September 25, 2024

Hope Knight
Commissioner, President and CEO
Empire State Development
633 Third Avenue
New York, NY 10017

Re: New NY Broadband Program
Report 2024-F-10

Dear Commissioner Knight:

Pursuant to the State Comptroller's authority as set forth in Article V, Section 1 and Article X, Section 5 of the State Constitution and Article II, Section 8 of State Finance Law, we have followed up on the actions taken by officials of Empire State Development to implement the recommendations contained in our initial audit report, *New NY Broadband Program* (Report 2020-S-19).

Background, Scope, and Objective

Broadband is a critical aspect of economic growth and job creation, and increasingly an essential part of how we conduct everyday life. Across all industries, broadband has reimagined how we provide education and health care, manage energy, and ensure public safety, as well as how information is stored, accessed, and shared. The COVID-19 pandemic further changed how we use the Internet for work, medical care, school, and socializing. Further, many businesses engage with customers, suppliers, and services online, with online sales making up about 16% of total retail sales.

The pandemic exposed that high-speed broadband remains unavailable or too costly for many New Yorkers. The New NY Broadband Program (Program), launched in 2015, focused on closing the digital divide in the State. The Program was designed to ensure that every New Yorker had access to high-speed broadband at Internet download speeds of at least 100 megabits per second (Mbps) by the end of 2018, except the most remote areas of the State where such speeds were not feasible. In those areas, download speeds of 25 Mbps were deemed acceptable. The Program included $500 million in State funds and secured additional private and federal matching investments of $235 million, bringing the total investment to $735 million.

The Broadband Program Office (BPO), a division of Empire State Development (ESD), was responsible for managing the Program. BPO's mission was to increase economic and social opportunities through universal broadband deployment, and it served as the State's single

point of contact for broadband development and deployment, identifying census blocks eligible for funding and establishing grant disbursement agreements with Internet service providers (ISPs). BPO implemented the Program in three phases between January 2016 and March 2017, with each phase having ISPs submit proposals to serve eligible unserved and underserved census blocks using a reverse auction process (i.e., lowest State subsidiary served). In total, BPO made 53 awards to 33 ISPs to provide broadband to 255,994 housing units, which represents approximately 3% of New York's 8.1 million housing units. As of December 2023, a total of $481.6 million in Program funds had been expended. At the time our initial report was issued, BPO stated that broadband Internet speeds of 100 Mbps or greater were available to 98.95% of the State.

In January 2022, the Executive announced the ConnectALL Initiative (ConnectALL) with additional funding upward of $1 billion to provide affordable broadband to those who remained unserved or underserved in the State. ConnectALL includes the National Telecommunications and Information Administration's (NTIA) federally funded Broadband Equity, Access, and Deployment Program (BEAD), which allocated $664 million to New York State. The funds are to be used primarily to provide fiber optic infrastructure to locations where inadequate broadband service is available. The ConnectALL Office (CAO) is responsible for administering BEAD. As of July 2024, New York's ConnectALL grantees were awarded more than $70 million to provide over 800 miles of public broadband infrastructure for connecting more than 25,000 homes and businesses to high-speed broadband.

The objective of our initial audit, issued on July 1, 2022, was to determine whether ESD had effectively monitored and managed the Program and whether the Program had achieved its overall goals. The audit found BPO effectively monitored and managed the Program; however, the Program did not achieve its overall goal of providing statewide broadband availability. In March 2021, BPO officials stated there were more than 14,000 households that were unserved or underserved. Also, 31% of the connected households were using satellite technology, which has a maximum download speed of 25 Mbps. Additionally, while BPO asserted that 98.95% of the State had access to broadband, the audit found this figure to be overstated because it was based, in part, on Federal Communications Commission (FCC) data, which was not based on specific location availability. The FCC data had known limitations regarding broadband availability within census blocks as it considered an entire census block served if at least a single location within that block had broadband availability, and the FCC only required the minimum download speed of 25 Mbps to consider a census block served. Further, there were nine projects with ISPs that remained in the construction phase; four of the projects affected as many as 12,400 households.

The objective of our follow-up was to assess the extent of implementation, as of July 19, 2024, of the three recommendations included in our initial audit report.

Summary Conclusions and Status of Audit Recommendations

ESD officials have made progress in addressing the problems identified in the initial audit report. Of the initial report's three recommendations, one was implemented, one was partially implemented, and one is no longer applicable.

<u>Follow-Up Observations</u>

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<u>Recommendation 1</u>

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Work with ISPs to complete outstanding projects as soon as practical.

Status – Partially Implemented

Agency Action – All nine of the broadband projects that were still in the construction phase of providing broadband to unserved or underserved households have been completed. However, ESD hired a third-party contractor to validate the work completed by the ISPs and only eight of the nine have been validated. The validations consisted of technical reviews, capital expenditure examinations, census block verifications, and on-site validations of the completed work. Eight of the nine projects had validations confirming project completion that met acceptable work quality, industry standards, and acceptable practices. One project had an affidavit affirming its completion, but the project was not yet validated.

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<u>Recommendation 2</u>

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Include a disclaimer when reporting the percentage of broadband availability in the State that it is based on FCC data that has known limitations.

Status – No Longer Applicable

Agency Action – ESD stopped gathering and using FCC block-level broadband data to report the percentage of broadband availability in the State. On December 9, 2022, the FCC ended the collection of broadband deployment data based on block-level fixed broadband data. ISPs now report services provided by individual locations to the FCC's Broadband Data Collection System, and the Public Service Commission reports on Statewide broadband availability via the [New York State Broadband Map](#).

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<u>Recommendation 3</u>

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Ensure that future State-funded projects are based on accurate broadband availability data and utilize technologies that provide high-speed and reliable Internet that meets users' needs.

Status – Implemented

Agency Action – To meet NTIA requirements for receiving funding, the CAO used the December 2023 National Broadband Map to determine unserved or underserved areas when making award determinations for future projects. The National Broadband Map uses information on services provided that is reported by ISPs to the FCC's Broadband Data Collection System. Because the service availability information is no longer based on block-level fixed broadband data, ESD officials stated it is more accurate to use the National Broadband Map when determining how to award funding. CAO also incorporates information from the [New York State Broadband Map](#), which uses various sources of information to determine unserved and underserved areas, including ISP data, input from the public and stakeholders, and State geographic information system data. Although more than $70 million has been awarded through the first phase of ConnectALL, none of the projects had started as of August 2024.

Major contributors to this report were Andre Spar, MBA; Kathleen Hotaling; and Lisa Whaley.

ESD officials are requested, but not required, to provide information about any actions planned to address the unresolved issues discussed in this follow-up within 30 days of the report's issuance. We thank the management and staff of ESD for the courtesies and cooperation extended to our auditors during this follow-up.

Very truly yours,

Scott Heid
Audit Manager

cc: Felisa R. Hochheiser, Empire State Development