

STATE OF NEW YORK

3739

2017-2018 Regular Sessions

IN ASSEMBLY

January 30, 2017

Introduced by M. of A. DINOWITZ -- read once and referred to the Committee on Corporations, Authorities and Commissions

AN ACT to amend the public service law, in relation to service quality standards, credits, reports and penalties

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

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

ARTICLE 12

PROVISIONS RELATING TO TELEPHONE CORPORATIONS, CABLE CORPORATIONS, COMBINATION TELEPHONE AND CABLE CORPORATIONS AND VOICE OVER INTERNET PROTOCOL SERVICE PROVIDERS

Section 231. Definitions.

232. Service quality standards, minimum performance levels, credits, and reports.

233. Administrative sanctions; recovery of penalties.

§ 231. Definitions. The words and phrases used in this article shall have the following meanings: 1. "Cable corporation" shall mean any person owning, controlling, operating, managing or leasing one or more cable television systems within the state.

2. "Cable television system" shall have the same meaning as set forth in section two hundred twelve of this chapter.

3. "Combination telephone and cable corporation" shall mean any telephone corporation operating in New York under common ownership with a cable corporation operating in New York or any cable corporation operating in New York under common ownership with a telephone corporation operating in New York, or any successor of either corporation.

4. "Voice over internet protocol service provider" shall mean any provider of voice over internet protocol service, as defined by 47 C.F.R. § 9.3.

5. "Core customers" shall mean customers who:

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

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- 1 (a) do not have access to wireline alternatives,
2 (b) subscribe to Lifeline service, or
3 (c) are characterized as having special needs.

4 § 232. Service quality standards, minimum performance levels, credits,
5 and reports. The commission shall establish quality of service stand-
6 ards, minimum performance levels, customer-specific credits, and report-
7 ing requirements that shall apply to each telephone corporation, cable
8 corporation, combination telephone and cable corporation or voice over
9 internet protocol service provider. 1. Service standards. Service stan-
10 dards shall include, but not be limited to: (a) measures relating to
11 repairs for service outages within forty-eight hours unless a customer
12 opts otherwise;

13 (b) a requirement that new installation orders be completed within
14 five days unless a customer opts otherwise;

15 (c) a requirement that each corporation or service provider develop
16 procedures to prioritize service to customers who are Lifeline custom-
17 ers, who are special needs customers, and for customers who utilize a
18 medical alert system or communications equipment, in conjunction with
19 medical devices, to monitor and transmit medical data to their treating
20 physicians' medical sites.

21 2. Minimum performance levels. Minimum performance levels for each
22 service standard shall be developed to ensure that each telephone corpo-
23 ration, cable corporation, combination telephone and cable corporation
24 or voice over internet protocol service provider in the state provide
25 high quality customer service and high quality technical service to all
26 their customers.

27 3. Customer credits or rebates. The commission shall establish a sche-
28 dule of customer credits or rebates, which shall be awarded to customers
29 that experience service outage conditions and for missed installation
30 appointments. A system of graduated credits or rebates shall be estab-
31 lished for those customers whose service outage condition was not
32 cleared within forty-eight hours or installation was not completed with-
33 in five business days unless a customer opts otherwise.

34 4. Service quality monitoring and reporting. The commission shall
35 re-establish the monitoring and measurements of service quality in force
36 on January first, two thousand eleven for telephone corporations and
37 shall apply those service quality standards to each telephone corpo-
38 ration, cable corporation, combination telephone and cable corporation
39 or voice over internet protocol service provider offering telephone
40 services. The commission shall apply a uniform set of standards when
41 monitoring and measuring the service quality provided to all customers
42 and shall not distinguish between core customers and non-core customers
43 when monitoring and measuring service quality.

44 § 233. Administrative sanctions; recovery of penalties. 1. Every tele-
45 phone corporation, cable corporation, combination telephone and cable
46 corporation or voice over internet protocol service provider shall
47 adhere to every provision of this chapter and every order or regulation
48 adopted under authority of this chapter so long as the same shall be in
49 force.

50 2. (a) The commission shall have the authority to assess a civil
51 penalty against each telephone corporation, cable corporation, combina-
52 tion telephone and cable corporation or voice over internet protocol
53 service provider and the directors, officers, agents and employees ther-
54 eof subject to the jurisdiction, supervision, or regulation pursuant to
55 this chapter in an amount as set forth in this section. In determining
56 the amount of any penalty to be assessed pursuant to this section, the

1 commission shall consider: (i) the seriousness of the violation for
2 which a penalty is sought;

3 (ii) the nature and extent of any previous violations for which penal-
4 ties have been assessed against the telephone corporation, cable corpo-
5 ration, combination telephone and cable corporation, voice over internet
6 protocol service provider or such directors, officers, agents and
7 employees thereof;

8 (iii) the gross revenues and financial status of the telephone corpo-
9 ration, cable corporation, combination telephone and cable corporation
10 or voice over internet protocol service provider; and

11 (iv) such other factors as the commission may deem appropriate and
12 relevant. The remedies provided in this subdivision are in addition to
13 any other remedies provided by law.

14 (b) Whenever the commission has reason to believe that a telephone
15 corporation, cable corporation, combination telephone and cable corpo-
16 ration or voice over internet protocol service provider and such direc-
17 tors, officers, agents and employees thereof may be subject to imposi-
18 tion of a civil penalty as set forth in this subdivision, it shall
19 provide notification and provide an opportunity to be heard to such
20 corporation, service provider, or person. Such notice shall include, but
21 shall not be limited to: (i) the date and a brief description of the
22 facts and nature of each act or failure to act for which such penalty is
23 proposed; (ii) a list of each statute, regulation or order that the
24 commission alleges has been violated; (iii) the amount of each penalty
25 that the commission proposes to assess; and (iv) the option to request a
26 hearing to demonstrate why the proposed penalty or penalties should not
27 be assessed against such corporation, service provider, or person.

28 3. Any telephone corporation, cable corporation, combination telephone
29 and cable corporation or voice over internet protocol service provider
30 that violates a provision of this chapter, regulation or an order
31 adopted under authority of this chapter so long as the same shall be in
32 force, or who fails to provide safe and adequate service shall forfeit a
33 sum not exceeding the greater of one hundred thousand dollars or two
34 one-hundredths of one percent of the annual intrastate gross operating
35 revenue of the corporation, constituting a civil penalty for each and
36 every offense and, in the case of a continuing violation, each day shall
37 be deemed a separate and distinct offense.

38 4. Notwithstanding the provisions of subdivision three of this
39 section, any such telephone corporation, cable corporation, combination
40 telephone and cable corporation or voice over internet protocol service
41 provider that violates a provision of this chapter, or an order or regu-
42 lation adopted under the authority of this chapter specifically for the
43 protection of human safety or prevention of significant damage to real
44 property, including, but not limited to: (a) a death or personal injury;
45 or (b) damage to real property in excess of fifty thousand dollars,
46 forfeit a sum not to exceed the greater of: (i) two hundred fifty thou-
47 sand dollars or three one-hundredths of one percent of the annual intra-
48 state gross operating revenue of the corporation, whichever is greater,
49 constituting a civil penalty for each separate and distinct offense;
50 provided, however, that for purposes of this paragraph, each day of a
51 continuing violation shall not be deemed a separate and distinct
52 offense. The total period of a continuing violation, as well as every
53 distinct violation, shall be similarly treated as a separate and
54 distinct offense for purposes of this paragraph; or (ii) the maximum
55 forfeiture determined in accordance with subdivision three of this
56 section.

1 5. Notwithstanding the provisions of subdivision three or four of this
2 section, a telephone corporation, cable corporation, combination tele-
3 phone and cable corporation or voice over internet protocol service
4 provider that violates a provision of this chapter, or an order or regu-
5 lation adopted under authority of this chapter, designed to protect the
6 overall reliability and continuity of service, including but not limited
7 to the restoration of service following a major outage event or emergen-
8 cy, shall forfeit a sum not to exceed the greater of: (a) five hundred
9 thousand dollars or four one-hundredths of one percent of the annual
10 intrastate gross operating revenue of the telephone corporation, cable
11 corporation, combination telephone and cable corporation or voice over
12 internet protocol service provider, whichever is greater, constituting a
13 civil penalty for each separate and distinct offense; provided, however,
14 that for purposes of this paragraph each day of a continuing violation
15 shall not be deemed a separate and distinct offense. The total period
16 of a continuing violation, as well as every distinct violation shall be
17 similarly treated as a separate and distinct offense for purposes of
18 this paragraph; or

19 (b) the maximum forfeiture determined in accordance with subdivision
20 three of this section.

21 6. Any director, officer, agent, or employee of any corporation or
22 service provider determined by the commission to have violated the
23 provisions of subdivision three, four, or five of this section, and who
24 knowingly violates a provision of this chapter, regulation or an order
25 adopted under authority of this chapter so long as the same shall be in
26 force, including a failure to provide safe and adequate service, shall
27 forfeit a sum not to exceed one hundred thousand dollars constituting a
28 civil penalty for each and every offense and, in the case of a continu-
29 ing violation, each day shall be deemed a separate and distinct offense.

30 7. Any such assessment may be compromised or discontinued by the
31 commission. All moneys recovered pursuant to this section, together with
32 the costs thereof, shall be remitted to, or for the benefit of, the
33 ratepayers in a manner to be determined by the commission.

34 8. Upon a failure by a telephone corporation, cable corporation,
35 combination telephone and cable corporation or voice over internet
36 protocol service provider to remit any penalty assessed by the commis-
37 sion pursuant to this section, the commission, through its counsel or
38 other appropriate designee, may institute an action or special proceed-
39 ing to collect the penalty in a court of competent jurisdiction.

40 9. Any payment made by a telephone corporation, cable corporation,
41 combination telephone and cable corporation or voice over internet
42 protocol service provider and the directors, officers, agents and
43 employees thereof as a result of an assessment as provided in this
44 section, and the cost of litigation and investigation related to any
45 such assessment, shall not be recoverable from ratepayers, subscribers,
46 or customers.

47 10. In construing and enforcing the provisions of this chapter relat-
48 ing to penalties, the act of any director, officer, agent or employee of
49 a telephone corporation, cable corporation, combination telephone and
50 cable corporation or voice over internet protocol service provider
51 acting within the scope of his or her official duties or employment
52 shall be deemed to be the act of such telephone corporation, cable
53 corporation, combination telephone and cable corporation or voice over
54 internet protocol service provider.

55 § 2. Severability clause. If any clause, sentence, paragraph, subdivi-
56 sion, section or part of this act shall be adjudged by any court of

1 competent jurisdiction to be invalid, such judgment shall not affect,
2 impair, or invalidate the remainder thereof, but shall be confined in
3 its operation to the clause, sentence, paragraph, subdivision, section
4 or part thereof directly involved in the controversy in which such judg-
5 ment shall have been rendered. It is hereby declared to be the intent of
6 the legislature that this act would have been enacted even if such
7 invalid provisions had not been included herein.

8 § 3. This act shall take effect immediately.