

1223--B

2015-2016 Regular Sessions

I N   A S S E M B L Y

January 8, 2015

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Introduced by M. of A. BRENNAN, PRETLOW, KAVANAGH, GUNTHER, LUPARDO, COLTON, ENGLEBRIGHT, LIFTON, CAHILL, ROBINSON, MAGNARELLI, ABINANTI, BENEDETTO, GOLDFEDER, JAFFEE, PAULIN, ABBATE, ORTIZ, STIRPE, ROSENTHAL, MILLER, WEPRIN, SKOUFIS, BARRETT, STECK, CLARK, BRINDISI, SEPULVEDA, DINOWITZ, BROOK-KRASNY, SEAWRIGHT, OTIS, MAYER, SANTABARBARA -- Multi-Sponsored by -- M. of A. BUCHWALD, CRESPO, CROUCH, CYMBROWITZ, DenDEKKER, GALEF, GLICK, GOTTFRIED, HEVESI, HOOPER, LENTOL, LOPEZ, LUPINACCI, MARKEY, McDONALD, McDONOUGH, MURRAY, PEOPLES-STOKES, PERRY, RAIA, RAMOS, SCHIMEL, SOLAGES, THIELE, TITONE -- read once and referred to the Committee on Corporations, Authorities and Commissions -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- again reported from said committee with amendments, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the public service law, in relation to creating standards by which the public service commission reviews and approves a merger or acquisition between telephone corporations, cable corporations, and combination telephone and cable corporations

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

1     Section 1. The public service law is amended by adding a new article  
2     12 to read as follows:

3   ARTICLE 12

4                     PROVISIONS RELATING TO TELEPHONE CORPORATIONS, CABLE  
5                     CORPORATIONS, AND COMBINATION TELEPHONE AND CABLE  
6                     CORPORATIONS

7     SECTION 250. DEFINITIONS.

8                     251. MERGERS OR ACQUISITIONS.

9     S 250. DEFINITIONS. THE WORDS AND PHRASES USED IN THIS ARTICLE SHALL  
10    HAVE THE FOLLOWING MEANINGS UNLESS A DIFFERENT MEANING CLEARLY APPEARS  
11    IN THE CONTEXT:

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

LBD02448-06-5

1 1. "CABLE CORPORATION" SHALL MEAN ANY PERSON OWNING, CONTROLLING,  
2 OPERATING, MANAGING OR LEASING ONE OR MORE CABLE TELEVISION SYSTEMS  
3 WITHIN THE STATE.

4 2. "CABLE SYSTEM" SHALL HAVE THE SAME MEANING AS SET FORTH IN SECTION  
5 TWO HUNDRED TWELVE OF THIS CHAPTER.

6 3. "COMBINATION TELEPHONE AND CABLE CORPORATION" SHALL MEAN ANY TELE-  
7 PHONE CORPORATION OPERATING IN NEW YORK UNDER COMMON OWNERSHIP WITH A  
8 CABLE CORPORATION OPERATING IN NEW YORK OR ANY CABLE CORPORATION OPERAT-  
9 ING IN NEW YORK UNDER COMMON OWNERSHIP WITH A TELEPHONE CORPORATION  
10 OPERATING IN NEW YORK, OR ANY SUCCESSOR OF EITHER CORPORATION.

11 S 251. MERGERS OR ACQUISITIONS. 1. (A) NO TELEPHONE CORPORATION, CABLE  
12 CORPORATION, OR COMBINATION TELEPHONE AND CABLE CORPORATION THAT HAS  
13 GROSS ANNUAL REVENUES EXCEEDING ONE HUNDRED MILLION DOLLARS SHALL TRANS-  
14 FER, LEASE OR MERGE ITS STOCK, WORKS, FRANCHISE OR SYSTEM OR ANY PART OF  
15 SUCH WORKS OR SYSTEM TO ANY OTHER PERSON OR CORPORATION WITHOUT THE  
16 WRITTEN CONSENT OF THE COMMISSION.

17 (B) NOTWITHSTANDING ANY OTHER SECTION OF LAW, NO CONSENT, AS REQUIRED  
18 BY PARAGRAPH (A) OF THIS SUBDIVISION, SHALL BE GIVEN BY THE COMMISSION  
19 TO THE ASSIGNMENT, TRANSFER, MERGER OR LEASE OF ANY RIGHT OR FRANCHISE  
20 TO OPERATE A TELEPHONE LINE OR ANY CABLE TELEVISION SYSTEM UNLESS IT  
21 SHALL HAVE BEEN SHOWN BY THE PARTIES THAT SUCH ASSIGNMENT, TRANSFER, OR  
22 LEASE IS IN THE PUBLIC INTEREST.

23 (C) NO CONSENT, AS REQUIRED BY PARAGRAPH (A) OF THIS SUBDIVISION,  
24 SHALL BE GIVEN BY THE COMMISSION TO THE ASSIGNMENT, TRANSFER, MERGER OR  
25 LEASE OF ANY RIGHT OR FRANCHISE TO OPERATE ANY PART OF A TELEPHONE OR  
26 CABLE CORPORATION'S WORKS OR SYSTEM, OR TO A CONTRACT FOR THE OPERATION  
27 OF SUCH ENTITY'S WORKS OR SYSTEM, UNLESS IT SHALL HAVE BEEN SHOWN BY THE  
28 PARTIES THAT SUCH ASSIGNMENT, TRANSFER, OR LEASE OR CONTRACT IS IN THE  
29 PUBLIC INTEREST.

30 2. BEFORE CONSENTING TO THE MERGER, ACQUISITION, ASSIGNMENT, LEASE, OR  
31 TRANSFER OF CONTROL OF ANY TELEPHONE CORPORATION, CABLE CORPORATION, OR  
32 COMBINATION TELEPHONE AND CABLE CORPORATION PURSUANT TO SUBDIVISION ONE  
33 OF THIS SECTION THE COMMISSION SHALL FIND THAT THE PROPOSAL DOES ALL OF  
34 THE FOLLOWING:

35 (A) PROVIDES PUBLIC INTEREST BENEFITS TO THE EFFECTED SUBSCRIBERS.

36 (B) MAINTAINS OR IMPROVES THE SERVICE QUALITY STANDARDS THE COMMISSION  
37 HAS ESTABLISHED FOR THE EFFECTED TELEPHONE CORPORATION, CABLE CORPO-  
38 RATION, OR COMBINATION TELEPHONE AND CABLE CORPORATION.

39 (C) MAINTAINS OR IMPROVES THE FINANCIAL CONDITION OF THE RESULTING  
40 TELEPHONE CORPORATION, CABLE CORPORATION, OR COMBINATION TELEPHONE AND  
41 CABLE CORPORATION DOING BUSINESS IN THE STATE.

42 (D) MAINTAINS OR IMPROVES THE TELEPHONE CORPORATION, CABLE CORPO-  
43 RATION, OR COMBINATION TELEPHONE AND CABLE CORPORATION SERVICE OFFERINGS  
44 TO SUBSCRIBERS IN THE STATE.

45 (E) MAINTAINS OR IMPROVES THE QUALITY OF MANAGEMENT OF THE RESULTING  
46 TELEPHONE CORPORATION, CABLE CORPORATION, OR COMBINATION TELEPHONE AND  
47 CABLE CORPORATION DOING BUSINESS IN THE STATE.

48 (F) IS FAIR AND REASONABLE TO AFFECTED TELEPHONE CORPORATION, CABLE  
49 CORPORATION, OR COMBINATION TELEPHONE AND CABLE CORPORATION EMPLOYEES,  
50 INCLUDING BOTH UNION AND NONUNION EMPLOYEES.

51 (G) DOES NOT ADVERSELY AFFECT COMPETITION IN THE MARKETPLACE FOR TELE-  
52 PHONE OR CABLE SERVICES.

53 (H) CREATES ENFORCEMENT MEASURES SO THAT IF POST-CONSENT A TELEPHONE  
54 CORPORATION, CABLE CORPORATION, OR COMBINATION TELEPHONE AND CABLE  
55 CORPORATION FAILS TO COMPLY WITH ANY CONDITION OR COMMITMENT MADE TO THE  
56 COMMISSION IN ORDER TO OBTAIN COMMISSION CONSENT, THE COMMISSION SHALL

1 BE AUTHORIZED TO COMPEL PERFORMANCE OR ORDER IMPLEMENTATION OF SUCH  
2 CONDITIONS OR COMMITMENTS.

3 (I) EQUITABLY ALLOCATES THE FORECASTED POSITIVE BENEFITS OF THE  
4 PROPOSAL BETWEEN SHAREHOLDERS AND SUBSCRIBERS, INCLUDING BUT NOT LIMITED  
5 TO, THE FORECASTED ECONOMIC BENEFITS. SUBSCRIBERS SHALL RECEIVE NOT LESS  
6 THAN FIFTY PERCENT OF SUCH FORECASTED POSITIVE BENEFITS. FOR THE PURPOSE  
7 OF ALLOCATING THE FORECASTED POSITIVE BENEFITS OF THE PROPOSAL BETWEEN  
8 SHAREHOLDERS AND SUBSCRIBERS, THE COMMISSION MAY DEEM, INCLUDING BUT NOT  
9 LIMITED TO, REINVESTMENT OF THE FORECASTED BENEFITS INTO THE TELEPHONE  
10 CORPORATION, CABLE CORPORATION, OR COMBINATION TELEPHONE AND CABLE  
11 CORPORATION'S INFRASTRUCTURE AS A BENEFIT RECEIVED BY SUBSCRIBERS.

12 3. WHEN REVIEWING A MERGER, ACQUISITION, OR TRANSFER OF CONTROL  
13 PROPOSAL, AS SET FORTH IN SUBDIVISION ONE OF THIS SECTION, THE COMMIS-  
14 SION SHALL CONSIDER REASONABLE ALTERNATIVES OR MODIFICATIONS TO THE  
15 PROPOSAL AS RECOMMENDED BY OTHER PARTIES TO DETERMINE WHETHER OR NOT THE  
16 PROPOSAL IS IN THE PUBLIC INTEREST.

17 4. THE PERSON OR CORPORATION SEEKING ACQUISITION OR CONTROL OF A TELE-  
18 PHONE CORPORATION, CABLE CORPORATION, OR COMBINATION TELEPHONE AND CABLE  
19 CORPORATION SHALL HAVE BEFORE THE COMMISSION THE BURDEN OF PROVING BY A  
20 PREPONDERANCE OF THE EVIDENCE THAT THE REQUIREMENTS OF SUBDIVISION TWO  
21 OF THIS SECTION ARE SATISFIED.

22 5. IN DETERMINING WHETHER OR NOT AN ACQUISITION OF A TELEPHONE CORPO-  
23 RATION, CABLE CORPORATION, OR COMBINATION TELEPHONE AND CABLE CORPO-  
24 RATION HAS THE GROSS ANNUAL REVENUES EXCEEDING THE AMOUNT SPECIFIED IN  
25 SUBDIVISION TWO OF THIS SECTION, THE REVENUES OF THAT TELEPHONE OR CABLE  
26 CORPORATION'S AFFILIATES SHALL NOT BE CONSIDERED, UNLESS THE AFFILIATE  
27 IS TO BE UTILIZED FOR THE PURPOSE OF EFFECTING SUCH MERGER, ACQUISITION,  
28 OR CONTROL.

29 6. PARAGRAPHS (A), (B), AND (C) OF SUBDIVISION TWO OF THIS SECTION  
30 SHALL NOT APPLY TO THE FORMATION OF A HOLDING COMPANY.

31 7. PARAGRAPHS (A), (B), AND (C) OF SUBDIVISION TWO OF THIS SECTION  
32 SHALL NOT APPLY TO ACQUISITIONS OR CHANGES IN CONTROL THAT ARE MANDATED  
33 BY EITHER THE COMMISSION OR THE LEGISLATURE.

34 8. WHEN ISSUING A DECISION ON A PROPOSED MERGER, ACQUISITION, OR  
35 TRANSFER OF CONTROL PROPOSAL, AS REQUIRED BY SUBDIVISION ONE OF THIS  
36 SECTION, THE COMMISSION SHALL ISSUE A REPORT DETAILING HOW THAT DECISION  
37 WAS REACHED WITHIN THIRTY DAYS OF ISSUING SUCH DECISION. IF THE COMMIS-  
38 SION GRANTS CONDITIONAL APPROVAL IN ITS DECISION, THE DEPARTMENT SHALL  
39 ISSUE AN ADDITIONAL REPORT WITHIN ONE YEAR AFTER GRANTING SUCH CONDI-  
40 TIONAL APPROVAL DETAILING THE CORPORATION'S COMPLIANCE WITH SUCH CONDI-  
41 TIONS OR COMMITMENTS. NOTHING IN THIS SECTION SHALL PRECLUDE THE DEPART-  
42 MENT FROM ISSUING ADDITIONAL REPORTS ON THE CORPORATION'S COMPLIANCE.

43 9. (A) ANY CONSENT REQUIRED BY PARAGRAPH (A) OF SUBDIVISION ONE OF  
44 THIS SECTION SHALL ONLY BE PROVIDED BY THE COMMISSION AFTER A FULL  
45 EVIDENTIARY HEARING WHICH SHALL INCLUDE THE STATE ATTORNEY GENERAL AS A  
46 PARTY TO THE PROCEEDING.

47 (B) SUCH FULL EVIDENTIARY HEARING SHALL BE LIVE STREAMED ON THE INTER-  
48 NET AND ARCHIVED ON THE DEPARTMENT WEBSITE FOR PUBLIC VIEWING.

49 10. (A) ANY CONSENT REQUIRED BY PARAGRAPH (A) OF SUBDIVISION ONE OF  
50 THIS SECTION SHALL ONLY BE ISSUED BY THE COMMISSION AFTER A PUBLIC HEAR-  
51 ING WHERE MEMBERS OF THE PUBLIC MAY PROVIDE THE COMMISSION OR ITS DESIG-  
52 NEE WITH COMMENTS ON THE PROPOSAL.

53 (B) THE COMMISSION SHALL ANNOUNCE THE PUBLIC HEARING AT LEAST THIRTY  
54 DAYS BEFORE THE DATE OF THE PUBLIC HEARING AND SHALL PUBLISH SUCH NOTICE  
55 ON ITS WEBSITE AT LEAST THIRTY DAYS BEFORE THE PUBLIC HEARING.

1 (C) THE PUBLIC HEARING SHALL BE NO LESS THAN FIFTEEN DAYS BEFORE A  
2 CONSENT ON THE PROPOSAL IS ISSUED BY THE COMMISSION.

3 (D) THE COMMISSION SHALL PUBLISH A REPORT ON THE PROPOSED PLAN WHICH  
4 SHALL BE POSTED AND ACCESSIBLE BY THE PUBLIC ON THE COMMISSION'S WEBSITE  
5 THIRTY DAYS PRIOR TO THE PUBLIC HEARING. SUCH A REPORT SHALL DESCRIBE  
6 THE POTENTIAL BENEFITS AND DETRIMENTS OF THE PROPOSED PLAN.

7 (E) THE COMMISSION SHALL SOLICIT AND COLLECT WRITTEN COMMENTS ON THE  
8 PROPOSAL FROM THE PUBLIC UPON THE ANNOUNCEMENT OF THE PUBLIC HEARING.

9 11. THE COMMISSION SHALL ISSUE A WRITTEN "FINDING OF FACT" AS TO ALL  
10 OF THE ELEMENTS REQUIRED TO BE ANALYZED IN SUBDIVISION TWO OF THIS  
11 SECTION, INCLUDING BUT NOT LIMITED TO:

12 (A) AN EXPLANATION OF HOW THE DEPARTMENT DETERMINED THE "FORECASTED  
13 ECONOMIC BENEFITS" IN PARAGRAPH (I) OF SUBDIVISION TWO OF THIS SECTION  
14 AND SPECIFICALLY SET FORTH IN AN ITEMIZED MANNER HOW SUBSCRIBERS ARE  
15 INTENDED TO RECEIVE NOT LESS THAN FIFTY PERCENT OF SUCH FORECASTED  
16 ECONOMIC BENEFITS, AND

17 (B) A RATIONALE AS TO WHY THE COMMISSION HAS CONSENTED TO THE PARTIC-  
18 ULAR DISTRIBUTION OF SUCH FORECASTED ECONOMIC BENEFITS BETWEEN THE  
19 SUBSCRIBERS AND SHAREHOLDERS. SUCH FINDING OF FACT SHALL BE ISSUED  
20 WITHIN THIRTY DAYS OF THE COMMISSION ISSUING A CONSENT ORDER PURSUANT TO  
21 SUBDIVISION ONE OF THIS SECTION AND POSTED ON THE COMMISSION'S WEBSITE.

22 12. (A) ANY REVIEW OF A MERGER OR ACQUISITION BY THE PUBLIC SERVICE  
23 COMMISSION PURSUANT TO THIS SECTION SHALL BE IN ADDITION TO ANY OTHER  
24 REVIEW REQUIRED BY THIS CHAPTER, INCLUDING BUT NOT LIMITED TO ARTICLES  
25 FIVE AND ELEVEN OF THIS CHAPTER.

26 (B) ANY CONSENT OR APPROVAL OF A MERGER OR ACQUISITION BY THE PUBLIC  
27 SERVICE COMMISSION ISSUED PURSUANT TO THIS SECTION SHALL NOT BE CONSID-  
28 ERED AN APPROVAL OR CONSENT REQUIRED BY ANY OTHER SECTION OF THIS CHAP-  
29 TER, INCLUDING BUT NOT LIMITED TO ARTICLES FIVE AND ELEVEN OF THIS CHAP-  
30 TER, UNLESS OTHERWISE DEEMED BY THE COMMISSION.

31 S 2. Severability clause. If any clause, sentence, paragraph, subdivi-  
32 sion, section or part of this act shall be adjudged by any court of  
33 competent jurisdiction to be invalid, such judgment shall not affect,  
34 impair, or invalidate the remainder thereof, but shall be confined in  
35 its operation to the clause, sentence, paragraph, subdivision, section  
36 or part thereof directly involved in the controversy in which such judg-  
37 ment shall have been rendered. It is hereby declared to be the intent of  
38 the legislature that this act would have been enacted even if such  
39 invalid provisions had not been included herein.

40 S 3. This act shall take effect immediately.