

5789

2011-2012 Regular Sessions

I N S E N A T E

June 16, 2011

Introduced by Sen. ALESI -- read twice and ordered printed, and when printed to be committed to the Committee on Rules

AN ACT to amend the public service law, in relation to modifying the current regulatory framework for telephone corporations and cable television companies to better reflect the current realities of the telecommunications and cable industries

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

1 Section 1. Short title. This act shall be known and may be cited as
2 the "telecommunications reform act of 2011".
3 S 2. Legislative findings and purpose. The legislature finds that:
4 1. (a) Pervasive competition for communications services that are
5 provided by telephone corporations subject to regulation by the public
6 service commission has been firmly established in New York.
7 (b) In large part competition is provided by fully "facilities-based"
8 companies that utilize their own networks to provide service rather than
9 relying on the networks of incumbent wireline telephone corporations;
10 and fully facilities-based competition is supplemented by competition
11 from providers that utilize some incumbent facilities but that rely in
12 substantial part on their own facilities.
13 (c) In large part competition is provided through the use of modes and
14 technologies other than those traditionally used to provide wireline
15 telephone service ("intermodal competition").
16 (d) Pervasive, facilities-based, intermodal competition extends to the
17 full range of services provided to both business and residential custom-
18 ers.
19 (e) Sound public policy favors allowing competition, rather than regu-
20 lation, to set the prices and other terms and conditions of service.
21 2. Intermodal competitors are to a large extent able to offer their
22 services free of regulation by the public service commission, and this
23 gives them a competitive advantage over regulated telephone corporations

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

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1 that is not based on superior price, quality, or reputation, but simply
2 on differential regulation.

3 3. (a) The public service law does not adequately reflect the current
4 realities of the market for the services provided by regulated telephone
5 corporations, and regulatory reform is therefore necessary and desira-
6 ble.

7 (b) The pervasive, facilities-based, intermodal competition that
8 exists today is sufficient to ensure that the prices and other terms and
9 conditions of the full range of services provided by traditional tele-
10 phone corporations remain just and reasonable without the necessity for
11 detailed regulation.

12 (c) The current regulatory scheme for traditional wireline telephone
13 corporations impairs rather than facilitates competition by imposing
14 asymmetrical burdens upon such corporations.

15 (d) Significant deregulation of traditional wireline telephone
16 services is necessary and appropriate to ensure fair competition on a
17 level playing field, and thus to maximize the public benefits created by
18 competition.

19 (e) Accordingly, it is the intent of the legislature to significantly
20 reduce the regulatory burdens that the law currently imposes on the
21 services provided by telephone corporations subject to the commission's
22 jurisdiction.

23 4. (a) Various provisions of current law generally require telephone
24 corporations to set forth prices and other information concerning
25 certain services that they offer in published "schedules" (or
26 "tariffs"), generally require changes in such tariffs be filed with the
27 public service commission a specified number of days prior to their
28 effective date, and generally give the commission power to disapprove or
29 suspend the effectiveness of such schedules.

30 (b) Such requirements impose an administrative burden on regulated
31 companies, slow the introduction of innovative new services, and inhibit
32 rapid changes in price and other terms and conditions of service offer-
33 ings in response to market conditions.

34 (c) Intermodal providers that offer services to end-user customers in
35 competition with regulated telephone corporations are generally not
36 subject to such requirements.

37 (d) As a result, such requirements impose an unfair and asymmetrical
38 competitive burden upon telephone corporations that are subject to the
39 commission's jurisdiction.

40 (e) Accordingly, it would be consistent with the public interest to
41 relieve telephone corporations of such requirements with respect to
42 services offered primarily to end-user customers.

43 5. (a) Allowing competing service providers to offer services using
44 the technologies of their choice encourages competition, investment, the
45 adoption of innovative new technologies, and technological diversity.

46 (b) Accordingly, it would be consistent with the public interest to
47 preclude the commission from prohibiting telephone corporations from
48 utilizing, or from requiring telephone corporations to utilize, partic-
49 ular transport, switching, distribution, or other technologies in the
50 provision of their services.

51 S 3. Section 5 of the public service law is amended by adding a new
52 subdivision 7 to read as follows:

53 7. NOTWITHSTANDING ANY OTHER PROVISION OF LAW, NO PROVISION OF THIS
54 CHAPTER, AND NO REGULATION, ORDER OR SETTLEMENT ADOPTED PURSUANT TO THIS
55 CHAPTER, SHALL APPLY TO ANY TELEPHONE CORPORATION IN ANY EXCHANGE IN
56 WHICH THERE ARE AT LEAST TWO PROVIDERS OFFERING VOICE SERVICES TO RETAIL

1 RESIDENTIAL CUSTOMERS USING ANY TECHNOLOGY, INCLUDING BUT NOT LIMITED TO
2 PROVIDERS OF COMMERCIAL MOBILE SERVICE AS DEFINED IN 47 U.S.C. S 332(D)
3 AND PROVIDERS OF VOICE OVER INTERNET PROTOCOL SERVICE; PROVIDED, HOWEV-
4 ER, THAT NOTHING IN THIS SUBDIVISION SHALL BE INTERPRETED TO GRANT THE
5 COMMISSION ANY AUTHORITY THAT IT DID NOT HAVE PRIOR TO THE EFFECTIVE
6 DATE THEREOF; AND PROVIDED FURTHER THAT NOTHING IN THIS SUBDIVISION
7 AFFECTS:

8 (A) THE COMMISSION'S AUTHORITY UNDER ARTICLE ELEVEN OF THIS CHAPTER;
9 (B) ANY DUTIES IMPOSED UPON THE COMMISSION BY FEDERAL LAW;
10 (C) THE APPLICABILITY OF, AND ANY AUTHORITY OF THE COMMISSION TO
11 IMPLEMENT OR ENFORCE, ANY LAW, RULE, TARIFF, OR REGULATION GOVERNING THE
12 RIGHTS, DUTIES OR OBLIGATIONS OF ANY PARTY RELATING TO INTERCONNECTION
13 OR CARRIER-TO-CARRIER SERVICES, INCLUDING ANY AUTHORITY OF THE COMMIS-
14 SION TO ENFORCE ANY RIGHTS, DUTIES, OR OBLIGATIONS UNDER 47 U.S.C. SS
15 251 AND 252;

16 (D) THE COMMISSION'S EXISTING JURISDICTION OVER THE LEVEL OF INTRA-
17 STATE SWITCHED ACCESS RATES CHARGED BY A LOCAL EXCHANGE TELECOMMUNI-
18 CATIONS COMPANY;

19 (E) THE APPLICABILITY OR ENFORCEMENT OF CONSUMER PROTECTION AND UNFAIR
20 OR DECEPTIVE TRADE PRACTICES LAWS THAT APPLY GENERALLY TO THE CONDUCT OF
21 BUSINESS IN THE STATE;

22 (F) THE COMMISSION'S EXISTING AUTHORITY TO REQUIRE TELEPHONE CORPO-
23 RATIONS TO SUBMIT REPORTS OF MAJOR NETWORK OUTAGES;

24 (G) THE COMMISSION'S EXISTING AUTHORITY TO IMPOSE AND ENFORCE REQUIRE-
25 MENTS RELATED TO TELEPHONE RELAY SERVICE OR EMERGENCY CALLING (911/E911)
26 SERVICE;

27 (H) THE COMMISSION'S EXISTING AUTHORITY TO IMPOSE AND ENFORCE REQUIRE-
28 MENTS RELATED TO CHANGES IN A CUSTOMER'S SERVICE PROVIDER WITHOUT THE
29 CUSTOMER'S CONSENT;

30 (I) THE COMMISSION'S EXISTING AUTHORITY WITH RESPECT TO TELEPHONE
31 RELAY SERVICE;

32 (J) THE COMMISSION'S EXISTING AUTHORITY TO REQUIRE THE OFFERING OF
33 LIFELINE SERVICE AT A DISCOUNT, PROVIDED FURTHER THAT ANY TECHNOLOGY MAY
34 BE USED TO SATISFY LIFELINE OBLIGATIONS WITHOUT OTHERWISE SUBJECTING
35 LIFELINE SERVICES TO ANY GREATER REGULATION THAN NON-LIFELINE SERVICES
36 PROVIDED USING THAT TECHNOLOGY; OR

37 (K) THE CORPORATION'S STATUS AS A TELEPHONE CORPORATION UNDER THE
38 TRANSPORTATION CORPORATIONS LAW.

39 S 4. The public service law is amended by adding a new section 92-g to
40 read as follows:

41 S 92-G. TARIFF OR SCHEDULE FOR RETAIL SERVICES. 1. NOTWITHSTANDING
42 ANY OTHER PROVISION OF THIS CHAPTER, OR ANY REGULATION OR ORDER ISSUED
43 BY THE COMMISSION PURSUANT TO THIS CHAPTER, ON OR AFTER THE EFFECTIVE
44 DATE OF THIS SECTION, NO TELEPHONE CORPORATION SHALL BE REQUIRED TO: (A)
45 PREPARE, MAINTAIN, ISSUE, OR FILE WITH THE COMMISSION ANY TARIFF OR
46 SCHEDULE, OR STATEMENT OR DESCRIPTION OF ANY KIND, OF THE RATES OR OTHER
47 TERMS AND CONDITIONS OF ANY OF ITS RETAIL SERVICES; OR

48 (B) PROVIDE NOTICE TO OR OBTAIN APPROVAL FROM THE COMMISSION FOR ANY
49 TARIFF, SCHEDULE, RATE, TERM, OR CONDITION APPLICABLE TO A RETAIL
50 SERVICE.

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

55 S 5. Section 5 of the public service law is amended by adding a new
56 subdivision 8 to read as follows:

1 8. THE COMMISSION SHALL HAVE NO AUTHORITY TO REQUIRE ANY TELEPHONE
2 CORPORATION TO USE, OR TO PROHIBIT SUCH CORPORATION FROM USING, ANY
3 PARTICULAR TRANSPORT, DISTRIBUTION, SWITCHING, OR OTHER TECHNOLOGY FOR
4 THE PROVISION OF ITS SERVICES. THE SELECTION OF APPROPRIATE NETWORK
5 TECHNOLOGIES SHALL LIE WITHIN THE DISCRETION OF THE TELEPHONE CORPO-
6 RATION.

7 S 6. Severability. If any provision of this act or its application to
8 any person or circumstance is held invalid, this invalidity does not
9 affect other provisions or applications of this act that can be given
10 effect without the invalid provision or application, and to this end the
11 provisions of this act are declared to be severable.

12 S 7. This act shall take effect immediately.