

4395--A

Cal. No. 474

2013-2014 Regular Sessions

I N S E N A T E

March 26, 2013

Introduced by Sens. YOUNG, RITCHIE, VALESKY -- (at request of the Legislative Commission on Rural Resources) -- read twice and ordered printed, and when printed to be committed to the Committee on Infrastructure and Capital Investment -- reported favorably from said committee, ordered to first and second report, ordered to a third reading, amended and ordered reprinted, retaining its place in the order of third reading

AN ACT to amend the public service law, in relation to the issuance of stocks, bonds and other forms of indebtedness for the purpose of expanding broadband services

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 Section 1. Section 101 of the public service law, as amended by chap-
2 ter 443 of the laws of 2000, is amended to read as follows:
3 S 101. Authority to issue stock, bonds and other forms of indebt-
4 edness. A telegraph or telephone corporation may, when authorized by
5 the commission, issue stock, bonds, notes or other evidences of indebt-
6 edness payable at periods of more than twelve months after the date
7 thereof, or a receiver of such a corporation, if duly authorized by law,
8 may issue receiver's certificates, when necessary for the acquisition of
9 property, the construction, completion, extension or improvement of its
10 facilities or the improvement or maintenance of its service within the
11 state, or for the discharge or lawful refunding of its obligations, or
12 reimbursement of moneys actually expended from the income from any
13 source, within five years next prior to the filing of the application
14 therefor, or for any of such purposes, provided, however, that no
15 authority shall be granted authorizing such issue for reimbursement of
16 moneys expended from income for betterments or replacements unless the
17 applicant shall have kept its accounts and vouchers of such expenditures
18 in such manner as to enable the commission to ascertain the amount of
19 moneys so expended and the purposes for which such expenditures were

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets
[] is old law to be omitted.

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1 made. Stock may be issued to stockholders as a stock dividend provided
2 that there shall have been secured from the commission authority for
3 such issuance and for a transfer of surplus to capital in an amount
4 equal to the par or stated value of the stock so authorized and that the
5 applicant has certified in the application for authority that a sum
6 equal to the amount to be so transferred was expended for the purposes
7 enumerated in this section. Stock may be issued to an employee or direc-
8 tor of a telegraph or telephone corporation under a stock option plan
9 pursuant to which such corporation grants options to its employees or
10 directors to purchase shares of stock, such options to be exercisable
11 for a stated period of time to purchase shares of stock at the market
12 value of the stock at the time of issuance of the option, provided that
13 there shall have been secured from the commission authority for such
14 issuance and that the applicant has certified in the application for
15 authority that the proceeds from the exercise of the stock options are
16 needed for one of the purposes enumerated in this section. The issue of
17 stocks, bonds or other evidences of indebtedness, within the meaning of
18 this section, shall include the sale by any such corporation of any such
19 securities previously issued in compliance with the provisions of this
20 section and subsequently reacquired by such corporation, provided,
21 however, for good cause shown the commission may exempt from the
22 restriction hereof stocks, bonds or other evidences of indebtedness. The
23 application for authority shall state the amount of any such issue and
24 the purposes to which it or its proceeds are to be applied and shall
25 certify that the money, property or labor procured or to be procured or
26 paid for by such issue or its proceeds has been or is reasonably
27 required for the purposes specified in the application for authority,
28 and that such purposes are in no part reasonably chargeable to operating
29 expenses or to income except in the case of bonds, notes or other
30 evidences of indebtedness as may be specifically identified in the
31 application for authority. FOR THE PROCEEDS FROM A FEDERAL LOAN OR
32 GRANT, A TELEGRAPH OR TELEPHONE CORPORATION SHALL PROVIDE NOTICE TO THE
33 PUBLIC SERVICE COMMISSION OF RECEIPT OF SUCH ISSUE BUT SHALL NOT BE
34 REQUIRED TO FILE AN APPLICATION FOR AUTHORITY. For the purpose of enabl-
35 ing the commission to determine whether it should authorize such issu-
36 ance, the commission shall have the power to make such inquiry or inves-
37 tigation, hold such hearings and examine such witnesses, books, papers,
38 documents or contracts as it may determine of importance in enabling it
39 to reach a determination. [No] EXCEPT IN INSTANCES WHERE A TELEGRAPH OR
40 TELEPHONE CORPORATION HAS NOTIFIED THE COMMISSION IT IS ENGAGED IN
41 SECURING A FEDERAL LOAN OR GRANT FOR THE EXPANSION OF BROADBAND
42 SERVICES, NO such corporation shall, without the consent of the commis-
43 sion, apply any such issue or its proceeds to any purpose not specified
44 in the application for authority. Such telegraph corporation or tele-
45 phone corporation may issue notes for proper corporate purposes and not
46 in violation of any provision of this chapter or of any other act, paya-
47 ble at periods of not more than twelve months without the consent of the
48 commission; but no such note shall, in whole or in part, directly or
49 indirectly, be refunded by any issue of stock or bonds, or by any
50 evidences of indebtedness running for more than twelve months, without
51 the consent of the commission. No telegraph corporation or telephone
52 corporation shall be required, however, to apply to the commission for
53 authority to issue stocks, bonds, notes or other evidence of indebt-
54 edness except for the acquisition of property, the construction,
55 completion, extension or improvement of its facilities, or the improve-
56 ment or maintenance of its service within the state, or the discharge or

1 refunding of obligations, or reimbursement of moneys actually expended
2 for such purposes. The commission shall have power to require every such
3 corporation to file with the commission after the issuance of stocks,
4 bonds, notes or other evidences of indebtedness issued with or without
5 the approval of the commission as provided in this section, a notice of
6 such transaction in such form as the commission may prescribe. The
7 commission shall have no power to authorize the capitalization of any
8 franchise or right to be a corporation, nor to authorize the capitaliza-
9 tion of any franchise or the right to own, operate or enjoy any fran-
10 chise whatsoever in excess of the amount (exclusive of any tax or annual
11 charge) actually paid to the state or any political subdivision thereof,
12 as the consideration of the grant of such franchise or right, nor to
13 authorize the issuance of any stocks or other securities for any
14 purposes other than those enumerated in this section. Nor shall the
15 corporate stock of the corporation formed by the merger or consolidation
16 of two or more other corporations exceed the sum of the capital stock of
17 the corporations so consolidated, at the par value thereof, or such sum
18 and any additional sum actually paid in cash; nor shall any contract for
19 consolidation or lease be capitalized in the stock of any corporation
20 whatever; nor shall any corporation hereafter issue any bonds against or
21 as a lien upon any contract for consolidation or merger. Notwithstanding
22 the foregoing provisions of this section, any application for approval
23 under this section shall be deemed granted by the commission forty-five
24 days after such application is filed for approval, unless the commis-
25 sion, or its designee, determines and informs the applicant in writing
26 within such forty-five day period that the public interest requires the
27 commission's review and its written order.

28 S 2. This act shall take effect immediately.