

5731

2009-2010 Regular Sessions

I N S E N A T E

June 1, 2009

Introduced by Sen. AUBERTINE -- read twice and ordered printed, and when printed to be committed to the Committee on Energy and Telecommunications

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.
6 S 2. Subdivision 2 of section 99 of the public service law, as amended
7 by chapter 383 of the laws of 1996, is amended to read as follows:
8 2. (A) No franchise nor any right to or under any franchise to own or
9 operate a telegraph line or telephone line shall be assigned, trans-
10 ferred, or leased, nor shall any contract or agreement hereafter made
11 with reference to or affecting any such franchise or right be valid or
12 of any force or effect whatsoever[,] unless the assignment, transfer,
13 lease, contract, or agreement shall have been approved by the commis-
14 sion.
15 (B) No telephone corporation shall transfer or lease its works or
16 system or any part of such works or system to any other person or corpo-
17 ration or contract for the operation of its works or system[,] without
18 the written consent of the commission. [Notwithstanding the foregoing,
19 any such transfer or lease between affiliated corporations with an
20 original cost of (a) less than one hundred thousand dollars proposed by
21 a telephone corporation having annual gross revenues in excess of two

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

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1 hundred million dollars, (b) less than twenty-five thousand dollars
2 proposed by a telephone corporation having annual gross revenues of less
3 than two hundred million but more than ten million dollars or (c) less
4 than ten thousand dollars proposed by a telephone corporation having
5 annual gross revenues of less than ten million dollars and any other
6 transfer or lease between non-affiliates regardless of cost shall be
7 effective without the commission's written consent within ninety days
8 after such corporation notifies the commission that it plans to complete
9 such transfer or lease and submits a description of the transfer or
10 lease, unless the commission, or its designee, determines within such
11 ninety days that the public interest requires the commission's review
12 and written consent.]

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

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

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

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

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

37 (3) MAINTAINS OR IMPROVES THE FINANCIAL CONDITION OF THE RESULTING
38 TELEPHONE CORPORATIONS DOING BUSINESS IN THE STATE AND DOES NOT UNREA-
39 SONABLY ALLOCATE A TELEPHONE CORPORATION'S DEBT TO A DIVESTITURE ENTITY
40 CREATED FROM AN EXISTING TELEPHONE CORPORATION. FOR THE PURPOSE OF THIS
41 SECTION, A DIVESTITURE ENTITY IS A BUSINESS ENTITY CREATED BY THE
42 ASSIGNMENT, EXCHANGE, SALE, OR OTHER TRANSFER OF SOME OR ALL OF AN
43 EXISTING TELEPHONE CORPORATION'S LINES, SYSTEM, OR WORKS TO A NEW TELE-
44 PHONE CORPORATION.

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

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

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

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

53 (8) IS BENEFICIAL ON AN OVERALL BASIS TO STATE AND LOCAL ECONOMIES AND
54 TO THE COMMUNITIES IN THE AREA SERVED BY THE RESULTING ENTITY AND DOES
55 NOT ALLOCATE SUBSTANTIALLY UNFUNDED PENSION OR HEALTH CARE OBLIGATIONS
56 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 446 of the laws of 1998, 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, 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

1 THE PROPOSAL DOES ALL OF THE FOLLOWING, TO THE EXTENT DETERMINED TO BE
2 APPLICABLE:

3 (I) PROVIDES SHORT-TERM AND LONG-TERM ECONOMIC BENEFITS TO RATEPAYERS.
4 (II) EQUITABLY ALLOCATES, WHERE APPLICABLE AND WHERE THE COMMISSION
5 HAS RATEMAKING AUTHORITY, THE TOTAL SHORT-TERM AND LONG-TERM FORECASTED
6 ECONOMIC BENEFITS, AS DETERMINED BY THE COMMISSION, OF THE PROPOSED
7 ACQUISITION, PURCHASE, SALE, TRANSFER, OR RETENTION BETWEEN SHAREHOLDERS
8 AND RATEPAYERS. RATEPAYERS SHALL RECEIVE NOT LESS THAN FORTY PERCENT OF
9 THOSE BENEFITS, PROVIDED, HOWEVER, THAT REINVESTMENT OF SUCH BENEFITS IN
10 A TELEPHONE CORPORATION'S IN-STATE INFRASTRUCTURE MAY BE DEEMED TO
11 SATISFY SUCH REQUIREMENT.

12 (III) MAINTAINS OR IMPROVES THE FINANCIAL CONDITION OF THE RESULTING
13 TELEPHONE CORPORATIONS DOING BUSINESS IN THE STATE AND DOES NOT UNREA-
14 SONABLY ALLOCATE A TELEPHONE CORPORATION'S DEBT TO A DIVESTITURE ENTITY
15 CREATED FROM AN EXISTING TELEPHONE CORPORATION. FOR THE PURPOSE OF THIS
16 SECTION, A DIVESTITURE ENTITY IS A BUSINESS ENTITY CREATED BY THE
17 ASSIGNMENT, EXCHANGE, SALE, OR OTHER TRANSFER OF SOME OR ALL OF AN
18 EXISTING TELEPHONE CORPORATION'S LINES, SYSTEM, OR WORKS TO A NEW TELE-
19 PHONE CORPORATION.

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

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

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

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

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

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

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

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

43 (B) ANY such consent, HOWEVER, shall be deemed to be granted by the
44 commission ninety days after such corporation applies to the commission
45 for its consent, unless the commission, or its designee, determines and
46 informs the applicant in writing within such ninety day period that the
47 public interest requires the commission's review and its written
48 consent. Nothing [herein] IN THIS SECTION contained shall be construed
49 to prevent the holding of any stock heretofore lawfully acquired, nor to
50 prevent, upon the surrender or exchange of such stock pursuant to a
51 reorganization plan, the purchase, acquisition, taking, or holding of a
52 proportionate amount of stock of any new corporation organized to take
53 over, at foreclosure or other sale, the property of any corporation
54 whose stock has been thus surrendered or exchanged[;], but the propor-
55 tion of the voting capital stock of the new corporation held by a stock
56 corporation and acquired by it by any such surrender or exchange of

1 stock shall not without the consent of the commission exceed the propor-
2 tion of the voting capital stock held by it in the former corporation.
3 Every contract, assignment, transfer, or agreement for transfer of any
4 stock by or through any person or corporation to any corporation in
5 violation of any provision of this chapter shall be void and of no
6 effect, and no such transfer or assignment shall be made upon the books
7 of any such telegraph corporation or telephone corporation[,] or shall
8 be recognized as effective for any purpose.
9 S 4. This act shall take effect on the one hundred twentieth day after
10 it shall have become a law; provided that any and all rules and regu-
11 lations and any other measures necessary to implement any provision of
12 this act on its effective date may be promulgated and taken, respective-
13 ly, on or before the effective date of such provision.