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

5590--A

2011-2012 Regular Sessions

I N S E N A T E

June 3, 2011

Introduced by Sen. MAZIARZ -- read twice and ordered printed, and when printed to be committed to the Committee on Energy and Telecommunications -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the public service law, in relation to implementing a new framework for the regulation of telecommunications and cable services

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

Section 1. Short title. This act shall be known and may be cited as the "Telecommunications modernization act of 2012".

S 2. Section 5 of the public service law is amended by adding four new subdivisions 7, 8, 9 and 10 to read as follows:

7. NOTWITHSTANDING ANY OTHER PROVISION OF LAW, NO PROVISION OF THIS CHAPTER, AND NO REGULATION, ORDER OR SETTLEMENT ADOPTED PURSUANT TO THIS CHAPTER, SHALL APPLY TO ANY TELEPHONE CORPORATION IN ANY WIRE CENTER IN WHICH THE CORPORATION CERTIFIES TO THE COMMISSION THERE ARE AT LEAST TWO PROVIDERS OFFERING VOICE SERVICES TO RETAIL RESIDENTIAL CUSTOMERS USING ANY TECHNOLOGY, INCLUDING BUT NOT LIMITED TO PROVIDERS OF COMMERCIAL MOBILE SERVICES AS DEFINED IN 47 U.S.C. S 332(D) AND PROVIDERS OF VOICE OVER INTERNET PROTOCOL SERVICE; PROVIDED, HOWEVER, THAT NOTHING IN THIS SECTION SHALL BE INTERPRETED TO GRANT THE COMMISSION ANY AUTHORITY THAT IT DID NOT HAVE PRIOR TO THE EFFECTIVE DATE OF THIS SUBDIVISION; AND PROVIDED FURTHER THAT NOTHING IN THIS SECTION AFFECTS THE APPLICABILITY, IMPLEMENTATION, OR ENFORCEMENT IN SUCH AREAS OF:

(A) THE RIGHTS OR OBLIGATIONS OF ANY CABLE TELEVISION COMPANIES WITH RESPECT TO THEIR OPERATION OF ANY CABLE TELEVISION SYSTEM UNDER ARTICLE ELEVEN OF THIS CHAPTER;

(B) ANY DUTIES IMPOSED UPON THE COMMISSION BY THE FEDERAL LAW;

(C) ANY ENTITY'S RIGHTS, DUTIES OR OBLIGATIONS UNDER 47 U.S.C. SS 251 AND 252;

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

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(D) REQUIREMENTS RELATING TO THE LEVEL OF INTRASTATE SWITCHED ACCESS RATES CHARGED BY A LOCAL EXCHANGE TELECOMMUNICATIONS COMPANY;
(E) REQUIREMENTS RELATED TO TELEPHONE RELAY SERVICE OR EMERGENCY CALLING (911/E911) SERVICE;
(F) REQUIREMENTS RELATED TO CHANGES IN A CUSTOMER'S SERVICE PROVIDER WITHOUT THE CUSTOMER'S CONSENT;
(G) REQUIREMENTS RELATED TO TELEPHONE RELAY SERVICE;
(H) REQUIREMENTS RELATED TO THE OFFERING OF LIFELINE SERVICE AT A DISCOUNT, PROVIDED FURTHER THAT ANY TECHNOLOGY MAY BE USED TO SATISFY LIFELINE OBLIGATIONS WITHOUT OTHERWISE SUBJECTING LIFELINE SERVICES TO ANY GREATER REGULATION THAN NON-LIFELINE SERVICES PROVIDED USING THAT TECHNOLOGY;
(I) CONSUMER PROTECTION AND UNFAIR OR DECEPTIVE TRADE PRACTICES LAWS THAT APPLY GENERALLY TO THE CONDUCT OF BUSINESS IN THE STATE; OR
(J) THE CORPORATION'S STATUS AND RIGHTS AS A TELEPHONE CORPORATION UNDER THE TRANSPORTATION CORPORATIONS LAW.

8. NOTWITHSTANDING ANY OTHER PROVISION OF LAW, NO PROVISION OF THIS CHAPTER, AND NO REGULATION, ORDER OR SETTLEMENT ADOPTED PURSUANT TO THIS CHAPTER, SHALL APPLY TO ANY TELEPHONE CORPORATION IN ANY WIRE CENTER NOT COVERED BY SUBDIVISION SEVEN OF THIS SECTION; PROVIDED, HOWEVER, THAT NOTHING IN THIS SECTION SHALL BE INTERPRETED TO GRANT THE COMMISSION ANY AUTHORITY THAT IT DID NOT HAVE PRIOR TO THE EFFECTIVE DATE OF THIS SUBDIVISION; AND PROVIDED FURTHER THAT NOTHING IN THIS SECTION AFFECTS THE APPLICABILITY, IMPLEMENTATION, OR ENFORCEMENT IN SUCH AREAS OF:
(A) THE RIGHTS, OBLIGATIONS, DUTIES, AND REQUIREMENTS THAT ARE REFERRED TO IN PARAGRAPHS (A) THROUGH (J) OF SUBDIVISION SEVEN OF THIS SECTION; OR
(B) ANY REQUIREMENT THAT THE CORPORATION PROVIDE A STAND ALONE OFFERING OF A BASIC LOCAL EXCHANGE ACCESS LINE PLUS LOCAL USAGE TO RESIDENTIAL CUSTOMERS IN THE WIRE CENTER ON REASONABLE TERMS AND CONDITIONS.

9. NOTWITHSTANDING ANY OTHER PROVISION OF LAW, THE COMMISSION SHALL HAVE NO AUTHORITY OVER ANY SERVICE, CLASS OF SERVICES, OR TECHNOLOGY OFFERED OR USED BY A TELEPHONE CORPORATION AS DEFINED IN SECTION TWO OF THIS ARTICLE, OR BY A CABLE TELEVISION COMPANY UNDER SECTION TWO HUNDRED TWELVE OF THIS CHAPTER, OR ANY OTHER PROVIDER OF VOICE COMMUNICATION OR VIDEO PROGRAMMING DISTRIBUTION SERVICES, THAT IT DID NOT ACTIVELY REGULATE AS OF JANUARY FIRST, TWO THOUSAND TWELVE. THE COMMISSION SHALL HAVE NO AUTHORITY TO PROHIBIT, REQUIRE OR OTHERWISE DIRECT ANY ENTITY'S CHOICE OF TECHNOLOGY FOR ANY PURPOSE.

10. THE COMMISSION SHALL HAVE NO AUTHORITY TO REQUIRE ANY TELEPHONE CORPORATION TO USE, OR TO PROHIBIT SUCH CORPORATION FROM USING, ANY PARTICULAR TRANSPORT, DISTRIBUTION, SWITCHING, OR OTHER TECHNOLOGY FOR THE PROVISION OF ITS SERVICES. THE SELECTION OF APPROPRIATE NETWORK TECHNOLOGIES SHALL LIE SOLELY WITHIN THE DISCRETION OF THE TELEPHONE CORPORATION.

S 3. Section 2 of the public service law is amended by adding two new subdivisions 19-a and 19-b to read as follows:

19-A. THE TERM "VOICE OVER INTERNET PROTOCOL SERVICE" OR "VOIP SERVICE" WHEN USED IN THIS CHAPTER MEANS ANY SERVICE THAT: (A) ENABLES REAL-TIME TWO-WAY VOICE COMMUNICATIONS THAT ORIGINATE FROM OR TERMINATE TO THE USER'S LOCATION IN INTERNET PROTOCOL (IP) OR ANY SUCCESSOR PROTOCOL; (B) USES A BROADBAND CONNECTION FROM THE USER'S LOCATION; AND (C) PERMITS USERS GENERALLY TO RECEIVE CALLS THAT ORIGINATE ON THE PUBLIC SWITCHED TELEPHONE NETWORK AND TO TERMINATE CALLS TO THE PUBLIC SWITCHED TELEPHONE NETWORK.

19-B. THE TERM "INTERNET PROTOCOL-ENABLED SERVICE" OR "IP-ENABLED SERVICE" WHEN USED IN THIS CHAPTER MEANS, EXCEPT AS PROVIDED IN THE DEFINITION OF "VOICE-OVER-INTERNET PROTOCOL SERVICE" IN SUBDIVISION NINETEEN-A OF THIS SECTION ANY SERVICE, CAPABILITY, FUNCTIONALITY, OR APPLICATION PROVIDED USING INTERNET PROTOCOL (IP), OR ANY SUCCESSOR PROTOCOL, THAT ENABLES AN END USER TO SEND OR RECEIVE A COMMUNICATION IN IP FORMAT, OR ANY SUCCESSOR FORMAT, REGARDLESS OF WHETHER THE COMMUNICATION IS VOICE, DATA OR VIDEO.

S 4. Paragraph d of subdivision 1 of section 5 of the public service law, as amended by chapter 155 of the laws of 1970, is amended to read as follows:

d. To every telephone line which lies wholly within the state and that part within the state of New York of every telephone line which lies partly within and partly without the state and to the persons or corporations owning, leasing or operating any such telephone line. NOTWITHSTANDING ANY OTHER PROVISION OF LAW TO THE CONTRARY, NEITHER THE COMMISSION, THE DEPARTMENT, NOR ANY OTHER DEPARTMENT OR AGENCY OF THIS STATE, OR ANY POLITICAL SUBDIVISION THEREOF, SHALL HAVE AUTHORITY TO REGULATE THE ENTRY, RATES OR OTHER TERMS OF SERVICE OF VOICE OVER INTERNET PROTOCOL SERVICE OR IP-ENABLED SERVICE. PROVIDED, HOWEVER, THAT NOTHING IN THIS SECTION SHALL BE CONSTRUED TO DIVEST THE COMMISSION OF ITS AUTHORITY WITH RESPECT TO THE RATES, TERMS OR CONDITIONS OF ANY LOCAL EXCHANGE TELEPHONE SERVICE OVER WHICH THE COMMISSION EXERCISED ITS LAWFUL JURISDICTION PRIOR TO JANUARY FIRST, TWO THOUSAND TWELVE. PROVIDED, FURTHER, THAT NOTHING IN THIS SECTION SHALL AFFECT THE AUTHORITY OF THE STATE OR ITS AGENCIES TO ENFORCE SUCH REQUIREMENTS AS ARE OTHERWISE EXPRESSLY PROVIDED FOR BY FEDERAL LAW, INCLUDING, BUT NOT LIMITED TO, CONNECTION TO 911 FACILITIES, THE COLLECTION OF ENHANCED 911 FEES, TELECOMMUNICATIONS RELAY SERVICE FEES, OR FEDERAL UNIVERSAL SERVICE FUND FEES ON VOICE OVER INTERNET PROTOCOL SERVICES THAT MAY BE DETERMINED TO APPLY, OR BE CONSTRUED TO (A) MODIFY OR AFFECT THE RIGHTS, OBLIGATIONS OR AUTHORITY OF ANY ENTITY, INCLUDING BUT NOT LIMITED TO THE DEPARTMENT, TO ACT PURSUANT TO, OR ENFORCE THE PROVISIONS OF 47 U.S.C. 251, 47 U.S.C. 252, ANY APPLICABLE TARIFF, OR ANY STATE LAW, RULE, REGULATION OR ORDER RELATED TO WHOLESALE RIGHTS, DUTIES AND OBLIGATIONS, INCLUDING THE RIGHTS, DUTIES, AND OBLIGATIONS OF LOCAL EXCHANGE CARRIERS TO INTERCONNECT AND EXCHANGE VOICE TRAFFIC; (B) MODIFY OR AFFECT THE AUTHORITY OF THE DEPARTMENT TO IMPLEMENT, CARRY OUT, AND ENFORCE SUCH PROVISIONS, RIGHTS, DUTIES, OBLIGATIONS OR TARIFF THROUGH ARBITRATION PROCEEDINGS OR OTHER AVAILABLE MECHANISMS AND PROCEDURES; OR (C) AFFECT THE PAYMENT OF SWITCHED NETWORK ACCESS RATES OR OTHER INTERCARRIER COMPENSATION RATES, AS APPLICABLE. NOTHING HEREIN SHALL BE CONSTRUED TO AFFECT THE APPLICATION OR ENFORCEMENT OF OTHER STATUES OR REGULATIONS THAT APPLY GENERALLY TO THE CONDUCT OF BUSINESS IN THE STATE, INCLUDING CONSUMER PROTECTION, OR UNFAIR OR DECEPTIVE TRADE PRACTICES RULES OF GENERAL APPLICABILITY. NOTHING IN THIS SECTION SHALL AFFECT THE AUTHORITY OF THE COMMISSION OVER CABLE TELEVISION COMPANIES OR ANY OTHER ENTITY THAT OPERATES A CABLE TELEVISION SYSTEM PURSUANT TO ARTICLE ELEVEN OF THIS CHAPTER.

S 5. Subdivision 1 of section 90 of the public service law, as amended by chapter 414 of the laws of 1981, is amended to read as follows:

1. The provisions of this article shall apply to communication by telegraph or telephone between one point and another within the state of New York and to every telegraph corporation and telephone corporation. NOTWITHSTANDING ANY OTHER PROVISION OF LAW TO THE CONTRARY, NEITHER THE COMMISSION, THE DEPARTMENT, NOR ANY OTHER DEPARTMENT OR AGENCY OF THIS STATE, OR ANY POLITICAL SUBDIVISION THEREOF, SHALL HAVE AUTHORITY TO

REGULATE THE ENTRY, RATES OR OTHER TERMS OF SERVICE OF VOICE OVER INTERNET PROTOCOL SERVICE OR IP-ENABLED SERVICE. PROVIDED, HOWEVER, THAT NOTHING IN THIS SECTION SHALL BE CONSTRUED TO DIVEST THE COMMISSION OF ITS AUTHORITY WITH RESPECT TO THE RATES, TERMS OR CONDITIONS OF ANY LOCAL EXCHANGE TELEPHONE SERVICE OVER WHICH THE COMMISSION EXERCISED ITS LAWFUL JURISDICTION PRIOR TO JANUARY FIRST, TWO THOUSAND TWELVE. PROVIDED FURTHER, HOWEVER, THAT NOTHING IN THIS SECTION SHALL AFFECT THE AUTHORITY OF THE STATE OR ITS AGENCIES TO ENFORCE SUCH REQUIREMENTS AS ARE OTHERWISE EXPRESSLY PROVIDED FOR BY FEDERAL LAW, INCLUDING, BUT NOT LIMITED TO, CONNECTION TO 911 FACILITIES, THE COLLECTION OF ENHANCED 911 FEES, TELECOMMUNICATIONS RELAY SERVICE FEES, OR FEDERAL UNIVERSAL SERVICE FUND FEES ON VOICE OVER INTERNET PROTOCOL SERVICES THAT MAY BE DETERMINED TO APPLY, OR BE CONSTRUED TO (A) MODIFY OR AFFECT THE RIGHTS, OBLIGATIONS OR AUTHORITY OF ANY ENTITY, INCLUDING BUT NOT LIMITED TO THE DEPARTMENT, TO ACT PURSUANT TO, OR ENFORCE THE PROVISIONS OF 47 U.S.C. 251, 47 U.S.C. 252, ANY APPLICABLE TARIFF, OR ANY STATE LAW, RULE, REGULATION OR ORDER RELATED TO WHOLESALE RIGHTS, DUTIES AND OBLIGATIONS, INCLUDING THE RIGHTS, DUTIES, AND OBLIGATIONS OF LOCAL EXCHANGE CARRIERS TO INTERCONNECT AND EXCHANGE VOICE TRAFFIC; (B) MODIFY OR AFFECT THE AUTHORITY OF THE DEPARTMENT TO IMPLEMENT, CARRY OUT, AND ENFORCE SUCH PROVISIONS, RIGHTS, DUTIES, OBLIGATIONS OR TARIFF THROUGH ARBITRATION PROCEEDINGS OR OTHER AVAILABLE MECHANISMS AND PROCEDURES; OR (C) AFFECT THE PAYMENT OF SWITCHED NETWORK ACCESS RATES OR OTHER INTERCARRIER COMPENSATION RATES, AS APPLICABLE. NOTHING HEREIN SHALL BE CONSTRUED TO AFFECT THE APPLICATION OR ENFORCEMENT OF OTHER STATUTES OR REGULATIONS THAT APPLY GENERALLY TO THE CONDUCT OF BUSINESS IN THE STATE, INCLUDING CONSUMER PROTECTION, OR UNFAIR OR DECEPTIVE TRADE PRACTICES RULES OF GENERAL APPLICABILITY. NOTHING IN THIS SECTION SHALL AFFECT THE AUTHORITY OF THE COMMISSION OVER CABLE TELEVISION COMPANIES OR ANY OTHER ENTITY THAT OPERATES A CABLE TELEVISION SYSTEM PURSUANT TO ARTICLE ELEVEN OF THIS CHAPTER.

S 6. The public service law is amended by adding a new section 92-g to read as follows:

S 92-G. DE-TARIFFING OF RETAIL SERVICES. 1. NOTWITHSTANDING ANY OTHER PROVISION OF THIS CHAPTER, OR ANY REGULATION OR ORDER ISSUED BY THE COMMISSION PURSUANT TO THIS CHAPTER, ON AND AFTER THE EFFECTIVE DATE OF THIS SECTION, NO TELEPHONE CORPORATION SHALL BE REQUIRED TO: (A) PREPARE, MAINTAIN, ISSUE, OR FILE WITH THE COMMISSION ANY TARIFF OR SCHEDULE, OR STATEMENT OR DESCRIPTION OF ANY KIND, OF THE RATES OR OTHER TERMS AND CONDITIONS OF ANY OF ITS RETAIL SERVICES; OR (B) PROVIDE NOTICE TO OR OBTAIN APPROVAL FROM THE COMMISSION FOR ANY OFFERING OF A RETAIL SERVICE, ANY DISCONTINUATION OF SUCH AN OFFERING, OR ANY CHANGE IN THE TERMS OR CONDITIONS APPLICABLE TO SUCH AN OFFERING, INCLUDING PRICE.

2. NOTWITHSTANDING ANY OTHER PROVISION OF THIS CHAPTER, OR ANY REGULATION OR ORDER ISSUED BY THE COMMISSION PURSUANT TO THIS CHAPTER, ON AND AFTER THE EFFECTIVE DATE OF THIS SECTION THE COMMISSION SHALL HAVE NO JURISDICTION TO IMPOSE REQUIREMENTS ON TELEPHONE CORPORATIONS RELATING TO THE TERMS AND CONDITIONS, INCLUDING PRICE, ON WHICH THEY MAY OFFER RETAIL SERVICES.

3. ANY TARIFF OR SCHEDULE FOR RETAIL SERVICES FILED BY A TELEPHONE CORPORATION PRIOR TO THE EFFECTIVE DATE OF THIS SECTION MAY BE WITHDRAWN AT ANY TIME AFTER SUCH DATE UPON TEN DAYS' NOTICE TO THE COMMISSION, BUT SHALL REMAIN IN EFFECT UNTIL SUCH WITHDRAWAL.

S 7. This act shall take effect immediately.