

S T A T E O F N E W Y O R K

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I N A S S E M B L Y

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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, MAYER-SOHN, 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:

1 Section 1. Legislative findings and purpose. The legislature finds
2 the public interest to require closer scrutiny of proposed telecommuni-
3 cations industry transfers of control, and declares that, except where
4 the public interest requires a contrary result, a portion of the bene-
5 fits 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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1 S 2. Subdivision 2 of section 99 of the public service law, as amended
2 by chapter 383 of the laws of 1996, is amended to read as follows:

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

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

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

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

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

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

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

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

1 EXISTING TELEPHONE CORPORATION'S LINES, SYSTEM, OR WORKS TO A NEW TELE-
2 PHONE CORPORATION.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 including a joint stock association, partnership, including a limited
2 liability partnership, or person, other than a telegraph corporation or
3 telephone corporation, shall, without the consent of the commission,
4 purchase [or], acquire, take, or hold more than ten [per centum] PERCENT
5 of the voting capital stock issued by any telegraph corporation or tele-
6 phone corporation organized or existing under or by virtue of the laws
7 of this state. Any corporation now lawfully holding a majority of the
8 voting capital stock of any telegraph corporation or telephone corpo-
9 ration may, without the consent of the commission, acquire and hold the
10 remainder of the voting capital stock of such telegraph corporation or
11 telephone corporation[,] or any portion thereof.

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

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

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

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

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

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

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

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

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

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

49 (X) PROVIDES MITIGATION MEASURES TO PREVENT SIGNIFICANT ADVERSE CONSE-
50 QUENCES WHICH MAY RESULT FROM SUCH ACQUISITION.

51 (XI) DOES NOT ADVERSELY AFFECT COMPETITION. IN MAKING THIS FINDING,
52 THE COMMISSION SHALL REQUEST AN ADVISORY OPINION FROM THE ATTORNEY
53 GENERAL REGARDING WHETHER OR NOT COMPETITION WILL BE ADVERSELY AFFECTED
54 AND WHAT MITIGATORY MEASURES COULD BE ADOPTED TO AVOID ANY SUCH ADVERSE
55 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, company, association, partnership or person and acquired by
15 it by any such surrender or exchange of stock shall not without the
16 consent of the commission exceed the proportion of the voting capital
17 stock held by it in the former corporation.

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

25 S 4. This act shall take effect on the one hundred twentieth day after
26 it shall have become a law. Effective immediately, all rules and regu-
27 lations and any other measures necessary to implement any provision of
28 this act on its effective date may be promulgated and taken, respective-
29 ly, on or before the effective date of such provision.