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2009-2010 Regular Sessions

I N A S S E M B L Y

January 15, 2009

Introduced by M. of A. BRODSKY, GABRYSZAK, MAISEL, HOYT, CAHILL, ESPAILLAT, ROSENTHAL, SCHROEDER, JOHN, JACOBS, FIELDS, LUPARDO, MILLMAN, COLTON, GUNTHER, PAULIN, NOLAN, ALESSI, ROBINSON, ENGLEBRIGHT, SPANO, LIFTON, COOK, KAVANAGH, CARROZZA, JAFFEE, RUSSELL, N. RIVERA -- Multi-Sponsored by -- M. of A. BARRA, BENEDETTO, BOYLAND, BRENNAN, BROOK-KRASNY, CHRISTENSEN, CONTE, CYMBROWITZ, GALEF, GLICK, GOTTFRIED, HEASTIE, HOOPER, HYER-SPENCER, KELLNER, KOON, LATIMER, LAVINE, MAYERSOHN, McENENY, McKEVITT, PEOPLES-STOKES, PERRY, PHEFFER, PRETLOW, RAIA, REILLY, J. RIVERA, SCARBOROUGH, SCHIMEL, SWEENEY, TITONE, TOWNSEND, WEISENBERG -- read once and referred to the Committee on Corporations, Authorities and Commissions -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- reported and referred to the Committee on Ways and Means -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- recommitted to the Committee on Corporations, Authorities and Commissions in accordance with Assembly Rule 3, sec. 2 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the public service law, in relation to directing the public service commission to conduct an in-depth public interest analysis of proposed mergers by telephone corporations and other telecommunications services providers over which said commission has jurisdiction

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

Section 1. Legislative findings and purpose. The legislature finds the public interest to require closer scrutiny of proposed telecommunications industry transfers of control, and declares that, except where the public interest requires a contrary result, a portion of the benefits of such mergers should be returned to the state's ratepayers.

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

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

2. (A) No franchise nor any right to or under any franchise to own or operate a telegraph line or telephone line shall be assigned, transferred, or leased, nor shall any contract or agreement hereafter made with reference to or affecting any such franchise or right be valid or of any force or effect whatsoever[,] unless the assignment, transfer, lease, contract, or agreement shall have been approved by the commission.

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

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

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

(D) BEFORE AUTHORIZING THE MERGER, ACQUISITION, ASSIGNMENT, LEASE, OR TRANSFER OF CONTROL OF ANY TELEPHONE CORPORATION ORGANIZED AND DOING BUSINESS IN THIS STATE, THE COMMISSION SHALL FIND THAT THE PROPOSAL DOES ALL OF THE FOLLOWING:

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

(2) EQUITABLY ALLOCATES, WHERE THE COMMISSION HAS RATEMAKING AUTHORITY, THE TOTAL SHORT-TERM AND LONG-TERM FORECASTED ECONOMIC BENEFITS, AS DETERMINED BY THE COMMISSION, OF THE PROPOSED MERGER, ACQUISITION, OR CONTROL BETWEEN SHAREHOLDERS AND RATEPAYERS. RATEPAYERS SHALL RECEIVE NOT LESS THAN FORTY PERCENT OF SUCH BENEFITS; PROVIDED, HOWEVER THAT REINVESTMENT OF SUCH BENEFITS IN A TELEPHONE CORPORATION'S IN-STATE INFRASTRUCTURE MAY BE DEEMED TO SATISFY SUCH REQUIREMENT.

(3) MAINTAINS OR IMPROVES THE FINANCIAL CONDITION OF THE RESULTING TELEPHONE CORPORATIONS DOING BUSINESS IN THE STATE AND DOES NOT UNREASONABLY ALLOCATE A TELEPHONE CORPORATION'S DEBT TO A DIVESTITURE ENTITY CREATED FROM AN EXISTING TELEPHONE CORPORATION. FOR THE PURPOSE OF THIS SECTION, A DIVESTITURE ENTITY IS A BUSINESS ENTITY CREATED BY THE ASSIGNMENT, EXCHANGE, SALE, OR OTHER TRANSFER OF SOME OR ALL OF AN

EXISTING TELEPHONE CORPORATION'S LINES, SYSTEM, OR WORKS TO A NEW TELEPHONE CORPORATION.

(4) MAINTAINS OR IMPROVES THE QUALITY OF SERVICE TO TELEPHONE CORPORATION RATEPAYERS IN THE STATE.

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

(6) IS FAIR AND REASONABLE TO AFFECTED TELEPHONE CORPORATION EMPLOYEES, INCLUDING BOTH UNION AND NONUNION EMPLOYEES.

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

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

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

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

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

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

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

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

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

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

S 3. Section 100 of the public service law, as amended by chapter 226 of the laws of 2009, is amended to read as follows:

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

2. Save where stock shall be transferred or held for the purpose of collateral security, no stock corporation, domestic or foreign, company, including, but not limited to, a limited liability company, association,

including a joint stock association, partnership, including a limited liability partnership, or person, other than a telegraph corporation or telephone corporation, shall, without the consent of the commission, purchase [or], acquire, take, or hold more than ten [per centum] PERCENT of the voting capital stock issued by any telegraph corporation or telephone corporation organized or existing under or by virtue of the laws of this state. Any corporation now lawfully holding a majority of the voting capital stock of any telegraph corporation or telephone corporation may, without the consent of the commission, acquire and hold the remainder of the voting capital stock of such telegraph corporation or telephone corporation[,] or any portion thereof.

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

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

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

(III) MAINTAINS OR IMPROVES THE FINANCIAL CONDITION OF THE RESULTING TELEPHONE CORPORATIONS DOING BUSINESS IN THE STATE AND DOES NOT UNREASONABLY ALLOCATE A TELEPHONE CORPORATION'S DEBT TO A DIVESTITURE ENTITY CREATED FROM AN EXISTING TELEPHONE CORPORATION. FOR THE PURPOSE OF THIS SECTION, A DIVESTITURE ENTITY IS A BUSINESS ENTITY CREATED BY THE ASSIGNMENT, EXCHANGE, SALE, OR OTHER TRANSFER OF SOME OR ALL OF AN EXISTING TELEPHONE CORPORATION'S LINES, SYSTEM, OR WORKS TO A NEW TELEPHONE CORPORATION.

(IV) MAINTAINS OR IMPROVES THE QUALITY OF SERVICE TO TELEPHONE CORPORATION RATEPAYERS IN THE STATE.

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

(VI) IS FAIR AND REASONABLE TO AFFECTED TELEPHONE CORPORATION EMPLOYEES, INCLUDING BOTH UNION AND NONUNION EMPLOYEES.

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

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

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

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

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

(B) ANY such consent HOWEVER, shall be deemed to be granted by the commission ninety days after such corporation applies to the commission for its consent, unless the commission, or its designee, determines and informs the applicant in writing within such ninety day period that the public interest requires the commission's review and its written consent. Nothing [herein] contained IN THIS SECTION shall be construed to prevent the holding of any stock heretofore lawfully acquired, nor to prevent, upon the surrender or exchange of such stock pursuant to a reorganization plan, the purchase, acquisition, taking, or holding of a proportionate amount of stock of any new corporation organized to take over, at foreclosure or other sale, the property of any corporation whose stock has been thus surrendered or exchanged[;], but the proportion of the voting capital stock of the new corporation held by a stock corporation, company, association, partnership or person and acquired by it by any such surrender or exchange of stock shall not without the consent of the commission exceed the proportion of the voting capital stock held by it in the former corporation.

4. Every contract, assignment, transfer, or agreement for transfer of any stock by or through any person or corporation to any corporation, company, association, partnership or person, in violation of any provision of this chapter shall be void and of no effect, and no such transfer or assignment shall be made upon the books of any such telegraph corporation or telephone corporation[,] or shall be recognized as effective for any purpose.

S 4. This act shall take effect on the one hundred twentieth day after it shall have become a law. Effective immediately, all rules and regulations and any other measures necessary to implement any provision of this act on its effective date may be promulgated and taken, respectively, on or before the effective date of such provision.