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

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2011-2012 Regular Sessions

I N A S S E M B L Y

April 29, 2011

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

AN ACT to amend the public service law, in relation to universal telecommunications services

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

Section 1. The public service law is amended by adding a new section 90-a to read as follows:

S 90-A. STATEMENT OF POLICY. 1. THE STATE OF NEW YORK'S LONG-STANDING POLICY, CODIFIED IN THIS SECTION, IS THAT CERTAIN COMMUNICATIONS TOOLS, AND PARTICULARLY TELEPHONE SERVICES, I.E. ESSENTIAL SERVICES, ARE SO FUNDAMENTAL THAT IT IS NOT IN THE PUBLIC INTEREST TO LEAVE THEIR PROVISION TO THE VAGARIES OF THE MARKETPLACE ALONE. FURTHERMORE, THE LEGISLATURE DECLARES THAT IT IS IN THE PUBLIC INTEREST THAT SUCH ESSENTIAL SERVICES BE MADE AND MAINTAINED UNIVERSALLY ACROSS NEW YORK. SUCH TOOLS AND SERVICES HAVE, OVER TIME, AND INCREASINGLY NOW, SHAPED CITIZENS' ABILITY TO PARTICIPATE IN CIVIC AFFAIRS, TO ACQUIRE LEARNING SKILLS NEEDED FOR THEIR ECONOMIC SUCCESS AND THAT OF THE STATE, AND TO ENJOY THE RICH AND UNPARALLELED SOCIAL AND CULTURAL LIFE THAT IS A VITAL PART OF NEW YORK STATE'S ECONOMY. THE STATE'S GOALS FOR UNIVERSAL SERVICE ARE TO FURTHER AND PROTECT THE PUBLIC INTEREST BY PROMOTING THE AVAILABILITY OF QUALITY SERVICES AT JUST, REASONABLE, AND AFFORDABLE RATES; TO ADVANCE THE AVAILABILITY OF SUCH SERVICES TO ALL CONSUMERS, INCLUDING THOSE IN LOW INCOME, RURAL, INSULAR, AND HIGH COST AREAS AT RATES THAT ARE REASONABLY COMPARABLE TO THOSE CHARGED IN HIGH-DENSITY URBAN AREAS; AND TO INCREASE ACCESS TO, AND THE UBIQUITY OF, ADVANCED TELECOMMUNICATIONS SERVICES AVAILABLE TO THE PUBLIC IN AN EQUITABLE AND NONDISCRIMINATORY MANNER. ALL TELECOMMUNICATIONS PROVIDERS UTILIZING TELEPHONE NUMBERS, AND ALL RESELLERS OF TELECOMMUNICATIONS SERVICES UTILIZING TELEPHONE NUMBERS SHOULD CONTRIBUTE TO CORE PUBLIC SAFETY AND PUBLIC INTEREST GOALS TO THE EXTENT ALLOWABLE BY LAW. AT A MINIMUM,

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

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THESE INCLUDE EQUIVALENT UNIVERSAL SERVICE SUPPORT, PROVISION AND SUPPORT FOR E911, DISABILITY ACCESS, CONSUMER PROTECTIONS, AND EQUITABLE TAXATION. EFFECTIVE PUBLIC PROGRAMS MUST BE MADE AVAILABLE WHERE COMPETITIVE FORCES DO NOT RESULT IN THE DEPLOYMENT, MAINTENANCE, OR RECONSTRUCTION OF AFFORDABLE, HIGH-QUALITY, AND RELIABLE ADVANCE TELECOMMUNICATIONS CAPABILITY ACROSS ALL GEOGRAPHIC REGIONS AND DEMOGRAPHIC SEGMENTS OF THE STATE. TELECOMMUNICATIONS NETWORKS MUST BE INTER-OPERABLE, BASED ON OPEN STANDARDS, RELIABLE, SURVIVABLE, DIVERSELY PATHED, AS WIDELY INTERCONNECTED AS IS REASONABLE, ACCESSIBLE FOR ALL USERS AS PROVIDED FOR BY LAW, INCLUDING BUT NOT LIMITED TO THE AMERICANS WITH DISABILITIES ACT, AND ALL APPLICABLE FEDERAL, STATE, AND LOCAL REGULATIONS, AND MUST MEET BASIC REQUIREMENTS CONCERNING PUBLIC SAFETY, CONSUMER PROTECTION, AND RELEVANT SOCIAL AND MORAL OBLIGATIONS.

2. FOR THE PURPOSES OF THIS SECTION:

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

(B) THE TERM "ESSENTIAL SERVICES" MEANS THE PROVISION BY TELECOMMUNICATIONS PROVIDERS UTILIZING TELEPHONE NUMBERS OF VOICE GRADE ACCESS TO AND ACROSS ANALOG, DIGITAL, OR WIRELESS NETWORKS, AS PERTAINS TO THE CARRIER, WITH THE ABILITY TO PLACE AND RECEIVE CALLS; TOUCH-TONE SERVICE; SINGLE-PARTY SERVICE; ACCESS TO EMERGENCY SERVICES, INCLUDING 911 AND E911 (WHICH IDENTIFIES A CALLER'S LOCATION); ACCESS TO OPERATOR SERVICES; ACCESS TO INTER-EXCHANGE SERVICES; ACCESS TO DIRECTORY ASSISTANCE; ACCESS TO "LIFELINE" SERVICES, OR OTHER SERVICES EQUIVALENT IN PRICE AND QUALITY FOR QUALIFYING LOW-INCOME CONSUMERS; AND ACCESS TO ALL OF SUCH OTHER SERVICES AS MAY BE MANDATED BY FEDERAL, STATE, AND LOCAL LAW.

3. WITHIN THIRTY DAYS OF THE DATE ON WHICH THE COMMISSION HAD ACTUAL KNOWLEDGE, OR SHOULD REASONABLY HAVE KNOWN OR BEEN INFORMED, OF THE OCCURRENCE, OR APPEARANCE OF THE PROXIMATE OCCURRENCE, OF A PURCHASE, ACQUISITION, TAKING, OR OTHER TRANSFER OF CONTROL OR OWNERSHIP OF THE CAPITAL STOCK OF A TELECOMMUNICATIONS PROVIDER UTILIZING TELEPHONE NUMBERS ORGANIZED OR EXISTING UNDER THE LAWS OF THIS STATE WITHIN THE CONTEMPLATION OF SECTION ONE HUNDRED OF THIS ARTICLE OR PARAGRAPH (B) OF THIS SUBDIVISION, THE COMMISSION SHALL COMPILE AND PUBLISH A REPORT ON THE EFFECT, IF ANY, OF SUCH TRANSFER OF CONTROL UPON UNIVERSAL SERVICE IN THE STATE. SUCH REPORT SHALL BE KNOWN AS THE "UNIVERSAL SERVICE IMPACT ANALYSIS", AND SHALL BE ISSUED BEFORE THE COMMISSION MAY VOTE UPON THE APPROVAL OF SUCH OCCURRENCE. IF, ON THE EFFECTIVE DATE OF THIS SUBDIVISION, THERE IS A PROCEEDING BEFORE THE COMMISSION WITHIN THE CONTEMPLATION OF SUBDIVISION ONE OF THIS SECTION, THEN THE COMMISSION SHALL HAVE THIRTY DAYS FROM SUCH EFFECTIVE DATE TO ISSUE ITS UNIVERSAL SERVICE IMPACT ANALYSIS REPORT. SUCH UNIVERSAL SERVICE IMPACT ANALYSIS REPORT SHALL INCLUDE, BUT NOT BE LIMITED TO:

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

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

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

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

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

S 2. The public service law is amended by adding a new section 92-g to read as follows:

S 92-G. UNIVERSAL, AFFORDABLE AND SECURE TELECOMMUNICATIONS SERVICES FUND. 1. THE COMMISSION SHALL ESTABLISH A MECHANISM FOR THE SUPPORT OF UNIVERSAL SERVICE, ALSO REFERRED TO IN THIS SECTION AS THE "HIGH COST SUPPORT MECHANISM", WHICH SHALL OPERATE IN ACCORDANCE WITH RULES ADOPTED BY THE COMMISSION. THE PURPOSE OF THE HIGH COST SUPPORT MECHANISM IS TO PROVIDE FINANCIAL ASSISTANCE TO TELECOMMUNICATIONS SERVICES PROVIDERS UTILIZING TELEPHONE NUMBERS TO HELP MAKE BASIC LOCAL ANALOG, DIGITAL, AND WIRELESS SERVICES UNIVERSALLY AVAILABLE, AT JUST AND REASONABLE RATES AND ALLOW SUCH PROVIDERS TO BE FULLY REIMBURSED FOR THE DIFFERENCE BETWEEN THE REASONABLE COSTS INCURRED IN MAKING BASIC SERVICE AVAILABLE TO THEIR CUSTOMERS WITHIN A RURAL, HIGH COST GEOGRAPHIC SUPPORT AREA AND THE PRICE CHARGED FOR SUCH SERVICE, AFTER TAKING INTO ACCOUNT ANY AMOUNTS RECEIVED BY SUCH PROVIDERS UNDER PRICE SUPPORT MECHANISMS ESTABLISHED BY THE FEDERAL GOVERNMENT AND BY THIS STATE. THE COMMISSION SHALL ENSURE THAT NO TELECOMMUNICATIONS SERVICES PROVIDER IS RECEIVING FUNDS FROM THIS OR ANY OTHER SOURCE THAT, TOGETHER WITH LOCAL SERVICE REVENUES, EXCEEDS THE COST OF PROVIDING LOCAL SERVICE TO CUSTOMERS OF SUCH PROVIDER. THE HIGH COST SUPPORT MECHANISM SHALL BE SUPPORTED AND DISTRIBUTED EQUITABLY AND ON A NONDISCRIMINATORY, COMPETITIVELY NEUTRAL BASIS THROUGH A RATE ELEMENT ASSESSED ON ALL TELECOMMUNICATIONS SERVICE PROVIDERS IN NEW YORK. A PROVIDER THAT OFFERS BASIC LOCAL ANALOG, DIGITAL, AND WIRELESS SERVICE THROUGHOUT AN ENTIRE SUPPORT AREA THROUGH

USE OF ITS OWN FACILITIES OR ON A RESALE BASIS MAY BE QUALIFIED AS A PROVIDER OF LAST RESORT OR MAY BE ELIGIBLE TO RECEIVE UNIVERSAL SERVICE SUPPORT, AS DETERMINED BY THE COMMISSION. A PROVIDER THAT FAILS TO PAY AN ASSESSMENT DUE AND PAYABLE UNDER THIS SECTION SHALL BE SUBJECT TO THE REVOCATION OF CERTIFICATE AFTER NOTICE AND THE OPPORTUNITY FOR A HEARING AS PROVIDED IN THIS CHAPTER. IN ALL RELEVANT GEOGRAPHIC AREAS OF THE STATE, AS DEFINED BY THE COMMISSION, THE COMMISSION SHALL DESIGNATE AT LEAST ONE PROVIDER AS THE PROVIDER OF LAST RESORT AND ADOPT PROCEDURES FOR CHANGING OR TERMINATING SUCH DESIGNATIONS. A PROVIDER OF LAST RESORT DESIGNATION CARRIES THE RESPONSIBILITY TO OFFER BASIC LOCAL ANALOG, DIGITAL, OR WIRELESS SERVICE TO ALL CONSUMERS WHO REQUEST IT. A PERSON HOLDING A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY TO PROVIDE BASIC SERVICE SHALL BE SUBJECT TO THE EVOLVING DEFINITION OF BASIC SERVICE DEVELOPED BY THE COMMISSION UNDER THIS CHAPTER AND THE SYSTEM OF FINANCIAL SUPPORT FOR UNIVERSAL SERVICE ESTABLISHED BY THE COMMISSION UNDER THIS SECTION. IF AND WHEN ADDITIONAL ELEMENTS ARE INCLUDED IN THE DEFINITION OF BASIC SERVICE AS A RESULT OF REVIEW BY THE COMMISSION, PRICES MAY INCREASE AS IS DETERMINED BY THE COMMISSION TO BE REASONABLY NECESSARY TO COVER THE COST AND ACCOUNT FOR THE INCLUSION OF SUCH ADDITIONAL ELEMENTS.

2. ON OR BEFORE DECEMBER FIRST OF EACH YEAR, THE COMMISSION SHALL SUBMIT A WRITTEN REPORT TO THE GOVERNOR, TEMPORARY PRESIDENT OF THE SENATE, SPEAKER OF THE ASSEMBLY, MINORITY LEADERS OF THE SENATE AND ASSEMBLY, CHAIRPERSON AND RANKING MINORITY MEMBER OF THE SENATE ENERGY AND TELECOMMUNICATIONS COMMITTEE, AND THE CHAIRPERSON AND RANKING MINORITY MEMBER OF THE ASSEMBLY CORPORATIONS, AUTHORITIES AND COMMISSIONS COMMITTEE, ACCOUNTING FOR THE OPERATION OF THE HIGH COST SUPPORT MECHANISM DURING THE PRECEDING CALENDAR YEAR AND CONTAINING THE FOLLOWING INFORMATION, AT A MINIMUM:

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

(B) THE TOTAL AMOUNT OF MONEY ORDERED TO BE CONTRIBUTED THROUGH A RATE ELEMENT ASSESSMENT COLLECTED BY EACH TELECOMMUNICATIONS SERVICE PROVIDER;

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

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

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

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

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

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

(I) THE PROPOSED BENCHMARKS, THE PROPOSED CONTRIBUTIONS TO BE COLLECTED THROUGH A RATE ELEMENT ASSESSMENT BY EACH TELECOMMUNICATIONS SERVICE PROVIDER, AND THE PROPOSED TOTAL AMOUNT OF THE HIGH COST SUPPORT MECHANISM FROM WHICH DISTRIBUTIONS ARE TO BE MADE FOR THE FOLLOWING CALENDAR YEAR; AND

(J) THE TOTAL AMOUNT OF DISTRIBUTIONS MADE FROM THE HIGH COST FUND, DIRECTLY OR INDIRECTLY, AND HOW THEY ARE BALANCED BY RATE REDUCTIONS BY

ALL PROVIDERS FOR THE SAME PERIOD AND A FULL ACCOUNTING OF AND JUSTIFICATION FOR ANY DIFFERENCE. IF THE REPORT SUBMITTED PURSUANT TO THIS SUBDIVISION CONTAINS A PROPOSAL FOR AN INCREASE IN ANY OF THE AMOUNTS LISTED IN PARAGRAPH (B) OF THIS SUBDIVISION, SUCH INCREASE SHALL BE SUSPENDED UNTIL MARCH THIRTY-FIRST OF THE FOLLOWING YEAR.

SUCH REPORT MUST ALSO DETERMINE WHAT AMOUNT OF UNEXPENDED FUNDS, IF ANY, AT THE END OF EACH FISCAL YEAR, COULD BE REFUNDED TO THE CONTRIBUTING TELECOMMUNICATIONS SERVICES PROVIDERS ON A BASIS THAT IS PROPORTIONAL TO THE AMOUNTS CONTRIBUTED BY SUCH TELECOMMUNICATIONS SERVICES PROVIDERS.

3. THERE IS HEREBY CREATED, IN THE STATE TREASURY, THE NEW YORK HIGH COST ADMINISTRATION FUND, REFERRED TO IN THIS SECTION AS THE "FUND", WHICH SHALL BE USED TO REIMBURSE THE COMMISSION AND, IF APPLICABLE, ITS CONTRACTORS, FOR REASONABLE EXPENSES INCURRED IN THE ADMINISTRATION OF THE HIGH COST SUPPORT MECHANISM AS DETERMINED BY RULES OF THE COMMISSION, AND SHALL BE AUDITED IN A MANNER AND FREQUENCY TO BE DETERMINED BY THE COMPTROLLER. THE MONEYS IN THE FUND THAT ARE TO BE USED FOR THE DIRECT AND INDIRECT ADMINISTRATIVE COSTS INCURRED BY THE COMMISSION AND ITS CONTRACTORS SHALL BE APPROPRIATED ANNUALLY BY THE LEGISLATURE. AT THE END OF ANY FISCAL YEAR, ALL UNEXPENDED AND UNENCUMBERED MONEYS IN THE FUND SHALL REMAIN THEREIN AND SHALL NOT BE CREDITED OR TRANSFERRED TO THE GENERAL FUND OR ANY OTHER FUND. BASED UPON THE BALANCE REMAINING IN THE FUND AND THE AMOUNT APPROPRIATED ANNUALLY BY THE LEGISLATURE FOR USE BY THE COMMISSION, EACH YEAR THE COMMISSION SHALL DETERMINE THE NONDISCRIMINATORY, COMPETITIVELY NEUTRAL ASSESSMENT ON ALL TELECOMMUNICATIONS SERVICE PROVIDERS IN NEW YORK THAT WILL BE NECESSARY TO COVER THE COST OF IMPLEMENTING THE HIGH COST SUPPORT MECHANISM. ONLY THE MONEYS FROM SUCH ASSESSMENT SHALL BE TRANSMITTED TO THE STATE TREASURER, WHO SHALL CREDIT THE SAME TO THE FUND. ALL INTEREST DERIVED FROM THE DEPOSIT AND INVESTMENT OF THIS FUND SHALL REMAIN IN THE FUND AND SHALL NOT REVERT TO THE GENERAL FUND.

S 3. This act shall take effect immediately.