- **Implementation and Compliance:** ISPs must document their infrastructure extension efforts, detailing how these installations contribute to potential future broadband expansion. Compliance will be verified through regular audits of infrastructure plans and actual deployments.