

2665

2011-2012 Regular Sessions

I N A S S E M B L Y

January 19, 2011

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

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
22 hundred million dollars, (b) less than twenty-five thousand dollars

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

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

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

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

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

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

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

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

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

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

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

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

52 (8) IS BENEFICIAL ON AN OVERALL BASIS TO STATE AND LOCAL ECONOMIES AND
53 TO THE COMMUNITIES IN THE AREA SERVED BY THE RESULTING ENTITY AND DOES
54 NOT ALLOCATE SUBSTANTIALLY UNFUNDED PENSION OR HEALTH CARE OBLIGATIONS
55 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.

(J) THIS SUBDIVISION SHALL ONLY APPLY TO ASSIGNMENTS, TRANSFERS OR LEASES OF WORKS OR SYSTEMS OR OTHER TELECOMMUNICATIONS SERVICES PROVIDERS IF THE PROPOSED MERGER, ACQUISITION, ASSIGNMENT, LEASE, OR TRANSFER INVOLVES A TELEPHONE COMPANY OR TELECOMMUNICATIONS SERVICE PROVIDER THAT PROVIDES, AND ONLY TO THE EXTENT THE TRANSACTION INVOLVES, NON-COMPETITIVE BASIC RATE RESIDENTIAL OR LIFELINE TELECOMMUNICATIONS SERVICE TO AT LEAST ONE RESIDENTIAL CUSTOMER.

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

1 voting capital stock of any telegraph corporation or telephone corpo-
2 ration may, without the consent of the commission, acquire and hold the
3 remainder of the voting capital stock of such telegraph corporation or
4 telephone corporation[,] or any portion thereof.

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

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

12 (II) EQUITABLY ALLOCATES, WHERE APPLICABLE AND WHERE THE COMMISSION
13 HAS RATEMAKING AUTHORITY, THE TOTAL SHORT-TERM AND LONG-TERM FORECASTED
14 ECONOMIC BENEFITS, AS DETERMINED BY THE COMMISSION, OF THE PROPOSED
15 ACQUISITION, PURCHASE, SALE, TRANSFER, OR RETENTION BETWEEN SHAREHOLDERS
16 AND RATEPAYERS. RATEPAYERS SHALL RECEIVE NOT LESS THAN FORTY PERCENT OF
17 THOSE BENEFITS; PROVIDED, HOWEVER THAT REINVESTMENT OF SUCH BENEFITS IN
18 A TELEPHONE CORPORATION'S IN-STATE INFRASTRUCTURE MAY BE DEEMED TO
19 SATISFY SUCH REQUIREMENT.

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

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

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

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

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

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

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

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

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

51 (B) ANY such consent HOWEVER, shall be deemed to be granted by the
52 commission ninety days after such corporation applies to the commission
53 for its consent, unless the commission, or its designee, determines and
54 informs the applicant in writing within such ninety day period that the
55 public interest requires the commission's review and its written
56 consent. Nothing [herein] contained IN THIS SECTION shall be construed

1 to prevent the holding of any stock heretofore lawfully acquired, nor to
2 prevent, upon the surrender or exchange of such stock pursuant to a
3 reorganization plan, the purchase, acquisition, taking, or holding of a
4 proportionate amount of stock of any new corporation organized to take
5 over, at foreclosure or other sale, the property of any corporation
6 whose stock has been thus surrendered or exchanged[;], but the propor-
7 tion of the voting capital stock of the new corporation held by a stock
8 corporation, company, association, partnership or person and acquired by
9 it by any such surrender or exchange of stock shall not without the
10 consent of the commission exceed the proportion of the voting capital
11 stock held by it in the former corporation.

12 (C) THIS SUBDIVISION SHALL ONLY APPLY TO MERGERS, ACQUISITIONS,
13 ASSIGNMENTS, LEASES, OR TRANSFERS OF CONTROL OF TELEPHONE CORPORATIONS
14 OR OTHER TELECOMMUNICATIONS SERVICES PROVIDERS IF THE PROPOSED MERGER,
15 ACQUISITION, ASSIGNMENT, LEASE, OR TRANSFER INVOLVES A TELEPHONE COMPANY
16 OR TELECOMMUNICATIONS SERVICE PROVIDER THAT PROVIDES, AND ONLY TO THE
17 EXTENT THE TRANSACTION INVOLVES, NON-COMPETITIVE BASIC RATE RESIDENTIAL
18 OR LIFELINE TELECOMMUNICATIONS SERVICE TO AT LEAST ONE RESIDENTIAL
19 CUSTOMER.

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

27 5. THE PROVISIONS OF THIS SECTION SHALL ONLY APPLY TO THE OWNERSHIP
28 TRANSFER OF STOCKS WHERE ANY PARTY TO SUCH TRANSFER HAS ANNUAL NEW YORK
29 GROSS REVENUES EXCEEDING TWO HUNDRED MILLION DOLLARS.

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