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I N A S S E M B L Y

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Introduced by M. of A. BRODSKY, KOON, BOYLAND, MAGNARELLI, CHRISTENSEN, SCHROEDER, ENGLEBRIGHT, STIRPE, PHEFFER, COLTON, CAHILL, PEOPLES, REILLY, BENEDETTO, JAFFEE, CLARK, POWELL, DIAZ, DINOWITZ, GUNTHER, TITUS, ORTIZ, BROOK-KRASNY, KAVANAGH, KELLNER, ALESSI -- Multi-Sponsored by -- M. of A. ABBATE, ALFANO, ARROYO, BING, BRADLEY, CAMARA, CARROZZA, COOK, CUSICK, CYMBROWITZ, GALEF, GIANARIS, GLICK, GORDON, GOTTFRIED, GREENE, HOOPER, HYER-SPENCER, JACOBS, JEFFRIES, LANCMAN, LATIMER, LAVINE, LENTOL, LIFTON, LUPARDO, MAGEE, MAISEL, MARKEY, MAYERSOHN, McDONOUGH, McENENY, MILLMAN, NOLAN, O'DONNELL, PAULIN, PERALTA, PERRY, PRETLOW, ROBINSON, ROSENTHAL, SALADINO, SPANO, SWEENEY, TITONE, TOWNS, TOWNSEND, WALKER, WEISENBERG, WEPRIN, WRIGHT, ZEBROWSKI -- read once and referred to the Committee on Corporations, Authorities and Commissions

AN ACT to amend the public authorities law, the public service law, and the executive law, in relation to reforming the telecommunications sector of the New York economy, by creating a broadband authority, authorizing statewide cable franchises for the purposes of competitive cable service, promoting the wide-spread development of high-capacity broadband internet access, and increasing the availability and quality of services in this key economic development area and ensuring the safety, reliability and affordability of telecommunications services

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

1 Section 1. Short title. This act shall be known and may be cited as
2 the "omnibus telecommunications reform act of 2009".

3 S 2. Legislative findings. 1. a. It is and has been the long-standing
4 policy of the state of New York that every resident and business in the
5 state of New York has a right to have equal physical and social access
6 to adequate telecommunications services at just and reasonable rates,
7 because universal access to the benefits of telephony is fundamental to
8 effective communication, quality of life, economic development, public

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

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1 safety and security, and democratic participation. Telecommunications,
2 however, is undergoing dramatic changes with new technologies driving
3 the ways people communicate with one another. No matter the source or
4 vehicle by which people communicate with each other, the people of this
5 state have the right to adequate service at just and reasonable rates.
6 Therefore, all telecommunications services must meet the highest stand-
7 ards of quality, reliability, and safety--including protecting and
8 expanding the system of emergency 911 service--which requires sufficient
9 investment in telecommunications infrastructure and, as many years of
10 experience have shown, adequate staffing provided by trained, career
11 employees operating under the applicable safety codes and regulations.

12 b. While the state's long-standing mission has been to provide
13 universal, affordable and reliable service to all New Yorkers, all citi-
14 zens of the state do not have equal access to communications technolo-
15 gies that are becoming the standard bearers for the 21st century. In
16 fact, the state lags behind in deploying communication networks that are
17 the foundation of modern telecommunications. The lack of deployment of
18 high-capacity telecommunications infrastructure services ("broadband")
19 in rural, underserved, unserved, economically distressed and other areas
20 of the state is affected with a public interest; the rates, services and
21 operations of cable television companies are affected with a public
22 interest and it is imperative that the state fairly regulate cable tele-
23 vision services in the interest of the public, and; the public interest
24 is furthered by comprehensive action in the area of telecommunications,
25 and by the state's continued promotion of universally available telecom-
26 munications services of adequate service quality and at affordable
27 rates, particularly in rural, high-cost and low income areas, and the
28 state's entry into promoting the universal availability and physical and
29 social access to high-quality broadband and advanced communications
30 services at affordable rates.

31 c. The deployment of high-capacity broadband telecommunications
32 networks and advanced communications networks throughout New York will
33 promote improvements in healthcare, public safety, education, consumer
34 choice, and the economy.

35 d. State action and public-private partnerships will be needed to
36 deepen investment in, promote demand for, stimulate adoption of, and
37 remove barriers to the development of universally deployed world-class
38 high-capacity broadband networks, providing services to business and
39 residential consumers in all areas of the state at competitive prices
40 with adequate service quality.

41 e. Reasonably unfettered access of the citizenry to the maximally
42 diverse Internet is in the public interest, consistent however with the
43 need or company choice of telecommunications providers to block, limit
44 or otherwise restrict the passage of electronic mail messages or other
45 content that transmit, portray, describe, represent or otherwise contain
46 matters such as child pornography or similar obscenity, other unlawful
47 material, threats of serious bodily harm, threats to the public safety
48 and homeland security, threats of death to individuals or groups of
49 individuals, viruses or similar computer generated programs or codes
50 that have the potential to harm computer hardware and/or software and/or
51 networks, excessive unsolicited commercial email that degrades or inter-
52 feres with or harms the normal operation of broadband networks, and
53 other similar types or forms of material or software (the foregoing
54 examples are illustrative, not exhaustive of such threats to users
55 and/or the network).

1 2. a. New cable television services regulation is necessary to: (i)
2 promote adequate, affordable and efficient cable television service to
3 the citizens and residents of the state; (ii) encourage the optimum
4 development of the educational, government and community-service poten-
5 tials of the cable television medium; (iii) provide just and reasonable
6 rates for cable television service without geographic discrimination;
7 (iv) protect the interests of the municipalities of this state in
8 relation to the issuance of municipal consents for the operations of
9 cable television companies in those jurisdictions; (v) to protect the
10 right of consumers to access the lawful internet content of their
11 choice, to run applications and use services of their choice, subject to
12 the requirements of law enforcement, and to connect their choice of
13 legal devices that do not harm the network; and (vi) cooperate with
14 other states and with the federal government in promoting and coordinat-
15 ing efforts to regulate cable television effectively in the public
16 interest.

17 b. Competition in the provisioning of cable service is emerging with
18 the convergence of preexisting and new technologies for providing voice,
19 video and data services, which results in increased investment in the
20 state, lower prices and improved service offerings for consumers.

21 c. Increased investment and the potential for competition in the cable
22 service market through the provisioning of new communications services
23 and deployment of advanced communications infrastructure further
24 enhances economic opportunities, public safety, and the overall health
25 and well being of the residents of the state.

26 d. State-issued franchises for the provision of cable service will
27 promote and facilitate the deployment of advanced technologies and new
28 services to all classes of communities and protect New York's ability to
29 compete in the national and international marketplace for industry and
30 jobs.

31 e. Modifying existing cable service regulation through the enactment
32 of new standards and procedures that provide consumers with access to a
33 competitive facilities-based cable market and also preserves munici-
34 palities historic authority to manage public rights-of-way, collect a
35 franchise fee up to five percent of gross revenue, administer public
36 educational and government access channels, enforce consumer protections
37 and ensure competitive cable services are delivered in a nondiscrimina-
38 tory manner is warranted in this state.

39 f. Nothing in this act shall be seen to limit or reduce the protection
40 afforded to cable television customers, broadband internet services
41 customers, telephone customers, and customers of advanced communications
42 services generally, and it is in the public interest to ensure that
43 customers continue to be provided a high level of customer protection
44 and customer service in a more competitive market.

45 3. Therefore, the legislature declares that the state needs to funda-
46 mentally reform the three key pillars of its vast telecommunications
47 system--telephone, broadband internet access and cable television--to
48 provide 21st Century technology to all New Yorkers that is safe, reli-
49 able and affordable.

50 S 3. Article 11 and sections 4000, 4001 and 4002 of the public
51 authorities law, article 11 as renumbered by chapter 168 of the laws of
52 1975 and sections 4000, 4001 and 4002 as renumbered by chapter 182 of
53 the laws of 2005, are renumbered article 12 and sections 4200, 4201 and
54 4202 and a new article 11 is added to read as follows:

55 ARTICLE 11

56 BROADBAND DEVELOPMENT AUTHORITY

- 1 SECTION 4100. SHORT TITLE.
2 4101. BROADBAND DEVELOPMENT AUTHORITY.
3 4102. DEFINITIONS.
4 4103. POWERS OF THE AUTHORITY.
5 4104. BOARD OF DIRECTORS.
6 4105. BROADBAND DEVELOPMENT AND DEPLOYMENT COUNCIL.
7 4106. APPLICATIONS FOR BROADBAND DEPLOYMENT FINANCING; RESPONSIBILITIES OF THE APPLICANT TO PROVIDE SAFE, RELIABLE AND AFFORDABLE SERVICE.
8
9 4107. BONDS AND NOTES OF THE AUTHORITY.
10 4108. BONDS AND NOTES; PERSONAL LIABILITY.
11 4109. RIGHTS OF AUTHORITY TO FULFILL TERMS OF AGREEMENT NOT LIMITED, ALTERED, OR IMPAIRED.
12
13 4110. REMEDIES OF BONDHOLDERS AND NOTEHOLDERS.
14 4111. GRANTS OR LOANS OF PUBLIC OR PRIVATE FUNDS OR IN-KIND MATERIAL.
15
16 4112. EXEMPTION FROM TAXES AND ASSESSMENTS.
17 4113. BROADBAND AND ADVANCED COMMUNICATIONS DEVELOPMENT FUND.
18 4114. APPROPRIATIONS BY ANY GOVERNMENT OR MUNICIPAL CORPORATION.
19 4115. CONVEYANCE, LEASE OR TRANSFER OF PROPERTY BY A CITY OR COUNTY TO THE AUTHORITY.
20
21 4116. ACTIONS AGAINST THE AUTHORITY.
22 4117. AUDIT POWER AND CONTRACT APPROVAL BY THE COMPTROLLER.
23 4118. ANNUAL REPORT.
24 4119. EFFECT OF INCONSISTENT PROVISIONS.
25 4120. SEVERABILITY.

27 S 4100. SHORT TITLE. THIS ARTICLE SHALL BE KNOWN AND MAY BE CITED AS
28 THE "BROADBAND DEVELOPMENT AUTHORITY ACT."

29 S 4101. BROADBAND DEVELOPMENT AUTHORITY. 1. THE NEW YORK STATE BROAD-
30 BAND DEVELOPMENT AUTHORITY IS ESTABLISHED IN ORDER TO ENCOURAGE THE
31 PROVISION OF AFFORDABLE AND RELIABLE BROADBAND SERVICES AND NETWORKS
32 THAT WILL:

33 (A) ENSURE THE LONG TERM GROWTH OF AND THE ENHANCEMENT AND DELIVERY OF
34 SERVICES BY BUSINESS, EDUCATIONAL, MEDICAL, COMMERCIAL, NONPROFIT, AND
35 GOVERNMENTAL ENTITIES IN UNSERVED, UNDERSERVED AND DISTRESSED AREAS IN
36 NEW YORK;

37 (B) BENEFIT RESIDENTIAL, COMMERCIAL, PUBLIC, GOVERNMENTAL, AND NONPRO-
38 FIT ENTITIES IN UNSERVED, UNDERSERVED AND DISTRESSED AREAS IN NEW YORK;
39 AND

40 (C) TO ADVANCE THE AVAILABILITY OF, AND PROMOTE THE PHYSICAL AND
41 SOCIAL ACCESS TO, BROADBAND AND OTHER ADVANCED COMMUNICATIONS SERVICES
42 TO ALL CONSUMERS, INCLUDING THOSE IN LOW INCOME, RURAL, INSULAR, AND
43 HIGH COST AREAS AT RATES THAT ARE REASONABLY COMPARABLE TO THOSE CHARGED
44 IN HIGH-DENSITY URBAN AREAS AND/OR IN THE AREA OF THE STATE WHERE SUCH
45 SERVICES ARE MOST COMPETITIVELY PRICED; AND TO INCREASE ACCESS TO, AND
46 THE UBIQUITY OF, ADVANCED TELECOMMUNICATIONS SERVICES AVAILABLE TO THE
47 PUBLIC IN AN EQUITABLE AND NONDISCRIMINATORY MANNER.

48 2. THE AUTHORITY SHALL ADMINISTER THE BROADBAND DEVELOPMENT PROGRAM,
49 AND SHALL, THROUGH THE BROADBAND DEVELOPMENT AND DEPLOYMENT COUNCIL
50 CREATED IN SECTION FORTY-ONE HUNDRED FIVE OF THIS ARTICLE, WORK TO BUILD
51 AND FACILITATE LOCAL TECHNOLOGY AND SOCIAL ACCESS PLANNING ENTITIES, AND
52 PARTNERSHIPS WITH BROADBAND INTERNET SERVICES PROVIDERS AND TECHNOLOGY
53 COMPANIES, AND THE PRIVATE AND NONPROFIT SECTORS GENERALLY, AND SUCH
54 OTHER PROGRAMS AS ARE REASONABLY CALCULATED TO FACILITATE THE AUTHORI-
55 TY'S ACHIEVEMENT OF ITS STATUTORY DUTIES.

1 S 4102. DEFINITIONS. 1. "AUTHORITY" MEANS THE NEW YORK STATE BROADBAND
2 DEVELOPMENT AUTHORITY CREATED UNDER SECTION FORTY-ONE HUNDRED ONE OF
3 THIS ARTICLE.

4 2. "UNSERVED AREA" MEANS ANY PART OF A MUNICIPALITY WITHOUT READILY
5 AND GENERALLY AVAILABLE RETAIL CONSUMER ACCESS TO A FACILITIES-BASED OR
6 FIXED WIRELESS BROADBAND SERVICES PROVIDER. FOR THE PURPOSES OF THIS
7 SECTION, THE DEFINITION OF WIRELESS BROADBAND SERVICES PROVIDERS SHALL
8 NOT INCLUDE SUBSCRIPTION SATELLITE SERVICE.

9 3. "UNDERSERVED AREA" MEANS ANY PART OF A MUNICIPALITY WITHOUT READILY
10 AND GENERALLY AVAILABLE RETAIL CONSUMER ACCESS TO AT LEAST TWO OR MORE
11 NONAFFILIATED FACILITIES-BASED OR FIXED WIRELESS BROADBAND TELECOMMUNI-
12 CATIONS SERVICES PROVIDERS. WIRELESS SHALL NOT INCLUDE SUBSCRIPTION
13 SATELLITE SERVICE.

14 4. "BROADBAND" MEANS THE TRANSMISSION OF INFORMATION, BETWEEN OR AMONG
15 POINTS SPECIFIED BY THE USER, WITH OR WITHOUT CHANGE IN THE FORM OR
16 CONTENT OF THE INFORMATION AS SENT AND RECEIVED, AT MINIMUM RATES OF
17 TRANSMISSION OF TWO MEGABITS PER SECOND DOWNSTREAM AND ONE MEGABIT PER
18 SECOND UPSTREAM, OR ONE HUNDRED FIFTY PERCENT OF THOSE TRANSMISSION
19 RATES DEFINED BY THE FEDERAL COMMUNICATIONS COMMISSION AS "BROADBAND,"
20 OR AT THOSE SYNCHRONOUS UPSTREAM AND DOWNSTREAM TRANSMISSION RATES AS
21 MAY BE RECOMMENDED BY THE BROADBAND COUNCIL FROM TIME TO TIME, WHICHEVER
22 IS FASTEST IN SPEED.

23 5. "BROADBAND CARRIER" MEANS ANY PROVIDER OF BROADBAND SERVICES,
24 EXCEPT AGGREGATORS OF BROADBAND SERVICES, AS DEFINED IN SECTION TWO
25 HUNDRED TWENTY-SIX OF THE NINETEEN HUNDRED NINETY-SIX TELECOMMUNICATIONS
26 ACT.

27 6. "BROADBAND INFRASTRUCTURE" MEANS ALL EQUIPMENT AND FACILITIES,
28 INCLUDING ALL CHANGES, MODIFICATIONS, AND EXPANSIONS TO EXISTING FACILI-
29 TIES, AS WELL AS THE CUSTOMER PREMISES EQUIPMENT USED TO PROVIDE BROAD-
30 BAND, AND ANY SOFTWARE INTEGRAL TO OR RELATED TO THE OPERATIONS,
31 SUPPORT, FACILITATION, OR INTERCONNECTION OF SUCH EQUIPMENT, INCLUDING
32 UPGRADES, AND ANY INSTALLATION, OPERATIONS AND SUPPORT, MAINTENANCE, AND
33 OTHER FUNCTIONS REQUIRED TO SUPPORT THE DELIVERY OF BROADBAND.

34 7. "BROADBAND SERVICE" MEANS THE OFFERING OF BROADBAND FOR A FEE
35 DIRECTLY TO THE PUBLIC, OR TO SUCH CLASSES OF USERS AS TO BE READILY
36 AVAILABLE DIRECTLY TO THE PUBLIC, REGARDLESS OF THE FACILITIES USED.

37 8. "OPEN NETWORK" MEANS ANY BROADBAND INFRASTRUCTURE WHICH IS OPEN TO
38 ANY THIRD PARTY USERS IN A NONDISCRIMINATORY MANNER ON A FAIR AND EQUI-
39 TABLE BASIS USING PUBLICLY AVAILABLE ACCESS TARIFFS FOR SERVICES.

40 9. "OPEN NETWORK INTERFACES" MEANS THE TECHNICAL AND OPERATIONAL
41 MEANS, MANNERS, AND METHODS FOR ANY THIRD PARTY ACCESS TO THE BROADBAND
42 INFRASTRUCTURE, WHICH SHALL BE PROVIDED ON THE BASIS OF GENERALLY
43 ACCEPTABLE INDUSTRY STANDARDS AVAILABLE AT THE TIME OF ACCESS.

44 10. "DISTRESSED AREA" MEANS:

45 (A) A CENSUS TRACT OR TRACTS OR BLOCK NUMBERING AREA OR AREAS OR SUCH
46 CENSUS TRACT OR BLOCK NUMBERING AREA CONTIGUOUS THERETO WHICH, ACCORDING
47 TO THE MOST RECENT CENSUS DATA AVAILABLE, HAS:

48 (I) A POVERTY RATE OF AT LEAST TWENTY PERCENT FOR THE YEAR TO WHICH
49 THE DATA RELATES OR AT LEAST TWENTY PERCENT OF HOUSEHOLDS RECEIVING
50 PUBLIC ASSISTANCE; AND

51 (II) AN UNEMPLOYMENT RATE OF AT LEAST ONE AND A QUARTER TIMES THE
52 STATEWIDE UNEMPLOYMENT RATE FOR THE YEAR TO WHICH THE DATA RELATES; OR

53 (B) A CITY, TOWN, VILLAGE OR COUNTY WITHIN A CITY WITH A POPULATION OF
54 ONE MILLION OR MORE FOR WHICH:

1 (I) THE RATIO OF THE FULL VALUE PROPERTY WEALTH, AS DETERMINED BY THE
2 COMPTROLLER FOR THE YEAR NINETEEN HUNDRED NINETY, PER RESIDENT TO THE
3 STATEWIDE AVERAGE FULL VALUE PROPERTY WEALTH PER RESIDENT; AND

4 (II) THE RATIO OF THE INCOME PER RESIDENT; AS SHOWN IN THE NINETEEN
5 HUNDRED NINETY CENSUS TO THE STATEWIDE AVERAGE INCOME PER RESIDENT; ARE
6 EACH FIFTY-FIVE PERCENT OR LESS OF THE STATEWIDE AVERAGE; OR

7 (C) AN AREA WHICH WAS DESIGNATED AN EMPIRE ZONE PURSUANT TO ARTICLE
8 EIGHTEEN-B OF THE GENERAL MUNICIPAL LAW.

9 11. "DARK FIBER" MEANS FIBER OPTIC CABLE THAT IS NOT LIGHTED BY LASERS
10 OR OTHER ELECTRONIC EQUIPMENT.

11 12. "COMPTROLLER" MEANS THE COMPTROLLER OF THE STATE OF NEW YORK.

12 13. "BOARD" MEANS BOARD OF DIRECTORS CREATED UNDER SECTION FORTY-ONE
13 HUNDRED FOUR OF THIS ARTICLE.

14 14. "FUND" MEANS THE BROADBAND AND ADVANCED COMMUNICATIONS DEVELOPMENT
15 FUND CREATED UNDER SECTION FORTY-ONE HUNDRED THIRTEEN OF THIS ARTICLE.

16 15. "BROADBAND COUNCIL" MEANS THE BROADBAND DEVELOPMENT AND DEPLOYMENT
17 COUNCIL AS CREATED UNDER SECTION FORTY-ONE HUNDRED FIVE OF THIS ARTICLE.

18 16. "CURRENT GENERATION BROADBAND SERVICE" MEANS THE TRANSMISSION OF
19 SIGNALS AT A RATE OF AT LEAST ONE MILLION FIVE HUNDRED THOUSAND BITS PER
20 SECOND TO THE SUBSCRIBER AND AT LEAST TWO HUNDRED THOUSAND BITS PER
21 SECOND FROM THE SUBSCRIBER.

22 17. "NEXT GENERATION BROADBAND SERVICE" MEANS THE TRANSMISSION OF
23 SIGNALS AT A RATE OF AT LEAST TWENTY-TWO MILLION BITS PER SECOND TO THE
24 SUBSCRIBER AND AT LEAST TEN MILLION BITS PER SECOND FROM THE SUBSCRIBER.

25 18. "QUALIFIED EQUIPMENT" MEANS EQUIPMENT CAPABLE OF PROVIDING CURRENT
26 GENERATION BROADBAND SERVICES OR NEXT GENERATION BROADBAND SERVICES AT
27 ANY TIME TO EACH SUBSCRIBER WHO IS UTILIZING SUCH SERVICES.

28 19. "QUALIFIED EXPENDITURE" MEANS ANY AMOUNT CHARGEABLE TO CAPITAL
29 ACCOUNT WITH RESPECT TO THE PURCHASE AND INSTALLATION OF QUALIFIED
30 EQUIPMENT, INCLUDING ANY UPGRADES THERETO, FOR WHICH DEPRECIATION IS
31 ALLOWABLE UNDER SECTION 168 OF THE INTERNAL REVENUE CODE.

32 20. "UNDERSERVED SUBSCRIBER" MEANS A RETAIL CONSUMER RESIDING IN A
33 DWELLING LOCATED IN AN UNSERVED OR UNDERSERVED AREA.

34 21. "UNDERSERVED STRUCTURE" MEANS A MULTI-FAMILY HOUSING UNIT OR A
35 MULTIPLE-DWELLING HOUSING UNIT LOCATED IN AN UNSERVED OR UNDERSERVED
36 AREA.

37 S 4103. POWERS OF THE AUTHORITY. 1. THE GENERAL POWERS OF THE AUTHORI-
38 TY UNDER THIS ARTICLE INCLUDE ALL THOSE NECESSARY TO CARRY OUT AND
39 EFFECTUATE THE PURPOSES OF THIS ARTICLE, INCLUDING, BUT NOT LIMITED TO,
40 THE FOLLOWING:

41 (A) TO INVEST ANY MONEY OF THE AUTHORITY AT THE AUTHORITY'S
42 DISCRETION, IN ANY OBLIGATIONS DETERMINED PROPER BY THE AUTHORITY, AND
43 TO NAME AND USE DEPOSITORIES FOR THE AUTHORITY'S MONEY;

44 (B) TO RECEIVE AND DISTRIBUTE FEDERAL, STATE OR LOCAL FUNDING, INCLUD-
45 ING GRANTS, LOANS, AND APPROPRIATIONS;

46 (C) TO MAKE EXPENDITURES NECESSARY TO CARRY OUT THE AUTHORITY'S DUTIES
47 UNDER THIS ARTICLE, INCLUDING PAYING THE AUTHORITY'S OPERATING EXPENSES;

48 (D) TO SUE AND BE SUED, IMPLEAD AND BE IMPLEADED, COMPLAIN AND DEFEND
49 IN ALL COURTS;

50 (E) TO ADOPT, USE AND ALTER AT WILL A CORPORATE SEAL;

51 (F) TO ACQUIRE, PURCHASE, HOLD, USE, LEASE OR OTHERWISE DISPOSE OF ANY
52 PROJECT AND PROPERTY, REAL, PERSONAL OR MIXED, TANGIBLE OR INTANGIBLE,
53 OR ANY INTEREST THEREIN NECESSARY OR DESIRABLE FOR CARRYING OUT THE
54 PURPOSES OF THE AUTHORITY, AND, WITHOUT LIMITATION OF THE FOREGOING, TO
55 LEASE AS LESSEE, ANY PROJECT AND ANY PROPERTY, REAL, PERSONAL OR MIXED,
56 OR ANY INTEREST THEREIN, AT SUCH ANNUAL RENTAL AND ON SUCH TERMS AND

1 CONDITIONS AS MAY BE DETERMINED BY THE BOARD AND TO LEASE AS LESSOR TO
2 ANY PERSON, ANY PROJECT AND ANY PROPERTY, REAL, PERSONAL OR MIXED,
3 TANGIBLE OR INTANGIBLE, OR ANY INTEREST THEREIN, AT ANY TIME ACQUIRED BY
4 THE AUTHORITY, WHETHER WHOLLY OR PARTIALLY COMPLETED, AT SUCH ANNUAL
5 RENTAL AND ON SUCH TERMS AND CONDITIONS AS MAY BE DETERMINED BY THE
6 BOARD, AND TO SELL, TRANSFER OR CONVEY ANY PROPERTY, REAL, PERSONAL OR
7 MIXED, TANGIBLE OR INTANGIBLE OR ANY INTEREST THEREIN, AT ANY TIME
8 ACQUIRED OR HELD BY THE AUTHORITY ON SUCH TERMS AND CONDITIONS AS MAY BE
9 DETERMINED BY THE BOARD OF THE AUTHORITY;

10 (G) TO PLAN, DEVELOP, UNDERTAKE, CARRY OUT, CONSTRUCT, IMPROVE, REHA-
11 BILITATE, REPAIR, FURNISH, MAINTAIN, AND OPERATE PROJECTS;

12 (H) TO ADOPT BYLAWS FOR THE MANAGEMENT AND REGULATION OF ITS AFFAIRS
13 CONSISTENT WITH THIS CHAPTER;

14 (I) TO ESTABLISH AND MAINTAIN SATELLITE OFFICES WITHIN NEW YORK;

15 (J) TO FIX, ALTER, CHARGE, AND COLLECT RATES, RENTALS, AND OTHER
16 CHARGES FOR THE USE OF PROJECTS OF, OR FOR THE SALE OF PRODUCTS OF OR
17 FOR THE SERVICES RENDERED BY, THE AUTHORITY, AT RATES TO BE DETERMINED
18 BY IT FOR THE PURPOSE OF PROVIDING FOR THE PAYMENT OF THE EXPENSES OF
19 THE AUTHORITY, THE PLANNING, DEVELOPMENT, CONSTRUCTION, IMPROVEMENT,
20 REHABILITATION, REPAIR, FURNISHING, MAINTENANCE, AND OPERATION OF ITS
21 PROJECTS AND PROPERTIES, THE PAYMENT OF THE COSTS ACCOMPLISHING ITS
22 TASKS;

23 (K) THE PAYMENT OF THE PRINCIPAL OF AND INTEREST ON ITS OBLIGATIONS,
24 AND TO FULFILL THE TERMS AND PROVISIONS OF ANY AGREEMENTS MADE WITH THE
25 PURCHASERS OR HOLDERS OF ANY SUCH OBLIGATIONS;

26 (L) TO BORROW MONEY, MAKE AND ISSUE BONDS, AND TO SECURE THE PAYMENT
27 OF ALL BONDS, OR ANY PART THEREOF, BY PLEDGE OR DEED OF TRUST OF ALL OR
28 ANY OF ITS REVENUES, RENTALS, AND RECEIPTS OR OF ANY PROJECT OR PROPER-
29 TY, REAL, PERSONAL OR MIXED, TANGIBLE OR INTANGIBLE, OR ANY INTEREST
30 THEREIN, AND TO MAKE AGREEMENTS WITH THE PURCHASERS OR HOLDERS OF SUCH
31 BONDS OR WITH OTHERS IN CONNECTION WITH ANY SUCH BONDS, WHETHER ISSUED
32 OR TO BE ISSUED, AS THE AUTHORITY DEEMS ADVISABLE, AND IN GENERAL TO
33 PROVIDE FOR THE SECURITY FOR THE BONDS AND THE RIGHTS OF HOLDERS THERE-
34 OF;

35 (M) TO MAKE AND ENTER INTO ALL CONTRACTS AND AGREEMENTS NECESSARY OR
36 INCIDENTAL TO THE PERFORMANCE OF ITS DUTIES, THE FURTHERANCE OF ITS
37 PURPOSES AND THE EXECUTION TO ITS POWERS UNDER THIS ARTICLE, INCLUDING
38 AGREEMENTS WITH ANY PERSON OR FEDERAL AGENCY;

39 (N) TO EMPLOY, IN ITS DISCRETION, CONSULTANTS, ATTORNEYS, ARCHITECTS,
40 ENGINEERS, ACCOUNTANTS, FINANCIAL EXPERTS, INVESTMENT BANKERS, SUPER-
41 INTENDENTS, MANAGERS AND SUCH OTHER EMPLOYEES AND AGENTS AS MAY BE
42 NECESSARY, AND TO FIX THEIR COMPENSATION TO BE PAYABLE FROM FUNDS MADE
43 AVAILABLE TO THE AUTHORITY;

44 (O) TO PLEDGE OR OTHERWISE ENCUMBER ALL OR ANY OF THE REVENUES OR
45 RECEIPTS OF THE AUTHORITY AS SECURITY FOR ALL OR ANY OF THE OBLIGATIONS
46 OF THE AUTHORITY; AND

47 (P) TO DO ALL ACTS AND THINGS NECESSARY OR CONVENIENT TO CARRY OUT THE
48 POWERS GRANTED TO IT BY LAW.

49 2. THE PHYSICAL ACCESS POWERS OF THE AUTHORITY UNDER THIS ARTICLE
50 INCLUDE ALL THOSE NECESSARY TO CARRY OUT AND EFFECTUATE THE PURPOSES OF
51 THIS ARTICLE, INCLUDING, BUT NOT LIMITED TO, THE FOLLOWING:

52 (A) TO MAKE LOANS OR GRANTS TO BROADBAND DEVELOPERS AND BROADBAND
53 OPERATORS, AND DEVELOPERS AND OPERATORS OF ADVANCED COMMUNICATIONS, THAT
54 WILL ACQUIRE, CONSTRUCT, MAINTAIN, AND OPERATE ALL OR PART OF THE BROAD-
55 BAND INFRASTRUCTURE SERVING UNSERVED, UNDERSERVED AND DISTRESSED AREAS;

1 (B) TO SET CONSTRUCTION, OPERATION, AND FINANCING STANDARDS FOR THE
2 BROADBAND INFRASTRUCTURE IN CONNECTION WITH AUTHORITY FINANCING AND TO
3 PROVIDE FOR INSPECTIONS TO DETERMINE COMPLIANCE WITH THOSE STANDARDS;

4 (C) TO INVESTIGATE, EVALUATE, AND ACCESS THE CURRENT BROADBAND INFRA-
5 STRUCTURE AND THE FUTURE BROADBAND INFRASTRUCTURE NEEDS OF THE STATE;

6 (D) TO TAKE ACTIONS REASONABLY CALCULATED TO RESULT IN INFRASTRUCTURE
7 CONSTRUCTION, ENHANCEMENT, EXCHANGES, EXPANSION, LEASES, SWAPS AND OTHER
8 AGREEMENTS OR ARRANGEMENTS GIVING RISE TO SERVICE OR COMPETITIVE SERVICE
9 TO UNDERSERVED STRUCTURES AND UNDERSERVED SUBSCRIBERS; AND

10 (G) TO DO ALL ACTS AND THINGS NECESSARY OR CONVENIENT TO CARRY OUT THE
11 POWERS GRANTED TO IT BY LAW.

12 3. THE SOCIAL ACCESS POWERS OF THE AUTHORITY UNDER THIS ARTICLE
13 INCLUDE ALL THOSE NECESSARY TO CARRY OUT AND EFFECTUATE THE PURPOSES OF
14 THIS ARTICLE, INCLUDING, BUT NOT LIMITED TO, THE FOLLOWING:

15 (A) TO PROVIDE OPERATING ASSISTANCE TO MAKE BROADBAND SERVICES MORE
16 AFFORDABLE TO BROADBAND DEVELOPERS, BROADBAND OPERATORS, AND BROADBAND
17 CUSTOMERS IN UNSERVED, UNDERSERVED AND DISTRESSED AREAS, IN CONJUNCTION
18 WITH BROADBAND INFRASTRUCTURE FINANCED BY THE AUTHORITY;

19 (B) TO ENCOURAGE AND PARTICIPATE IN AGGREGATION STRATEGIES FOR THE
20 BROADBAND SERVICES OF ALL PUBLIC ENTITIES AND NONPROFIT CORPORATIONS IN
21 THE STATE TO MAXIMIZE THE INTERCONNECTIVITY AND EFFICIENCIES OF THE
22 BROADBAND INFRASTRUCTURE;

23 (C) TO RECEIVE AND ACCEPT FROM ANY FEDERAL OR PRIVATE AGENCY, FOUNDA-
24 TION, CORPORATION, ASSOCIATION OR PERSON GRANTS TO BE EXPENDED IN ACCOM-
25 PLISHING THE OBJECTIVES OF THE AUTHORITY, AND TO RECEIVE AND ACCEPT FROM
26 NEW YORK OR ANY STATE, AND ANY MUNICIPALITY, COUNTY OR OTHER POLITICAL
27 SUBDIVISION THEREOF AND FROM ANY OTHER SOURCE, AID OR CONTRIBUTIONS OF
28 EITHER MONEY, PROPERTY, OR OTHER THINGS OF VALUE, TO BE HELD, USED AND
29 APPLIED ONLY FOR THE PURPOSES FOR WHICH SUCH GRANTS AND CONTRIBUTIONS
30 MAY BE MADE;

31 (D) TO RENDER ADVICE AND ASSISTANCE, AND TO PROVIDE SERVICES, TO
32 INSTITUTIONS OF HIGHER EDUCATION AND TO OTHER PERSONS PROVIDING SERVICES
33 OR FACILITIES FOR SCIENTIFIC AND TECHNOLOGICAL RESEARCH OR GRADUATE
34 EDUCATION, FOCUSED UPON DEVELOPMENT OF ADVANCED COMMUNICATIONS TECHNOLO-
35 GIES, PROVIDED THAT CREDIT TOWARDS A DEGREE, CERTIFICATE OR DIPLOMA
36 SHALL BE GRANTED ONLY IF SUCH EDUCATION IS PROVIDED IN CONJUNCTION WITH
37 AN INSTITUTION OF HIGHER EDUCATION AUTHORIZED TO OPERATE IN NEW YORK;

38 (E) TO TAKE SUCH OTHER ACTIONS IT DEEMS NECESSARY OR CONVENIENT, THAT
39 ARE REASONABLY CALCULATED TO RESULT IN ENHANCED, INITIAL OR COMPETITIVE
40 SOCIAL ACCESS TO GENERALLY AVAILABLE RETAIL BROADBAND SERVICES OF
41 ADEQUATE QUALITY, AT AFFORDABLE PRICES, FOR UNDERSERVED STRUCTURES AND
42 UNDERSERVED SUBSCRIBERS; AND

43 (G) TO DO ALL ACTS AND THINGS OR CONVENIENT TO CARRY OUT THE POWERS
44 GRANTED TO IT BY LAW.

45 S 4104. BOARD OF DIRECTORS. 1. THE AUTHORITY SHALL BE GOVERNED BY A
46 BOARD OF DIRECTORS CONSISTING OF SEVENTEEN MEMBERS, INCLUDING: THE
47 COMMISSIONERS OF THE DEPARTMENT OF ECONOMIC DEVELOPMENT, THE EMPIRE
48 STATE DEVELOPMENT CORPORATION, THE PUBLIC SERVICE COMMISSION AND THE
49 STATE OFFICE FOR TECHNOLOGY, OR THEIR DESIGNEES, THE GOVERNOR, SENATE
50 MAJORITY LEADER, SPEAKER OF THE ASSEMBLY, AND THE COMPTROLLER OR THEIR
51 DESIGNEES. TWO MEMBERS OF THE BOARD SHALL BE PROPOSED BY THE RESPECTIVE
52 UNIONS OF THE WIRELINE AND WIRELESS TELECOMMUNICATIONS INDUSTRIES OF NEW
53 YORK. THE REMAINING MEMBERS OF THE BOARD SHALL BE APPOINTED BY THE
54 GOVERNOR WITH THE ADVICE AND CONSENT OF THE SENATE, FROM A LIST OF INDI-
55 VIDUALS NOMINATED BY THE PRINCIPAL ESTABLISHED INDUSTRY GROUPS, TECHNICAL
56 COUNSELS, OR ACADEMIC PROFESSIONAL GROUPS OF NEW YORK. THE APPOINT-

1 EES SHALL BE THE FOLLOWING: ONE MEMBER FROM EACH TELECOMMUNICATIONS
2 INDUSTRY GROUPING, TO BE NOMINATED BY THE NEW YORK-BASED WIRELINE TELE-
3 PHONE INDUSTRY, THE NEW YORK-BASED WIRELESS CELLULAR TELEPHONE INDUSTRY,
4 AND THE NEW YORK-BASED CABLE TELEVISION/BROADBAND INDUSTRY AND WIRELESS
5 INTERNET PROVIDER INDUSTRY; THE PRESIDENT OF THE STATE UNIVERSITY SYSTEM
6 OF NEW YORK, TWO PRESIDENTS OF MAJOR NEW YORK RESEARCH UNIVERSITIES, ONE
7 OF WHOM SHALL REPRESENT PRIVATE RESEARCH UNIVERSITIES AND ONE OF WHOM
8 SHALL REPRESENT PUBLIC RESEARCH UNIVERSITIES; AND ONE MEMBER WHO SHALL
9 BE NOMINATED BY NEW YORK'S FINANCIAL SERVICES COMMUNITY.

10 2. THE GOVERNMENT MEMBERS SHALL SERVE ON THE BOARD FOR TERMS COINCI-
11 DENT WITH THEIR TERMS OF OFFICE. THE INITIAL TERM OF THE NON-GOVERNMENT-
12 TAL MEMBERS SHALL EXPIRE ON DECEMBER THIRTY-FIRST, TWO THOUSAND ELEVEN,
13 AND ALL SUBSEQUENT NONGOVERNMENTAL MEMBER TERMS SHALL BE COINCIDENT WITH
14 THE TERM OF THE GOVERNOR WHO APPOINTED SUCH MEMBERS. VACANCIES IN THE
15 MEMBERSHIP OF THE BOARD SHALL BE FILLED BY APPOINTMENT BY THE GOVERNOR
16 FOR THE UNEXPIRED PORTION OF THE TERM. NO NONGOVERNMENTAL MEMBER OF THE
17 BOARD SHALL BE ELIGIBLE TO SERVE FOR MORE THAN TWO SUCCESSIVE TERMS,
18 PROVIDED HOWEVER THAT AFTER THE EXPIRATION OF A FOUR YEAR TERM, SUCH
19 MEMBERS MAY BE APPOINTED TO AND SERVE UP TO TWO ADDITIONAL TERMS.
20 MEMBERS OF THE BOARD SHALL BE SUBJECT TO THE PUBLIC OFFICERS LAW, AND
21 SHALL SERVE AT THE PLEASURE OF THE GOVERNOR. IMMEDIATELY AFTER APPOINT-
22 MENT, THE MEMBERS OF THE BOARD SHALL ENTER UPON THE PERFORMANCE OF THEIR
23 DUTIES.

24 3. THE BOARD SHALL ELECT ANNUALLY FROM AMONG ITS MEMBERS A CHAIRPERSON
25 AND VICE-CHAIRPERSON. THE BOARD SHALL ALSO ANNUALLY ELECT A SECRETARY,
26 WHO NEED NOT BE A BOARD MEMBER, AND MAY ALSO ELECT SUCH OTHER SUBORDI-
27 NATE OFFICERS WHO NEED NOT BE MEMBERS OF THE BOARD AS IT DEEMS NECESSARY
28 AND PROPER. THE CHAIRPERSON, OR IN HIS OR HER ABSENCE, THE VICE-CHAIR-
29 PERSON, SHALL PRESIDE OVER ALL MEETINGS OF THE BOARD. IN THE ABSENCE OF
30 BOTH THE CHAIRPERSON AND VICE-CHAIRPERSON, THE BOARD SHALL APPOINT A
31 CHAIRPERSON PRO-TEMPORE, WHO SHALL PRESIDE AT SUCH MEETINGS.

32 4. THE BOARD SHALL EMPLOY A PRESIDENT OF THE AUTHORITY, WHO SHALL
33 SERVE AT THE PLEASURE OF THE BOARD, TO DIRECT THE DAY-TO-DAY OPERATIONS
34 AND ACTIVITIES OF THE AUTHORITY AND CARRY OUT SUCH DUTIES AND POWERS AS
35 MAY BE CONFERRED UPON HIM OR HER BY THE BOARD. THE PRESIDENT AND ALL
36 EMPLOYEES OF THE AUTHORITY SHALL BE COMPENSATED IN THE MANNER PROVIDED
37 BY THE BOARD, PROVIDED HOWEVER THAT SUCH COMPENSATION SHALL NOT EXCEED
38 THE MEDIAN SALARIES OF EMPLOYEES IN EQUIVALENT TITLES OF NEW YORK "STATE
39 AUTHORITIES" AS DEFINED IN THIS CHAPTER.

40 S 4105. BROADBAND DEVELOPMENT AND DEPLOYMENT COUNCIL. 1. THE BOARD
41 SHALL ESTABLISH, WITHIN THIRTY DAYS OF THE EFFECTIVE DATE OF THIS
42 SECTION, A SEVENTEEN MEMBER TECHNICAL ADVISORY COMMITTEE FROM REPRESENT-
43 TIVES RECOMMENDED BY TECHNOLOGY COUNCILS, INDUSTRY AND BUSINESS ASSO-
44 CIATIONS, AND COLLEGE AND UNIVERSITY PRESIDENTS, TO BE KNOWN AS THE
45 BROADBAND DEVELOPMENT AND DEPLOYMENT COUNCIL. FIVE MEMBERS SHALL HAVE
46 KNOWLEDGE, SKILLS AND EXPERTISE IN THE NEEDS OF INDUSTRY, FIVE SHALL
47 HAVE KNOWLEDGE, SKILLS AND EXPERTISE IN SPECIFIC TELECOMMUNICATIONS
48 TECHNOLOGY AREAS, AND TWO SHALL BE COMMUNITY REPRESENTATIVES FROM
49 UNSERVED AND/OR UNDERSERVED AREAS. THE CHIEF TECHNICAL OFFICERS FOR THE
50 PUBLIC SERVICE COMMISSION, THE STATE OFFICE FOR TECHNOLOGY, THE STATE
51 OFFICE FOR EMERGENCY MANAGEMENT AND THE STATE OFFICE OF SCIENCE, TECH-
52 NOLOGY AND ACADEMIC RESEARCH, AND THE CHIEF INFORMATION OFFICER FOR THE
53 STATE OF NEW YORK, SHALL ALSO SERVE ON THIS COMMITTEE.

54 2. (A) WITHIN SIXTY DAYS OF THE EFFECTIVE DATE OF THIS SECTION, THE
55 BROADBAND COUNCIL SHALL CREATE, COORDINATE, OR LIAISE WITH EXISTING,
56 MUNICIPAL AND/OR COUNTY-LEVEL SOCIAL ACCESS COUNCILS TO STUDY, AND

1 SUBSEQUENTLY REPORT TO THE AUTHORITY UPON: (I) THE LOCATION, SIZE AND
2 POPULATION OF UNSERVED, UNDERSERVED AND DISTRESSED AREAS WITHIN THE
3 RESPECTIVE MUNICIPALITIES AND COUNTIES; (II) A PROPOSED LIST OF SOCIAL
4 ACCESS PROJECTS FOR THE MUNICIPALITIES AND COUNTIES; (III) THE PRESENCE
5 OF NON-GOVERNMENTAL ORGANIZATIONS AND FEDERAL 501C3 ORGANIZATIONS THAT
6 COULD WORK COOPERATIVELY WITH THE AUTHORITY ON SOCIAL ACCESS PROJECTS;
7 (IV) SUCH OTHER MATTERS AS THE BROADBAND COUNCIL AND LOCAL BROADBAND
8 DEVELOPMENT COUNCILS BELIEVE NECESSARY TO EFFECTUATING THE MISSION OF
9 THE AUTHORITY.

10 (B) WITHIN NINETY DAYS OF THE EFFECTIVE DATE OF THIS SECTION, THE
11 BROADBAND COUNCIL SHALL STUDY AND REPORT TO THE AUTHORITY UPON:

12 (I) THE AVAILABILITY OF ANY EXISTING FEDERAL, STATE AND LOCAL FUNDS
13 THAT CAN BE USED OR RE-PURPOSED TO FUND BROADBAND DEVELOPMENT AND
14 PROMOTE UNIVERSAL ACCESS TO BROADBAND AND ADVANCED COMMUNICATIONS
15 SERVICES IN UNSERVED, UNDERSERVED AND DISTRESSED AREAS;

16 (II) COMMERCIALY REASONABLE INVESTMENT BENCHMARKS THAT IT BELIEVES
17 ARE NECESSARY TO DETERMINE BETWEEN REASONABLY EQUALLY VALUABLE AND
18 IMPERATIVE BROADBAND DEVELOPMENT PROJECTS;

19 (III) AN APPROPRIATE SET OF METRICS BY WHICH TO DETERMINE THE QUALITY
20 OF A BROADBAND BUILDOUT PROJECT, AND WHETHER SUCH BUILDOUT WAS BEING
21 COMPLETED WITHIN THE TIME SPAN UPON WHICH THE AUTHORITY CONDITIONED THE
22 GRANT OF ANY FUNDS TOWARD SUCH BUILDOUT;

23 (IV) THE AVAILABILITY, DESIRABILITY AND UTILITY OF A SET OF STANDARD-
24 IZED METRICS FOR SERVICE QUALITY, SPEED, AND RELIABILITY THAT SHALL BE
25 APPLIED TO THE NETWORKS BUILT WITH FUNDS FROM THE AUTHORITY; AND

26 (V) THE AVAILABILITY OF SURPLUS COMPUTERS AND OTHER BROADBAND TELECOM-
27 MUNICATIONS EQUIPMENT IN THE INVENTORIES OF STATE AND LOCAL AUTHORITIES
28 THAT MIGHT BE DONATED TO THE AUTHORITY FOR USE IN ENHANCING PHYSICAL AND
29 SOCIAL ACCESS TO BROADBAND IN THE STATE.

30 3. THE COUNCIL SHALL ACT AS LIAISON, AND BINDING MEDIATOR WHEN
31 REQUESTED, BETWEEN ANY DEPLOYMENT PROJECTS AND OWNERS OF RIGHTS-OF-WAY,
32 EASEMENTS OR INFRASTRUCTURE NECESSARY TO PROMOTE OR ESTABLISH BROADBAND
33 SERVICE IN UNSERVED, UNDERSERVED AND DISTRESSED AREAS.

34 4. THE COUNCIL SHALL DETERMINE AND RECOMMEND TO THE BOARD PROJECTS FOR
35 THE EXPENDITURE OF FUNDS FROM THE FUND, WITH SPECIAL ATTENTION TO
36 PROJECTS USING MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISES AS CONTRAC-
37 TORS OR SUB-CONTRACTORS, AND TO PROJECTS PROVIDING PRIVATE SECTOR MATCH-
38 ING FUNDING AT RATIOS OF THREE TO ONE PRIVATE TO PUBLIC FUNDING OR
39 GREATER.

40 5. THE COUNCIL SHALL RECOMMEND TO THE BOARD, ON AN ANNUAL BASIS,
41 LEGISLATION THAT IT DETERMINES WOULD BE REASONABLY NECESSARY TO FURTHER
42 PROMOTE BROADBAND DEVELOPMENT, ENHANCE ECONOMIC DEVELOPMENT ARISING FROM
43 SUCH BROADBAND DEVELOPMENT, AND PROTECT AND ENHANCE ACCESS OF CONSUMERS
44 TO E911 AND OTHER PUBLIC SAFETY SERVICES AND ENTITIES BY METHOD OF
45 BROADBAND AND ADVANCED COMMUNICATIONS SERVICES.

46 6. (A) A MEMBER OF THE BOARD OR OFFICER, EMPLOYEE, OR AGENT OF THE
47 AUTHORITY SHALL DISCHARGE THE DUTIES OF HIS OR HER POSITION IN A NONPAR-
48 TISAN MANNER, WITH GOOD FAITH, AND WITH THAT DEGREE OF DILIGENCE, CARE
49 AND SKILL THAT AN ORDINARY PRUDENT PERSON WOULD EXERCISE UNDER SIMILAR
50 CIRCUMSTANCES IN A LIKE POSITION. IN DISCHARGING THE DUTIES OF HIS OR
51 HER POSITION, A MEMBER OF THE BOARD OR AN OFFICER, EMPLOYEE, OR AGENT OF
52 THE AUTHORITY, WHEN ACTING IN GOOD FAITH, MAY RELY UPON THE OPINION OF
53 COUNSEL FOR THE AUTHORITY, UPON THE REPORT OF AN INDEPENDENT APPRAISER
54 SELECTED WITH REASONABLE CARE BY THE BOARD, OR UPON FINANCIAL STATEMENTS
55 OF THE AUTHORITY REPRESENTED TO THE MEMBER OF THE BOARD OR OFFICER,
56 EMPLOYEE, OR AGENT OF THE AUTHORITY TO BE CORRECT BY THE PRESIDENT OR

1 THE OFFICER OF THE AUTHORITY HAVING CHARGE OF ITS BOOKS OR ACCOUNT, OR
2 STATED IN A WRITTEN REPORT BY A CERTIFIED PUBLIC ACCOUNTANT OR FIRM OF
3 CERTIFIED PUBLIC ACCOUNTANTS TO FAIRLY REFLECT THE FINANCIAL CONDITION
4 OF THE AUTHORITY.

5 (B) A MEMBER OF THE BROADBAND DEVELOPMENT COUNCIL SHALL DISCHARGE THE
6 DUTIES OF HIS OR HER POSITION IN A NONPARTISAN MANNER, WITH GOOD FAITH,
7 AND WITH THAT DEGREE OF DILIGENCE, CARE AND SKILL THAT AN ORDINARY
8 PRUDENT PERSON WOULD EXERCISE UNDER SIMILAR CIRCUMSTANCES IN A LIKE
9 POSITION.

10 (C) A MEMBER OF A SOCIAL ACCESS COUNCIL SHALL DISCHARGE THE DUTIES OF
11 HIS OR HER POSITION IN A NONPARTISAN MANNER, WITH GOOD FAITH, AND WITH
12 THAT DEGREE OF DILIGENCE, CARE AND SKILL THAT AN ORDINARY PRUDENT PERSON
13 WOULD EXERCISE UNDER SIMILAR CIRCUMSTANCES IN A LIKE POSITION.

14 S 4106. APPLICATIONS FOR BROADBAND DEPLOYMENT FINANCING; RESPONSIBIL-
15 ITIES OF THE APPLICANT TO PROVIDE SAFE, RELIABLE AND AFFORDABLE SERVICE.
16 IN ADDITION TO RULES PROMULGATED BY THE AUTHORITY AS WELL AS THE OTHER
17 REQUIREMENTS ESTABLISHED IN THIS ARTICLE, AS PART OF AN APPLICATION FOR
18 FINANCING UNDER THIS CHAPTER, A BROADBAND DEVELOPER OR BROADBAND OPERA-
19 TOR MUST FILE WITH THE AUTHORITY:

20 1. A PARTICIPATION PLAN FOR MINORITY AND WOMAN-OWNED BUSINESSES;

21 2. A COMMUNITY WIDE OUTREACH PLAN TO EDUCATE THE PUBLIC WITH RESPECT
22 TO THE AVAILABILITY OF BROADBAND SERVICES;

23 3. A CONSTRUCTION AND MAINTENANCE PLAN THAT SHALL DETAIL THE CAPACITY
24 OF ANY BROADBAND NETWORK OR NETWORKS BUILT WITH FUNDING FROM THE AUTHOR-
25 ITY, AND WHETHER SUCH NETWORKS SHALL MAINTAIN FULL UPLOAD AND DOWNLOAD
26 SPEEDS WHEN SUBSCRIBED TO ONE HUNDRED PERCENT OF CAPACITY;

27 4. A DETAILED PLAN SHOWING HOW SUCH BUILDOUT FUNDED BY THE AUTHORITY
28 SHALL ADDRESS OR EXCEED THE CURRENT AGGREGATE DEMAND FOR BROADBAND
29 SERVICES IN THE AREA OF PROPOSED BUILDOUT AS DETERMINED BY THE AUTHORI-
30 TY, COUNCIL, CYBER SECURITY AND CRITICAL INFRASTRUCTURE COORDINATION
31 OFFICE ("CSIC") AND PUBLIC SERVICE COMMISSION'S MAPPING AND DEMAND
32 ASSESSMENT ANALYSES AND REPORTS;

33 5. SUCH OTHER REQUIREMENTS AS MAY BE RECOMMENDED TO THE AUTHORITY BY
34 THE COUNCIL AND THE PUBLIC SERVICE COMMISSION;

35 6. A PLAN FOR FOLLOWING THE PRINCIPLES OF NEUTRAL NETWORKS AS REQUIRED
36 IN SECTION FORTY-ONE HUNDRED THIRTEEN OF THIS ARTICLE; AND

37 7. A PLAN CONTAINING DETAILED METRICS SETTING FORTH TIME TO COMPLETION
38 FOR EACH STAGE OF ITS PROPOSED BUILDOUT, THE SPEEDS TO BE OFFERED ON AND
39 ACROSS ITS NETWORK, AND SUCH OTHER METRICS AS THE BROADBAND COUNCIL OR
40 BOARD MAY PROPOSE. THE AUTHORITY MAY NOT APPROVE AN APPLICATION UNLESS A
41 PLAN IS SUBMITTED UNDER THIS SECTION AND UNLESS THE REQUIREMENTS OF THIS
42 SECTION ARE MET.

43 S 4107. BONDS AND NOTES OF THE AUTHORITY. 1. THE AUTHORITY SHALL HAVE
44 THE POWER AND IS HEREBY AUTHORIZED FROM TIME TO TIME TO ISSUE NEGOTIABLE
45 BONDS OR NOTES FOR ANY OF ITS CORPORATE PURPOSES FOR UP TO ONE HUNDRED
46 FIFTY MILLION DOLLARS ANNUALLY FOR FIVE YEARS TO DO ALL OF THE FOLLOW-
47 ING:

48 (A) PAY THE DEVELOPMENT COSTS ASSOCIATED WITH ACQUIRING, LEASING,
49 CONSTRUCTING, MAINTAINING, AND OPERATING THE BROADBAND INFRASTRUCTURE,
50 IN UNSERVED, UNDERSERVED, AND DISTRESSED AREAS;

51 (B) MAKE LOANS TO PERSONS FOR DEVELOPMENT COSTS;

52 (C) MAKE LOANS TO PERSONS TO MAKE PURCHASES RELATED TO THE BROADBAND
53 INFRASTRUCTURE;

54 (D) PAY THE INTEREST ON BONDS AND NOTES OF THE AUTHORITY;

55 (E) ESTABLISH RESERVES TO SECURE THE BONDS AND NOTES OF THE AUTHORITY;

56 AND

1 (F) MAKE OTHER EXPENDITURES NECESSARY TO CARRY OUT THE AUTHORITY'S
2 DUTIES UNDER THIS ARTICLE, INCLUDING THE PAYMENT OF THE AUTHORITY'S
3 OPERATING EXPENSES.

4 THE BONDS AND NOTES SHALL BE IN A FORM, BEAR INTEREST AT A RATE OR
5 RATES, BE IN THE DENOMINATIONS, CARRY REGISTRATION PRIVILEGES, BE PAYA-
6 BLE, AND BE SUBJECT TO THE TERMS OF REDEMPTION AS PROVIDED IN THE RESOL-
7 UTION DESCRIBED IN SUBDIVISION TWO OF THIS SECTION. THE BONDS AND NOTES
8 OF THE AUTHORITY MAY BE SOLD BY THE AUTHORITY AT PUBLIC OR PRIVATE SALES
9 AT PRICES AS THE AUTHORITY DETERMINES.

10 2. A RESOLUTION RELATING TO AUTHORIZING NOTES OR BONDS MAY CONTAIN ANY
11 OF THE FOLLOWING PROVISIONS, WHICH SHALL BE A PART OF THE CONTRACT WITH
12 THE HOLDERS OF THE NOTES OR BONDS:

13 (A) PLEDGING ALL OR ANY PART OF THE REVENUES OF THE AUTHORITY, AND ALL
14 OR ANY PART OF THE MONEY RECEIVED IN PAYMENT OF LOANS AND INTEREST ON
15 LOANS, AND OTHER MONEY RECEIVED OR TO BE RECEIVED TO SECURE THE PAYMENT
16 OF THE NOTES OR BONDS;

17 (B) PLEDGING ALL OR ANY PART OF THE ASSETS OF THE AUTHORITY, INCLUDING
18 MORTGAGES AND OBLIGATIONS OBTAINED BY THE AUTHORITY IN CONNECTION WITH
19 ITS PROGRAMS, TO SECURE THE PAYMENT OF THE NOTES OR BONDS;

20 (C) PLEDGING ANY LOAN, GRANT, OR CONTRIBUTION FROM A GOVERNMENT ENTI-
21 TY;

22 (D) THE USE AND DISPOSITION OF THE GROSS INCOME FROM CONTRACTS AND
23 LEASES OF THE AUTHORITY;

24 (E) LIMITATIONS ON THE PURPOSE TO WHICH THE PROCEEDS OF SALE OF NOTES
25 OR BONDS MAY BE APPLIED AND PLEDGING PROCEEDS TO SECURE THE PAYMENT OF
26 THE NOTES OR BONDS;

27 (F) LIMITATIONS ON THE ISSUANCE OF ADDITIONAL NOTES OR BONDS, THE
28 TERMS UPON WHICH ADDITIONAL NOTES OR BONDS MAY BE ISSUED AND SECURED,
29 AND THE REFUNDING OF OUTSTANDING OR OTHER NOTES OR BONDS;

30 (G) THE PROCEDURE, IF ANY, BY WHICH THE TERMS OF ANY CONTRACT WITH
31 NOTEHOLDERS OR BONDHOLDERS MAY BE AMENDED OR ABROGATED, THE AMOUNT OF
32 NOTES OR BONDS THE HOLDERS OF WHICH SHALL CONSENT TO THE AMENDMENT OR
33 ABROGATION, AND THE MANNER IN WHICH THE CONSENT IS TO BE GIVEN;

34 (H) VESTING IN A TRUSTEE OR TRUSTEES PROPERTY, RIGHTS, POWERS, AND
35 DUTIES IN TRUST AS THE AUTHORITY MAY DETERMINE, WHICH MAY INCLUDE ANY OF
36 THE RIGHTS, POWERS, AND DUTIES OF THE TRUSTEE APPOINTED BY THE BONDHOLD-
37 ERS UNDER THIS ARTICLE AND LIMITING OR ABROGATING THE RIGHT OF THE BOND-
38 HOLDERS TO APPOINT A TRUSTEE UNDER THIS SECTION OR LIMITING THE RIGHTS,
39 POWERS, AND DUTIES OF THE TRUSTEE.

40 3. NO MORE THAN FIFTY PERCENT OF ANY PAYMENTS TO THE AUTHORITY FOR USE
41 OF RIGHTS-OF-WAY UNDER ITS CONTROL OR SUPERVISION SHALL BE DEEMED REVEN-
42 UES OF THE AUTHORITY. UP TO SEVENTY-FIVE PERCENT OF MONIES ARISING FROM
43 RIGHT-OF-WAY USE PAYMENTS MAY BE USED TO FUND SOCIAL ACCESS PROJECTS OF
44 THE AUTHORITY, OR MAY BE CONTRIBUTED TO A STATE FUND ESTABLISHED TO
45 GUARANTEE UNIVERSAL AND AFFORDABLE BROADBAND SERVICE TO, WITHOUT LIMITA-
46 TION, UNDERSERVED SUBSCRIBERS AND STRUCTURES. ANY REMAINING UNEXPENDED
47 MONIES ARISING FROM RIGHT-OF-WAY USE PAYMENTS MAY BE PLEDGED BY THE
48 AUTHORITY TO SECURE THE PAYMENT OF NOTES AND BONDS.

49 S 4108. BONDS AND NOTES; PERSONAL LIABILITY. THE MEMBERS OF THE BOARD
50 OR ANY PERSON EXECUTING THE NOTES OR BONDS UNDER THIS ARTICLE ARE NOT
51 LIABLE PERSONALLY ON THE NOTES OR BONDS OR SUBJECT TO ANY PERSONAL
52 LIABILITY OR ACCOUNTABILITY BY REASON OF THE ISSUANCE.

53 S 4109. RIGHTS OF AUTHORITY TO FULFILL TERMS OF AGREEMENT NOT LIMITED,
54 ALTERED, OR IMPAIRED. THIS STATE PLEDGES AND AGREES WITH THE HOLDERS OF
55 ANY NOTES OR BONDS ISSUED UNDER THIS ARTICLE, THAT THE STATE WILL NOT
56 LIMIT OR ALTER THE RIGHTS VESTED IN THE AUTHORITY TO FULFILL THE TERMS

1 OF ANY AGREEMENTS MADE WITH THE HOLDERS, OR IN ANY WAY IMPAIR THE RIGHTS
2 AND REMEDIES OF THE HOLDERS UNTIL THE NOTES OR BONDS, TOGETHER WITH
3 EARNED INTEREST, WITH INTEREST ON ANY UNPAID INSTALLMENTS OF INTEREST,
4 AND ALL COSTS AND EXPENSES IN CONNECTION WITH ANY ACTION OR PROCEEDING
5 BY OR ON BEHALF OF THE HOLDERS, ARE FULLY MET AND DISCHARGED. THE
6 AUTHORITY IS AUTHORIZED TO INCLUDE THIS PLEDGE AND AGREEMENT OF THE
7 STATE IN ANY AGREEMENT WITH THE HOLDERS OF NOTES OR BONDS UNDER THIS
8 ARTICLE.

9 S 4110. REMEDIES OF BONDHOLDERS AND NOTEHOLDERS. 1. IF THE AUTHORITY
10 DEFAULTS IN THE PAYMENT OF PRINCIPAL OR INTEREST OF ANY NOTES OR BONDS
11 WHEN DUE, WHETHER AT MATURITY OR UPON CALL FOR REDEMPTION, AND THE
12 DEFAULT CONTINUES FOR A PERIOD OF THIRTY DAYS, OR IF THE AUTHORITY FAILS
13 OR REFUSES TO COMPLY WITH THIS ARTICLE, OR DEFAULTS IN ANY AGREEMENT
14 MADE WITH THE HOLDERS OF ANY NOTES OR BONDS, THE HOLDERS OF TWENTY-FIVE
15 PERCENT IN AGGREGATE PRINCIPAL AMOUNT OF THE NOTES OR BONDS THEN
16 OUTSTANDING MAY APPLY TO THE COURT OF CLAIMS FOR THE APPOINTMENT OF A
17 TRUSTEE TO REPRESENT THE HOLDERS OF THE NOTES OR BONDS.

18 2. A TRUSTEE APPOINTED UNDER THIS ARTICLE MAY, AND UPON THE WRITTEN
19 REQUEST OF THE HOLDERS OF TWENTY-FIVE PERCENT IN AGGREGATE PRINCIPAL
20 AMOUNT OF THE NOTES OR BONDS SHALL, DO ANY OF THE FOLLOWING:

21 (A) ENFORCE ALL RIGHTS OF THE NOTEHOLDERS OR BONDHOLDERS, INCLUDING
22 THE RIGHT TO REQUIRE THE AUTHORITY TO PERFORM ITS DUTIES UNDER THIS
23 ARTICLE;

24 (B) BRING SUIT UPON THE NOTES OR BONDS;

25 (C) REQUIRE THE AUTHORITY TO ACCOUNT AS IF IT WERE THE TRUSTEE OF AN
26 EXPRESS TRUST FOR THE HOLDERS OF THE NOTES OR BONDS;

27 (D) ENJOIN ANY ACTS OR THINGS THAT MAY BE UNLAWFUL OR IN VIOLATION OF
28 THE RIGHTS OF THE HOLDERS OF THE NOTES OR BONDS; AND

29 (E) DECLARE ALL THE NOTES OR BONDS DUE AND PAYABLE.

30 3. BEFORE DECLARING THE PRINCIPAL OF NOTES OR BONDS DUE AND PAYABLE,
31 THE TRUSTEE SHALL FIRST GIVE THIRTY DAYS' NOTICE IN WRITING TO THE
32 GOVERNOR, TO THE AUTHORITY, TO THE COMPTROLLER AND TO THE ATTORNEY
33 GENERAL.

34 4. THE TRUSTEE HAS ALL OF THE POWERS NECESSARY OR APPROPRIATE FOR THE
35 GENERAL REPRESENTATION OF BONDHOLDERS OR NOTEHOLDERS IN THE ENFORCEMENT
36 AND PROTECTION OF THEIR RIGHTS.

37 5. AN ACTION UNDER THIS SECTION SHALL BE BROUGHT IN THE COURT OF
38 CLAIMS.

39 S 4111. GRANTS OR LOANS OF PUBLIC OR PRIVATE FUNDS OR IN-KIND MATERI-
40 AL. 1. THE AUTHORITY MAY ACCEPT, RECEIVE, RECEIPT FOR, DISBURSE, AND
41 EXPEND FEDERAL AND STATE MONEYS AND OTHER MONEYS, PUBLIC OR PRIVATE,
42 MADE AVAILABLE BY GRANT OR LOAN OR BOTH OR OTHERWISE, TO ACCOMPLISH, IN
43 WHOLE OR IN PART ANY OF THE PURPOSES OF THIS ARTICLE. ALL FEDERAL MONEYS
44 ACCEPTED UNDER THIS SECTION SHALL BE ACCEPTED AND EXPENDED BY THE
45 AUTHORITY UPON SUCH TERMS AND CONDITIONS AS ARE PRESCRIBED BY THE UNITED
46 STATES AND AS ARE CONSISTENT WITH STATE LAW; AND ALL STATE MONEYS
47 ACCEPTED UNDER THIS SECTION SHALL BE ACCEPTED AND EXPENDED BY THE
48 AUTHORITY UPON SUCH TERMS AND CONDITIONS AS ARE PRESCRIBED BY NEW YORK
49 STATE LAW.

50 2. THE AUTHORITY MAY ACCEPT, RECEIVE, RECEIPT FOR, GRANT OR LOAN
51 COMPUTERS AND OTHER TELECOMMUNICATIONS EQUIPMENT OR BROADBAND INFRAS-
52 TRUCTURE EQUIPMENT MADE AVAILABLE TO IT BY IN-KIND DONATION, GRANT OR
53 LOAN, TO ACCOMPLISH, IN WHOLE OR IN PART, ANY OF THE PURPOSES OF THIS
54 ARTICLE. ALL SUCH IN-KIND MATERIAL SHALL BE ACCEPTED AND LOANED OR
55 GRANTED BY THE AUTHORITY UPON SUCH TERMS AND CONDITIONS AS ARE

1 PRESCRIBED IN APPLICABLE SECTIONS OF THE LAW OF THE UNITED STATES AND AS
2 ARE CONSISTENT WITH STATE LAW.

3 S 4112. EXEMPTION FROM TAXES AND ASSESSMENTS. THE EXERCISE OF THE
4 POWERS GRANTED BY THIS ARTICLE SHALL BE IN ALL RESPECTS FOR THE BENEFIT
5 OF THE PEOPLE OF THIS STATE, FOR THE INCREASE OF THEIR COMMERCE AND
6 PROSPERITY, FOR THE IMPROVEMENT OF THEIR HEALTH AND LIVING CONDITIONS,
7 AND AS THE OPERATION AND MAINTENANCE OF PROJECTS BY THE AUTHORITY AND
8 THE UNDERTAKING OF ACTIVITIES IN FURTHERANCE OF THE PURPOSE OF THE
9 AUTHORITY CONSTITUTE THE PERFORMANCE OF ESSENTIAL GOVERNMENTAL FUNC-
10 TIONS, THE AUTHORITY SHALL NOT BE REQUIRED TO PAY ANY TAXES OR ASSESS-
11 MENTS UPON ANY PROJECT OR ANY PROPERTY ACQUIRED OR USED BY THE AUTHORITY
12 UNDER THE PROVISIONS OF THIS ARTICLE OR UPON THE INCOME THEREFROM,
13 INCLUDING SALES AND USE TAXES ON TANGIBLE PERSONAL PROPERTY USED IN THE
14 OPERATIONS OF THE AUTHORITY, AND ANY BONDS ISSUED UNDER THE PROVISIONS
15 OF THIS ARTICLE, THEIR TRANSFER AND THE INCOME THEREFROM (INCLUDING ANY
16 PROFIT MADE ON THE SALE THEREOF) SHALL AT ALL TIMES BE FREE FROM STATE
17 AND LOCAL TAXATION. THE EXEMPTION GRANTED IN THIS SECTION SHALL NOT BE
18 CONSTRUED TO EXTEND TO PERSONS CONDUCTING ON THE PREMISES OF A FACILITY
19 BUSINESSES FOR WHICH LOCAL OR STATE TAXES WOULD OTHERWISE BE REQUIRED.

20 S 4113. BROADBAND AND ADVANCED COMMUNICATIONS DEVELOPMENT FUND. 1.
21 THERE IS CREATED IN JOINT CUSTODY OF THE COMPTROLLER AND THE COMMISSION-
22 ER OF THE DEPARTMENT OF TAXATION AND FINANCE A SPECIAL NONREVERTING,
23 PERMANENT ACCOUNT IN THE SPECIAL REVENUE FUND, TO BE CALLED THE ADVANCED
24 COMMUNICATIONS ASSISTANCE FUND, TO BE ADMINISTERED BY THE AUTHORITY.
25 MONEYS IN THE FUND SHALL BE USED SOLELY FOR THE PURPOSE OF HELPING
26 UNSERVED, UNDERSERVED AND DISTRESSED MUNICIPAL CORPORATIONS IN NEW YORK
27 STATE TAKE FULL ADVANTAGE OF BROADBAND AND ADVANCED COMMUNICATIONS
28 SERVICES. LOANS OR GRANTS FROM THE FUND SHALL BE USED TO EFFECTUATE
29 PHYSICAL AND SOCIAL ACCESS TO BROADBAND IN UNSERVED, UNDERSERVED AND
30 DISTRESSED LOCALITIES FOR:

31 (A) THE INTERNAL COMMUNICATION NEEDS OF SUCH LOCALITIES, WHICH MAY
32 INCLUDE BUT ARE NOT LIMITED TO FIBER-OPTIC AND WIRELESS COMMUNICATIONS
33 NETWORKS;

34 (B) HELP IN FINANCING THE COSTS OF PLANNING, DESIGNING, PURCHASING,
35 LEASING, INSTALLING, OR MAINTAINING DARK FIBER TO THE EXTENT PERMITTED,
36 SUBJECT HOWEVER TO ALL DUTIES AND RESTRICTIONS THAT EXIST WITHIN THIS
37 SECTION; OR

38 (C) TO ADVANCE THE PHYSICAL AND SOCIAL AVAILABILITY OF BROADBAND AND
39 OTHER ADVANCED COMMUNICATIONS SERVICES TO ALL CONSUMERS, INCLUDING THOSE
40 IN LOW INCOME, RURAL, INSULAR, AND HIGH COST AREAS AT RATES THAT ARE
41 REASONABLY COMPARABLE TO THOSE CHARGED IN HIGH-DENSITY URBAN AREAS
42 AND/OR IN THE AREA OF THE STATE WHERE SUCH SERVICES ARE MOST COMPETI-
43 TIVELY PRICED; AND TO INCREASE PHYSICAL AND SOCIAL ACCESS TO, AND THE
44 UBIQUITY OF, ADVANCED TELECOMMUNICATIONS SERVICES AVAILABLE TO THE
45 PUBLIC IN AN EQUITABLE AND NONDISCRIMINATORY MANNER.

46 2. ALL MONEYS OF THE AUTHORITY FROM WHATEVER SOURCE DERIVED INCLUDING
47 SUCH FUNDS AS MAY BE APPROPRIATED AND ANY GIFTS, GRANTS, DONATIONS FROM
48 PUBLIC OR PRIVATE SOURCES, OR MONEYS RAISED FROM BONDS OR NOTES, SHALL
49 BE DEPOSITED IN THE FUND.

50 3. INTEREST EARNED ON MONEYS IN THE FUND SHALL REMAIN IN THE FUND AND
51 BE CREDITED TO IT. ANY MONEYS REMAINING IN THE FUND AT THE END OF EACH
52 FISCAL YEAR, INCLUDING INTEREST THEREON, SHALL NOT REVERT TO THE GENERAL
53 FUND BUT SHALL REMAIN IN THE FUND AND EXPENDITURES AND DISBURSEMENTS
54 FROM THE FUND, WHICH MAY CONSIST OF GRANTS OR LOANS, SHALL BE MADE BY
55 THE COMPTROLLER UPON WRITTEN REQUEST BEARING THE SIGNATURE OF THE CHAIR
56 OR THE VICE-CHAIR OF THE AUTHORITY, OR, IF SO AUTHORIZED BY THE AUTHORI-

1 TY, BEARING HIS OR HER FACSIMILE SIGNATURE, AND THE OFFICIAL SEAL OF THE
2 AUTHORITY.

3 4. THE RECEIPT OF MONIES FROM THE FUND SHALL BE CONDITIONED UPON THE
4 ACCEPTANCE BY PUBLIC AND PRIVATE TELECOMMUNICATIONS SERVICES PROVIDER
5 RECIPIENTS OF THE IMPORTANT STATE POLICY THAT THE REASONABLY UNFETTERED
6 ACCESS OF THE CITIZENRY TO THE MAXIMALLY DIVERSE INTERNET IS IN THE
7 PUBLIC INTEREST, WITH THE EXPRESS UNDERSTANDING THAT TELECOMMUNICATIONS
8 PROVIDERS MAY CHOOSE TO BLOCK, LIMIT OR OTHERWISE RESTRICT THE PASSAGE
9 OF ELECTRONIC MAIL MESSAGE OR OTHER CONTENT THAT TRANSMIT, PORTRAY,
10 DESCRIBE, REPRESENT OR OTHERWISE CONTAIN MATTERS SUCH AS CHILD PORNOGRA-
11 PHY OR SIMILAR OBSCENITY, OTHER UNLAWFUL MATERIAL, THREATS OF SERIOUS
12 BODILY HARM, THREATS TO THE PUBLIC SAFETY AND HOMELAND SECURITY, THREATS
13 OF DEATH TO INDIVIDUALS OR GROUPS OF INDIVIDUALS, VIRUSES OR SIMILAR
14 COMPUTER GENERATED PROGRAMS OR CODE THAT HAVE THE POTENTIAL TO HARM
15 COMPUTER HARDWARE AND/OR SOFTWARE AND/OR NETWORKS, EXCESSIVE UNSOLICITED
16 COMMERCIAL EMAIL THAT DEGRADES OR INTERFERES WITH OR HARMS THE NORMAL
17 OPERATION OF BROADBAND NETWORKS, AND OTHER SIMILAR TYPES OR FORMS OF
18 MATERIAL OR SOFTWARE (THE FOREGOING EXAMPLES ARE ILLUSTRATIVE, NOT
19 EXHAUSTIVE OF SUCH THREATS TO USERS AND/OR THE NETWORK). EACH RECIPIENT
20 OF MONIES FROM THE FUND SHALL PROVIDE TO THE AUTHORITY ON AN ANNUAL
21 BASIS A WRITTEN REPORT DESCRIBING EVERY INSTANCE IN WHICH SUCH RECIPIENT
22 BLOCKS, LIMITS OR OTHERWISE RESTRICTS SUBSCRIBERS OR OTHER PURCHASERS OF
23 BROADBAND SERVICES FROM THE RECIPIENT FROM ACCESSING ANY PARTICULAR
24 INTERNET SITE OR CATEGORY OR TYPE OF INTERNET SITE OR ANY SPECIFIC ELEC-
25 TRONIC MAIL MESSAGE OR CATEGORY OR TYPE OF ELECTRONIC MAIL ("NEUTRALITY
26 REPORT"). SUCH NEUTRALITY REPORT SHALL CONTAIN DETAIL OF A SPECIFICITY
27 LEVEL TO BE DETERMINED BY THE AUTHORITY, AND SHALL CONTAIN SUFFICIENT
28 DETAIL TO ALLOW THE AUTHORITY TO ASCERTAIN THE NATURE OF ANY BLOCKING,
29 LIMITATION OR OTHER RESTRICTIONS, AND THE REASON FOR THE RECIPIENT
30 TAKING SUCH ACTION, BUT SHALL BE PROVIDED IN A MANNER REASONABLY CALCU-
31 LATED TO PROTECT SUBSCRIBER AND PURCHASER PRIVACY OR THE LEGITIMATE
32 NEEDS OF LAW ENFORCEMENT. NO RECIPIENT OF FUNDS SHALL BE RESPONSIBLE OR
33 LIABLE FOR ANY EFFORTS BY OR POLICIES, PRACTICES OR PROCEDURES OF AN
34 UNAFFILIATED TELECOMMUNICATIONS SERVICES PROVIDER OR INTERNET SERVICES
35 PROVIDER OR INTERNET PROTOCOL TRAFFIC ROUTING ENTITY TO BLOCK SUBSCRIB-
36 ERS FROM ACCESSING ANY INTERNET SITE OR ANY CATEGORY OR TYPE OF INTERNET
37 SITE OR ANY SPECIFIC ELECTRONIC MAIL MESSAGE OR ANY CATEGORY OR TYPE OF
38 ELECTRONIC MAIL.

39 5. ANY PLEDGE MADE BY THE AUTHORITY IS VALID AND BINDING FROM THE DATE
40 THAT THE PLEDGE IS MADE. THE MONEY OR PROPERTY PLEDGED AND RECEIVED BY
41 THE AUTHORITY SHALL IMMEDIATELY BE SUBJECT TO THE LIEN OF THE PLEDGE
42 WITHOUT ANY PHYSICAL DELIVERY OR FURTHER ACT AND THE LIEN OF THE PLEDGE
43 IS VALID AND BINDING AGAINST ALL PARTIES HAVING CLAIMS IN TORT,
44 CONTRACT, OR OTHERWISE AGAINST THE AUTHORITY, IRRESPECTIVE OF WHETHER
45 THE PARTIES HAVE NOTICE OF THE LIEN. THE RESOLUTION OR ANY OTHER INSTRU-
46 MENT BY WHICH A PLEDGE IS CREATED NEED NOT BE RECORDED.

47 S 4114. APPROPRIATIONS BY ANY GOVERNMENT OR MUNICIPAL CORPORATION. ANY
48 GOVERNMENT OR MUNICIPAL CORPORATION MAY MAKE APPROPRIATIONS FOR THE
49 ACQUISITION, CONSTRUCTION, IMPROVEMENT, MAINTENANCE OR OPERATION OF ANY
50 PROJECT ACQUIRED, CONSTRUCTED, IMPROVED, MAINTAINED OR OPERATED BY THE
51 AUTHORITY.

52 S 4115. CONVEYANCE, LEASE OR TRANSFER OF PROPERTY BY A CITY OR COUNTY
53 TO THE AUTHORITY. ANY CITY OR COUNTY WITHIN NEW YORK STATE IN ORDER TO
54 PROVIDE FOR THE CONSTRUCTION, RECONSTRUCTION, IMPROVEMENT, REPAIR OR
55 MANAGEMENT OF ANY PROJECT, OR IN ORDER TO ACCOMPLISH ANY OF THE PURPOSES
56 OF THIS ARTICLE MAY, WITH OR WITHOUT CONSIDERATION OR FOR A NOMINAL

1 CONSIDERATION, LEASE, SELL, CONVEY OR OTHERWISE TRANSFER TO THE AUTHORI-
2 TY ANY REAL, PERSONAL OR MIXED PROPERTY LOCATED WITHIN SUCH CITY OR
3 COUNTY.

4 S 4116. ACTIONS AGAINST THE AUTHORITY. 1. IN EVERY ACTION AGAINST THE
5 AUTHORITY FOR DAMAGES, FOR INJURIES TO REAL OR PERSONAL PROPERTY, OR FOR
6 THE DESTRUCTION THEREOF, OR FOR PERSONAL INJURIES, THE COMPLAINT SHALL
7 CONTAIN AN ALLEGATION THAT AT LEAST THIRTY DAYS HAVE ELAPSED SINCE THE
8 DEMAND, CLAIM OR CLAIMS UPON WHICH SUCH ACTION IS FOUNDED WERE PRESENTED
9 TO A MEMBER OF THE AUTHORITY, OR TO ITS SECRETARY, OR TO ITS CHIEF EXEC-
10 UTIVE OFFICER AND THAT THE AUTHORITY HAS NEGLECTED OR REFUSED TO MAKE AN
11 ADJUSTMENT OR PAYMENT THEREOF FOR THIRTY DAYS AFTER SUCH PRESENTMENT.

12 2. AN ACTION AGAINST THE AUTHORITY FOR DAMAGES FOR INJURIES TO REAL OR
13 PERSONAL PROPERTY, OR FOR THE DESTRUCTION THEREOF, OR FOR PERSONAL INJU-
14 RIES, ALLEGED TO HAVE BEEN SUSTAINED SHALL NOT BE COMMENCED MORE THAN
15 ONE YEAR AND NINETY DAYS AFTER THE CAUSE OF ACTION THEREFOR SHALL HAVE
16 ACCRUED, NOR UNLESS A NOTICE OF INTENTION TO COMMENCE SUCH ACTION AND OF
17 THE TIME WHEN AND PLACE WHERE THE DAMAGES WERE INCURRED OR SUSTAINED,
18 TOGETHER WITH A VERIFIED STATEMENT SHOWING IN DETAIL THE PROPERTY
19 ALLEGED TO HAVE BEEN DAMAGED OR DESTROYED AND THE VALUE THEREOF, OR THE
20 PERSONAL INJURIES ALLEGED TO HAVE BEEN SUSTAINED AND BY WHOM, SHALL HAVE
21 BEEN FILED IN THE PRINCIPAL OFFICE OF THE AUTHORITY WITHIN NINETY DAYS
22 AFTER SUCH CAUSE OF ACTION SHALL HAVE ACCRUED.

23 3. AN ACTION AGAINST THE AUTHORITY FOR WRONGFUL DEATH SHALL BE
24 COMMENCED IN ACCORDANCE WITH THE NOTICE OF CLAIM AND TIME LIMITATION
25 PROVISIONS OF TITLE ELEVEN OF ARTICLE NINE OF THIS CHAPTER.

26 S 4117. AUDIT POWER AND CONTRACT APPROVAL BY THE COMPTROLLER. 1. THE
27 COMPTROLLER, OR HIS OR HER LEGALLY AUTHORIZED REPRESENTATIVES, SHALL
28 HAVE THE AUTHORITY TO EXAMINE THE ACCOUNTS AND FINANCES OF THE AUTHORITY
29 AND TO CONDUCT MANAGEMENT AUDITS OF THE STAFF AND BOARD OF THE AUTHORI-
30 TY.

31 2. THE PROCUREMENT, PUBLIC WORK, CONSTRUCTION, AND REVENUE CONTRACTS
32 OF THE AUTHORITY SHALL BE SUBJECT TO PRIOR REVIEW AND APPROVAL BY THE
33 COMPTROLLER, IF THE COMPTROLLER, IN HIS OR HER DISCRETION, DETERMINES
34 THAT SUCH REVIEW AND APPROVAL SHALL BE REQUIRED. IF THE COMPTROLLER
35 DETERMINES THAT ANY CONTRACT OR CATEGORY OF CONTRACTS OF A STATE AUTHOR-
36 ITY REQUIRES DIRECT SUPERVISION IN THE FORM OF PRE-APPROVAL OF
37 CONTRACTS, AND THE COMPTROLLER SO NOTIFIES SUCH STATE AUTHORITY OF SUCH
38 DETERMINATION, THEN SUBJECT TO SUBDIVISION THREE OF THIS SECTION, NO
39 SUCH CONTRACT OR AGREEMENT BY SUCH STATE AUTHORITY SELECTED FOR REVIEW
40 BY THE COMPTROLLER SHALL BE A VALID ENFORCEABLE CONTRACT UNLESS SUCH
41 CONTRACT SHALL FIRST BE APPROVED BY THE COMPTROLLER. IN THE EVENT THAT
42 THE COMPTROLLER NOTIFIES THE AUTHORITY THAT APPROVAL SHALL BE REQUIRED
43 AS PROVIDED IN THIS SECTION, THEN THE AUTHORITY SHALL INCLUDE A
44 PROVISION IN ALL SUCH CONTRACTS SELECTED FOR REVIEW AS STATED IN ANY
45 SUCH NOTICE INFORMING THE OTHER PARTIES TO SUCH CONTRACTS THAT THE SAME
46 ARE NOT VALID AND ENFORCEABLE WITHOUT THE COMPTROLLER'S APPROVAL.

47 3. ANY CONTRACT SELECTED BY THE COMPTROLLER FOR REVIEW AND APPROVAL
48 PURSUANT TO SUBDIVISION TWO OF THIS SECTION SHALL BE A VALID ENFORCEABLE
49 CONTRACT ONLY IF THE COMPTROLLER (A) APPROVES THE CONTRACT, OR (B) HAS
50 NOT DISAPPROVED THE CONTRACT WITHIN FORTY-FIVE DAYS OF THE SUBMISSION OF
51 SUCH CONTRACT TO HIS OR HER OFFICE, UNLESS THE STATE AUTHORITY SHALL
52 AGREE WITH THE COMPTROLLER ON AN EXTENSION FOR A REASONABLE PERIOD OF
53 TIME.

54 S 4118. ANNUAL REPORT. THE AUTHORITY SHALL SUBMIT AN ANNUAL REPORT NO
55 LATER THAN MARCH FIRST OF EACH YEAR, INCLUDING THE RECOMMENDATIONS MADE
56 BY THE BROADBAND DEVELOPMENT AND DEPLOYMENT COUNCIL UNDER SECTION FOUR

1 THOUSAND ONE HUNDRED FIVE OF THIS ARTICLE, RELATING TO ITS ACTIVITIES
2 FOR THE PRECEDING CALENDAR YEAR TO THE GOVERNOR, THE SPEAKER OF THE
3 ASSEMBLY, THE TEMPORARY PRESIDENT OF THE SENATE, THE MINORITY LEADER OF
4 THE ASSEMBLY, THE MINORITY LEADER OF THE SENATE, THE CHAIR OF THE ASSEM-
5 BLY STANDING COMMITTEE ON CORPORATIONS, AUTHORITIES AND COMMISSIONS, AND
6 THE CHAIR OF THE SENATE STANDING COMMITTEE ON ENERGY AND TELECOMMUNI-
7 CATIONS.

8 S 4119. EFFECT OF INCONSISTENT PROVISIONS. INsofar AS THE PROVISIONS
9 OF THIS ARTICLE ARE INCONSISTENT WITH THE PROVISIONS OF ANY OTHER ACT,
10 GENERAL OR SPECIAL, THE PROVISIONS OF THIS TITLE SHALL BE CONTROLLING.

11 S 4120. SEVERABILITY. IF ANY PROVISION OF ANY SECTION OF THIS ARTICLE
12 OR THE APPLICATION THEREOF TO ANY PERSON OR CIRCUMSTANCE SHALL BE
13 ADJUDGED INVALID BY A COURT OF COMPETENT JURISDICTION, SUCH ORDER OR
14 JUDGMENT SHALL BE CONFINED IN ITS OPERATION TO THE CONTROVERSY IN WHICH
15 IT WAS RENDERED, AND SHALL NOT AFFECT OR INVALIDATE THE REMAINDER OF ANY
16 PROVISION OF ANY SECTION OF THIS ARTICLE OR THE APPLICATION OF ANY PART
17 THEREOF TO ANY OTHER PERSON OR CIRCUMSTANCE AND TO THIS END THE
18 PROVISIONS OF EACH SECTION OF THIS ARTICLE ARE HEREBY DECLARED TO BE
19 SEVERABLE.

20 S 4. The public service law is amended by adding a new section 92-g to
21 read as follows:

22 S 92-G. UNIVERSAL, AFFORDABLE AND SECURE TELECOMMUNICATIONS SERVICES
23 FUND. 1. THE COMMISSION SHALL ESTABLISH A MECHANISM FOR THE SUPPORT OF
24 UNIVERSAL SERVICE, ALSO REFERRED TO IN THIS SECTION AS THE "HIGH COST
25 SUPPORT MECHANISM", WHICH SHALL OPERATE IN ACCORDANCE WITH RULES ADOPTED
26 BY THE COMMISSION. THE PURPOSE OF THE HIGH COST SUPPORT MECHANISM IS TO
27 PROVIDE FINANCIAL ASSISTANCE TO TELECOMMUNICATIONS SERVICES PROVIDERS TO
28 HELP MAKE BASIC LOCAL EXCHANGE AND BROADBAND SERVICES UNIVERSALLY AVAIL-
29 ABLE, AT JUST AND REASONABLE RATES AND ALLOW SUCH PROVIDERS TO BE FULLY
30 REIMBURSED FOR THE DIFFERENCE BETWEEN THE REASONABLE COSTS INCURRED IN
31 MAKING BASIC SERVICE AVAILABLE TO THEIR CUSTOMERS WITHIN A RURAL, HIGH
32 COST GEOGRAPHIC SUPPORT AREA AND THE PRICE CHARGED FOR SUCH SERVICE,
33 AFTER TAKING INTO ACCOUNT ANY AMOUNTS RECEIVED BY SUCH PROVIDERS UNDER
34 PRICE SUPPORT MECHANISMS ESTABLISHED BY THE FEDERAL GOVERNMENT AND BY
35 THIS STATE. THE COMMISSION SHALL ENSURE THAT NO TELECOMMUNICATIONS
36 SERVICES PROVIDER IS RECEIVING FUNDS FROM THIS OR ANY OTHER SOURCE THAT,
37 TOGETHER WITH LOCAL EXCHANGE SERVICE REVENUES, EXCEEDS THE COST OF
38 PROVIDING LOCAL EXCHANGE SERVICE TO CUSTOMERS OF SUCH PROVIDER. THE HIGH
39 COST SUPPORT MECHANISM SHALL BE SUPPORTED AND DISTRIBUTED EQUITABLY AND
40 ON A NONDISCRIMINATORY, COMPETITIVELY NEUTRAL BASIS THROUGH A RATE
41 ELEMENT ASSESSED ON ALL TELECOMMUNICATIONS SERVICE PROVIDERS IN NEW
42 YORK. A PROVIDER THAT OFFERS BASIC LOCAL EXCHANGE SERVICE OR BROADBAND
43 SERVICE THROUGHOUT AN ENTIRE SUPPORT AREA THROUGH USE OF ITS OWN FACILI-
44 TIES OR ON A RESALE BASIS MAY BE QUALIFIED AS A PROVIDER OF LAST RESORT
45 OR MAY BE ELIGIBLE TO RECEIVE UNIVERSAL SERVICE SUPPORT, AS DETERMINED
46 BY THE COMMISSION. A PROVIDER THAT FAILS TO PAY AN ASSESSMENT DUE AND
47 PAYABLE UNDER THIS SECTION SHALL BE SUBJECT TO THE REVOCATION OF CERTIF-
48 ICATE AFTER NOTICE AND THE OPPORTUNITY FOR A HEARING AS PROVIDED IN THIS
49 CHAPTER. IN ALL RELEVANT GEOGRAPHIC AREAS OF THE STATE, AS DEFINED BY
50 THE COMMISSION, THE COMMISSION SHALL DESIGNATE AT LEAST ONE PROVIDER AS
51 THE PROVIDER OF LAST RESORT AND ADOPT PROCEDURES FOR CHANGING OR TERMI-
52 NATING SUCH DESIGNATIONS. A PROVIDER OF LAST RESORT DESIGNATION CARRIES
53 THE RESPONSIBILITY TO OFFER BASIC LOCAL EXCHANGE SERVICE AND BROADBAND
54 SERVICE TO ALL CONSUMERS WHO REQUEST IT. A PERSON HOLDING A CERTIFICATE
55 OF PUBLIC CONVENIENCE AND NECESSITY TO PROVIDE BASIC SERVICE SHALL BE
56 SUBJECT TO THE EVOLVING DEFINITION OF BASIC SERVICE DEVELOPED BY THE

1 COMMISSION UNDER THIS CHAPTER AND THE SYSTEM OF FINANCIAL SUPPORT FOR
2 UNIVERSAL SERVICE ESTABLISHED BY THE COMMISSION UNDER THIS SECTION. IF
3 AND WHEN ADDITIONAL ELEMENTS ARE INCLUDED IN THE DEFINITION OF BASIC
4 SERVICE AS A RESULT OF REVIEW BY THE COMMISSION, PRICES MAY INCREASE AS
5 IS DETERMINED BY THE COMMISSION TO BE REASONABLY NECESSARY TO COVER THE
6 COST AND ACCOUNT FOR THE INCLUSION OF SUCH ADDITIONAL ELEMENTS.

7 2. ON OR BEFORE DECEMBER FIRST OF EACH YEAR, THE COMMISSION SHALL
8 SUBMIT A WRITTEN REPORT TO THE GOVERNOR, TEMPORARY PRESIDENT OF THE
9 SENATE, SPEAKER OF THE ASSEMBLY, MINORITY LEADERS OF THE SENATE AND
10 ASSEMBLY, CHAIRPERSON AND RANKING MINORITY MEMBER OF THE SENATE ENERGY
11 AND TELECOMMUNICATIONS COMMITTEE, AND THE CHAIRPERSON AND RANKING MINOR-
12 ITY MEMBER OF THE ASSEMBLY CORPORATIONS, AUTHORITIES AND COMMISSIONS
13 COMMITTEE, ACCOUNTING FOR THE OPERATION OF THE HIGH COST SUPPORT MECH-
14 ANISM DURING THE PRECEDING CALENDAR YEAR AND CONTAINING THE FOLLOWING
15 INFORMATION, AT A MINIMUM:

16 (A) THE TOTAL AMOUNT OF MONEY THAT THE COMMISSION DETERMINED SHOULD
17 CONSTITUTE THE HIGH COST SUPPORT MECHANISM FROM WHICH DISTRIBUTIONS
18 WOULD BE MADE;

19 (B) THE TOTAL AMOUNT OF MONEY ORDERED TO BE CONTRIBUTED THROUGH A RATE
20 ELEMENT ASSESSMENT COLLECTED BY EACH TELECOMMUNICATIONS SERVICE PROVID-
21 ER;

22 (C) THE BASIS ON WHICH THE CONTRIBUTION OF EACH TELECOMMUNICATIONS
23 SERVICE PROVIDER WAS CALCULATED;

24 (D) THE BENCHMARKS USED AND THE BASIS ON WHICH THE BENCHMARKS WERE
25 DETERMINED;

26 (E) THE TOTAL AMOUNT OF MONEY THAT THE COMMISSION DETERMINED SHOULD BE
27 DISTRIBUTED FROM THE HIGH COST SUPPORT MECHANISM;

28 (F) THE TOTAL AMOUNT OF MONEY DISTRIBUTED TO EACH TELECOMMUNICATIONS
29 SERVICE PROVIDER FROM THE HIGH COST SUPPORT MECHANISM;

30 (G) THE BASIS ON WHICH THE DISTRIBUTION TO TELECOMMUNICATIONS SERVICE
31 PROVIDERS WAS CALCULATED;

32 (H) AS TO EACH TELECOMMUNICATIONS SERVICE PROVIDER RECEIVING A
33 DISTRIBUTION, THE AMOUNT RECEIVED BY GEOGRAPHIC SUPPORT AREA AND TYPE OF
34 CUSTOMER, THE WAY IN WHICH THE BENEFIT OF THE DISTRIBUTION WAS APPLIED
35 OR ACCOUNTED FOR;

36 (I) THE PROPOSED BENCHMARKS, THE PROPOSED CONTRIBUTIONS TO BE
37 COLLECTED THROUGH A RATE ELEMENT ASSESSMENT BY EACH TELECOMMUNICATIONS
38 PROVIDER, AND THE PROPOSED TOTAL AMOUNT OF THE HIGH COST SUPPORT MECH-
39 ANISM FROM WHICH DISTRIBUTIONS ARE TO BE MADE FOR THE FOLLOWING CALENDAR
40 YEAR; AND

41 (J) THE TOTAL AMOUNT OF DISTRIBUTIONS MADE FROM THE HIGH COST FUND,
42 DIRECTLY OR INDIRECTLY, AND HOW THEY ARE BALANCED BY RATE REDUCTIONS BY
43 ALL PROVIDERS FOR THE SAME PERIOD AND A FULL ACCOUNTING OF AND JUSTI-
44 FICATION FOR ANY DIFFERENCE. IF THE REPORT SUBMITTED PURSUANT TO THIS
45 SUBDIVISION CONTAINS A PROPOSAL FOR AN INCREASE IN ANY OF THE AMOUNTS
46 LISTED IN PARAGRAPH (B) OF THIS SUBDIVISION, SUCH INCREASE SHALL BE
47 SUSPENDED UNTIL MARCH THIRTY-FIRST OF THE FOLLOWING YEAR.

48 SUCH REPORT MUST ALSO DETERMINE WHAT AMOUNT OF UNEXPENDED FUNDS, IF
49 ANY, AT THE END OF EACH FISCAL YEAR, COULD BE REFUNDED TO THE CONTRIBUT-
50 ING TELECOMMUNICATIONS SERVICES PROVIDERS ON A BASIS THAT IS PROPOR-
51 TIONAL TO THE AMOUNTS CONTRIBUTED BY SUCH TELECOMMUNICATIONS SERVICES
52 PROVIDERS.

53 3. THERE IS HEREBY CREATED, IN THE STATE TREASURY, THE NEW YORK HIGH
54 COST ADMINISTRATION FUND, REFERRED TO IN THIS SECTION AS THE "FUND",
55 WHICH SHALL BE USED TO REIMBURSE THE COMMISSION AND, IF APPLICABLE, ITS
56 CONTRACTORS, FOR REASONABLE EXPENSES INCURRED IN THE ADMINISTRATION OF

1 THE HIGH COST SUPPORT MECHANISM AS DETERMINED BY RULES OF THE COMMIS-
 2 SION, AND SHALL BE AUDITED IN A MANNER AND FREQUENCY TO BE DETERMINED BY
 3 THE COMPTROLLER. THE MONEYS IN THE FUND THAT ARE TO BE USED FOR THE
 4 DIRECT AND INDIRECT ADMINISTRATIVE COSTS INCURRED BY THE COMMISSION AND
 5 ITS CONTRACTORS SHALL BE APPROPRIATED ANNUALLY BY THE LEGISLATURE. AT
 6 THE END OF ANY FISCAL YEAR, ALL UNEXPENDED AND UNENCUMBERED MONEYS IN
 7 THE FUND SHALL REMAIN THEREIN AND SHALL NOT BE CREDITED OR TRANSFERRED
 8 TO THE GENERAL FUND OR ANY OTHER FUND. BASED UPON THE BALANCE REMAINING
 9 IN THE FUND AND THE AMOUNT APPROPRIATED ANNUALLY BY THE LEGISLATURE FOR
 10 USE BY THE COMMISSION, EACH YEAR THE COMMISSION SHALL DETERMINE THE
 11 NONDISCRIMINATORY, COMPETITIVELY NEUTRAL ASSESSMENT ON ALL TELECOMMUNI-
 12 CATIONS SERVICE PROVIDERS IN NEW YORK THAT WILL BE NECESSARY TO COVER
 13 THE COST OF IMPLEMENTING THE HIGH COST SUPPORT MECHANISM. ONLY THE
 14 MONEYS FROM SUCH ASSESSMENT SHALL BE TRANSMITTED TO THE STATE TREASURER,
 15 WHO SHALL CREDIT THE SAME TO THE FUND. ALL INTEREST DERIVED FROM THE
 16 DEPOSIT AND INVESTMENT OF THIS FUND SHALL REMAIN IN THE FUND AND SHALL
 17 NOT REVERT TO THE GENERAL FUND.

18 S 5. The public service law is amended by adding a new article 11-A to
 19 read as follows:

20 ARTICLE 11-A

21 STATEWIDE CABLE FRANCHISING AND REGULATION

22 SECTION 231. DEFINITIONS.
 23 232. AUTHORIZATION TO PROVIDE CABLE SERVICE.
 24 233. PUBLIC SERVICE COMMISSION RESPONSIBILITIES.
 25 234. APPLICATION FOR STATEWIDE CABLE FRANCHISE.
 26 235. LENGTH OF STATEWIDE FRANCHISE.
 27 236. TERMINATION OF A STATEWIDE FRANCHISE.
 28 237. ABANDONMENT OF SERVICE.
 29 238. MUNICIPAL POWER AND REGULATION OVER FRANCHISE HOLDERS.
 30 239. PAYMENT AND REMITTANCE OF FRANCHISE FEE.
 31 240. PUBLIC, EDUCATIONAL AND GOVERNMENT CHANNELS.
 32 241. CABLE OPERATOR'S COMMUNITY COMMITMENT.
 33 242. CONSUMER PROTECTION RULES.
 34 243. NEUTRAL INTERNET AND BROADBAND NETWORKS.
 35 244. DEPLOYMENT REQUIREMENTS FOR STATEWIDE CABLE FRANCHISE.
 36 245. DISCRIMINATION IN THE PROVISIONING OF SERVICE PROHIBITED.
 37 246. ENFORCEMENT.

38 S 231. DEFINITIONS. THE WORDS AND PHRASES USED IN THIS ARTICLE SHALL
 39 HAVE THE FOLLOWING MEANINGS UNLESS A DIFFERENT MEANING CLEARLY APPEARS
 40 IN THE CONTEXT.

41 1. "CABLE SERVICE" SHALL MEAN THE ONE-WAY TRANSMISSION TO SUBSCRIBERS
 42 OF VIDEO PROGRAMMING; OR OTHER PROGRAMMING SERVICE, AND SUBSCRIBER
 43 INTERACTION, IF ANY, WHICH IS REQUIRED FOR THE SELECTION OR USE OF SUCH
 44 VIDEO PROGRAMMING OR OTHER PROGRAMMING SERVICE, REGARDLESS OF THE TECH-
 45 NOLOGY UTILIZED BY A CABLE TELEVISION COMPANY TO ENABLE SUCH SELECTION
 46 OR USE.

47 2. "CABLE OPERATOR" SHALL MEAN ANY PERSON OR GROUP OF PERSONS (A) WHO
 48 PROVIDES CABLE SERVICE OVER A CABLE SYSTEM AND DIRECTLY OR THROUGH ONE
 49 OR MORE AFFILIATES OWNS A SIGNIFICANT INTEREST IN SUCH CABLE SYSTEM, OR
 50 (B) WHO OTHERWISE CONTROLS OR IS RESPONSIBLE FOR, THROUGH ANY ARRANGE-
 51 MENT, THE MANAGEMENT AND OPERATION OF SUCH A CABLE SYSTEM, AS SET FORTH
 52 IN 47 U.S.C. S 522(5).

53 3. "CABLE SYSTEM" SHALL MEAN ANY FACILITY, CONSISTING OF A SET OF
 54 CLOSED TRANSMISSION PATHS AND ASSOCIATED SIGNAL GENERATION, RECEPTION
 55 AND CONTROL EQUIPMENT THAT IS DESIGNED TO PROVIDE CABLE SERVICE WHICH
 56 INCLUDES VIDEO PROGRAMMING, WITHOUT REGARD TO THE TECHNOLOGY USED TO

1 DELIVER SUCH VIDEO PROGRAMMING, INCLUDING INTERNET PROTOCOL TECHNOLOGY
2 OR ANY SUCCESSOR TECHNOLOGY AND WHICH IS PROVIDED TO MULTIPLE SUBSCRIB-
3 ERS WITHIN A COMMUNITY, AS SET FORTH IN 47 U.S.C. S 522(7), BUT SUCH
4 TERM DOES NOT INCLUDE:

5 (A) A FACILITY THAT SERVES ONLY TO RETRANSMIT THE TELEVISION SIGNALS
6 OF ONE OR MORE TELEVISION BROADCAST STATIONS;

7 (B) A FACILITY THAT SERVES SUBSCRIBERS WITHOUT USING ANY PUBLIC
8 RIGHT-OF-WAY;

9 (C) A FACILITY OF A COMMON CARRIER WHICH IS SUBJECT, IN WHOLE OR IN
10 PART, TO THE PROVISIONS OF TITLE II OF THE COMMUNICATIONS ACT OF 1934,
11 47 U.S.C. S 201 ET SEQ., EXCEPT THAT SUCH FACILITY SHALL BE CONSIDERED A
12 CABLE SYSTEM (OTHER THAN FOR PURPOSES OF 47 U.S.C. S 541(C)) TO THE
13 EXTENT SUCH FACILITY IS USED IN THE TRANSMISSION OF VIDEO PROGRAMMING
14 DIRECTLY TO SUBSCRIBERS, UNLESS THE EXTENT OF SUCH USE IS SOLELY TO
15 PROVIDE INTERACTIVE ON-DEMAND SERVICES;

16 (D) AN OPEN VIDEO SYSTEM THAT COMPLIES WITH 47 U.S.C. S 573; OR

17 (E) ANY FACILITIES OF ANY ELECTRIC UTILITY USED SOLELY FOR OPERATING
18 ITS ELECTRIC UTILITY SYSTEM.

19 4. "CATV COMPANY" SHALL MEAN ANY PERSON OR GROUP OF PERSONS (A) WHO
20 PROVIDES CABLE SERVICE OVER A CABLE SYSTEM AND DIRECTLY OR THROUGH ONE
21 OR MORE AFFILIATES OWNS A SIGNIFICANT INTEREST IN SUCH CABLE SYSTEM, OR
22 (B) WHO OTHERWISE CONTROLS OR IS RESPONSIBLE FOR, THROUGH ANY ARRANGE-
23 MENT, THE MANAGEMENT AND OPERATION OF SUCH A CABLE SYSTEM.

24 5. "CATV SYSTEM" SHALL MEAN ANY FACILITY WHICH RECEIVES AND AMPLIFIES
25 THE SIGNALS BROADCAST BY ONE OR MORE TELEVISION STATIONS AND REDISTRIB-
26 UTES SUCH SIGNALS BY WIRE, CABLE OR OTHER MEANS, OR WHICH DISTRIBUTES
27 SIGNALS IT ORIGINATES OR WHICH ARE ORIGINATED BY ANOTHER FOR VIEWING BY
28 SUBSCRIBERS, WHETHER THE WIRE, CABLE OR OTHER FACILITIES ARE OWNED OR
29 LEASED. A "CATV SYSTEM" SHALL NOT INCLUDE:

30 (A) THE POLES OR OTHER FACILITIES OF ANY TELEPHONE CORPORATION USED TO
31 PROVIDE CHANNEL SERVICE AS A COMMON CARRIER,

32 (B) A SYSTEM SERVING NOT MORE THAN TWO HUNDRED FIFTY SUBSCRIBERS, OR

33 (C) A MASTER ANTENNA SYSTEM SERVICING SUBSCRIBERS SITUATED ON PROPERTY
34 UNDER COMMON OWNERSHIP.

35 6. "COMMISSION" SHALL MEAN THE PUBLIC SERVICE COMMISSION OR ANY
36 SUCCESSOR AGENCY.

37 7. "FRANCHISE" SHALL MEAN AN INITIAL AUTHORIZATION, OR RENEWAL OF AN
38 AUTHORIZATION, ISSUED BY A FRANCHISING AUTHORITY, REGARDLESS OF WHETHER
39 THE AUTHORIZATION IS DESIGNATED AS A FRANCHISE, PERMIT, LICENSE, RESOL-
40 UTION, CONTRACT, CERTIFICATE, AGREEMENT, OR OTHERWISE, THAT AUTHORIZES
41 THE CONSTRUCTION AND OPERATION OF A CABLE SYSTEM IN THE PUBLIC
42 RIGHTS-OF-WAY.

43 8. "FRANCHISE HOLDER" OR "HOLDER" SHALL MEAN A PERSON WHO HAS RECEIVED
44 A STATE-WIDE FRANCHISE, BUT HAS NOT TRANSFERRED OR TERMINATED SUCH FRAN-
45 CHISE AUTHORIZATION, IN ACCORDANCE WITH THE PROVISIONS OF THIS ARTICLE.

46 9. "FRANCHISING AUTHORITY" SHALL MEAN THE PUBLIC SERVICE COMMISSION
47 AND MUNICIPALITIES WHICH ARE ENTITLED TO REQUIRE FRANCHISES AND IMPOSE
48 FEES IN ACCORDANCE WITH 47 U.S.C. SS 522(10) AND 542, RESPECTIVELY.

49 10. "GROSS REVENUES" SHALL MEAN ANY AND ALL REVENUES, INCLUDING CASH,
50 CREDITS, PROPERTY OR OTHER CONSIDERATION OF ANY KIND OR NATURE ARISING
51 FROM, ATTRIBUTABLE TO, OR IN ANY WAY DERIVED DIRECTLY OR INDIRECTLY FROM
52 THE OPERATION OF THE FRANCHISEE'S CABLE SYSTEM (INCLUDING THE STUDIOS
53 AND OTHER FACILITIES ASSOCIATED THEREWITH) TO PROVIDE CABLE SERVICES.
54 GROSS REVENUES INCLUDE, BY WAY OF ILLUSTRATION AND NOT LIMITATION,
55 MONTHLY FEES CHARGED SUBSCRIBERS FOR ANY BASIC, OPTIONAL, PREMIUM, PER-
56 CHANNEL, PER-PROGRAM SERVICE, OR CABLE PROGRAMMING SERVICE; INSTALLA-

1 TION, DISCONNECTION, RECONNECTION, AND CHANGE-IN-SERVICE FEES; LEASED
2 CHANNEL FEES; LATE FEES AND ADMINISTRATIVE FEES, PAYMENTS, OR OTHER
3 CONSIDERATION RECEIVED FROM PROGRAMMERS FOR CARRIAGE OF PROGRAMMING ON
4 THE SYSTEM; REVENUES FROM RENTALS OR SALES OF CONVERTERS OR OTHER EQUIP-
5 MENT; ANY STUDIO RENTAL, PRODUCTION EQUIPMENT, AND PERSONNEL FEES;
6 ADVERTISING REVENUES; BARTER; REVENUES FROM PROGRAM GUIDES; REVENUES
7 FROM THE SALE OR CARRIAGE OF OTHER CABLE SERVICES; AND REVENUES FROM
8 HOME SHOPPING CHANNELS AND OTHER REVENUE SHARING ARRANGEMENTS. GROSS
9 REVENUES SHALL INCLUDE REVENUES RECEIVED BY ANY ENTITY OTHER THAN THE
10 FRANCHISEE, AN AFFILIATE, OR ANOTHER ENTITY THAT OPERATES THE SYSTEM
11 WHERE NECESSARY TO PREVENT EVASION OR AVOIDANCE OF THE OBLIGATION UNDER
12 THIS STATUTE TO PAY THE FRANCHISE FEE. GROSS REVENUES SHALL NOT INCLUDE:

13 (A) AMOUNTS NOT ACTUALLY RECEIVED, EVEN IF BILLED, SUCH AS BAD DEBT;
14 REFUNDS, REBATES OR DISCOUNTS TO SUBSCRIBERS OR THIRD PARTIES; OR REVEN-
15 UE IMPUTED FROM THE PROVISION OF CABLE SERVICES FOR FREE OR AT REDUCED
16 RATES TO ANY PERSON AS REQUIRED OR ALLOWED BY LAW, INCLUDING, WITHOUT
17 LIMITATION, THE PROVISION OF SUCH SERVICES TO PUBLIC INSTITUTIONS,
18 PUBLIC SCHOOLS, GOVERNMENTAL ENTITIES, OR EMPLOYEES, OTHER THAN FORGONE
19 REVENUE CHOSEN NOT TO BE RECEIVED IN EXCHANGE FOR TRADES, BARTERS,
20 SERVICES, OR OTHER ITEMS OF VALUE; OR

21 (B) ANY REVENUE FROM ANY CHARGES OR FEES DERIVED FROM SERVICES CLASSI-
22 FIED AS NON-CABLE SERVICES AND INFORMATION SERVICES AND ANY OTHER REVEN-
23 UES ATTRIBUTED BY THE HOLDER OF A CERTIFICATE OF APPROVAL OR SYSTEMWIDE
24 FRANCHISE TO NON-CABLE SERVICES IN ACCORDANCE WITH FEDERAL COMMUNI-
25 CATIONS COMMISSIONS RULES, REGULATIONS, STANDARDS, OR ORDERS.

26 IN THE CASE OF CABLE SERVICE THAT MAY BE BUNDLED OR INTEGRATED FUNC-
27 TIONALLY WITH OTHER SERVICES, CAPABILITIES OR APPLICATIONS, THE GROSS
28 REVENUES SHALL ONLY INCLUDE THOSE CHARGES OR FEES DERIVED FROM OR
29 ATTRIBUTABLE TO THE PROVISION OF CABLE SERVICE, AS REFLECTED ON THE
30 BOOKS AND RECORDS OF THE HOLDER OF A CERTIFICATE OF APPROVAL OR A
31 SYSTEM-WIDE FRANCHISE, AS THE CASE MAY BE, IN ACCORDANCE WITH THE RULES,
32 REGULATIONS, STANDARDS AND ORDERS OF THE FEDERAL COMMUNICATIONS COMMIS-
33 SION.

34 11. "INCUMBENT CABLE OPERATOR" SHALL MEAN THE CABLE OPERATOR SERVING
35 THE LARGEST NUMBER OF CABLE SUBSCRIBERS IN A PARTICULAR MUNICIPAL FRAN-
36 CHISE AREA ON THE EFFECTIVE DATE OF THIS ARTICLE.

37 12. "MUNICIPALITY" SHALL MEAN A CITY OR TOWN WITHIN THE STATE.

38 13. "PERSON" SHALL MEAN AN INDIVIDUAL, PARTNERSHIP, ASSOCIATION, JOINT
39 STOCK COMPANY, TRUST, CORPORATION, GOVERNMENT ENTITY, LIMITED LIABILITY
40 COMPANY OR ANY OTHER ENTITY.

41 14. "PUBLIC RIGHT-OF-WAY" SHALL MEAN THE AREA ON, BELOW OR ABOVE A
42 PUBLIC ROADWAY, HIGHWAY, STREET, PUBLIC SIDEWALK, ALLEY, WATERWAY, OR
43 UTILITY EASEMENT IN WHICH A MUNICIPALITY HAS AN INTEREST.

44 15. "VIDEO PROGRAMMING" SHALL MEAN PROGRAMMING PROVIDED BY, OR GENER-
45 ALLY CONSIDERED COMPARABLE TO, PROGRAMMING PROVIDED BY A TELEVISION
46 BROADCAST STATION, AS SET FORTH IN 47 U.S.C. S 522(20).

47 S 232. AUTHORIZATION TO PROVIDE CABLE SERVICE. 1. NOTWITHSTANDING ANY
48 OTHER LAW TO THE CONTRARY AND SUBJECT TO THE PROVISIONS OF THIS ARTICLE,
49 A PERSON SEEKING TO PROVIDE CABLE SERVICE IN THE STATE AFTER THE EFFEC-
50 TIVE DATE OF THIS ARTICLE MAY FILE AN APPLICATION FOR A STATEWIDE FRAN-
51 CHISE WITH THE COMMISSION AS REQUIRED BY THIS SECTION. THIS ARTICLE DOES
52 NOT PRECLUDE CABLE OPERATORS FROM FILING INDIVIDUAL APPLICATIONS UNDER
53 ARTICLE ELEVEN OF THIS CHAPTER, PROVIDED HOWEVER THAT A PERSON FILING AN
54 APPLICATION FOR A STATEWIDE FRANCHISE WITH THE COMMISSION SHALL BE
55 REQUIRED UPON RECEIPT OF SUCH FRANCHISE TO COMPLY WITH SECTIONS TWO
56 HUNDRED FORTY-TWO AND TWO HUNDRED FORTY-THREE OF THIS ARTICLE WITH

1 REGARD TO ALL IN-STATE BROADBAND AND BROADBAND-CAPABLE FACILITIES AND
2 LINES BUILT DURING THE INITIAL BUILD-OUT PERIOD PURSUANT TO THE AUTHORI-
3 ZATION PROVIDED BY SUCH FRANCHISE, AND FOR THE PERIOD OF THE INITIAL
4 BUILD-OUT PERIOD WITH REGARD TO SUCH PERSON'S IN-STATE BROADBAND AND
5 BROADBAND-CAPABLE FACILITIES AND LINES IN EXISTENCE WHEN SUCH FRANCHISE
6 BECOMES EFFECTIVE.

7 2. A PERSON, INCLUDING AN INCUMBENT CABLE OPERATOR, PROVIDING CABLE
8 SERVICE UNDER A FRANCHISE AGREEMENT WITH A FRANCHISING AUTHORITY WHICH
9 EXISTED PRIOR TO THE EFFECTIVE DATE OF THIS ARTICLE IS NOT SUBJECT TO
10 THIS SECTION UNTIL THE FRANCHISE AGREEMENT EXPIRES AT THE END OF ITS
11 ORIGINAL OR ANY MUTUALLY AGREEABLE RENEWAL TERM, OR UNLESS AND UNTIL THE
12 FRANCHISING AUTHORITY AND ENTITY PROVIDING CABLE SERVICE MUTUALLY AGREE
13 TO TERMINATE THE EXISTING FRANCHISE AGREEMENT.

14 3. NOTHING IN THIS SECTION SHALL RESTRICT A CABLE OPERATOR FROM APPLY-
15 ING TO THE COMMISSION FOR A STATEWIDE FRANCHISE TO PROVISION CABLE
16 SERVICES IN TERRITORIES OF THE STATE FOR WHICH IT DOES NOT HAVE AN
17 EXISTING FRANCHISE AGREEMENT WITH A FRANCHISING AUTHORITY. FOR PURPOSES
18 OF THIS SECTION, A CABLE OPERATOR WILL BE DEEMED TO HAVE A FRANCHISE TO
19 PROVIDE CABLE SERVICE IN THE JURISDICTION OF A SPECIFIC FRANCHISING
20 AUTHORITY IF ANY AFFILIATE, PREDECESSOR OR SUCCESSOR ENTITY OF THE CABLE
21 OPERATOR MAINTAINS A FRANCHISE GRANTED BY THAT FRANCHISING AUTHORITY.
22 THE TERMS "AFFILIATE, PREDECESSOR OR SUCCESSOR ENTITY" IN THIS SECTION
23 SHALL INCLUDE BUT NOT BE LIMITED TO ANY ENTITY RECEIVING, OBTAINING OR
24 OPERATING UNDER A FRANCHISE FROM A FRANCHISING ENTITY FOR CABLE SERVICE
25 THROUGH THE GRANT OF A FRANCHISE, MERGER, SALE, ASSIGNMENT, RESTRUCTUR-
26 ING, OR ANY OTHER TYPE OF TRANSACTION.

27 4. THE COMMISSION SHALL HAVE THE FRANCHISING AUTHORITY TO ISSUE STATE-
28 WIDE FRANCHISES FOR THE PROVISIONING OF CABLE SERVICE UNDER THIS ARTI-
29 CLE. NEITHER THE COMMISSION NOR ANY MUNICIPALITY IN THE STATE MAY
30 REQUIRE THE FRANCHISE HOLDER TO OBTAIN ANY SEPARATE OR ADDITIONAL FRAN-
31 CHISE OR OTHERWISE IMPOSE ANY FEE OR OTHER REQUIREMENT, INCLUDING BUT
32 NOT LIMITED TO THE REGULATION OF CABLE SERVICE RATES, ON ANY FRANCHISE
33 HOLDER AS A CONDITION OF PROVIDING CABLE SERVICE, EXCEPT AS PROVIDED IN
34 THIS ARTICLE.

35 5. 16 NYCRR S 895.3, AS AMENDED FROM TIME TO TIME, SHALL NOT APPLY TO
36 THIS ARTICLE.

37 S 233. PUBLIC SERVICE COMMISSION RESPONSIBILITIES. 1. THE COMMISSION
38 SHALL ASSIGN EXISTING PERMANENT STAFF OF SUCH LEGAL, TECHNICAL AND OTHER
39 EMPLOYEES OF THE COMMISSION AS MAY BE REQUIRED FOR THE PROPER CONDUCT OF
40 ITS CABLE FRANCHISING RESPONSIBILITIES UNDER THIS ARTICLE. THE POWERS
41 AND DUTIES OF THE PUBLIC SERVICE COMMISSION WITH RESPECT TO STATEWIDE
42 FRANCHISES SHALL NOT EXCEED THOSE PRESCRIBED IN THIS ARTICLE.

43 2. THE COMMISSION SHALL BE RESPONSIBLE FOR ESTABLISHING ADDITIONAL
44 ADMINISTRATIVE PROCEDURES AND REGULATIONS NOT EXPLICITLY GRANTED IN THIS
45 ARTICLE FOR THE ISSUANCE OF STATEWIDE FRANCHISES IN ACCORDANCE WITH THE
46 PROVISIONS OF THIS ARTICLE. THE COMMISSION'S ADMINISTRATIVE POWERS AND
47 DUTIES SHALL BE LIMITED TO THE PROVISION FOUND IN SECTION TWO HUNDRED
48 THIRTY-FOUR OF THIS ARTICLE AND ADDITIONAL POWERS INCLUDING THE:

49 (A) DEVELOPMENT OF PROCEDURES TO SUBMIT, REVIEW AND DOCUMENT APPLICA-
50 TIONS FILED WITH THE COMMISSION;

51 (B) REVIEW OF THE INITIAL SUBMISSION AND ANY UPDATES OF THE GENERAL
52 DESCRIPTION OF THE SERVICE AREA FOOTPRINT TO BE SERVED OR EXPANDED,
53 INCLUDING, IF APPLICABLE, ANY AREA WITHIN A MUNICIPALITY TO BE SERVED BY
54 AN APPLICANT;

55 (C) DETERMINATION AND NOTICE OF INCOMPLETE APPLICATIONS;

1 (D) APPROVAL OF APPLICATIONS AND AMENDED APPLICATIONS, OR DENIAL OF
2 SUCH APPLICATIONS, WITHIN THE PERIODS DESIGNATED UNDER THE PROVISIONS OF
3 THIS ARTICLE;

4 (E) ISSUANCE TO APPLICANTS WHOSE APPLICATIONS ARE APPROVED FOR STATE-
5 WIDE FRANCHISES TO PROVIDE CABLE SERVICE IN THE SERVICE AREA FOOTPRINT
6 DESCRIBED IN THE APPLICATION; TO CONSTRUCT, UPGRADE, OPERATE OR MAINTAIN
7 A NETWORK CAPABLE OF PROVIDING SUCH SERVICE, AND TO USE AND OCCUPY THE
8 PUBLIC RIGHTS-OF-WAY IN THE DELIVERY OF THAT SERVICE;

9 (F) DEVELOPMENT OF PROCEDURES TO REVIEW AND DOCUMENT THE TRANSFER OR
10 TERMINATION OF A STATEWIDE FRANCHISE;

11 (G) ESTABLISH GUIDELINES IN ADDITION TO THOSE DEVELOPED BY MUNICI-
12 PALITIES UNDER SECTION TWO HUNDRED THIRTY-EIGHT OF THIS ARTICLE, TO DEAL
13 WITH ANY CONSUMER COMPLAINTS OR COMPLAINTS ALLEGING VIOLATIONS OF ANY
14 PROVISIONS OF THIS ARTICLE. SUCH GUIDELINES SHALL BE EASILY ACCESSIBLE
15 TO RESIDENTS OF THE STATE AND SHALL BE POSTED ON THE INTERNET. THE
16 COMMISSION SHALL ALSO PROVIDE CONSUMER COMPLAINT FORMS ON THE INTERNET
17 EVEN IF MUNICIPALITIES ESTABLISH THEIR OWN COMPLAINT FORMS. IN SUCH
18 CASES, MUNICIPALITIES AND THE COMMISSION WILL WORK COOPERATIVELY TO
19 ADDRESS CONSUMER COMPLAINTS.

20 S 234. APPLICATION FOR STATEWIDE CABLE FRANCHISE. 1. ANY PERSON WISH-
21 ING TO PROVIDE CABLE SERVICE IN THE STATE AFTER THE EFFECTIVE DATE OF
22 THIS ARTICLE MAY FILE AN APPLICATION FOR A STATEWIDE FRANCHISE WITH THE
23 COMMISSION AS REQUIRED BY THIS SECTION. A STATEWIDE FRANCHISE APPLICA-
24 TION SHALL BE ACCOMPANIED BY AN APPLICATION FEE OF TEN THOUSAND DOLLARS
25 THAT SHALL BE USED BY THE COMMISSION TO CARRY OUT THE PURPOSES OF THIS
26 ARTICLE. NOTHING IN THIS SECTION REQUIRES THAT ANY PERSON OR ENTITY FILE
27 AN APPLICATION FOR A STATEWIDE FRANCHISE.

28 2. APPLICATIONS FOR A STATEWIDE FRANCHISE SHALL CONTAIN BUT NOT BE
29 LIMITED TO:

30 (A) A STATEMENT THAT THE APPLICANT HAS FILED OR WILL TIMELY FILE WITH
31 THE FEDERAL COMMUNICATIONS COMMISSION ALL FORMS REQUIRED BY THAT AGENCY
32 IN ADVANCE OF OFFERING CABLE SERVICE IN THIS STATE;

33 (B) A STATEMENT THAT THE APPLICANT AGREES TO COMPLY WITH ALL OTHER
34 APPLICABLE FEDERAL, STATE STATUTES AND REGULATIONS AND ALL GENERALLY
35 APPLICABLE MUNICIPAL ORDINANCES AND REGULATIONS, INCLUDING WITHOUT LIMITATION
36 MUNICIPAL ORDINANCES AND REGULATIONS REGARDING THE TIME, PLACE
37 AND MANNER OF USING AND OCCUPYING PUBLIC RIGHTS-OF-WAY ADOPTED IN
38 ACCORDANCE WITH STATE AND FEDERAL LAW;

39 (C) A GENERAL DESCRIPTION OF THE SERVICE AREA FOOTPRINT TO BE SERVED,
40 INCLUDING, IF APPLICABLE, ANY AREA WITHIN A MUNICIPALITY TO BE SERVED BY
41 THE APPLICANT. SUCH DESCRIPTION MAY BE SET FORTH ON ONE OR MORE MAPS. IF
42 THE APPLICANT IS A TELEPHONE CORPORATION OR AN AFFILIATE OF A TELEPHONE
43 CORPORATION, THE SERVICE AREA WILL INCLUDE A DESCRIPTION OF THE TERRITORY
44 IN WHICH THE COMPANY PROVIDES TELEPHONE SERVICE. DESCRIPTIONS OF
45 SERVICE AREA FOOTPRINTS SHALL BE UPDATED BY THE APPLICANT PRIOR TO THE
46 EXPANSION OF CABLE SERVICE TO A PREVIOUSLY UNDESIGNATED SERVICE AREA
47 AND, UPON SUCH EXPANSION, WRITTEN NOTICE SHALL BE GIVEN TO THE COMMISSION
48 OF THE NEW SERVICE AREA TO BE SERVED BY THE APPLICANT. THE
49 STATE-ISSUED FRANCHISE AREA AND ANY SERVICE AREA WITHIN THE FRANCHISE
50 AREA MAY EXTEND BEYOND THE AREA OR AREAS WHERE THE APPLICANT HAS PRE-EXISTING
51 AUTHORITY TO OCCUPY THE PUBLIC RIGHTS-OF-WAY;

52 (D) THE LOCATION OF THE APPLICANT'S PRINCIPAL PLACE OF BUSINESS, THE
53 NAMES OF THE APPLICANT'S PRINCIPAL EXECUTIVE OFFICERS, AND THE NAME,
54 ADDRESS AND TELEPHONE NUMBER OF AN OFFICER, GENERAL PARTNER OR OTHER
55 EMPLOYEE OF THE APPLICANT WHO WILL BE RESPONSIBLE FOR ONGOING COMMUNI-
56 CATIONS WITH THE COMMISSION;

1 (E) THE NAME AND LOCATION OF THE PRINCIPAL PLACE OF BUSINESS OF THE
2 APPLICANT'S PARENT COMPANY, IF ANY;

3 (F) THE SIGNATURE OF AN OFFICER OR GENERAL PARTNER OF THE APPLICANT
4 VERIFYING THE INFORMATION SET FORTH IN THE APPLICATION;

5 (G) DEMONSTRATE THE FINANCIAL, TECHNICAL, MANAGERIAL AND LEGAL CHARAC-
6 TER AND OTHER QUALIFICATIONS NEEDED TO CONSTRUCT, OPERATE, AND MAINTAIN
7 THE NECESSARY PLANT AND TO PROVIDE SERVICE IN A SAFE, ADEQUATE AND PROP-
8 ER MANNER;

9 (H) PROVIDE A RECORD OF COMPLIANCE WITH LOCAL, STATE AND FEDERAL LAWS;
10 AND

11 (I) PROVIDE ADDITIONAL INFORMATION AS NEEDED BY THE COMMISSION.

12 3. UPON FILING AN APPLICATION WITH THE COMMISSION FOR A SYSTEM-WIDE
13 FRANCHISE AGREEMENT PURSUANT TO SUBDIVISION TWO OF THIS SECTION, THE
14 APPLICANT SHALL INCLUDE A LIST OF THE SPECIFIC MUNICIPALITIES TO WHICH
15 CATV SERVICE WILL BE PROVIDED OR EXTENDED, THE ANTICIPATED CONSTRUCTION
16 AND DEPLOYMENT DATES, AND THE ANTICIPATED DATE ON WHICH SERVICE WILL BE
17 OFFERED AND A CERTIFIED STATEMENT THAT SUCH DEPLOYMENT WILL MEET THE
18 REQUIREMENTS OF SECTION TWO HUNDRED FORTY-FOUR OF THIS ARTICLE. THE
19 APPLICANT WILL CONCURRENTLY PROVIDE A COPY OF THE APPLICATION TO EACH
20 AFFECTED MUNICIPALITY.

21 4. WITHIN FIFTEEN BUSINESS DAYS AFTER IT RECEIVES THE APPLICATION, THE
22 COMMISSION SHALL:

23 (A) DETERMINE WHETHER AN APPLICATION SUBMITTED IS INCOMPLETE; AND

24 (B) IF SO, THE COMMISSION SHALL NOTIFY THE APPLICANT THAT THE APPLICA-
25 TION IS INCOMPLETE AND IDENTIFY THE INFORMATION THAT THE COMMISSION MUST
26 RECEIVE FROM THE APPLICANT TO MAKE THE APPLICATION COMPLETE.

27 5. WITHIN SIXTY BUSINESS DAYS AFTER IT RECEIVES THE COMPLETED APPLICA-
28 TION, THE COMMISSION SHALL APPROVE THE APPLICATION AND ISSUE A STATEWIDE
29 FRANCHISE TO THE APPLICANT, OR DENY THE APPLICATION. WITHIN SIXTY DAYS
30 OF THE RECEIPT THEREOF, THE COMMISSION SHALL SCHEDULE THREE PUBLIC HEAR-
31 INGS TO BE HELD IN DIFFERENT GEOGRAPHICAL AREAS OF THE STATE TO GAIN
32 PUBLIC COMMENT IN CONSIDERATION OF THE APPLICATION. ON OR BEFORE THE
33 EXPIRATION OF THE SIXTY-DAY PERIOD, THE COMMISSION SHALL ISSUE AN ORDER
34 IN WRITING APPROVING THE APPLICATION IF THE APPLICANT HAS COMPLIED WITH
35 THE REQUIREMENTS FOR A STATEWIDE FRANCHISE, OR THE COMMISSION SHALL
36 DISAPPROVE THE APPLICATION IN WRITING CITING THE REASONS FOR DISAPPROVAL
37 IF THE BOARD DETERMINES THAT THE APPLICATION FOR A STATEWIDE FRANCHISE
38 DOES NOT COMPLY WITH THE REQUIREMENTS FOR A STATEWIDE FRANCHISE. THE
39 COMMISSION MAY DENY THE APPLICATION IF THE APPLICANT HAS FAILED TO STATE
40 IN THE APPLICATION THE INFORMATION AND REPRESENTATIONS REQUIRED BY
41 SUBDIVISION TWO OF THIS SECTION. IF THE COMMISSION DENIES THE APPLICA-
42 TION, IT MUST SPECIFY WITH PARTICULARITY THE REASON OR REASONS FOR THE
43 DENIAL, AND THE APPLICANT MAY AMEND ITS APPLICATION TO CURE ANY DEFI-
44 CIENCY. THE COMMISSION SHALL DECIDE SUCH AMENDED APPLICATION WITHIN TEN
45 BUSINESS DAYS OF ITS SUBMISSION TO THE COMMISSION BY THE APPLICANT. IF
46 THE COMMISSION DENIES THE APPLICATION, THE COMMISSION SHALL SCHEDULE A
47 PUBLIC MEETING WITH THE APPLICANT TO EXPLAIN TO THE APPLICANT THE
48 REASONS FOR THE COMMISSION'S DISAPPROVAL. SUCH MEETING SHALL BE SCHED-
49 ULED NO LATER THAN THIRTY DAYS FOLLOWING THE EXPIRATION OF THE SIXTY-DAY
50 REVIEW PERIOD AS REQUIRED BY THIS SECTION. THE APPLICANT SHALL HAVE
51 THIRTY DAYS FOLLOWING THE DATE OF THE MEETING WITH THE COMMISSION TO
52 FILE AN APPEAL OF THE BOARD'S DECISION. THE COMMISSION SHALL THEREAFTER
53 SCHEDULE AN ADMINISTRATIVE HEARING NOT LATER THAN THE THIRTIETH DAY
54 FOLLOWING THE DATE OF THE FILING OF THE APPLICANT'S APPEAL IN ORDER TO
55 CONSIDER THE APPLICANT'S APPEAL. THE COMMISSION SHALL ISSUE A FINAL
56 DECISION IN WRITTEN FORM ON THE APPLICANT'S APPEAL NOT LATER THAN THE

1 SIXTIETH DAY FOLLOWING THE ADMINISTRATIVE HEARING, REQUIRED BY THIS
2 SUBDIVISION, ON THE APPLICANT'S APPEAL. AFTER AN ADMINISTRATIVE PERIOD
3 AN APPLICANT MAY CHALLENGE A DENIAL OF ITS APPLICATION OR AMENDED APPLI-
4 CATION IN ANY COURT OF COMPETENT JURISDICTION.

5 6. A STATEWIDE FRANCHISE AUTHORIZATION ISSUED BY THE COMMISSION SHALL
6 CONTAIN:

7 (A) A GRANT OF A FRANCHISE TO PROVIDE CABLE SERVICE IN THE SERVICE
8 AREA FOOTPRINT DESCRIBED IN THE APPLICATION; TO CONSTRUCT, UPGRADE,
9 OPERATE OR MAINTAIN A NETWORK CAPABLE OF PROVIDING SUCH SERVICE, EXCEPT
10 WHERE THIS GRANT IS NOT REQUIRED AND TO USE AND OCCUPY THE PUBLIC
11 RIGHTS-OF-WAY IN THE DELIVERY OF THAT SERVICE; AND

12 (B) A STATEMENT THAT THE FRANCHISE GRANT IN SUBDIVISION ONE OF THIS
13 SECTION IS SUBJECT TO LAWFUL OPERATION OF THE CABLE SERVICE BY THE
14 APPLICANT OR ITS SUCCESSOR IN INTEREST.

15 7. AN APPLICANT HAVING PRE-EXISTING AUTHORITY TO UTILIZE THE PUBLIC
16 RIGHTS-OF-WAY IS REQUIRED TO OBTAIN A STATEWIDE FRANCHISE PRIOR TO THE
17 ACTUAL PROVISION OF CABLE SERVICE ON A COMMERCIAL BASIS DIRECTLY TO
18 SUBSCRIBERS. HOWEVER, SUCH AN APPLICANT IS NOT REQUIRED TO OBTAIN A
19 STATEWIDE FRANCHISE OR ANY MUNICIPALITY AUTHORIZATION, EXCEPT FOR BEING
20 SUBJECT TO MUNICIPALITY RIGHT-OF-WAY REQUIREMENTS, IN ORDER TO
21 CONSTRUCT, UPGRADE, OPERATE OR MAINTAIN A NETWORK THAT IS CAPABLE OF
22 PROVIDING CABLE SERVICE.

23 8. A SYSTEM-WIDE FRANCHISE ISSUED BY THE BOARD SHALL BE NONTRANSFERA-
24 BLE, EXCEPT BY WRITTEN CONSENT OF THE BOARD.

25 S 235. LENGTH OF STATEWIDE FRANCHISE. A STATEWIDE FRANCHISE ISSUED BY
26 THE COMMISSION SHALL BE VALID FOR TEN YEARS FROM THE DATE OF ISSUANCE.
27 RENEWAL OF A SYSTEM-WIDE FRANCHISE SHALL BE VALID FOR A PERIOD OF
28 FIFTEEN YEARS FROM THE DATE OF THE RENEWAL ISSUANCE, AND THE COMMISSION
29 SHALL ESTABLISH RULES GOVERNING THE RENEWAL OF A SYSTEM-WIDE FRANCHISE.

30 S 236. TERMINATION OF A STATEWIDE FRANCHISE. 1. A FRANCHISE SHALL
31 TERMINATE AT THE EXPIRATION OF ITS TERM OR OTHERWISE IN ACCORDANCE WITH
32 THE PROVISIONS THEREOF, UNLESS, PRIOR THERETO, THE COMMISSION OTHERWISE
33 ORDERS. THE COMMISSION MAY SO ORDER ONLY IF IT FINDS, AFTER PUBLIC
34 NOTICE AND OPPORTUNITY FOR A HEARING, THAT THE FRANCHISEE:

35 (A) HAS COMMITTED A MATERIAL BREACH OF ITS FRANCHISE OR ANY APPLICABLE
36 PROVISION OF THIS ARTICLE OR OF THE REGULATIONS PROMULGATED HEREUNDER
37 AND HAS FAILED, WITHOUT REASONABLE JUSTIFICATION, TO CURE SAID BREACH
38 WITHIN SIXTY DAYS AFTER HAVING RECEIVED WRITTEN NOTICE THEREOF FROM THE
39 COMMISSION; OR

40 (B) HAS NOT MET THE REQUIREMENTS OF SECTIONS TWO HUNDRED FORTY-THREE
41 AND TWO HUNDRED FORTY-FOUR OF THIS ARTICLE;

42 (C) HAS ENGAGED IN BLOCKING OF LAWFUL CONTENT OR WEB SITES OR SERVICES
43 OF COMPETITORS, OR REFUSED TO INTERCONNECT ITS FACILITIES WITH THE
44 FACILITIES OF ANOTHER PROVIDER OF BROADBAND NETWORK SERVICES ON REASON-
45 ABLE AND NONDISCRIMINATORY TERMS OR CONDITIONS; OR

46 (D) HAS BEEN ADJUDICATED A BANKRUPT OR HAS FILED A VOLUNTARY PETITION
47 FOR BANKRUPTCY OR REORGANIZATION OR FOR AN ORDER PROTECTING ITS ASSETS
48 FROM THE CLAIMS OF CREDITORS AND THE COMMISSION FINDS THAT TERMINATION
49 OF THE FRANCHISE OR CERTIFICATE OF CONFIRMATION UNDER SUCH CONDITIONS IS
50 IN THE BEST INTEREST OF THE PUBLIC.

51 2. UPON TERMINATION OF A FRANCHISE OR CERTIFICATE OF CONFIRMATION, THE
52 CABLE OPERATOR SHALL DISPOSE OF ITS FACILITIES IN ACCORDANCE WITH THE
53 PROVISIONS OF THE FRANCHISE OR CERTIFICATE. HOWEVER, ON MOTION OF ANY
54 INTERESTED PARTY OR UPON ITS OWN MOTION, AND AFTER PUBLIC NOTICE AND
55 OPPORTUNITY FOR HEARING, IF THE COMMISSION FINDS THAT THE CONTINUED
56 PRESENCE OF THE FACILITIES IN ANY PUBLIC THOROUGHFARE WOULD POSE A

1 NUISANCE TO THE MUNICIPALITY OR ITS RESIDENTS, THE OPERATOR SHALL REMOVE
2 ITS FACILITIES WITHIN SUCH PERIOD AS THE COMMISSION SHALL ORDER. IN THE
3 ABSENCE OF ANY APPLICABLE FRANCHISE OR CERTIFICATE PROVISION OR ORDER BY
4 THE COMMISSION TO THE CONTRARY, THE CABLE TELEVISION COMPANY MAY ABANDON
5 ITS FACILITIES.

6 S 237. ABANDONMENT OF SERVICE. 1. NO CABLE OPERATOR MAY ABANDON ANY
7 SERVICE OR PORTION THEREOF WITHOUT GIVING SIX MONTHS' PRIOR WRITTEN
8 NOTICE TO THE COMMISSION AND TO THE FRANCHISOR, IF ANY, AND TO THE MUNI-
9 CIPALITIES IT SERVES.

10 2. WHEN ABANDONMENT OF ANY SERVICE IS PROHIBITED BY A FRANCHISE, NO
11 CABLE OPERATOR MAY ABANDON SUCH SERVICE WITHOUT WRITTEN CONSENT OF THE
12 COMMISSION. IN GRANTING SUCH CONSENT, THE COMMISSION MAY IMPOSE SUCH
13 TERMS, CONDITIONS OR REQUIREMENTS AS IN ITS JUDGMENT ARE NECESSARY TO
14 PROTECT THE PUBLIC INTEREST.

15 S 238. MUNICIPAL POWER AND REGULATION OVER FRANCHISE HOLDERS. A MUNI-
16 CIPALITY MAY:

17 1. EXERCISE ITS PUBLIC RIGHTS-OF-WAY AUTHORITY OVER FRANCHISE HOLDERS,
18 INCLUDING REQUIRING FRANCHISE HOLDERS TO FOLLOW MUNICIPAL ORDINANCES AS
19 WELL AS ALL APPLICABLE LOCAL, STATE AND FEDERAL LAWS;

20 2. RECEIVE, MEDIATE, AND RESOLVE CABLE SERVICE QUALITY COMPLAINTS FROM
21 A FRANCHISE HOLDER'S CUSTOMERS WITHIN THE MUNICIPALITY;

22 3. REQUIRE A FRANCHISE HOLDER WHO IS PROVIDING CABLE SERVICE WITHIN
23 THE MUNICIPALITY TO REGISTER WITH THE MUNICIPALITY, MAINTAIN A POINT OF
24 CONTACT, AND PROVIDE NOTICE OF ANY FRANCHISE AUTHORIZATION TRANSFER TO
25 THE MUNICIPALITY WITHIN FOURTEEN BUSINESS DAYS AFTER THE COMPLETION OF
26 THE TRANSFER;

27 4. ESTABLISH REASONABLE GUIDELINES REGARDING THE USE OF PUBLIC, EDUCA-
28 TIONAL, AND GOVERNMENTAL ACCESS CHANNELS WITHIN THE MUNICIPALITY IN
29 ADDITION TO THOSE ESTABLISHED IN SECTION TWO HUNDRED FORTY-ONE OF THIS
30 ARTICLE.

31 S 239. PAYMENT AND REMITTANCE OF FRANCHISE FEE. 1. THE FRANCHISE HOLD-
32 ER WHO OFFERS CABLE SERVICE WITHIN THE JURISDICTION OF A MUNICIPALITY
33 SHALL CALCULATE AND REMIT TO THE MUNICIPALITY AT THE END OF EACH CALEN-
34 DAR YEAR QUARTER A FRANCHISE FEE, AS PROVIDED IN THIS SECTION. THE OBLI-
35 GATION TO CALCULATE AND REMIT THE FRANCHISE FEE TO A MUNICIPALITY BEGINS
36 IMMEDIATELY UPON PROVISION OF CABLE SERVICE WITHIN THAT MUNICIPALITY'S
37 JURISDICTION, BUT THE FIRST REMITTANCE SHALL NOT BE DUE UNTIL THE END OF
38 THE FIRST CALENDAR YEAR QUARTER THAT IS LATER THAN ONE HUNDRED EIGHTY
39 DAYS AFTER THE PROVISION OF CABLE SERVICE BEGAN.

40 2. THE FRANCHISE FEE SHALL BE CALCULATED AS A PERCENTAGE OF THE HOLD-
41 ER'S GROSS REVENUES, AS DEFINED IN SECTION TWO HUNDRED THIRTY-ONE OF
42 THIS ARTICLE AND SHALL BE FIVE PERCENT. A MUNICIPALITY MAY, BY ORDI-
43 NANCE, CHANGE THE PERCENTAGE APPLIED TO THE GROSS REVENUES OF THE HOLD-
44 ER.

45 3. NO FEE UNDER THIS SECTION WILL BECOME DUE UNTIL THE MUNICIPALITY
46 CERTIFIES AND PROVIDES DOCUMENTATION TO THE FRANCHISE HOLDER SUPPORTING
47 THE PERCENTAGE PAID BY ANY INCUMBENT CABLE OPERATOR SERVING THE AREA
48 WITHIN THE MUNICIPALITY'S JURISDICTION.

49 4. NO MUNICIPALITY OR ANY OTHER POLITICAL SUBDIVISION OF THIS STATE
50 MAY ASSESS ANY ADDITIONAL FEES OR CHARGES OR REQUIRE OTHER REMUNERATION
51 OF ANY KIND FROM THE FRANCHISE HOLDER OTHER THAN AS SET FORTH IN THIS
52 SECTION, PROVIDED, HOWEVER, THAT THE PROVISION OF IN-KIND SERVICES OR
53 SUPPORT, PERSONNEL AND FUNDING DEDICATED TO PUBLIC, EDUCATIONAL AND
54 GOVERNMENT FACILITIES AND SERVICES SHALL NOT BE CONSIDERED ADDITIONAL
55 FEES, CHARGES OR REMUNERATION.

1 5. FOR PURPOSES OF THIS SECTION, IN THE CASE OF A CABLE SERVICE THAT
2 MAY BE BUNDLED OR INTEGRATED FUNCTIONALLY WITH OTHER SERVICES, CAPABILI-
3 TIES OR APPLICATIONS, THE FRANCHISE FEE SHALL BE APPLIED ONLY TO THE
4 GROSS REVENUES, AS DEFINED IN THIS ARTICLE, ATTRIBUTABLE TO CABLE
5 SERVICE OR THE USE OF THE CABLE SYSTEM AND FACILITIES, AS REFLECTED ON
6 THE BOOKS AND RECORDS OF THE HOLDER IN ACCORDANCE WITH GENERALLY
7 ACCEPTED ACCOUNTING PRINCIPLES AND FEDERAL COMMUNICATIONS COMMISSION
8 RULES, REGULATIONS, STANDARDS OR ORDERS, AS APPLICABLE.

9 6. THE FRANCHISE FEE SHALL BE REMITTED TO THE APPLICABLE MUNICIPALITY
10 QUARTERLY, WITHIN FORTY-FIVE DAYS AFTER THE END OF THE QUARTER FOR THE
11 PRECEDING CALENDAR QUARTER. EACH PAYMENT SHALL BE ACCOMPANIED BY A
12 SUMMARY EXPLAINING THE BASIS FOR THE CALCULATION OF THE FRANCHISE FEE.
13 NOT MORE THAN ONCE ANNUALLY, A MUNICIPALITY MAY EXAMINE THE FRANCHISE
14 HOLDER'S BUSINESS RECORDS TO THE EXTENT REASONABLY NECESSARY TO ENSURE
15 COMPENSATION IN ACCORDANCE WITH THIS SECTION. EACH PARTY SHALL BEAR THE
16 PARTY'S OWN COSTS OF THE EXAMINATION. ANY CLAIMS BY A MUNICIPALITY THAT
17 COMPENSATION IS NOT IN ACCORDANCE WITH THIS SECTION, AND ANY CLAIMS FOR
18 REFUNDS OR OTHER CORRECTIONS TO THE REMITTANCE OF THE FRANCHISE HOLDER,
19 MUST BE MADE WITHIN THREE YEARS AND FORTY-FIVE DAYS OF THE END OF THE
20 QUARTER FOR WHICH COMPENSATION IS REMITTED, OR THREE YEARS FROM THE DATE
21 OF REMITTANCE, WHICHEVER IS LATER. EITHER A MUNICIPALITY OR THE FRAN-
22 CHISE HOLDER MAY, IN THE EVENT OF A DISPUTE CONCERNING COMPENSATION
23 UNDER THIS SECTION, BRING AN ACTION IN A COURT OF COMPETENT JURISDIC-
24 TION.

25 S 240. PUBLIC, EDUCATIONAL AND GOVERNMENT CHANNELS. 1. IN ADDITION TO
26 THE REQUIREMENTS SET FORTH IN 16 NYCRR SEC. 894.4 (AS MAY BE AMENDED
27 FROM TIME TO TIME), THE FRANCHISE HOLDER SHALL PROVIDE THE MUNICIPALITY
28 WITH CAPACITY IN ITS CABLE SYSTEM TO ALLOW PUBLIC, EDUCATIONAL, AND
29 GOVERNMENTAL (PEG) ACCESS CHANNELS FOR NONCOMMERCIAL PROGRAMMING. FOR
30 THE PURPOSES OF THIS SECTION, PEG CHANNELS SHALL BE DEFINED AS ANALOG
31 CHANNELS OF SIX MEGAHERTZ BANDWIDTH OR THE SAME AS ANY OTHER CHANNEL ON
32 THE BASIC TIER, WHICHEVER IS GREATER. IN ADDITION TO THE REQUIREMENTS
33 SET FORTH IN THIS SECTION, THE COMMISSION MAY ISSUE ADDITIONAL RULES OR
34 GUIDELINES REGARDING PEG ACCESS CHANNELS. THE HOLDER SHALL PROVIDE THE
35 SAME ANCILLARY SERVICES TO THE PEG CHANNELS AND ENTITIES AS THE INCUM-
36 BENT PROVIDER.

37 2. THE FRANCHISE HOLDER SHALL DESIGNATE A SUFFICIENT AMOUNT OF CAPACI-
38 TY ON ITS CABLE SYSTEM TO ALLOW THE PROVISION OF A COMPARABLE NUMBER OF
39 PEG CHANNELS OR HOURS OF PROGRAMMING THAT THE INCUMBENT CABLE OPERATOR
40 HAS ACTIVATED AND PROVIDED WITHIN THE MUNICIPALITY UNDER THE TERMS OF
41 ITS FRANCHISE AGREEMENT AS OF THE EFFECTIVE DATE OF THIS ARTICLE. IF A
42 MUNICIPALITY DID NOT HAVE PEG ACCESS CHANNELS AS OF THAT DATE, THE CABLE
43 OPERATOR SHALL FURNISH TO THE MUNICIPALITY UPON REQUEST UP TO THREE PEG
44 CHANNELS FOR A MUNICIPALITY WITH A POPULATION OF AT LEAST FIFTY THOUSAND
45 AND UP TO TWO PEG CHANNELS FOR A MUNICIPALITY WITH A POPULATION OF LESS
46 THAN FIFTY THOUSAND. FOR THE PURPOSES OF THIS SECTION, A PEG CHANNEL IS
47 DEEMED ACTIVATED IF IT IS BEING UTILIZED FOR PEG PROGRAMMING WITHIN THE
48 MUNICIPALITY FOR AT LEAST EIGHT HOURS PER DAY AND IF SUCH PROGRAMMING IS
49 NOT BROADCAST MORE THAN ONCE IN EVERY EIGHT HOURS. THE HOLDER SHALL HAVE
50 TWELVE MONTHS FROM THE DATE THE MUNICIPALITY REQUESTS SUCH PEG CHANNELS
51 TO DESIGNATE THE CAPACITY; PROVIDED, HOWEVER, THAT THE TWELVE-MONTH
52 PERIOD SHALL BE TOLLED BY ANY PERIOD DURING WHICH THE DESIGNATION OR
53 PROVISION OF PEG CHANNEL CAPACITY IS TECHNICALLY INFEASIBLE, INCLUDING
54 ANY FAILURE OR DELAY OF THE INCUMBENT CABLE OPERATOR TO MAKE ADEQUATE
55 INTERCONNECTION AVAILABLE, AS REQUIRED BY THIS SECTION. IN CITIES WITH A
56 POPULATION OF ONE MILLION OR MORE PERSONS, IF A SYSTEM HAS TOTAL ACTI-

1 VATED BANDWIDTH IN EXCESS OF EIGHT HUNDRED SIXTY-TWO MEGAHERTZ THEN AT
2 LEAST TWO ADDITIONAL PEG CHANNELS SHALL BE SET ASIDE BY THE HOLDER,
3 INCLUDING ONE FOR PUBLIC ACCESS.

4 3. THE FRANCHISE HOLDER MAY SUBMIT TO THE COMMISSION AN APPLICATION TO
5 CEASE PROVIDING ANY PEG CHANNEL PROVIDED PURSUANT TO THIS SECTION THAT
6 IS NOT UTILIZED BY THE MUNICIPALITY FOR AT LEAST EIGHT HOURS PER DAY,
7 AND EXCEPT AS PROVIDED HEREIN, THE CHANNEL MAY THEREAFTER BE PROGRAMMED
8 AT THE FRANCHISE HOLDER'S DISCRETION. THE COMMISSION MAY HOLD A HEARING
9 IN THE MUNICIPALITY TO AID IN MAKING ITS DETERMINATION WHETHER TO
10 APPROVE THE APPLICATION. THE COMMISSION SHALL ISSUE A DECISION WITHIN
11 THIRTY BUSINESS DAYS OF THE FRANCHISEE'S APPLICATION. IF THE MUNICI-
12 PALITY SUBSEQUENTLY CERTIFIES TO THE COMMISSION AND HOLDER A SCHEDULE
13 FOR AT LEAST EIGHT HOURS OF DAILY NON-REPEAT PEG CHANNEL PROGRAMMING PER
14 CHANNEL, THE HOLDER SHALL RESTORE THE PEG CHANNEL OR CHANNELS FOR THE
15 USE OF THE MUNICIPALITY FOR AS LONG AS THE MUNICIPALITY USES THE CHANNEL
16 OR CHANNELS FOR AT LEAST EIGHT HOURS A DAY.

17 4. THE CONTENT AND OPERATION OF ANY PEG ACCESS CHANNEL PROVIDED PURSU-
18 ANT TO THIS SECTION SHALL BE THE RESPONSIBILITY OF THE MUNICIPALITY,
19 RECEIVING THE BENEFIT OF SUCH CHANNEL, AND THE FRANCHISE HOLDER BEARS
20 ONLY THE RESPONSIBILITY FOR THE TRANSMISSION OF SUCH CHANNEL, SUBJECT TO
21 REASONABLE TECHNOLOGICAL CONSTRAINTS. THE FRANCHISE HOLDER SHALL BE
22 RESPONSIBLE FOR PROVIDING THE CONNECTIVITY, AS WELL AS OTHER EQUIPMENT
23 NECESSARY, TO EACH PEG ACCESS CHANNEL PROGRAMMING DISTRIBUTION LOCATION
24 AND FOR DOING SO WITHOUT CHARGE FOR UP TO THE FIRST TWO HUNDRED FEET OF
25 THE HOLDER'S CONNECTING FACILITIES.

26 5. THE MUNICIPALITY, OR ITS DESIGNEES, MUST ENSURE THAT ALL TRANS-
27 MISSIONS, CONTENT, OR PROGRAMMING TO BE TRANSMITTED OVER A PEG ACCESS
28 CHANNEL OR FACILITY BY A FRANCHISE HOLDER ARE PROVIDED OR SUBMITTED TO
29 THE CABLE OPERATOR IN A MANNER OR FORM THAT IS CAPABLE OF BEING ACCEPTED
30 AND TRANSMITTED BY THE CABLE OPERATOR, WITHOUT REQUIREMENT FOR ADDI-
31 TIONAL ALTERATION OR CHANGE IN THE CONTENT BY THE CABLE OPERATOR, OVER
32 THE CABLE SYSTEM OF THE CABLE OPERATOR. THE MUNICIPALITY'S, OR ITS
33 DESIGNEES' PROVISION OF PEG CONTENT TO THE HOLDER SHALL CONSTITUTE
34 AUTHORIZATION FOR THE HOLDER TO CARRY SUCH CONTENT INCLUDING, AT THE
35 HOLDER'S OPTION, BEYOND THE JURISDICTIONAL BOUNDARIES OF THE MUNICI-
36 PALITY.

37 6. THE FRANCHISE HOLDER AND AN INCUMBENT CABLE OPERATOR SHALL USE
38 REASONABLE EFFORTS TO INTERCONNECT THEIR CABLE SYSTEMS FOR THE PURPOSE
39 OF PROVIDING PEG PROGRAMMING. INTERCONNECTION MAY BE ACCOMPLISHED BY
40 DIRECT CABLE, MICROWAVE LINK, SATELLITE, OR OTHER REASONABLE METHOD OF
41 CONNECTION. FRANCHISE HOLDERS AND INCUMBENT CABLE OPERATORS SHALL NEGO-
42 TIATE IN GOOD FAITH AND INCUMBENT CABLE OPERATORS MAY NOT WITHHOLD
43 INTERCONNECTION OF PEG CHANNELS. IN THE EVENT A FRANCHISE HOLDER AND AN
44 INCUMBENT CABLE OPERATOR CANNOT REACH A MUTUALLY ACCEPTABLE INTERCON-
45 NECTION AGREEMENT, THEN THE DUTY OF THE HOLDER SHALL BE DISCHARGED IF
46 THE HOLDER MAKES INTERCONNECTION AVAILABLE TO THE CHANNEL ORIGINATOR AT
47 A POINT ON THE HOLDER'S NETWORK DETERMINED BY THE HOLDER.

48 7. THE PEG CHANNELS SHALL BE FOR THE EXCLUSIVE USE OF THE LOCAL ENTITY
49 OR ITS DESIGNEE TO PROVIDE PUBLIC, EDUCATIONAL, AND GOVERNMENTAL CHAN-
50 NELS. THE PEG CHANNELS SHALL BE USED ONLY FOR NONCOMMERCIAL PURPOSES.
51 HOWEVER, ADVERTISING, UNDERWRITING, OR SPONSORSHIP RECOGNITION MAY BE
52 CARRIED ON THE CHANNELS FOR THE PURPOSE OF FUNDING PEG-RELATED ACTIV-
53 ITIES. THE PEG CHANNELS SHALL ALL BE CARRIED ON THE BASIC SERVICE TIER.
54 TO THE EXTENT FEASIBLE, THE PEG CHANNELS SHALL NOT BE SEPARATED NUMER-
55 ICALLY FROM OTHER CHANNELS CARRIED ON THE BASIC SERVICE TIER AND THE
56 CHANNEL NUMBERS FOR THE PEG CHANNELS SHALL BE THE SAME CHANNEL NUMBERS

1 USED BY THE INCUMBENT CABLE OPERATOR UNLESS PROHIBITED BY FEDERAL LAW.
2 AFTER THE INITIAL DESIGNATION OF PEG CHANNEL NUMBERS, THE CHANNEL
3 NUMBERS SHALL NOT BE CHANGED WITHOUT THE AGREEMENT OF THE LOCAL ENTITY
4 UNLESS THE CHANGE IS REQUIRED BY FEDERAL LAW. EACH CHANNEL SHALL BE
5 CAPABLE OF CARRYING A NATIONAL TELEVISION SYSTEM COMMITTEE (NTSC) TELE-
6 VISION SIGNAL.

7 8. THE CONTENT TO BE PROVIDED OVER THE PEG CHANNEL CAPACITY PROVIDED
8 PURSUANT TO THIS SECTION SHALL BE THE RESPONSIBILITY OF THE LOCAL ENTITY
9 OR ITS DESIGNEE RECEIVING THE BENEFIT OF THAT CAPACITY, AND THE HOLDER
10 OF A STATE FRANCHISE BEARS ONLY THE RESPONSIBILITY FOR THE TRANSMISSION
11 OF THAT CONTENT, SUBJECT TO TECHNOLOGICAL RESTRAINTS.

12 9. THE PEG SIGNAL SHALL BE RECEIVABLE BY ALL SUBSCRIBERS, WHETHER THEY
13 RECEIVE DIGITAL OR ANALOG SERVICE, OR A COMBINATION THEREOF, WITHOUT THE
14 NEED FOR ANY EQUIPMENT OTHER THAN THE EQUIPMENT NECESSARY TO RECEIVE THE
15 LOWEST COST TIER OF SERVICE. THE PEG ACCESS CAPACITY PROVIDED SHALL BE
16 OF SIMILAR QUALITY AND FUNCTIONALITY TO THAT OFFERED BY COMMERCIAL CHAN-
17 NELS ON THE LOWEST COST TIER OF SERVICE UNLESS THE SIGNAL IS PROVIDED TO
18 THE HOLDER AT A LOWER QUALITY OR WITH LESS FUNCTIONALITY.

19 10. AFTER JANUARY FIRST, TWO THOUSAND NINE, AND UNTIL THE EXPIRATION
20 OF THE INCUMBENT CABLE OPERATOR'S FRANCHISE, IF THE INCUMBENT CABLE
21 OPERATOR HAS EXISTING UNSATISFIED OBLIGATIONS UNDER THE FRANCHISE TO
22 REMIT TO THE LOCAL ENTITY OR ITS DESIGNEE ANY CASH PAYMENTS FOR THE
23 ONGOING COSTS OF PUBLIC, EDUCATIONAL, AND GOVERNMENT ACCESS CHANNEL
24 FACILITIES, THE LOCAL ENTITY, OR ITS DESIGNEE FOR THE PUBLIC ACCESS
25 CHANNELS, SHALL DIVIDE THOSE CASH PAYMENTS AMONG ALL CABLE OR VIDEO
26 PROVIDERS AS PROVIDED IN THIS SECTION. THE FEE SHALL BE THE HOLDER'S PRO
27 RATA PER SUBSCRIBER SHARE OF THE CASH PAYMENT REQUIRED TO BE PAID BY THE
28 INCUMBENT CABLE OPERATOR TO THE LOCAL ENTITY OR ITS DESIGNEE COMMUNITY
29 ACCESS ORGANIZATION FOR THE COSTS OF PEG CHANNEL FACILITIES. ALL VIDEO
30 SERVICE PROVIDERS AND THE INCUMBENT CABLE OPERATOR SHALL BE SUBJECT TO
31 THE SAME REQUIREMENTS FOR RECURRING PAYMENTS FOR THE SUPPORT OF PEG
32 CHANNEL FACILITIES, WHETHER EXPRESSED AS A PERCENTAGE OF GROSS REVENUE
33 OR AS AN AMOUNT PER SUBSCRIBER, PER MONTH, OR OTHERWISE.

34 11. A LOCAL ENTITY SHALL ESTABLISH A PAYMENT FOR THE ONGOING SUPPORT
35 OF THE COST OF PEG FACILITIES AND SERVICES THAT WOULD BECOME EFFECTIVE
36 SUBSEQUENT TO THE EXPIRATION OF ANY FEE IMPOSED BY THIS ARTICLE,
37 PROVIDED, HOWEVER, THAT NO SUCH FEE SHALL BE ALLOCATED SUCH THAT ANY
38 COMMUNITY ACCESS ORGANIZATION IS RECEIVING ANYTHING LESS THAN WHAT IT IS
39 RECEIVING FROM THE CABLE OPERATOR ON THE EFFECTIVE DATE OF THIS LEGIS-
40 LATION, AND PROVIDED, HOWEVER, THAT EVERY LOCAL ENTITY SHALL BE ENTITLED
41 TO A PAYMENT OF NOT LESS THAN TWO PERCENT FROM THE HOLDER OF A STATE
42 FRANCHISE FOR THE ONGOING SUPPORT OF THE COST OF PEG FACILITIES AND
43 SERVICES. IF, ON DECEMBER THIRTY-FIRST, TWO THOUSAND EIGHT, A LOCAL
44 ENTITY OR ITS DESIGNEE WAS IMPOSING A SEPARATE FEE TO SUPPORT PEG CHAN-
45 NEL FACILITIES THAT IS IN EXCESS OF TWO PERCENT, THAT ENTITY OR ITS
46 DESIGNEE MAY ESTABLISH A FEE NO GREATER THAN THAT SEPARATE FEE, AND IN
47 NO EVENT GREATER THAN THREE PERCENT, TO SUPPORT PEG ACTIVITIES. IF THE
48 PEG SUPPORT FEE IMPOSED BY A LOCAL ENTITY OR ITS DESIGNEE IS EXPRESSED
49 IN A MANNER OTHER THAN AS A PERCENTAGE OF GROSS REVENUES, THE LOCAL
50 ENTITY OR ITS DESIGNEE COMMUNITY ACCESS ORGANIZATION MAY CONVERT THAT
51 FEE TO A CURRENTLY EQUIVALENT PERCENTAGE OF GROSS REVENUES AT ANY TIME.
52 THE LOCAL ENTITY OR ITS DESIGNEE MAY ADOPT REQUIREMENTS FOR THE
53 PROVISION OF PEG-RELATED IN-KIND RESOURCES BY ALL CABLE AND VIDEO
54 SERVICE PROVIDERS.

55 12. RULES AND REGULATIONS ADOPTED BY THE COMMUNITY ACCESS ORGANIZATION
56 SHALL GOVERN THE USE OF ANY CHANNEL TIME ON THE PUBLIC CHANNELS AS WELL

1 AS THE EQUIPMENT, FACILITIES AND SERVICES RELATED TO THE PUBLIC CHAN-
2 NELS.

3 13. THE COMMISSION, THROUGH AN ADMINISTRATIVE PROCEEDING SHALL HAVE
4 THE ORIGINAL JURISDICTION TO ENFORCE ANY REQUIREMENTS UNDER THIS SECTION
5 TO RESOLVE ANY DISPUTE REGARDING THE REQUIREMENTS SET FORTH IN THIS
6 SECTION. AFTER THE ADMINISTRATIVE PROCESS IS EXHAUSTED, A COURT OF
7 COMPETENT JURISDICTION SHALL HAVE JURISDICTION TO ENFORCE ANY REQUIRE-
8 MENT UNDER THIS SECTION OR RESOLVE ANY DISPUTE REGARDING THE REQUIRE-
9 MENTS SET FORTH IN THIS SECTION, AND NO CABLE OPERATOR MAY BE BARRED
10 FROM THE PROVISION OF CABLE SERVICE OR BE REQUIRED TO TERMINATE CABLE
11 SERVICE AS A RESULT OF SUCH DISPUTE OR ENFORCEMENT ACTION.

12 S 241. CABLE OPERATOR'S COMMUNITY COMMITMENT. 1. CABLE OPERATORS
13 SHALL INSTALL AND RETAIN OR PROVIDE, WITHOUT CHARGE, ONE SERVICE OUTLET
14 ACTIVATED FOR BASIC SERVICE TO ANY AND ALL FIRE STATIONS, PUBLIC
15 SCHOOLS, POLICE STATIONS, PUBLIC LIBRARIES AND OTHER SUCH BUILDINGS USED
16 FOR MUNICIPAL PURPOSES.

17 2. CABLE OPERATORS SHALL PROVIDE INTERNET SERVICE, WITHOUT CHARGE,
18 THROUGH ONE SERVICE OUTLET ACTIVATED FOR BASIC SERVICE TO ANY AND ALL
19 FIRE STATIONS, PUBLIC SCHOOLS, POLICE STATIONS, PUBLIC LIBRARIES, AND
20 OTHER SUCH BUILDING USED FOR MUNICIPAL PURPOSES.

21 S 242. CONSUMER PROTECTION RULES. 1. EVERY CABLE OPERATOR SHALL
22 PROVIDE SAFE, ADEQUATE AND RELIABLE SERVICE IN ACCORDANCE WITH APPLICA-
23 BLE LAWS, REGULATIONS, AND FRANCHISE REQUIREMENTS. CABLE OPERATORS WITH
24 A STATEWIDE FRANCHISE ARE SUBJECT TO THE REQUIREMENTS UNDER SECTIONS TWO
25 HUNDRED TWENTY-FOUR AND TWO HUNDRED TWENTY-FOUR-A OF THIS CHAPTER AND
26 ANY OTHER CUSTOMER SERVICE STANDARDS PERTAINING TO THE PROVISION OF
27 VIDEO SERVICE ESTABLISHED BY FEDERAL LAW OR REGULATION OR ADOPTED BY
28 SUBSEQUENT ENACTMENT OF THE LEGISLATURE. ALL CUSTOMER SERVICE AND
29 CONSUMER PROTECTION STANDARDS UNDER THIS SECTION SHALL BE INTERPRETED
30 AND APPLIED TO ACCOMMODATE NEWER OR DIFFERENT TECHNOLOGIES WHILE MEETING
31 OR EXCEEDING THE GOALS OF THESE STANDARDS.

32 2. IN ADDITION, CABLE OPERATORS:

33 (A) SHALL CLEARLY AND CONSPICUOUSLY DISCLOSE TO USERS, IN PLAIN
34 LANGUAGE, ACCURATE INFORMATION CONCERNING ANY TERMS, CONDITIONS, OR
35 LIMITATIONS ON THE BROADBAND NETWORK SERVICE THEY OFFER, THE SPEEDS OF
36 THE DOWNLOAD AND UPLOADING SPEEDS OF THE PROVIDER'S INTERNET SERVICE;

37 (B) PROVIDE THEIR BROADBAND NETWORK SERVICES ON REASONABLE AND NONDIS-
38 CRIMINATORY TERMS AND CONDITIONS SUCH THAT ANY PERSON CAN OFFER OR
39 PROVIDE CONTENT, APPLICATIONS, OR SERVICES TO OR OVER THE NETWORK IN A
40 MANNER THAT IS AT LEAST EQUAL TO THE MANNER IN WHICH THE PROVIDER OR ITS
41 AFFILIATES OFFER CONTENT, APPLICATIONS, AND SERVICES, FREE OF ANY
42 SURCHARGE ON THE BASIS OF THE CONTENT, APPLICATION, OR SERVICE;

43 (C) INTERCONNECT THEIR FACILITIES WITH THE FACILITIES OF OTHER PROVID-
44 ERS OF BROADBAND NETWORK SERVICES ON REASONABLE AND NONDISCRIMINATORY
45 TERMS OR CONDITIONS.

46 S 243. NEUTRAL INTERNET AND BROADBAND NETWORKS. 1. CABLE OPERATORS
47 SHALL NOT:

48 (A) BLOCK, IMPAIR, DISCRIMINATE AGAINST, OR INTERFERE WITH THE ABILITY
49 OF ANY PERSON TO USE INTERNET BASED TRAFFIC BASED ON THE SOURCE, DESTI-
50 NATION, OR OWNERSHIP OF THE INTERNET TRAFFIC THAT CARRIES VIDEO SERVICE,
51 IN A MANNER THAT DEGRADES OR OTHERWISE NEGATIVELY IMPACTS THE ACCESS TO,
52 OR THE QUALITY OF SERVICES RECEIVED BY AN END USER;

53 (B) ENGAGE IN ANY EXCLUSIVE OR PREFERENTIAL DEALINGS REGARDING THE
54 CARRIAGE AND TREATMENT OF INTERNET TRAFFIC, INCLUDING, BUT NOT LIMITED
55 TO, TRAFFIC THAT CARRIES VIDEO PROGRAMMING OR VIDEO SERVICE, WITH AN

1 AFFILIATE OR THIRD PARTY PROVIDER OF INTERNET APPLICATIONS, SERVICES,
2 CONTENT, OR VIDEO SERVICES;

3 (C) IMPOSE AN ADDITIONAL CHARGE TO AVOID ANY CONDUCT THAT IS PROHIBIT-
4 ED BY THIS SECTION;

5 (D) PROHIBIT A USER FROM ATTACHING OR USING A DEVICE ON THE PROVIDER'S
6 INTERNET OR BROADBAND NETWORK THAT DOES NOT PHYSICALLY DAMAGE OR MATE-
7 Rially DEGRADE OTHER USERS' UTILIZATION OF THE NETWORK.

8 2. NOTHING IN THIS SECTION SHALL BE CONSTRUED TO PREVENT A BROADBAND
9 OR INTERNET NETWORK PROVIDER FROM TAKING REASONABLE AND NONDISCRIMINATO-
10 RY MEASURES:

11 (A) TO MANAGE THE FUNCTIONING OF ITS NETWORK TO PROTECT THE SECURITY
12 AND TO OFFER PARENTAL CONTROLS AND OTHER CONSUMER PROTECTION MEASURES OF
13 SUCH NETWORK AND BROADBAND OR INTERNET NETWORK SERVICES IF SUCH MANAGE-
14 MENT DOES NOT RESULT IN DISCRIMINATION AMONG THE CONTENT, APPLICATIONS,
15 OR SERVICES ON THE NETWORK;

16 (B) TO GIVE PRIORITY TO EMERGENCY COMMUNICATIONS; OR

17 (C) TO PREVENT A VIOLATION OF A FEDERAL OR STATE LAW, OR TO COMPLY
18 WITH AN ORDER OF A COURT TO ENFORCE SUCH LAW, OR SUCH OTHER ACTION
19 AGAINST NETWORK THREATS AS MAY BE AUTHORIZED IN SECTION TWO HUNDRED
20 FIFTEEN OF THIS CHAPTER.

21 S 244. DEPLOYMENT REQUIREMENTS FOR STATEWIDE CABLE FRANCHISE. 1. AS
22 PART OF ANY FRANCHISE ISSUED BY THE COMMISSION IN THIS ARTICLE, A CABLE
23 OPERATOR SHALL BE REQUIRED TO:

24 (A) BEGIN PROVIDING CABLE SERVICE ON A COMMERCIAL BASIS, WITHIN THREE
25 YEARS OF ISSUANCE OF THE SYSTEM-WIDE FRANCHISE, IN:

26 (I) EACH COUNTY SEAT THAT IS WITHIN THE CATV COMPANY'S SERVICE AREA;
27 AND

28 (II) EACH MUNICIPALITY WITHIN THE CATV COMPANY'S SERVICE AREA THAT HAS
29 A POPULATION DENSITY GREATER THAN SEVENTY-ONE HUNDRED ELEVEN PERSONS PER
30 SQUARE MILE OF LAND AREA, AS DETERMINED BY THE MOST RECENT FEDERAL
31 DECENNIAL CENSUS, PROVIDED, HOWEVER, THAT IF SUCH COUNTY SEATS ARE NOT
32 LOCATED WITHIN OR CONTIGUOUS TO SUCH MUNICIPALITIES, EACH SUCH COUNTY
33 SEAT SHALL BE INTERCONNECTED TO THE NEAREST MUNICIPALITY WITH A POPU-
34 LATION DENSITY GREATER THAN PERSONS PER SQUARE MILE OF LAND AREA BY THE
35 CABLE OPERATOR; AND

36 (B) MAKE CABLE TELEVISION SERVICE AVAILABLE THROUGHOUT THE RESIDENTIAL
37 AREAS ON A COMMERCIAL BASIS, BEFORE THE BEGINNING OF THE SIXTH YEAR
38 AFTER THE ISSUANCE OF THE SYSTEM-WIDE FRANCHISE, IN:

39 (I) EACH MUNICIPALITY WITHIN THE STATE THAT HAS A POPULATION DENSITY
40 GREATER THAN FIVE HUNDRED ONE PERSONS PER SQUARE MILE OF LAND AREA, AS
41 DETERMINED BY THE MOST RECENT FEDERAL DECENNIAL CENSUS; AND

42 (II) THROUGHOUT THE RESIDENTIAL AREAS OF ANY MUNICIPALITIES SERVED BY
43 CENTRAL OFFICES LOCATED WITHIN A COUNTY SEAT WITHIN THE FRANCHISEE'S
44 SERVICE AREA, SUBJECT TO THE CABLE OPERATOR'S LINE EXTENSION POLICY;
45 PROVIDED, HOWEVER, A CATV COMPANY MAY APPLY TO THE COMMISSION FOR AN
46 EXEMPTION FROM THIS REQUIREMENT IF THE BOARD FINDS, AFTER CONDUCTING A
47 HEARING WITH FULL NOTICE AND OPPORTUNITY TO BE HEARD, THAT THE AREAS IN
48 QUESTION ARE AREAS IN WHICH THE CATV COMPANY IS UNABLE TO ACCESS THE
49 PUBLIC RIGHTS-OF-WAY UNDER REASONABLE TERMS AND CONDITIONS.

50 2. THE REQUIREMENTS OF SUBDIVISION ONE OF THIS SECTION SHALL ONLY
51 APPLY TO CABLE OPERATORS THAT ON THE DATE OF THE ISSUANCE OF THE
52 SYSTEM-WIDE FRANCHISE PROVIDE MORE THAN FORTY PERCENT OF THE LOCAL
53 EXCHANGE TELEPHONE SERVICE MARKET IN THIS STATE; AND TO CABLE OPERATORS
54 THAT ON THE DATE OF THE ISSUANCE OF THE SYSTEM-WIDE FRANCHISE PROVIDE
55 TWO HUNDRED FIFTY THOUSAND OR MORE LOCAL EXCHANGE TELEPHONE LINES IN
56 THIS STATE;

1 3. INCUMBENT CABLE COMPANIES THAT BECOME STATEWIDE FRANCHISE HOLDERS
2 SHALL NOT REDUCE THE NUMBER OR PERCENTAGE OF HOUSEHOLDS SERVED; WILL
3 BUILD OUT TO ALL RESIDENTIAL HOUSEHOLDS SUBJECT TO THE OPERATOR'S LINE
4 EXTENSION POLICY WITHIN THREE YEARS; AND WILL UPGRADE THEIR FACILITIES
5 TO THE ENTIRE SERVICE AREA WITHIN THREE YEARS OF THE DATE THE CABLE
6 OPERATOR UPGRADES ANY PART OF ITS FACILITIES.

7 4. WITHIN THREE YEARS OF THE ISSUANCE OF THE SYSTEM-WIDE FRANCHISE ALL
8 OTHER STATEWIDE FRANCHISE HOLDERS SHALL FULLY COMPLETE A SYSTEM CAPABLE
9 OF PROVIDING CABLE SERVICE TO ALL HOUSEHOLDS WITHIN THE CABLE OPERATOR'S
10 SERVICE AREA, SUBJECT TO THE CABLE OPERATOR'S LINE EXTENSION POLICY.

11 S 245. DISCRIMINATION IN THE PROVISIONING OF SERVICE PROHIBITED. 1.
12 THE FRANCHISE HOLDER SHALL BECOME CAPABLE OF PROVIDING CABLE SERVICE TO
13 ALL HOUSEHOLDS WITHIN THE DESIGNATED SERVICE AREA FOOTPRINT. A CABLE
14 OPERATOR THAT HAS BEEN GRANTED A STATEWIDE FRANCHISE UNDER THIS ARTICLE
15 SHALL NOT DENY ACCESS TO CABLE SERVICE TO ANY GROUP OF POTENTIAL RESI-
16 DENTIAL SUBSCRIBERS BECAUSE OF THE INCOME OR RACE OF THE RESIDENTS IN
17 THE LOCAL AREA IN WHICH SUCH GROUP RESIDES. A FRANCHISEE MUST SUBMIT TO
18 THE COMMISSION A DEPLOYMENT SCHEDULE, SETTING FORTH THE MUNICIPALITIES
19 TO BE SERVED, THE DATE SERVICE SHALL BEGIN IN EACH PROPOSED MUNICI-
20 PALITY, AND A DATE CERTAIN BY WHICH EACH COMMUNITY WILL BE ABLE TO
21 RECEIVE CABLE SERVICE. THE COMMISSION WILL ENSURE THAT THE BUILD-OUT
22 PROCESS IS NOT DISCRIMINATORY BASED ON AN AREA'S CLASS OR RACE. IF
23 DEPLOYMENT OF CABLE SERVICES UNDER A STATEWIDE FRANCHISE IS SCHEDULED
24 FOR DEPLOYMENT IN A GIVEN AREA, THE CABLE OPERATOR MUST OFFER SERVICE TO
25 ALL RESIDENTS WITHIN THE GEOGRAPHIC AREA OR THE COMMISSION MAY TERMINATE
26 THE FRANCHISE PURSUANT TO SECTION TWO HUNDRED THIRTY-SIX OF THIS ARTI-
27 CLE.

28 2. NOTWITHSTANDING ANY OTHER PROVISION OF LAW, THE FRANCHISE HOLDER
29 SHALL COMPLY WITH CUSTOMER SERVICE REQUIREMENTS SET FORTH IN ARTICLE
30 ELEVEN OF THIS CHAPTER, AT 47 C.F.R. S 76.309(C) AND ANY OTHER CUSTOMER
31 SERVICE STANDARDS PERTAINING TO THE PROVISION OF VIDEO SERVICE ESTAB-
32 LISHED BY FEDERAL LAW OR REGULATION OR BY SUBSEQUENT ENACTMENT OF THE
33 LEGISLATURE. ALL CUSTOMER SERVICE AND CONSUMER PROTECTION STANDARDS
34 UNDER THIS SECTION SHALL BE INTERPRETED AND APPLIED TO ACCOMMODATE NEWER
35 OR DIFFERENT TECHNOLOGIES WHILE MEETING OR EXCEEDING THE GOALS OF THESE
36 STANDARDS.

37 3. IF THE COMMISSION DETERMINES THAT A CABLE OPERATOR HAS DENIED
38 ACCESS OF CABLE SERVICE TO A GROUP OF POTENTIAL RESIDENTIAL SUBSCRIBERS
39 BECAUSE OF THE INCOME LEVELS OF THE RESIDENTS OF THE LOCAL AREA IN WHICH
40 SUCH GROUP RESIDES OR HAS FAILED TO MEET THE REQUIREMENTS OF THE
41 SECTION, THE COMMISSION IS AUTHORIZED TO, AFTER CONDUCTING A HEARING
42 WITH FULL NOTICE AND OPPORTUNITY TO BE HEARD, IMPOSE MONETARY PENALTIES
43 OF NOT LESS THAN FIFTY THOUSAND DOLLARS, NOR MORE THAN ONE HUNDRED THOU-
44 SAND DOLLARS PER MUNICIPALITY, NOT TO EXCEED A TOTAL OF THREE MILLION
45 SIX HUNDRED FIFTY THOUSAND DOLLARS PER YEAR FOR ALL VIOLATIONS. A MUNI-
46 CIPALITY IN WHICH THE PROVIDER OFFERS CABLE SERVICE SHALL BE AN APPRO-
47 PRIATE PARTY IN ANY SUCH PROCEEDING.

48 S 246. ENFORCEMENT. THE EXCLUSIVE REMEDY FOR ENFORCING THE PROVISIONS
49 OF THIS ARTICLE, NOTWITHSTANDING SPECIFIC SECTIONS OF THIS ARTICLE,
50 SHALL BE AN ACTION IN A COURT OF COMPETENT JURISDICTION BROUGHT BY
51 EITHER THE MUNICIPALITY, THE ATTORNEY GENERAL ON BEHALF OF THE COMMIS-
52 SION OR OTHER INJURED PARTY. AT LEAST SIXTY DAYS BEFORE BRINGING SUCH AN
53 ACTION, THE MUNICIPALITY OR ATTORNEY GENERAL SHALL SERVE THE FRANCHISE
54 HOLDER WITH A NOTICE SETTING OUT THE ALLEGED VIOLATION AND STATING THAT
55 AN ACTION MAY BE BROUGHT UNLESS THE HOLDER CORRECTS THE ALLEGED
56 VIOLATION OR ENTERS INTO A BINDING AGREEMENT TO CORRECT THE VIOLATION

1 WITHIN THE SIXTY-DAY NOTICE PERIOD. THE NOTICE SHALL CONTAIN A SUFFI-
2 CIENTLY DETAILED DESCRIPTION OF THE ALLEGED VIOLATION TO ENABLE THE
3 FRANCHISE HOLDER TO MAKE A SPECIFIC RESPONSE.

4 S 6. Section 215 of the public service law is amended by adding a new
5 subdivision 14 to read as follows:

6 14. REQUIRE THAT CABLE TELEVISION FRANCHISES CONTAIN, UPON SUBMISSION
7 FOR CERTIFICATES OF CONFIRMATION, PROVISIONS REQUIRING THAT THE CABLE
8 TELEVISION SERVICES FRANCHISEE DELIVER TO THE FRANCHISOR AND THE COMMIS-
9 SION, ON AN ANNUAL BASIS, A WRITTEN REPORT DESCRIBING EVERY INSTANCE IN
10 WHICH SUCH FRANCHISEE BLOCKS, LIMITS OR OTHERWISE RESTRICTS SUBSCRIBERS
11 OR OTHER PURCHASERS OF BROADBAND SERVICES FROM THE FRANCHISEE FROM
12 ACCESSING ANY PARTICULAR INTERNET SITE OR CATEGORY OR TYPE OF INTERNET
13 SITE OR ANY SPECIFIC ELECTRONIC MAIL MESSAGE OR CATEGORY OR TYPE OF
14 ELECTRONIC MAIL ("NEUTRALITY REPORT"). SUCH NEUTRALITY REPORT SHALL
15 CONTAIN DETAIL OF A SPECIFICITY LEVEL TO BE DETERMINED BY THE COMMIS-
16 SION, AND SHALL CONTAIN SUFFICIENT DETAIL TO ALLOW THE COMMISSION OR THE
17 FRANCHISOR TO ASCERTAIN THE NATURE OF ANY BLOCKING, LIMITATION OR OTHER
18 RESTRICTIONS, AND THE REASON FOR THE FRANCHISEE FOR TAKING SUCH ACTION,
19 BUT SHALL BE PROVIDED IN A MANNER REASONABLY CALCULATED TO PROTECT
20 SUBSCRIBER PRIVACY OR THE LEGITIMATE NEEDS OF LAW ENFORCEMENT. NOTHING
21 IN THIS SUBDIVISION SHALL BE INTERPRETED TO RESTRICT THE RIGHTS OF FRAN-
22 CHISEES, IF THEY SO CHOOSE, TO BLOCK, LIMIT OR OTHERWISE RESTRICT THE
23 PASSAGE OF ELECTRONIC MAIL MESSAGES OR OTHER CONTENT THAT TRANSMIT,
24 PORTRAY, DESCRIBE, REPRESENT OR OTHERWISE CONTAIN MATTERS SUCH AS CHILD
25 PORNOGRAPHY OR SIMILAR OBSCENITY, OTHER UNLAWFUL MATERIAL, THREATS OF
26 SERIOUS BODILY HARM, THREATS TO THE PUBLIC SAFETY AND HOMELAND SECURITY,
27 THREATS OF DEATH TO INDIVIDUALS OR GROUPS OF INDIVIDUALS, VIRUSES OR
28 SIMILAR COMPUTER GENERATED PROGRAMS OR CODE THAT HAVE THE POTENTIAL TO
29 HARM COMPUTER HARDWARE AND/OR SOFTWARE AND/OR NETWORKS, EXCESSIVE UNSO-
30 LICITED COMMERCIAL EMAIL THAT DEGRADES OR INTERFERES WITH OR HARMS THE
31 NORMAL OPERATION OF BROADBAND NETWORKS, AND OTHER SIMILAR TYPES OR FORMS
32 OF MATERIAL OR SOFTWARE (THE FOREGOING EXAMPLES ARE ILLUSTRATIVE, NOT
33 EXHAUSTIVE OF SUCH THREATS TO USERS AND/OR THE NETWORK, COLLECTIVELY
34 HEREAFTER "NETWORK THREATS"). BLOCKING OR LIMITATION OF SUBSCRIBER
35 ACCESS TO THE MAXIMALLY DIVERSE INTERNET, IF NOT PREDICATED UPON THE
36 FRANCHISEE'S RIGHT TO DEFEND ITS NETWORK AND SUBSCRIBERS AGAINST
37 "NETWORK THREATS", SHALL PRESUMPTIVELY BE A BREACH OF THE FRANCHISE. NO
38 FRANCHISEE SHALL BE RESPONSIBLE OR LIABLE FOR ANY EFFORTS BY OR POLI-
39 CIES, PRACTICES OR PROCEDURES OF AN UNAFFILIATED TELECOMMUNICATIONS
40 SERVICES PROVIDER OR INTERNET SERVICES PROVIDER OR INTERNET PROTOCOL
41 TRAFFIC ROUTING ENTITY TO BLOCK SUBSCRIBERS FROM ACCESSING ANY INTERNET
42 SITE OR ANY CATEGORY OR TYPE OF INTERNET SITE OR ANY SPECIFIC ELECTRONIC
43 MAIL MESSAGE OR ANY CATEGORY OR TYPE OF ELECTRONIC MAIL.

44 S 7. Section 99 of the public service law is amended by adding a new
45 subdivision 4 to read as follows:

46 4. NO BUILDING OWNER MAY DISCRIMINATE AGAINST A TELEPHONE COMPANY,
47 BROADBAND SERVICES OR ADVANCED COMMUNICATIONS COMPANY OR THEIR ABILITY
48 TO PROVIDE SERVICES TO ONE OR MORE TENANTS OF A MULTI-TENANT PROPERTY
49 THAT IS OWNED OR CONTROLLED BY THE BUILDING OWNER, INCLUDING DISCRIMINA-
50 TORY TERMS AND CONDITIONS BY WHICH THE TELEPHONE COMPANY, BROADBAND
51 SERVICES OR ADVANCED COMMUNICATIONS COMPANY GAIN PHYSICAL ACCESS TO THE
52 PROPERTY TO PLACE ITS FACILITIES AND PROVIDE TELECOMMUNICATIONS SERVICES
53 TO THE PROPERTY'S TENANTS. THE COMMISSION SHALL HAVE JURISDICTION TO
54 IMPLEMENT THE PROVISIONS OF THIS SUBDIVISION BY APPROPRIATE RULES AND
55 REGULATIONS AND TO ADMINISTRATIVELY ADJUDICATE DISPUTES ARISING UNDER
56 THIS SUBDIVISION. IN NO EVENT MAY THE LACK OF AGREEMENT OVER TERMS AND

1 CONDITIONS OF ACCESS DELAY THE ABILITY OF A REQUESTING TELECOMMUNI-
2 CATIONS COMPANY TO OBTAIN ACCESS FOR MORE THAN THIRTY DAYS FOLLOWING AN
3 INITIAL REQUEST THEREFOR.

4 S 8. Subdivision 2 of section 99 of the public service law, as amended
5 by chapter 383 of the laws of 1996, is amended to read as follows:

6 2. (A) No franchise nor any right to or under any franchise to own or
7 operate a telegraph line or telephone line shall be assigned, trans-
8 ferred, or leased, nor shall any contract or agreement hereafter made
9 with reference to or affecting any such franchise or right be valid or
10 of any force or effect whatsoever[,] unless the assignment, transfer,
11 lease, contract, or agreement shall have been approved by the commis-
12 sion.

13 (B) No telephone corporation shall transfer or lease its works or
14 system or any part of such works or system to any other person or corpo-
15 ration or contract for the operation of its works or system[,] without
16 the written consent of the commission. [Notwithstanding the foregoing,
17 any such transfer or lease between affiliated corporations with an
18 original cost of (a) less than one hundred thousand dollars proposed by
19 a telephone corporation having annual gross revenues in excess of two
20 hundred million dollars, (b) less than twenty-five thousand dollars
21 proposed by a telephone corporation having annual gross revenues of less
22 than two hundred million but more than ten million dollars or (c) less
23 than ten thousand dollars proposed by a telephone corporation having
24 annual gross revenues of less than ten million dollars and any other
25 transfer or lease between non-affiliates regardless of cost shall be
26 effective without the commission's written consent within ninety days
27 after such corporation notifies the commission that it plans to complete
28 such transfer or lease and submits a description of the transfer or
29 lease, unless the commission, or its designee, determines within such
30 ninety days that the public interest requires the commission's review
31 and written consent.]

32 (C) (1) NO CONSENT SHALL BE GIVEN BY THE COMMISSION TO THE ASSIGNMENT,
33 TRANSFER, OR LEASE OF ANY RIGHT OR FRANCHISE TO OPERATE A TELEGRAPH LINE
34 OR TELEPHONE LINE UNLESS IT SHALL HAVE BEEN SHOWN THAT SUCH ASSIGNMENT,
35 TRANSFER, OR LEASE IS IN THE PUBLIC INTEREST.

36 (2) NO CONSENT SHALL BE GIVEN BY THE COMMISSION TO THE ASSIGNMENT,
37 TRANSFER, OR LEASE OF ANY RIGHT OR FRANCHISE TO OPERATE ANY PART OF A
38 TELEPHONE CORPORATION'S WORKS OR SYSTEM, OR TO A CONTRACT FOR THE OPERA-
39 TION OF SUCH ENTITY'S WORKS OR SYSTEM, UNLESS IT SHALL HAVE BEEN SHOWN
40 THAT SUCH ASSIGNMENT, TRANSFER, OR LEASE OR CONTRACT IS IN THE PUBLIC
41 INTEREST.

42 (D) BEFORE AUTHORIZING THE MERGER, ACQUISITION, ASSIGNMENT, LEASE, OR
43 TRANSFER OF CONTROL OF ANY TELEPHONE CORPORATION ORGANIZED AND DOING
44 BUSINESS IN THIS STATE, WHERE ANY OF THE ENTITIES THAT ARE PARTIES TO
45 THE PROPOSED TRANSACTION HAS GROSS ANNUAL NEW YORK REVENUES EXCEEDING
46 TWO HUNDRED MILLION DOLLARS, THE COMMISSION SHALL FIND THAT THE PROPOSAL
47 DOES ALL OF THE FOLLOWING:

48 (1) PROVIDES SHORT-TERM AND LONG-TERM ECONOMIC BENEFITS TO RATEPAYERS.

49 (2) EQUITABLY ALLOCATES, WHERE THE COMMISSION HAS RATEMAKING AUTHORI-
50 TY, THE TOTAL SHORT-TERM AND LONG-TERM FORECASTED ECONOMIC BENEFITS, AS
51 DETERMINED BY THE COMMISSION, OF THE PROPOSED MERGER, ACQUISITION, OR
52 CONTROL BETWEEN SHAREHOLDERS AND RATEPAYERS. RATEPAYERS SHALL RECEIVE
53 NOT LESS THAN FORTY PERCENT OF SUCH BENEFITS.

54 (3) MAINTAINS OR IMPROVES THE FINANCIAL CONDITION OF THE RESULTING
55 TELEPHONE CORPORATIONS DOING BUSINESS IN THE STATE AND DOES NOT UNREA-
56 SONABLY ALLOCATE A TELEPHONE CORPORATION'S DEBT TO A DIVESTITURE ENTITY

1 CREATED FROM AN EXISTING TELEPHONE CORPORATION. FOR THE PURPOSE OF THIS
2 SECTION, A DIVESTITURE ENTITY IS A BUSINESS ENTITY CREATED BY THE
3 ASSIGNMENT, EXCHANGE, SALE, OR OTHER TRANSFER OF SOME OR ALL OF AN
4 EXISTING TELEPHONE CORPORATION'S LINES, SYSTEM, OR WORKS TO A NEW TELE-
5 PHONE CORPORATION.

6 (4) MAINTAINS OR IMPROVES THE QUALITY OF SERVICE TO TELEPHONE CORPO-
7 RATION RATEPAYERS IN THE STATE.

8 (5) MAINTAINS OR IMPROVES THE QUALITY OF MANAGEMENT OF THE RESULTING
9 TELEPHONE CORPORATION DOING BUSINESS IN THE STATE.

10 (6) IS FAIR AND REASONABLE TO AFFECTED TELEPHONE CORPORATION EMPLOY-
11 EES, INCLUDING BOTH UNION AND NONUNION EMPLOYEES.

12 (7) IS FAIR AND REASONABLE TO THE MAJORITY OF ALL AFFECTED TELEPHONE
13 CORPORATIONS.

14 (8) IS BENEFICIAL ON AN OVERALL BASIS TO STATE AND LOCAL ECONOMIES AND
15 TO THE COMMUNITIES IN THE AREA SERVED BY THE RESULTING ENTITY AND DOES
16 NOT ALLOCATE SUBSTANTIALLY UNFUNDED PENSION OR HEALTH CARE OBLIGATIONS
17 OR OTHER EMPLOYEE BENEFITS TO A RESULTING TELEPHONE CORPORATION.

18 (9) PRESERVES THE JURISDICTION OF THE COMMISSION AND THE CAPACITY OF
19 THE COMMISSION TO EFFECTIVELY REGULATE AND AUDIT TELEPHONE CORPORATION
20 OPERATIONS IN THE STATE.

21 (10) PROVIDES MITIGATION MEASURES TO PREVENT SIGNIFICANT ADVERSE
22 CONSEQUENCES WHICH MAY RESULT.

23 (11) DOES NOT ADVERSELY AFFECT COMPETITION. IN MAKING THIS FINDING,
24 THE COMMISSION SHALL REQUEST AN ADVISORY OPINION FROM THE ATTORNEY
25 GENERAL REGARDING WHETHER OR NOT COMPETITION WILL BE ADVERSELY AFFECTED
26 AND WHAT MITIGATORY MEASURES COULD BE ADOPTED TO AVOID ANY SUCH ADVERSE
27 EFFECT.

28 (E) WHEN REVIEWING A MERGER, ACQUISITION, OR TRANSFER OF CONTROL
29 PROPOSAL, THE COMMISSION SHALL CONSIDER REASONABLE ALTERNATIVES OR
30 MODIFICATIONS TO THE PROPOSAL RECOMMENDED BY OTHER PARTIES, INCLUDING NO
31 MERGER, ACQUISITION, OR CONTROL, TO DETERMINE WHETHER OR NOT COMPARABLE
32 SHORT-TERM AND LONG-TERM ECONOMIC SAVINGS CAN BE ACHIEVED THROUGH OTHER
33 MEANS WHILE AVOIDING THE POSSIBLE ADVERSE CONSEQUENCES OF THE PROPOSAL.

34 (F) THE PERSON OR CORPORATION SEEKING ACQUISITION OR CONTROL OF A
35 TELEPHONE CORPORATION ORGANIZED AND DOING BUSINESS IN THIS STATE SHALL
36 HAVE BEFORE THE COMMISSION THE BURDEN OF PROVING BY A PREPONDERANCE OF
37 THE EVIDENCE THAT THE REQUIREMENTS OF PARAGRAPH (D) OF THIS SUBDIVISION
38 ARE MET.

39 (G) IN DETERMINING WHETHER OR NOT AN ACQUIRING TELEPHONE CORPORATION
40 HAS GROSS ANNUAL REVENUES EXCEEDING THE AMOUNT SPECIFIED IN PARAGRAPH
41 (D) OF THIS SUBDIVISION, THE REVENUES OF THAT TELEPHONE CORPORATION'S
42 AFFILIATES SHALL NOT BE CONSIDERED, UNLESS THE AFFILIATE IS TO BE
43 UTILIZED FOR THE PURPOSE OF EFFECTING SUCH MERGER, ACQUISITION, OR
44 CONTROL.

45 (H) SUBPARAGRAPHS ONE AND TWO OF PARAGRAPH (D) OF THIS SUBDIVISION
46 SHALL NOT APPLY TO THE FORMATION OF A HOLDING COMPANY.

47 (I) SUBPARAGRAPHS ONE AND TWO OF PARAGRAPH (D) OF THIS SUBDIVISION
48 SHALL NOT APPLY TO ACQUISITIONS OR CHANGES IN CONTROL THAT ARE MANDATED
49 BY EITHER THE COMMISSION OR THE LEGISLATURE.

50 S 9. Section 100 of the public service law, as amended by chapter 446
51 of the laws of 1998, is amended to read as follows:

52 S 100. Transfer and ownership of stock. 1. No telegraph corporation or
53 telephone corporation, domestic or foreign, shall hereafter purchase
54 [or], acquire, take, or hold any part of the capital stock of any tele-
55 graph corporation or telephone corporation organized or existing under
56 the laws of this state unless authorized so to do by the commission.

1 2. Save where stock shall be transferred or held for the purpose of
2 collateral security, no stock corporation, domestic or foreign, other
3 than a telegraph corporation or telephone corporation, shall, without
4 the consent of the commission, purchase [or], acquire, take, or hold
5 more than ten [per centum] PERCENT of the voting capital stock issued by
6 any telegraph corporation or telephone corporation organized or existing
7 under or by virtue of the laws of this state. Any corporation now
8 lawfully holding a majority of the voting capital stock of any telegraph
9 corporation or telephone corporation may, without the consent of the
10 commission, acquire and hold the remainder of the voting capital stock
11 of such telegraph corporation or telephone corporation[,] or any portion
12 thereof.

13 3. (A) No consent shall be given by the commission to the acquisition
14 of any stock in accordance with this section unless it shall have been
15 shown that such acquisition is in the public interest[; provided, howev-
16 er, that any], WHICH THE COMMISSION SHALL DETERMINE BY FINDING THAT THE
17 PROPOSAL DOES ALL OF THE FOLLOWING, TO THE EXTENT DETERMINED TO BE
18 APPLICABLE:

19 (I) PROVIDES SHORT-TERM AND LONG-TERM ECONOMIC BENEFITS TO RATEPAYERS.

20 (II) EQUITABLY ALLOCATES, WHERE APPLICABLE AND WHERE THE COMMISSION
21 HAS RATEMAKING AUTHORITY, THE TOTAL SHORT-TERM AND LONG-TERM FORECASTED
22 ECONOMIC BENEFITS, AS DETERMINED BY THE COMMISSION, OF THE PROPOSED
23 ACQUISITION, PURCHASE, SALE, TRANSFER, OR RETENTION BETWEEN SHAREHOLDERS
24 AND RATEPAYERS. RATEPAYERS SHALL RECEIVE NOT LESS THAN FORTY PERCENT OF
25 THOSE BENEFITS.

26 (III) MAINTAINS OR IMPROVES THE FINANCIAL CONDITION OF THE RESULTING
27 TELEPHONE CORPORATIONS DOING BUSINESS IN THE STATE AND DOES NOT UNREA-
28 SONABLY ALLOCATE A TELEPHONE CORPORATION'S DEBT TO A DIVESTITURE ENTITY
29 CREATED FROM AN EXISTING TELEPHONE CORPORATION. FOR THE PURPOSE OF THIS
30 SECTION, A DIVESTITURE ENTITY IS A BUSINESS ENTITY CREATED BY THE
31 ASSIGNMENT, EXCHANGE, SALE, OR OTHER TRANSFER OF SOME OR ALL OF AN
32 EXISTING TELEPHONE CORPORATION'S LINES, SYSTEM, OR WORKS TO A NEW TELE-
33 PHONE CORPORATION.

34 (IV) MAINTAINS OR IMPROVES THE QUALITY OF SERVICE TO TELEPHONE CORPO-
35 RATION RATEPAYERS IN THE STATE.

36 (V) MAINTAINS OR IMPROVES THE QUALITY OF MANAGEMENT OF THE RESULTING
37 TELEPHONE CORPORATION DOING BUSINESS IN THE STATE.

38 (VI) IS FAIR AND REASONABLE TO AFFECTED TELEPHONE CORPORATION EMPLOY-
39 EES, INCLUDING BOTH UNION AND NONUNION EMPLOYEES.

40 (VII) IS FAIR AND REASONABLE TO THE MAJORITY OF ALL AFFECTED TELEPHONE
41 CORPORATIONS.

42 (VIII) IS BENEFICIAL, ON AN OVERALL BASIS, TO STATE AND LOCAL ECONO-
43 MIES, AND TO THE COMMUNITIES IN THE AREA SERVED BY THE RESULTING ENTITY
44 AND DOES NOT ALLOCATE SUBSTANTIALLY UNFUNDED PENSION OR HEALTH CARE
45 OBLIGATIONS OR OTHER EMPLOYEE BENEFITS TO A RESULTING TELEPHONE CORPO-
46 RATION.

47 (IX) PRESERVES THE JURISDICTION OF THE COMMISSION AND THE CAPACITY OF
48 THE COMMISSION TO EFFECTIVELY REGULATE AND AUDIT TELEPHONE CORPORATION
49 OPERATIONS IN THE STATE.

50 (X) PROVIDES MITIGATION MEASURES TO PREVENT SIGNIFICANTLY ADVERSE
51 CONSEQUENCES WHICH MAY RESULT FROM SUCH ACQUISITION.

52 (XI) DOES NOT ADVERSELY AFFECT COMPETITION. IN MAKING THIS FINDING,
53 THE COMMISSION SHALL REQUEST AN ADVISORY OPINION FROM THE ATTORNEY
54 GENERAL REGARDING WHETHER OR NOT COMPETITION WILL BE ADVERSELY AFFECTED
55 AND WHAT MITIGATORY MEASURES COULD BE ADOPTED TO AVOID ANY SUCH ADVERSE
56 EFFECT.

1 (B) ANY such consent, HOWEVER, shall be deemed to be granted by the
2 commission ninety days after such corporation applies to the commission
3 for its consent, unless the commission, or its designee, determines and
4 informs the applicant in writing within such ninety day period that the
5 public interest requires the commission's review and its written
6 consent. Nothing [herein] contained IN THIS SECTION shall be construed
7 to prevent the holding of any stock heretofore lawfully acquired, nor to
8 prevent, upon the surrender or exchange of such stock pursuant to a
9 reorganization plan, the purchase, acquisition, taking, or holding of a
10 proportionate amount of stock of any new corporation organized to take
11 over, at foreclosure or other sale, the property of any corporation
12 whose stock has been thus surrendered or exchanged[;], but the propor-
13 tion of the voting capital stock of the new corporation held by a stock
14 corporation and acquired by it by any such surrender or exchange of
15 stock shall not without the consent of the commission exceed the propor-
16 tion of the voting capital stock held by it in the former corporation.
17 Every contract, assignment, transfer, or agreement for transfer of any
18 stock by or through any person or corporation to any corporation in
19 violation of any provision of this chapter shall be void and of no
20 effect, and no such transfer or assignment shall be made upon the books
21 of any such telegraph corporation or telephone corporation[,] or shall
22 be recognized as effective for any purpose.

23 S 10. The executive law is amended by adding a new section 33 to read
24 as follows:

25 S 33. STATE AGENCY TELECOMMUNICATIONS RESOURCE MANAGEMENT. 1. WITHIN
26 NINETY DAYS OF THE EFFECTIVE DATE OF THIS SECTION, ALL STATE AGENCIES,
27 AS SUCH ARE DEFINED IN SUBDIVISION ONE OF SECTION THIRTY-TWO OF THIS
28 ARTICLE, SHALL STUDY AND REPORT UPON THE PHYSICAL LOCATION AND/OR
29 FREQUENCY, AND AMOUNT OF ALL EXCESS CAPACITY, WITHIN THE TELECOMMUNI-
30 CATIONS INFRASTRUCTURE AND RADIO FREQUENCY BANDWIDTH OWNED, LICENSED OR
31 OTHERWISE CONTROLLED BY SUCH AGENCIES. TELECOMMUNICATIONS INFRASTRUCTURE
32 IS HEREIN DEFINED FOR THE PURPOSES OF THIS ARTICLE TO INCLUDE CONDUITS,
33 DUCTS, POLES, WIRES, FIBEROPTIC CABLE AND/OR LINES, COAXIAL CABLE,
34 COPPER TWISTED PAIR TELEPHONE LINES, RECEIVERS, TRANSMITTERS, BROADCAST
35 RADIO FREQUENCY BANDWIDTH, LASERS AND MULTIPLEXERS, TRANSMITTERS,
36 INSTRUMENTS, MACHINES, APPLIANCES AND ALL DEVICES, REAL ESTATE, EASE-
37 MENTS, APPARATUS, PROPERTY AND ROUTES USED AND/OR OPERATED BY STATE
38 AGENCIES.

39 2. ALL STATE AGENCIES SHALL, WITHIN ONE HUNDRED FIFTY DAYS OF THE
40 EFFECTIVE DATE OF THIS SECTION, IDENTIFY THE EXCESS CAPACITY AND BAND-
41 WIDTH REPORTED UPON WHICH MAY BE LEASED ON A NON-DISCRIMINATORY AND
42 COMMERCIALY REASONABLE BASIS TO PUBLIC ENTITIES OR CERTIFIED TELECOMMU-
43 NICATIONS CARRIERS THAT NEED SUCH CAPACITY TO PROVIDE BROADBAND SERVICES
44 TO UNSERVED, UNDERSERVED AND DISTRESSED AREAS. SUCH EXCESS CAPACITY AND
45 BANDWIDTH SO IDENTIFIED SHALL BE REPORTED UPON.

46 3. ALL STATE AGENCIES SHALL, WITHIN ONE HUNDRED EIGHTY DAYS OF THE
47 EFFECTIVE DATE OF THIS SECTION, IDENTIFY AND REPORT UPON ALL TELECOMMU-
48 NICATIONS SERVICES PURCHASED, LEASED OR OTHERWISE USED BY THE AGENCIES
49 THAT MAY BE USED IN A TELECOMMUNICATIONS DEMAND AGGREGATION PROGRAM
50 ADMINISTERED BY THE STATE BROADBAND DEVELOPMENT AND DEPLOYMENT COUNCIL
51 PURSUANT TO SECTION FOUR THOUSAND ONE HUNDRED FIVE OF THE PUBLIC AUTHOR-
52 ITIES LAW.

53 4. (A) ALL STATE AGENCIES SHALL, WITHIN NINETY DAYS OF THE EFFECTIVE
54 DATE OF THIS SECTION, INSTALL TELECOMMUNICATIONS-GRADE CONDUIT AND
55 ANTENNA ATTACHMENT POINTS IN AND/OR ON ALL INFRASTRUCTURE PROJECTS NEWLY
56 CONSTRUCTED OR UPGRADED BY SUCH AGENCIES, FOR LEASE ON A NON-DISCRIMINA-

1 TORY AND COMMERCIALLY REASONABLE BASIS TO PUBLIC ENTITIES OR CERTIFIED
2 TELECOMMUNICATIONS CARRIERS THAT NEED SUCH CAPACITY TO PROVIDE BROADBAND
3 SERVICES TO UNSERVED, UNDERSERVED AND DISTRESSED AREAS. STATE AGENCIES
4 MAY, HOWEVER, EXEMPT FROM THIS REQUIREMENT INFRASTRUCTURE WHERE SUCH
5 INSTALLATIONS COULD POSE A THREAT TO PUBLIC SAFETY OR OTHERWISE BE
6 UNREASONABLE. SUCH CONDUIT AND ANTENNA ATTACHMENT POINT INSTALLATIONS
7 SHALL BE REPORTED ON A SEMI-ANNUAL BASIS.

8 (B) THE STATE OFFICE OF GENERAL SERVICES SHALL, WITHIN NINETY DAYS OF
9 THE EFFECTIVE DATE OF THIS SECTION, MAKE WIRELESS INTERNET ACCESS AVAIL-
10 ABLE TO THE PUBLIC IN PUBLICLY ACCESSIBLE AND HIGHLY-TRAFFICKED AREAS OF
11 THE STATE CAPITOL AND THE LEGISLATIVE OFFICE BUILDING, AND SUCH OTHER
12 PUBLICLY ACCESSIBLE AND HIGHLY-TRAFFICKED OFFICE OF GENERAL SERVICES
13 MANAGED STATE BUILDINGS AS IS REASONABLE AND PRUDENT.

14 5. ALL REPORTS PROVIDED FOR IN THIS SECTION SHALL BE DELIVERED
15 INITIALLY, AND THEREAFTER ON AN ANNUAL BASIS, TO THE GOVERNOR, TEMPORARY
16 PRESIDENT OF THE SENATE, SPEAKER OF THE ASSEMBLY, MINORITY LEADERS OF
17 THE SENATE AND ASSEMBLY, CHAIR AND RANKING MINORITY MEMBER OF THE SENATE
18 ENERGY AND TELECOMMUNICATIONS COMMITTEE, AND THE CHAIR AND RANKING
19 MINORITY MEMBER OF THE ASSEMBLY CORPORATIONS, AUTHORITIES AND COMMIS-
20 SIONS COMMITTEE, CHAIR OF THE PUBLIC SERVICE COMMISSION, COMMISSIONER OF
21 THE DEPARTMENT OF ECONOMIC DEVELOPMENT, COMMISSIONER OF THE EMPIRE STATE
22 DEVELOPMENT CORPORATION AND THE CHAIRPEOPLE OF THE BROADBAND DEVELOPMENT
23 AND DEPLOYMENT COUNCIL AND BROADBAND DEVELOPMENT AUTHORITY.

24 S 11. The public authorities law is amended by adding a new section
25 2807 to read as follows:

26 S 2807. ANNUAL TELECOMMUNICATIONS RESOURCES REPORTS BY AUTHORITIES. 1.
27 STATE AUTHORITIES. (A) FOR THE PURPOSE OF FURNISHING THE STATE WITH
28 SYSTEMATIC INFORMATION REGARDING THE EXISTING, NEWLY CONSTRUCTED AND
29 PLANNED TELECOMMUNICATIONS INFRASTRUCTURE RESOURCES OF PUBLIC AUTHORI-
30 TIES, EVERY STATE AUTHORITY CONTINUED OR CREATED BY THIS CHAPTER OR ANY
31 OTHER CHAPTER OF THE LAWS OF THE STATE OF NEW YORK SHALL:

32 (I) WITHIN NINETY DAYS OF THE EFFECTIVE DATE OF THIS SECTION, SUBMIT
33 TO THE GOVERNOR, TEMPORARY PRESIDENT OF THE SENATE, SPEAKER OF THE
34 ASSEMBLY, MINORITY LEADERS OF THE SENATE AND ASSEMBLY, CHAIR AND RANKING
35 MINORITY MEMBER OF THE SENATE ENERGY AND TELECOMMUNICATIONS COMMITTEE,
36 AND THE CHAIR AND RANKING MINORITY MEMBER OF THE ASSEMBLY CORPORATIONS,
37 AUTHORITIES AND COMMISSIONS COMMITTEE, CHAIR OF THE PUBLIC SERVICE
38 COMMISSION, COMMISSIONER OF THE DEPARTMENT OF ECONOMIC DEVELOPMENT,
39 COMMISSIONER OF THE EMPIRE STATE DEVELOPMENT CORPORATION AND THE CHAIRS
40 OF THE BROADBAND DEVELOPMENT AND DEPLOYMENT COUNCIL AND BROADBAND DEVEL-
41 OPMENT AUTHORITY, A COMPLETE AND DETAILED REPORT OR REPORTS UPON THE
42 PHYSICAL LOCATION AND/OR FREQUENCY, AND AMOUNT OF ALL EXCESS CAPACITY,
43 WITHIN THE TELECOMMUNICATIONS INFRASTRUCTURE AND RADIO FREQUENCY BAND-
44 WIDTH OWNED, LICENSED OR OTHERWISE CONTROLLED BY STATE AUTHORITIES;

45 (II) WITHIN ONE HUNDRED FIFTY DAYS OF THE EFFECTIVE DATE OF THIS
46 SECTION, SUBMIT TO THE GOVERNOR, TEMPORARY PRESIDENT OF THE SENATE,
47 SPEAKER OF THE ASSEMBLY, MINORITY LEADERS OF THE SENATE AND ASSEMBLY,
48 CHAIR AND RANKING MINORITY MEMBER OF THE SENATE ENERGY AND TELECOMMUNI-
49 CATIONS COMMITTEE, AND THE CHAIR AND RANKING MINORITY MEMBER OF THE
50 ASSEMBLY CORPORATIONS, AUTHORITIES AND COMMISSIONS COMMITTEE, CHAIR-
51 PERSON OF THE PUBLIC SERVICE COMMISSION, COMMISSIONER OF THE DEPARTMENT
52 OF ECONOMIC DEVELOPMENT, COMMISSIONER OF THE EMPIRE STATE DEVELOPMENT
53 CORPORATION AND THE CHAIRPEOPLE OF THE BROADBAND DEVELOPMENT AND DEPLOY-
54 MENT COUNCIL AND BROADBAND DEVELOPMENT AUTHORITY, A COMPLETE AND
55 DETAILED REPORT OR REPORTS IDENTIFYING THE EXCESS CAPACITY AND BANDWIDTH
56 POSSESSED OR CONTROLLED BY STATE AUTHORITIES WHICH MAY BE LEASED ON A

1 NON-DISCRIMINATORY AND COMMERCIALY REASONABLE BASIS TO PUBLIC ENTITIES
2 OR CERTIFIED TELECOMMUNICATIONS CARRIERS THAT NEED SUCH CAPACITY TO
3 PROVIDE BROADBAND SERVICES TO UNSERVED, UNDERSERVED AND DISTRESSED
4 AREAS;

5 (III) WITHIN ONE HUNDRED EIGHTY DAYS OF THE EFFECTIVE DATE OF THIS
6 SECTION, IDENTIFY AND REPORT UPON ALL TELECOMMUNICATIONS SERVICES
7 PURCHASED, LEASED OR OTHERWISE USED BY THE AUTHORITIES THAT MAY BE USED
8 IN A TELECOMMUNICATIONS DEMAND AGGREGATION PROGRAM ADMINISTERED BY THE
9 STATE BROADBAND DEVELOPMENT AND DEPLOYMENT COUNCIL.

10 (B) ALL STATE AUTHORITIES SHALL, FROM THE EFFECTIVE DATE OF THIS
11 SECTION, INSTALL TELECOMMUNICATIONS-GRADE CONDUIT AND ANTENNA ATTACHMENT
12 POINTS IN AND/OR ON ALL INFRASTRUCTURE PROJECTS NEWLY CONSTRUCTED OR
13 UPGRADED BY SUCH AGENCIES, FOR LEASE ON A NON-DISCRIMINATORY AND COMMER-
14 CIALY REASONABLE BASIS TO PUBLIC ENTITIES OR CERTIFIED TELECOMMUNI-
15 CATIONS CARRIERS THAT NEED SUCH CAPACITY TO PROVIDE BROADBAND SERVICES
16 TO UNSERVED, UNDERSERVED AND DISTRESSED AREAS. STATE AUTHORITIES MAY,
17 HOWEVER, EXEMPT FROM THIS REQUIREMENT INFRASTRUCTURE WHERE SUCH INSTAL-
18 LATIONS COULD POSE A THREAT TO PUBLIC SAFETY OR OTHERWISE BE UNREASON-
19 ABLE. SUCH CONDUIT AND ANTENNA ATTACHMENT POINT INSTALLATIONS SHALL BE
20 REPORTED ON A SEMI-ANNUAL BASIS.

21 (C) ALL STATE AUTHORITY REPORTS PROVIDED FOR IN THIS SECTION SHALL BE
22 DELIVERED INITIALLY, AND THEREAFTER ON AN ANNUAL BASIS UNLESS OTHERWISE
23 SPECIFIED, TO THE GOVERNOR, TEMPORARY PRESIDENT OF THE SENATE, SPEAKER
24 OF THE ASSEMBLY, MINORITY LEADERS OF THE SENATE AND ASSEMBLY, CHAIR AND
25 RANKING MINORITY MEMBER OF THE SENATE ENERGY AND TELECOMMUNICATIONS
26 COMMITTEE, AND THE CHAIR AND RANKING MINORITY MEMBER OF THE ASSEMBLY
27 CORPORATIONS, AUTHORITIES AND COMMISSIONS COMMITTEE, CHAIR OF THE PUBLIC
28 SERVICE COMMISSION, COMMISSIONER OF THE EMPIRE STATE DEVELOPMENT CORPO-
29 RATION AND THE CHAIRPEOPLE OF THE BROADBAND DEVELOPMENT AND DEPLOYMENT
30 COUNCIL AND BROADBAND DEVELOPMENT AUTHORITY.

31 (D) TELECOMMUNICATIONS INFRASTRUCTURE IS DEFINED FOR THE PURPOSES OF
32 THIS ARTICLE TO INCLUDE CONDUITS, DUCTS, POLES, WIRES, FIBEROPTIC CABLE
33 AND/OR LINES, COAXIAL CABLE, COPPER TWISTED PAIR TELEPHONE LINES,
34 RECEIVERS, TRANSMITTERS, BROADCAST RADIO FREQUENCY BANDWIDTH, LASERS AND
35 MULTIPLEXERS, TRANSMITTERS, INSTRUMENTS, MACHINES, APPLIANCES AND ALL
36 DEVICES, REAL ESTATE, EASEMENTS, APPARATUS, PROPERTY AND ROUTES USED
37 AND/OR OPERATED BY STATE AUTHORITIES AND LOCAL AUTHORITIES.

38 2. LOCAL AUTHORITIES. (A) FOR THE PURPOSE OF FURNISHING THE STATE WITH
39 SYSTEMATIC INFORMATION REGARDING THE EXISTING, NEWLY CONSTRUCTED AND
40 PLANNED TELECOMMUNICATIONS INFRASTRUCTURE RESOURCES OF PUBLIC AUTHORI-
41 TIES, EVERY LOCAL AUTHORITY CONTINUED OR CREATED BY THIS CHAPTER OR ANY
42 OTHER CHAPTER OF THE LAWS OF THE STATE OF NEW YORK SHALL:

43 (I) WITHIN NINETY DAYS OF THE EFFECTIVE DATE OF THIS SECTION, SUBMIT
44 TO THE GOVERNOR, TEMPORARY PRESIDENT OF THE SENATE, SPEAKER OF THE
45 ASSEMBLY, MINORITY LEADERS OF THE SENATE AND ASSEMBLY, CHAIR AND RANKING
46 MINORITY MEMBER OF THE SENATE ENERGY AND TELECOMMUNICATIONS COMMITTEE,
47 AND THE CHAIR AND RANKING MINORITY MEMBER OF THE ASSEMBLY CORPORATIONS,
48 AUTHORITIES AND COMMISSIONS COMMITTEE, CHAIR OF THE PUBLIC SERVICE
49 COMMISSION, COMMISSIONER OF THE EMPIRE STATE DEVELOPMENT CORPORATION AND
50 THE CHAIRS OF THE BROADBAND DEVELOPMENT AND DEPLOYMENT COUNCIL AND
51 BROADBAND DEVELOPMENT AUTHORITY, A COMPLETE AND DETAILED REPORT OR
52 REPORTS UPON THE PHYSICAL LOCATION AND/OR FREQUENCY, AND AMOUNT OF ALL
53 EXCESS CAPACITY, WITHIN THE TELECOMMUNICATIONS INFRASTRUCTURE AND RADIO
54 FREQUENCY BANDWIDTH OWNED, LICENSED OR OTHERWISE CONTROLLED BY STATE
55 AUTHORITIES;

1 (II) WITHIN ONE HUNDRED FIFTY DAYS OF THE EFFECTIVE DATE OF THIS
2 SECTION, SUBMIT TO THE GOVERNOR, TEMPORARY PRESIDENT OF THE SENATE,
3 SPEAKER OF THE ASSEMBLY, MINORITY LEADERS OF THE SENATE AND ASSEMBLY,
4 CHAIR AND RANKING MINORITY MEMBER OF THE SENATE ENERGY AND TELECOMMUNI-
5 CATIONS COMMITTEE, AND THE CHAIR AND RANKING MINORITY MEMBER OF THE
6 ASSEMBLY CORPORATIONS, AUTHORITIES AND COMMISSIONS COMMITTEE, CHAIR OF
7 THE PUBLIC SERVICE COMMISSION, COMMISSIONER OF THE EMPIRE STATE DEVELOP-
8 MENT CORPORATION AND THE CHAIRS OF THE BROADBAND DEVELOPMENT AND DEPLOY-
9 MENT COUNCIL AND BROADBAND DEVELOPMENT AUTHORITY, A COMPLETE AND
10 DETAILED REPORT OR REPORTS IDENTIFYING THE EXCESS CAPACITY AND BANDWIDTH
11 POSSESSED OR CONTROLLED BY LOCAL AUTHORITIES WHICH MAY BE LEASED ON A
12 NON-DISCRIMINATORY AND COMMERCIALY REASONABLE BASIS TO PUBLIC ENTITIES
13 OR CERTIFIED TELECOMMUNICATIONS CARRIERS THAT NEED SUCH CAPACITY TO
14 PROVIDE BROADBAND SERVICES TO UNSERVED, UNDERSERVED AND DISTRESSED
15 AREAS;

16 (III) WITHIN ONE HUNDRED EIGHTY DAYS OF THE EFFECTIVE DATE OF THIS
17 SECTION, IDENTIFY AND REPORT UPON ALL TELECOMMUNICATIONS SERVICES
18 PURCHASED, LEASED OR OTHERWISE USED BY THE AUTHORITIES THAT MAY BE USED
19 IN A TELECOMMUNICATIONS DEMAND AGGREGATION PROGRAM ADMINISTERED BY THE
20 STATE BROADBAND DEVELOPMENT AND DEPLOYMENT COUNCIL.

21 (B) ALL LOCAL AUTHORITIES SHALL, FROM THE EFFECTIVE DATE OF THIS
22 SECTION, INSTALL TELECOMMUNICATIONS-GRADE CONDUIT AND ANTENNA ATTACHMENT
23 POINTS IN AND/OR ON ALL INFRASTRUCTURE PROJECTS NEWLY CONSTRUCTED OR
24 UPGRADED BY SUCH AGENCIES, FOR LEASE ON A NON-DISCRIMINATORY AND COMMER-
25 CIALY REASONABLE BASIS TO PUBLIC ENTITIES OR CERTIFIED TELECOMMUNI-
26 CATIONS CARRIERS THAT NEED SUCH CAPACITY TO PROVIDE BROADBAND SERVICES
27 TO UNSERVED, UNDERSERVED AND DISTRESSED AREAS. LOCAL AUTHORITIES MAY,
28 HOWEVER, EXEMPT FROM THIS REQUIREMENT INFRASTRUCTURE WHERE SUCH INSTAL-
29 LATIONS COULD POSE A THREAT TO PUBLIC SAFETY OR OTHERWISE BE UNREASON-
30 ABLE. SUCH CONDUIT AND ANTENNA ATTACHMENT POINT INSTALLATIONS SHALL BE
31 REPORTED ON A SEMI-ANNUAL BASIS.

32 (C) ALL LOCAL AUTHORITY REPORTS PROVIDED FOR IN THIS SECTION SHALL BE
33 DELIVERED INITIALLY, AND THEREAFTER ON AN ANNUAL BASIS UNLESS OTHERWISE
34 SPECIFIED, TO THE GOVERNOR, TEMPORARY PRESIDENT OF THE SENATE, SPEAKER
35 OF THE ASSEMBLY, MINORITY LEADERS OF THE SENATE AND ASSEMBLY, CHAIR AND
36 RANKING MINORITY MEMBER OF THE SENATE ENERGY AND TELECOMMUNICATIONS
37 COMMITTEE, AND THE CHAIR AND RANKING MINORITY MEMBER OF THE ASSEMBLY
38 CORPORATIONS, AUTHORITIES AND COMMISSIONS COMMITTEE, CHAIRPERSON OF THE
39 PUBLIC SERVICE COMMISSION, COMMISSIONER OF THE EMPIRE STATE DEVELOPMENT
40 CORPORATION AND THE CHAIRPEOPLE OF THE BROADBAND DEVELOPMENT COUNCIL AND
41 BROADBAND AUTHORITY.

42 3. STATE AND LOCAL AUTHORITIES. TO THE EXTENT PRACTICABLE, AND
43 CONSISTENT WITH APPLICABLE DIRECTIVES OR GUIDELINES BY THE EMERGENCY
44 PREPAREDNESS COMMISSION, STATE EMERGENCY MANAGEMENT OFFICE AND STATE
45 OFFICE OF HOMELAND SECURITY, EACH STATE AND LOCAL AUTHORITY SHALL MAKE
46 ACCESSIBLE TO THE PUBLIC VIA ITS OFFICIAL INTERNET WEB SITE DOCUMENTA-
47 TION PERTAINING TO THE TELECOMMUNICATIONS INFRASTRUCTURE RESOURCES OWNED
48 BY, LEASED BY, USED BY OR OTHERWISE CONTROLLED BY SUCH STATE AND LOCAL
49 AUTHORITIES.

50 S 12. The public service law is amended by adding a new section 90-a
51 to read as follows:

52 S 90-A. STATEMENT OF POLICY. 1. THE STATE OF NEW YORK'S LONG-STANDING
53 POLICY, CODIFIED IN THIS SECTION, IS THAT CERTAIN COMMUNICATIONS TOOLS,
54 AND PARTICULARLY TELEPHONE SERVICES, I.E. ESSENTIAL SERVICES, ARE SO
55 FUNDAMENTAL THAT IT IS NOT IN THE PUBLIC INTEREST TO LEAVE THEIR
56 PROVISION TO THE VAGARIES OF THE MARKETPLACE ALONE. FURTHERMORE, THE

1 LEGISLATURE DECLARES THAT IT IS IN THE PUBLIC INTEREST THAT SUCH ESSEN-
2 TIAL SERVICES BE MADE AND MAINTAINED UNIVERSALLY ACROSS NEW YORK. SUCH
3 TOOLS AND SERVICES HAVE, OVER TIME, AND INCREASINGLY NOW, SHAPED CITI-
4 ZENS' ABILITY TO PARTICIPATE IN CIVIC AFFAIRS, TO ACQUIRE LEARNING
5 SKILLS NEEDED FOR THEIR ECONOMIC SUCCESS AND THAT OF THE STATE, AND TO
6 ENJOY THE RICH AND UNPARALLELED SOCIAL AND CULTURAL LIFE THAT IS A VITAL
7 PART OF NEW YORK STATE'S ECONOMY. THE STATE'S GOALS FOR UNIVERSAL
8 SERVICE ARE TO FURTHER AND PROTECT THE PUBLIC INTEREST BY PROMOTING THE
9 AVAILABILITY OF QUALITY SERVICES AT JUST, REASONABLE, AND AFFORDABLE
10 RATES; TO ADVANCE THE AVAILABILITY OF SUCH SERVICES TO ALL CONSUMERS,
11 INCLUDING THOSE IN LOW INCOME, RURAL, INSULAR, AND HIGH COST AREAS AT
12 RATES THAT ARE REASONABLY COMPARABLE TO THOSE CHARGED IN HIGH-DENSITY
13 URBAN AREAS; AND TO INCREASE ACCESS TO, AND THE UBIQUITY OF, ADVANCED
14 TELECOMMUNICATIONS SERVICES AVAILABLE TO THE PUBLIC IN AN EQUITABLE AND
15 NONDISCRIMINATORY MANNER. ALL TELEPHONE CORPORATIONS AND PROVIDERS AND
16 RESELLERS OF TELECOMMUNICATIONS SERVICES SHOULD CONTRIBUTE TO CORE
17 PUBLIC SAFETY AND PUBLIC INTEREST GOALS TO THE EXTENT ALLOWABLE BY LAW.
18 AT A MINIMUM, THESE INCLUDE EQUIVALENT UNIVERSAL SERVICE SUPPORT,
19 PROVISION AND SUPPORT FOR E911, DISABILITY ACCESS, CONSUMER PROTECTIONS,
20 AND EQUITABLE TAXATION. EFFECTIVE PUBLIC PROGRAMS MUST BE MADE AVAILABLE
21 WHERE COMPETITIVE FORCES DO NOT RESULT IN THE DEPLOYMENT, MAINTENANCE,
22 OR RECONSTRUCTION OF AFFORDABLE, HIGH-QUALITY, AND RELIABLE ADVANCE
23 TELECOMMUNICATIONS CAPABILITY ACROSS ALL GEOGRAPHIC REGIONS AND DEMO-
24 GRAPHIC SEGMENTS OF THE STATE. TELECOMMUNICATIONS NETWORKS MUST BE
25 INTER-OPERABLE, BASED ON OPEN STANDARDS, RELIABLE, SURVIVABLE, DIVERSELY
26 PATHED, AS WIDELY INTERCONNECTED AS IS REASONABLE, ACCESSIBLE FOR ALL
27 USERS AS PROVIDED FOR BY LAW, INCLUDING BUT NOT LIMITED TO THE AMERICANS
28 WITH DISABILITIES ACT, AND ALL APPLICABLE FEDERAL, STATE, AND LOCAL
29 REGULATIONS, AND MUST MEET BASIC REQUIREMENTS CONCERNING PUBLIC SAFETY,
30 CONSUMER PROTECTION, AND RELEVANT SOCIAL AND MORAL OBLIGATIONS.

31 2. FOR THE PURPOSES OF THIS SECTION:

32 (A) THE TERM "UNIVERSAL SERVICE" MEANS THAT CERTAIN BASIC TELEPHONE
33 FACILITIES, SERVICES, AND INSTRUMENTALITIES, KNOWN AS "ESSENTIAL
34 SERVICES", SHALL BE ACCESSIBLE TO ANY PERSON, CORPORATION, OR LOCALITY
35 IN NEW YORK STATE AT COSTS REASONABLY COMPARABLE TO RATES CHARGED IN
36 URBAN AREAS AND LOW-COST AREAS, SO THAT THERE SHALL NOT BE ANY UNDUE OR
37 UNREASONABLE PREFERENCE OR ADVANTAGE TO ANY PERSON, CORPORATION, OR
38 LOCALITY.

39 (B) THE TERM "ESSENTIAL SERVICES" MEANS THE PROVISION BY TELEPHONE
40 CORPORATIONS OF VOICE GRADE ACCESS TO AND ACROSS THE PUBLIC SWITCHED
41 TELEPHONE NETWORK, WITH THE ABILITY TO PLACE AND RECEIVE CALLS;
42 TOUCH-TONE SERVICE; SINGLE-PARTY SERVICE; ACCESS TO EMERGENCY SERVICES,
43 INCLUDING 911 AND E911 (WHICH IDENTIFIES A CALLER'S LOCATION); ACCESS TO
44 OPERATOR SERVICES; ACCESS TO INTER-EXCHANGE SERVICES; ACCESS TO DIRECTO-
45 RY ASSISTANCE; ACCESS TO "LIFELINE" SERVICES, OR OTHER SERVICES EQUIV-
46 ALENT IN PRICE AND QUALITY FOR QUALIFYING LOW-INCOME CONSUMERS; AND
47 ACCESS TO ALL OF SUCH OTHER SERVICES AS MAY BE MANDATED BY FEDERAL,
48 STATE, AND LOCAL LAW.

49 3. WITHIN THIRTY DAYS OF THE DATE ON WHICH THE COMMISSION HAD ACTUAL
50 KNOWLEDGE, OR SHOULD REASONABLY HAVE KNOWN OR BEEN INFORMED, OF THE
51 OCCURRENCE, OR APPEARANCE OF THE PROXIMATE OCCURRENCE, OF A PURCHASE,
52 ACQUISITION, TAKING, OR OTHER TRANSFER OF CONTROL OR OWNERSHIP OF THE
53 CAPITAL STOCK OF A TELEGRAPH OR TELEPHONE CORPORATION ORGANIZED OR
54 EXISTING UNDER THE LAWS OF THIS STATE WITHIN THE CONTEMPLATION OF
55 SECTION ONE HUNDRED OF THIS ARTICLE OR PARAGRAPH (B) OF THIS SUBDIVI-
56 SION, THE COMMISSION SHALL COMPILE AND PUBLISH A REPORT ON THE EFFECT,

1 IF ANY, OF SUCH TRANSFER OF CONTROL UPON UNIVERSAL SERVICE IN THE STATE.
2 SUCH REPORT SHALL BE KNOWN AS THE "UNIVERSAL SERVICE IMPACT ANALYSIS",
3 AND SHALL BE ISSUED BEFORE THE COMMISSION MAY VOTE UPON THE APPROVAL OF
4 SUCH OCCURRENCE. IF, ON THE EFFECTIVE DATE OF THIS SUBDIVISION, THERE IS
5 A PROCEEDING BEFORE THE COMMISSION WITHIN THE CONTEMPLATION OF SUBDIVI-
6 SION ONE OF THIS SECTION, THEN THE COMMISSION SHALL HAVE THIRTY DAYS
7 FROM SUCH EFFECTIVE DATE TO ISSUE ITS UNIVERSAL SERVICE IMPACT ANALYSIS
8 REPORT. SUCH UNIVERSAL SERVICE IMPACT ANALYSIS REPORT SHALL INCLUDE, BUT
9 NOT BE LIMITED TO:

10 (A) AN ANALYSIS OF THE EFFECTS UPON PRICING OF TELEPHONE SERVICES IN
11 HIGH-COST AND RURAL AND LOW-INCOME AREAS AFFECTED BY SUCH TRANSFER OF
12 CONTROL;

13 (B) AN ANALYSIS OF THE ACTUAL OR POTENTIAL EFFECTS OF SUCH TRANSFER OF
14 CONTROL UPON NETWORK RELIABILITY AND SERVICE QUALITY IN THE AREA
15 AFFECTED BY SUCH TRANSFER OF CONTROL;

16 (C) AN ANALYSIS OF THE ACTUAL OR POTENTIAL EFFECTS UPON NEW SERVICE
17 PROVISION IN RURAL AND HIGH-COST AND LOW-INCOME AREAS WITHIN THE AREA
18 AFFECTED BY SUCH TRANSFER OF CONTROL.

19 FOR THE PURPOSES OF TRIGGERING SUCH REPORTING REQUIREMENT BY THE
20 COMMISSION, THERE SHALL BE A REBUTTABLE PRESUMPTION OF A TRANSFER OF
21 CONTROL OR OWNERSHIP UPON THE ACQUISITION OR ACCUMULATION BY ANY PERSON
22 OR GROUP OF PERSONS OF TEN PERCENT OR MORE OF THE SHARES OF, OR OF
23 COMPARABLE OWNERSHIP INTEREST IN, A TELEGRAPH OR TELEPHONE CORPORATION.
24 SUCH TRANSFER OF CONTROL OR ACQUISITION OR ACCUMULATION OF OWNERSHIP
25 INTERESTS SHALL ALSO BE DEEMED TO OCCUR UPON THE SALE, ASSIGNMENT,
26 TRANSFER, DIVESTITURE OF A PORTION OF A BUSINESS ENTITY, LEASE OR OTHER
27 DISPOSAL, EITHER IN WHOLE OR PART, EITHER BY INVOLUNTARY SALE OR BY
28 VOLUNTARY SALE, MERGER, OR CONSOLIDATION, OR BANKRUPTCY, OF ANY TITLE TO
29 SUCH TELEGRAPH OR TELEPHONE CORPORATION, EITHER LEGAL OR EQUITABLE, OR
30 OF THE LINES OR OTHER NETWORK ELEMENTS OF SUCH TELEGRAPH OR TELEPHONE
31 CORPORATION WITHIN THREE OR MORE LOCAL ACCESS AND TRANSPORT AREAS
32 (LATAS) OR COUNTIES.

33 4. UPON THE COMPLETION OF THE REPORT UNDER SUBDIVISION THREE OF THIS
34 SECTION THE COMMISSION SHALL HAVE POWER AND THE DUTY TO ESTABLISH BY
35 RULE OR REGULATION, WITHIN NINETY DAYS OF THE EFFECTIVE DATE OF THIS
36 SECTION, SUCH CHARGES, EXCHANGES OF FUNDS, FEES, METHODOLOGIES, AND
37 MODALITIES AS ARE NECESSARY AND CONVENIENT TO PROMOTE AND ENSURE THE
38 STATEWIDE UNIVERSAL AVAILABILITY OF HIGH-QUALITY ESSENTIAL SERVICES AT
39 JUST, REASONABLE, AND AFFORDABLE RATES; TO ADVANCE THE AVAILABILITY OF
40 SUCH SERVICES TO ALL CONSUMERS, INCLUDING THOSE IN LOW INCOME, RURAL,
41 INSULAR, AND HIGH COST AREAS AT RATES THAT ARE REASONABLY COMPARABLE TO
42 THOSE CHARGED IN LOW COST AND URBAN AREAS; AND TO INCREASE ACCESS TO,
43 AND THE UBIQUITY OF, ADVANCED TELECOMMUNICATIONS SERVICES AVAILABLE TO
44 THE PUBLIC IN AN EQUITABLE AND NONDISCRIMINATORY MANNER. THE COMMISSION
45 SHALL HAVE POWER AND THE DUTY TO PROMULGATE SUCH RULES OR REGULATIONS AS
46 ARE NECESSARY AND CONVENIENT TO EFFECTUATE THE STATE POLICIES SET FORTH
47 IN THIS SECTION.

48 S 13. The public service law is amended by adding a new section 90-b
49 to read as follows:

50 S 90-B. REPORTS, HEARINGS AND INVESTIGATIONS STUDYING MATTERS IN THE
51 PUBLIC INTEREST. THE LEGISLATURE FINDS THAT UNIVERSAL ACCESS TO AFFORDA-
52 BLE TELEPHONE SERVICE HAS BEEN A LONG-STANDING TRADITION AND POLICY OF
53 THE STATE. HOWEVER, THIS POLICY HAS COME INTO QUESTION WITH PROPOSALS BY
54 INCUMBENT CARRIERS TO SELL SIGNIFICANT PORTIONS OF THE UPSTATE TELEPHONE
55 NETWORK TO COMPANIES WITH LITTLE OR NO BACKGROUND IN THE PROVISION OF
56 TELEPHONE SERVICE. UNIVERSAL SERVICE, LONG TAKEN FOR GRANTED, MUST NOW

1 BE REEVALUATED TO ENSURE THAT ANY FUTURE UPSTATE TELEPHONE CARRIERS WILL
2 MAINTAIN THIS POLICY. THEREFORE, THE DEPARTMENT SHALL PREPARE AND
3 SUBMIT, ON OR BEFORE AUGUST FIRST, TWO THOUSAND TEN, A REPORT TO THE
4 GOVERNOR, TEMPORARY PRESIDENT OF THE SENATE, SPEAKER OF THE ASSEMBLY,
5 MINORITY LEADERS OF THE SENATE AND ASSEMBLY, CHAIR AND RANKING MINORITY
6 MEMBER OF THE SENATE ENERGY AND TELECOMMUNICATIONS COMMITTEE, AND THE
7 CHAIR AND RANKING MINORITY MEMBER OF THE ASSEMBLY CORPORATIONS, AUTHORI-
8 TIES AND COMMISSIONS COMMITTEE. THE REPORT SHALL EVALUATE THE IMPLI-
9 CATIONS OF A SALE OF A PORTION OF THE UPSTATE TELEPHONE NETWORK FOR THE
10 POLICY OF UNIVERSAL ACCESS TO AFFORDABLE SERVICE. THE REPORT SHALL
11 FURTHER EVALUATE THE STANDARDS BY WHICH THE DEPARTMENT WILL ANALYZE A
12 PROPOSED SALE.

13 S 14. The public service law is amended by adding a new section 90-c
14 to read as follows:

15 S 90-C. LEGISLATIVE FINDINGS. 1. THE LEGISLATURE FINDS THAT DEPLOYING
16 BROADBAND NETWORKS AND ADVANCED COMMUNICATIONS SERVICES THROUGHOUT NEW
17 YORK WILL ENABLE CONTINUED IMPROVEMENTS IN HEALTHCARE, PUBLIC SAFETY,
18 EDUCATION, ECONOMIC DEVELOPMENT AND THE CREATION OF JOBS, AND WILL
19 FACILITATE THE FREE EXCHANGE OF IDEAS THAT IS VITAL TO DEMOCRACY. THE
20 LEGISLATURE FURTHER FINDS THAT NEW YORK'S FINANCIAL SERVICES COMMUNITY,
21 PUBLISHING COMMUNITY, HIGHER EDUCATION COMMUNITY, HIGH-TECHNOLOGY COMMU-
22 NITY AND OTHER WORLD-CLASS BUSINESS COMMUNITIES HAVE PLACED NEW YORK AT
23 THE FOREFRONT OF NUMEROUS VITAL INDUSTRIES, BUT THAT TO CONTINUE TO BE A
24 WORLD-CLASS LEADER, NEW YORK MUST ADOPT POLICIES AND PRACTICES THAT
25 PROMOTE THE ROLL-OUT AND FURTHER DEVELOPMENT OF BROADBAND. FINALLY, THE
26 LEGISLATURE FINDS THAT RURAL AREAS OF NEW YORK LACK THE MULTIPLE TELE-
27 COMMUNICATIONS CONNECTIONS NECESSARY TO LINK TO OUTSIDE RESOURCES DURING
28 TIMES OF EMERGENCY, THAT BROADBAND NETWORKS ARE NECESSARY TO CREATE OR
29 FACILITATE SUSTAINABLE TELEMEDICINE NETWORKS THAT CONNECT RURAL HEALTH
30 CLINICS TO URBAN MEDICAL CENTERS, AND THAT INCREASED GOVERNMENT USE OF
31 BROADBAND NETWORKS AND ADVANCED COMMUNICATIONS SERVICES WILL ENHANCE
32 GOVERNMENT OPERATIONS THROUGH TELEMEDICINE FOR HEALTHCARE, DISTANCE
33 LEARNING FOR EDUCATION, REDUNDANT AND DIVERSELY-PATHED COMMUNICATIONS
34 NETWORKS FOR PUBLIC SAFETY COMMUNICATIONS AND TO GENERALLY PROTECT THE
35 HEALTH AND WELFARE OF THE STATE AND ITS CITIZENS.

36 2. THE DEPARTMENT SHALL PREPARE AND SUBMIT, WITHIN NINETY DAYS OF THE
37 EFFECTIVE DATE OF THIS SECTION, A REPORT TO THE GOVERNOR, TEMPORARY
38 PRESIDENT OF THE SENATE, SPEAKER OF THE ASSEMBLY, MINORITY LEADERS OF
39 THE SENATE AND ASSEMBLY, CHAIR AND RANKING MINORITY MEMBER OF THE SENATE
40 ENERGY AND TELECOMMUNICATIONS COMMITTEE, AND THE CHAIR AND RANKING
41 MINORITY MEMBER OF THE ASSEMBLY CORPORATIONS, AUTHORITIES AND COMMIS-
42 SIONS COMMITTEE. THE REPORT SHALL STUDY IN DETAIL THE ACTUAL RETAIL
43 AVAILABILITY OF WIRELINE, WIRELESS CELLULAR AND FIXED-WIRELESS BROADBAND
44 COMMUNICATIONS MODALITIES ACROSS THE STATE OF NEW YORK, AND SHALL ORGAN-
45 IZE THE DATA OF SUCH AVAILABILITY BY CENSUS TRACT.

46 3. THE DEPARTMENT, ACTING TOGETHER WITH THE EMPIRE STATE DEVELOPMENT
47 CORPORATION, SHALL PREPARE AND SUBMIT, WITHIN NINETY DAYS OF THE EFFEC-
48 TIVE DATE OF THIS SECTION, A REPORT TO THE GOVERNOR, TEMPORARY PRESIDENT
49 OF THE SENATE, SPEAKER OF THE ASSEMBLY, MINORITY LEADERS OF THE SENATE
50 AND ASSEMBLY, CHAIR AND RANKING MINORITY MEMBER OF THE SENATE ENERGY AND
51 TELECOMMUNICATIONS COMMITTEE, AND THE CHAIR AND RANKING MINORITY MEMBER
52 OF THE ASSEMBLY CORPORATIONS, AUTHORITIES AND COMMISSIONS COMMITTEE. THE
53 REPORT SHALL LIST ALL FEDERAL, STATE, LOCAL, FOUNDATION, PRIVATE SECTOR
54 AND OTHER FUNDS, GRANTS, LOANS AND OTHER FUNDING MECHANISMS THAT CAN BE
55 APPLIED FOR AND USED BY THE BROADBAND DEVELOPMENT AUTHORITY, BY THE

1 STATE, BY MUNICIPAL CORPORATIONS, BY NONPROFIT CORPORATIONS AND BY
2 PRIVATE SECTOR BUSINESSES TO FUND BROADBAND DEPLOYMENT IN NEW YORK.

3 4. THE DEPARTMENT, ACTING TOGETHER WITH THE OFFICE FOR TECHNOLOGY AND
4 THE OFFICE OF CYBER SECURITY AND CRITICAL INFRASTRUCTURE COORDINATION
5 ("CSIC") SHALL PREPARE AND SUBMIT, WITHIN NINETY DAYS OF THE EFFECTIVE
6 DATE OF THIS SECTION, A REPORT TO THE GOVERNOR, TEMPORARY PRESIDENT OF
7 THE SENATE, SPEAKER OF THE ASSEMBLY, MINORITY LEADERS OF THE SENATE AND
8 ASSEMBLY, CHAIR AND RANKING MINORITY MEMBER OF THE SENATE ENERGY AND
9 TELECOMMUNICATIONS COMMITTEE, AND THE CHAIR AND RANKING MINORITY MEMBER
10 OF THE ASSEMBLY CORPORATIONS, AUTHORITIES AND COMMISSIONS COMMITTEE. THE
11 REPORT SHALL DETERMINE THE LOCATION OF ALL AREAS OF THE STATE, BY CENSUS
12 TRACT, THAT DO NOT HAVE GENERALLY AND READILY COMMERCIALY AVAILABLE
13 RETAIL ACCESS TO BROADBAND WIRELINE FACILITIES AND/OR FIXED-WIRELESS
14 BROADBAND FACILITIES ("UNSERVED AREAS"); THE REPORT SHALL ALSO DETERMINE
15 ALL AREAS OF THE STATE, BY CENSUS TRACT, THAT DO NOT HAVE GENERALLY AND
16 READILY COMMERCIALY AVAILABLE RETAIL ACCESS TO BROADBAND WIRELINE
17 FACILITIES AND/OR FIXED-WIRELESS BROADBAND FACILITIES FROM TWO OR MORE
18 TELECOMMUNICATIONS OR ADVANCED COMMUNICATIONS SERVICES PROVIDERS
19 ("UNDERSERVED AREAS"); THE REPORT SHALL ALSO DETERMINE THE LOCATION OF
20 ALL AREAS OF THE STATE, BY CENSUS TRACT, THAT QUALIFY AS "DISTRESSED
21 AREAS" UNDER THIS CHAPTER, AND EITHER DO OR DO NOT HAVE GENERALLY AND
22 READILY COMMERCIALY AVAILABLE RETAIL ACCESS TO BROADBAND WIRELINE
23 FACILITIES AND/OR FIXED-WIRELESS BROADBAND FACILITIES; THE REPORT SHALL,
24 FURTHERMORE, ASSESS AND SET FORTH WITH SPECIFICITY THE AGGREGATE UNMET
25 DEMAND FOR BROADBAND SERVICES IN UNSERVED, UNDERSERVED AND DISTRESSED
26 AREAS BY CENSUS TRACT AND BY BLOCK, LOT OR OTHER UNIQUELY IDENTIFIABLE
27 ADMINISTRATIVE CHARACTERISTIC, AND SHALL ESTIMATE THE AMOUNT OF BROAD-
28 BAND CONNECTIVITY THAT WOULD NEED TO BE BUILT OR OFFERED IN SUCH AREAS
29 TO MEET THE UNMET DEMAND. SUCH REPORT SHALL, IN ADDITION TO BEING
30 SUBMITTED TO THE GOVERNMENT OFFICES AND OFFICIALS SET FORTH ABOVE, BE
31 USED TO CREATE A MAP IN STANDARD FORMAT TO BE DETERMINED BY THE NEW YORK
32 GEOGRAPHIC INFORMATION SYSTEMS CLEARINGHOUSE AND CSIC, AND CONSISTENT
33 WITH THE LEGITIMATE SECURITY CONCERNS THAT MAY BE EXPRESSED BY CSIC,
34 SUCH MAP SHALL BE A FULLY THREE-DIMENSIONAL REPRESENTATION OF ALL BROAD-
35 BAND RESOURCES WITHIN THE STATE.

36 S 15. The public service law is amended by adding a new section 90-d
37 to read as follows:

38 S 90-D. LEGISLATIVE PURPOSE. 1. THE LEGISLATURE FINDS THAT:

39 (A) THE PUBLIC INTEREST IS FURTHERED AND PROTECTED BY ENSURING THAT
40 NEW YORK'S EXISTING ENHANCED 9-1-1 ("E911") SYSTEM FOR WIRELINE TELE-
41 PHONE SERVICE AND WIRELESS CELLULAR TELEPHONE SERVICE PROVIDE ALL THE
42 AUTOMATIC NUMBER IDENTIFICATION ("ANI") AND AUTOMATIC LOCATION IDENTIFI-
43 CATION ("ALI") NECESSARY TO PROTECT PUBLIC SAFETY AND RESPOND TO HOME-
44 LAND SECURITY CONCERNS, AND PARTICULARLY SO IN RURAL AREAS AND ON OR
45 NEAR NEW YORK'S COASTLINES;

46 (B) EXISTING EMERGENCY SERVICES SYSTEMS CAN ISOLATE EMERGENCY RESPONSE
47 AGENCIES THAT NEED INTER-CONNECTIVITY IN MEETING HOMELAND SECURITY AND
48 PUBLIC SAFETY CRISES;

49 (C) ALL 9-1-1 CALLERS IN NEW YORK, AND THE FIRST RESPONDERS WHO
50 RECEIVE AND ACT UPON SUCH CALLS, WOULD BE BETTER ABLE TO ENHANCE THE
51 PUBLIC SAFETY WITH FLEXIBLE E-911 NETWORKS THAT COULD BE INTERCONNECTED
52 WITH LOCAL, REGIONAL AND NATIONAL INTERNET PROTOCOL BASED NETWORKS, AND
53 THAT COULD BE FLEXIBLY ADAPTED AND SCALED TO MEET THE CHALLENGES NEW
54 COMMUNICATIONS TECHNOLOGY PLACE UPON E911 NETWORKS; AND

1 (D) CLEAR LINES OF AUTHORITY AND ORGANIZATION IN THE DEPLOYMENT AND
2 ADMINISTRATION OF PUBLIC SAFETY ANSWERING POINTS SHOULD BE A GOAL OF
3 STATE E911 POLICY.

4 2. THE DEPARTMENT SHALL PREPARE AND SUBMIT, WITHIN NINETY DAYS OF THE
5 DATE THIS SECTION BECOMES LAW A REPORT TO THE GOVERNOR, TEMPORARY PRESI-
6 DENT OF THE SENATE, SPEAKER OF THE ASSEMBLY, MINORITY LEADERS OF THE
7 SENATE AND ASSEMBLY, CHAIR AND RANKING MINORITY MEMBER OF THE SENATE
8 ENERGY AND TELECOMMUNICATIONS COMMITTEE, AND THE CHAIR AND RANKING
9 MINORITY MEMBER OF THE ASSEMBLY CORPORATIONS, AUTHORITIES AND COMMIS-
10 SIONS COMMITTEE. THE REPORT SHALL STUDY IN DETAIL THE TECHNICAL CHAL-
11 LENGES FACING AND POTENTIALLY DEGRADING THE EFFECTIVENESS OF NEW YORK'S
12 EXISTING E911 NETWORKS, AND SHALL STUDY AND REPORT UPON IN DETAIL THE
13 NEXT-GENERATION TECHNOLOGICAL SOLUTIONS, AND NATIONAL STANDARDS, AND
14 POTENTIALLY AMELIORATIVE SYSTEMS AND PROCEDURES PROPOSED BY NATIONAL
15 PUBLIC SAFETY EXPERT ASSOCIATIONS SUCH AS, BUT NOT LIMITED TO, THE
16 NATIONAL EMERGENCY NUMBERING ASSOCIATION ("NENA"), THE ASSOCIATION OF
17 PUBLIC SAFETY COMMUNICATIONS OFFICES ("APCO"), AND THE NATIONAL PUBLIC
18 SAFETY TELECOMMUNICATIONS COUNCIL.

19 3. THE DEPARTMENT, ACTING TOGETHER WITH THE STATE EMERGENCY MANAGEMENT
20 OFFICE, THE STATE OFFICE OF FIRE PREVENTION AND CONTROL, AND THE STATE
21 POLICE, SHALL PREPARE AND SUBMIT, WITHIN NINETY DAYS OF THE EFFECTIVE
22 DATE OF THIS SECTION, A REPORT TO THE GOVERNOR, TEMPORARY PRESIDENT OF
23 THE SENATE, SPEAKER OF THE ASSEMBLY, MINORITY LEADERS OF THE SENATE AND
24 ASSEMBLY, CHAIR AND RANKING MINORITY MEMBER OF THE SENATE ENERGY AND
25 TELECOMMUNICATIONS COMMITTEE, AND THE CHAIR AND RANKING MINORITY MEMBER
26 OF THE ASSEMBLY CORPORATIONS, AUTHORITIES AND COMMISSIONS COMMITTEE. THE
27 REPORT SHALL EXAMINE THE CURRENT E911 SYSTEMS FUNDING MECHANISMS, STATE-
28 WIDE, REGIONAL, COUNTY AND LOCAL ADMINISTRATION OF E911 FACILITIES, THE
29 EXTENT OR LACK THEREOF OF THE COMMISSION'S EXISTING REGULATORY AUTHORITY
30 OF E911 ISSUES IN NEW YORK, AND SUCH OTHER PUBLIC SAFETY ISSUES DIRECTLY
31 ARISING FROM THE CURRENT E911 IMPLEMENTATIONS IN NEW YORK AS IS NECES-
32 SARY AND CONVENIENT TO PROTECT THE PUBLIC INTEREST.

33 4. WITHIN SIXTY DAYS AFTER THE SUBMISSION OF THE REPORTS REQUIRED BY
34 SUBDIVISIONS TWO AND THREE OF THIS SECTION, THE COMMISSION SHALL CONVENE
35 A SERIES OF PUBLIC HEARINGS TO DISCUSS NEW YORK'S EXISTING E911 SYSTEMS
36 AND NETWORKS AND THE FINDINGS OF SUCH REPORTS IN NEW YORK TO CLARIFY THE
37 PUBLIC POLICY ISSUES INVOLVED THAT MIGHT REQUIRE LEGISLATIVE ATTENTION.

38 S 16. The public service law is amended by adding a new section 90-e
39 to read as follows:

40 S 90-E. WIRELESS TELEPHONE QUALITY, RELIABILITY AND AFFORDABILITY
41 STUDY. 1. WITHIN ONE HUNDRED EIGHTY DAYS OF THE EFFECTIVE DATE OF THIS
42 SECTION, THE COMMISSION SHALL STUDY AND REPORT ON THE QUALITY, RELIABIL-
43 ITY, AND AFFORDABILITY, OF WIRELESS TELEPHONE SERVICE, INCLUDING WHY
44 SUBDIVISION SIX OF SECTION FIVE OF THIS CHAPTER SHOULD NOT BE REPEALED.
45 THE COMMISSION SHALL ALSO, AS PART OF SUCH STUDY, DETERMINE WHAT RULES
46 AND REGULATIONS SHALL BE NECESSARY:

47 (A) TO ENHANCE CONSUMER PROTECTIONS CURRENTLY OFFERED TO WIRELESS
48 TELEPHONE SERVICES CONSUMERS;

49 (B) TO ESTABLISH AND SAFEGUARD WIRELESS TELEPHONE SERVICE QUALITY SO
50 THAT IT IS REASONABLY COMPARABLE TO THE WIRELINE SERVICE QUALITY NECES-
51 SARY TO SAFEGUARD CITIZEN ACCESS TO E-911; AND

52 (C) TO PROTECT THE PUBLIC INTEREST, PUBLIC SAFETY AND HEALTH AND
53 WELFARE.

54 2. THE STUDY SHALL INCLUDE A DETAILED ANALYSIS EXAMINING WHETHER THE
55 WIRELESS TELEPHONE SERVICE PROVIDERS' POLICIES INCLUDE ADEQUATE CONSUMER
56 PROTECTIONS INCLUDING WHETHER:

1 (A) THERE IS SUFFICIENT WRITTEN DISCLOSURE IN THE COMPANY'S CONSUMER
2 SERVICE CONTRACT WITH RESPECT TO THE CALLING AREA FOR THE PLAN, THE
3 MONTHLY ACCESS FEE OR BASE CHARGE; THE NUMBER OF AIRTIME MINUTES
4 INCLUDED IN THE PLAN; ANY NIGHT AND WEEKEND MINUTES INCLUDED IN THE PLAN
5 OR OTHER DIFFERING CHARGES FOR DIFFERING TIME PERIODS AND THE TIME PERI-
6 ODS WHEN NIGHT AND WEEKEND MINUTES OR OTHER CHARGES APPLY; THE CHARGES
7 FOR EXCESS OR ADDITIONAL MINUTES; WHETHER OR NOT, AND THE EXTENT TO
8 WHICH, PER-MINUTE DOMESTIC OR INTERNATIONAL LONG DISTANCE CHARGES ARE
9 INCLUDED IN OTHER RATES, AND, TO THE EXTENT NOT INCLUDED, THE APPLICABLE
10 PER-MINUTE LONG DISTANCE RATES; PER-MINUTE ROAMING OR OFF-NETWORK CHARG-
11 ES; THE AMOUNT OF ANY ADDITIONAL TAXES, FEES, OR SURCHARGES THAT WILL BE
12 COLLECTED OR RETAINED BY THE WIRELESS TELEPHONE SERVICE PROVIDER; IF THE
13 PLAN REQUIRES A FIXED-TERM CONTRACT, THE DURATION OF SUCH CONTRACT; THE
14 AMOUNT OF ANY EARLY TERMINATION FEE AND THE CONDITIONS UNDER WHICH ANY
15 SUCH EARLY TERMINATION FEE WOULD APPLY, INCLUDING THE LENGTH OF ANY
16 TRIAL PERIOD DURING WHICH NO EARLY TERMINATION FEE WOULD APPLY;

17 (B) THE FIRST BILL RENDERED BY THE WIRELESS TELEPHONE SERVICE PROVIDER
18 TO THE CUSTOMER SHALL INCLUDE NOTICE OF THE TERMS ON AND THE PERIOD OF
19 TIME DURING WHICH SUCH SERVICE MAY BE TERMINATED WITHOUT PENALTY; A
20 STATEMENT NOTIFYING THE CUSTOMER THAT THE SERVICE INCLUDES BASIC WIRE-
21 LESS 911 SERVICE; THE INFORMATION WHICH IS INCLUDED IN THE EDUCATIONAL
22 PLAN FOR INFORMING THE PUBLIC ABOUT THE ENHANCED WIRELESS 911 SERVICE IN
23 NEW YORK STATE REQUIRED BY SUBDIVISION EIGHT OF SECTION THREE HUNDRED
24 TWENTY-EIGHT OF THE COUNTY LAW AND WHICH IS AN EXPLANATION OF THE
25 ENHANCED WIRELESS 911 SYSTEM AND A PROGRESS REPORT ON THE
26 COUNTY-BY-COUNTY IMPLEMENTATION OF THE STATEWIDE SYSTEM; WEBSITE INFOR-
27 MATION TO PERMIT THE CONSUMER TO ACCESS SUCH INFORMATION VIA THE INTER-
28 NET IN ACCORDANCE WITH SUBDIVISION EIGHT OF SECTION THREE HUNDRED TWEN-
29 TY-EIGHT OF THE COUNTY LAW; THE TOLL-FREE HOTLINE NUMBER BY WHICH SUCH
30 INFORMATION MAY BE ACCESSED BY THE CONSUMER IN ACCORDANCE WITH SUBDIVI-
31 SION EIGHT OF SECTION THREE HUNDRED TWENTY-EIGHT OF THE COUNTY LAW; AND
32 BASED UPON CUSTOMER SUPPLIED INFORMATION REGARDING ANTICIPATED USAGE
33 PATTERNS AND UPON SUCH CUSTOMER'S REQUEST, A GOOD FAITH ESTIMATE OF THE
34 MONTHLY FIXED AND USAGE CHARGES AND ADDITIONAL TAXES, FEES, OR
35 SURCHARGES AND OF THE ANTICIPATED TOTAL MONTHLY BILL FOR SUCH CUSTOMER
36 UNDER SUCH PLAN;

37 (C) WIRELESS TELEPHONE SERVICE PROVIDERS HAVE ADEQUATELY ESTABLISHED
38 PROCEDURES FOR DISCLOSURE AT ANY POINT OF SALE OR OF CONTACT WITH POTEN-
39 TIAL OR EXISTING RESIDENTIAL CUSTOMERS OF MAPS DISPLAYING THE WIRELESS
40 TELEPHONE SERVICE PROVIDER'S OUTSIDE COVERAGE WITHIN THE STATE AND WITH-
41 IN EACH COUNTY OF THE STATE IN WHICH SUCH PROVIDER PROVIDES SERVICE;

42 (D) WIRELESS TELEPHONE SERVICE PROVIDERS CLEARLY DESCRIBE IN PLAIN
43 LANGUAGE THE PRODUCTS AND SERVICES FOR WHICH CHARGES ARE IMPOSED, AND
44 SHALL CONFORM TO FORMAT STANDARDS ESTABLISHED BY THE BOARD IN THE
45 CUSTOMER'S MONTHLY BILL;

46 (E) WIRELESS TELEPHONE SERVICE PROVIDERS OFFER CUSTOMERS A TRIAL PERI-
47 OD WHICH AFTER THE FIRST BILL IS RENDERED TO SUCH CUSTOMER FOR MONTHLY
48 SERVICE FOLLOWING SERVICE ACTIVATION AND DURING WHICH PERIOD SUCH
49 CUSTOMER MAY, AFTER PAYMENT FOR SERVICES USED, TERMINATE SUCH SERVICE
50 WITHOUT INCURRING ANY TERMINATION FEES OR CHARGES OR ANY OTHER PENALTY
51 OF ANY KIND AND MAY, UPON THE RETURN OF ANY HANDSET BOUGHT OR LEASED IN
52 CONNECTION WITH SUCH SERVICE, RECEIVE A PRO RATA REFUND OF ANY AMOUNTS
53 PAID FOR SUCH HANDSET;

54 (F) WIRELESS TELEPHONE SERVICE PROVIDERS HAVE ESTABLISHED PROCEDURES
55 FOR THE NOTIFICATION OF RESIDENTIAL CUSTOMERS AT LEAST THIRTY DAYS IN

1 ADVANCE OF ANY CHANGE IN RATES, CHARGES, TERMS, OR CONDITIONS OF SERVICE
2 FOR SUCH CUSTOMERS; AND

3 (G) WIRELESS TELEPHONE SERVICE PROVIDERS HAVE ESTABLISHED PROCEDURES
4 FOR THE TIMELY PRIOR NOTICE TO RESIDENTIAL CUSTOMERS OF THE WIRELESS
5 TELEPHONE SERVICE PROVIDER'S INTENT TO TERMINATE SUCH CUSTOMER'S SERVICE
6 SUCH THAT, AT A MINIMUM, SUCH CUSTOMER IS FULLY ADVISED OF THE AMOUNT
7 WHICH MUST BE PAID TO MAINTAIN SERVICE, THE PROCEDURES AVAILABLE TO MAKE
8 SUCH PAYMENTS SO THAT THE TERMINATION MAY BE AVOIDED AND THE BOARD'S
9 COMPLAINT HANDLING PROCEDURES.

10 3. THE COMMISSION SHALL DELIVER THE REPORT TO THE GOVERNOR, TEMPORARY
11 PRESIDENT OF THE SENATE, SPEAKER OF THE ASSEMBLY, MINORITY LEADERS OF
12 THE SENATE AND ASSEMBLY, CHAIR AND RANKING MINORITY MEMBER OF THE SENATE
13 ENERGY AND TELECOMMUNICATIONS COMMITTEE, AND THE CHAIR AND RANKING
14 MINORITY MEMBER OF THE ASSEMBLY CORPORATIONS, AUTHORITIES AND COMMIS-
15 SIONS COMMITTEE.

16 4. THE COMMISSION SHALL, AT THE COMPLETION OF THE STUDY AND SIMULTANE-
17 OUSLY WITH THE DELIVERY OF THE REPORT, BEGIN A RULEMAKING PROCEEDING TO
18 IMPLEMENT SUCH RULES AS MAY BE DETERMINED DURING THE STUDY TO BE NECES-
19 SARY AND CONVENIENT TO EFFECTUATE THE REQUIREMENTS OF SUBDIVISION ONE OF
20 THIS SECTION.

21 S 17. The public service law is amended by adding a new section 90-f
22 to read as follows:

23 S 90-F. LEGISLATIVE FINDINGS AND DECLARATION. 1. IT IS HEREBY FOUND
24 AND DECLARED THAT UNIVERSAL, AFFORDABLE AND HIGH QUALITY TELECOMMUNI-
25 CATIONS SERVICES THAT MEET THE NEEDS OF INDIVIDUALS AND BUSINESSES IN
26 THE STATE ARE NECESSARY AND VITAL TO THE WELFARE AND DEVELOPMENT OF OUR
27 SOCIETY. IT IS, AND HAS BEEN THE GOAL OF THE STATE TO ENSURE THE
28 UNIVERSAL AVAILABILITY AND ACCESSIBILITY OF HIGH QUALITY, AFFORDABLE
29 TELECOMMUNICATIONS SERVICES TO ALL RESIDENTS AND BUSINESSES IN THE STATE
30 AND TO ENSURE THAT PROVIDERS OF TELECOMMUNICATIONS SERVICES IN THE STATE
31 PROVIDE HIGH QUALITY CUSTOMER SERVICE AND HIGH QUALITY TECHNICAL
32 SERVICE. ALL NEW YORK RESIDENTS SHOULD BE ABLE TO EXPECT TO RECEIVE A
33 SIMILAR LEVEL OF HIGH QUALITY SERVICE REGARDLESS OF WHERE THEY LIVE OR
34 WHO PROVIDES THEIR SERVICE. THE COMMISSION MUST MAKE USE OF ITS MAXIMUM
35 AUTHORITY TO PROTECT THE PUBLIC HEALTH, SAFETY AND WELFARE BY ENSURING
36 THAT TELEPHONE SERVICE QUALITY DOES NOT ERODE TO THE POINT THAT E-911
37 SERVICE IS ENDANGERED BY PERSISTENT, EXTENDED, OR CHRONIC LOSS OF DIAL-
38 TONE, OR BY THE FAILURE OF INTERMODAL CARRIERS TO PROVIDE E-911
39 SERVICES, OR BY SUCH OTHER EROSION OF SERVICE QUALITY THAT WOULD TEND TO
40 UNDERMINE THE ABILITY OF THE VARIOUS CITIZENS OF NEW YORK TO ENGAGE IN
41 PROTECTED SPEECH OVER THE TELEPHONE NETWORKS AND LINES AND FACILITIES
42 AND EQUIPMENT UNDER THE JURISDICTION OF THE COMMISSION.

43 2. THE COMMISSION SHALL COMMENCE A STUDY TO SURVEY SERVICE QUALITY
44 PRACTICES AND STANDARDS OF PROVIDERS OF TELECOMMUNICATIONS SERVICES THAT
45 WILL LEAD TO LEGISLATIVE AND REGULATORY RECOMMENDATIONS. FOR THE
46 PURPOSES OF THIS SECTION, "TELECOMMUNICATIONS SERVICE PROVIDER" OR
47 "PROVIDER OF TELECOMMUNICATIONS SERVICES" SHALL MEAN A TELEPHONE CORPO-
48 RATION, OR OTHER PROVIDER OF TELEPHONE SERVICES, CERTIFIED IN THE STATE
49 WITH THE AUTHORITY TO PROVIDE INTRASTATE TOLL AND LOCAL EXCHANGE SERVICE
50 USING EITHER ITS OWN OR LEASED FACILITIES. THE COMMISSION SHALL ALSO, AS
51 PART OF SUCH STUDY, DETERMINE WHAT RULES AND REGULATIONS SHALL BE NECES-
52 SARY:

53 (A) TO ENHANCE CONSUMER PROTECTIONS CURRENTLY OFFERED TO WIRELINE
54 TELEPHONE SERVICES CONSUMERS;

1 (B) TO ESTABLISH AND SAFEGUARD WIRELINE TELEPHONE SERVICE QUALITY SO
2 THAT IT IS REASONABLY COMPARABLE TO THE WIRELINE SERVICE QUALITY NECES-
3 SARY TO SAFEGUARD CITIZEN ACCESS TO E-911; AND

4 (C) TO PROTECT THE PUBLIC INTEREST, PUBLIC SAFETY AND HEALTH AND
5 WELFARE.

6 3. THE COMMISSION SHALL SPECIFICALLY STUDY SERVICE AND RELIABILITY
7 ISSUES INCLUDING, BUT NOT LIMITED TO, AREAS OF THE STATE THAT EXPERIENCE
8 CHRONIC TELECOMMUNICATIONS OUTAGES, CUSTOMER SERVICE PROVIDERS OF TELE-
9 COMMUNICATION SERVICES, INSTALLATION OF TELECOMMUNICATION SERVICES
10 ISSUES, NETWORK PERFORMANCE, DATA COLLECTION BY PROVIDERS OF TELECOMMU-
11 NICATIONS SERVICES, THE PREVIOUS EFFECT OF PERFORMANCE-BASED INCENTIVE
12 PLANS UPON SERVICE QUALITY PROVIDED BY WIRELINE PROVIDERS, WHETHER AND
13 HOW THE COMMISSION'S PRE-TWO THOUSAND ONE SERVICE QUALITY AND CONSUMER
14 PROTECTION RULES AND REGULATIONS CAN BE EXPANDED TO BE EQUALLY APPLICA-
15 BLE TO ALL TELECOMMUNICATIONS PROVIDERS THAT PROVIDE E-911 AND IN ANY
16 MARKETING MATERIALS PRESENT THEIR COMPANY OR PRODUCT AS A REPLACEMENT
17 FOR PRIMARY LINE TELEPHONE SERVICE USED BY CONSUMERS IN NEW YORK, AND
18 ISSUES CONCERNING REPORTING UPON SERVICE QUALITY AND OTHER CONSUMER
19 PROTECTION RELATED ISSUES, PROVIDED HOWEVER THAT SUCH REPORTING REQUIRE-
20 MENTS SHALL BE EXAMINED BY THE COMMISSION FOR METHODS THAT MIGHT
21 DECREASE THE COST OF COMPLIANCE BY SUCH TELECOMMUNICATIONS PROVIDERS.

22 4. THE COMMISSION SHALL ISSUE A REPORT OF ITS FINDINGS INCLUDING
23 LEGISLATIVE AND REGULATORY RECOMMENDATIONS TO ENHANCE RELIABILITY OF
24 PROVIDERS OF TELEPHONE SERVICE TO THE GOVERNOR, TEMPORARY PRESIDENT OF
25 THE SENATE, SPEAKER OF THE ASSEMBLY, CHAIR OF THE SENATE COMMITTEE ON
26 ENERGY AND TELECOMMUNICATIONS AND CHAIR OF THE ASSEMBLY COMMITTEE ON
27 CORPORATIONS, AUTHORITIES AND COMMISSIONS WITHIN ONE HUNDRED EIGHTY
28 DAYS.

29 5. THE COMMISSION SHALL, AT THE COMPLETION OF THE STUDY AND SIMULTANE-
30 OUSLY WITH THE DELIVERY OF THE REPORT, BEGIN A RULEMAKING PROCEEDING TO
31 IMPLEMENT SUCH RULES AS MAY BE DETERMINED DURING THE STUDY TO BE NECES-
32 SARY AND CONVENIENT TO EFFECTUATE THE REQUIREMENTS OF SUBDIVISION TWO OF
33 THIS SECTION.

34 S 18. Applicability of other laws. The provisions of section seven of
35 this act are intended to be consistent with the Federal Cable Act, 47
36 U.S.C. S521, et. seq., and nothing in this act shall be interpreted to
37 prevent a voice provider, cable operator or municipality from seeking
38 clarification of its rights and obligations under federal law. In the
39 event that any cable operator obtains relief through judicial, adminis-
40 trative, or executive action from any obligation imposed under this act,
41 or from any obligation in a franchise agreement that gives rise to an
42 obligation of another cable operator under this act, all other cable
43 operators shall be deemed to be relieved of their obligations under this
44 act within the same geographic area and to the same extent.

45 S 19. Severability. If any provision of this act or its application to
46 any person or circumstance is held invalid, this invalidity does not
47 affect other provisions or applications of this act that can be given
48 effect without the invalid provision or application, and to this end the
49 provisions of this act are declared to be severable.

50 S 20. This act shall take effect immediately.