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

7167--E

2013-2014 Regular Sessions

I N A S S E M B L Y

May 3, 2013

Introduced by M. of A. PAULIN, BUCHWALD, JAFFEE, GALEF, STIRPE, BOYLAND, OTIS -- Multi-Sponsored by -- M. of A. ABBATE, COOK, HOOPER, MARKEY, MILLMAN, SCHIMEL, SOLAGES, TITONE -- read once and referred to the Committee on Corporations, Authorities and Commissions -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- again reported from said committee with amendments, ordered reprinted as amended and recommitted to said committee -- reported and referred to the Committee on Rules -- amended on the special order of third reading, ordered reprinted as amended, retaining its place on the special order of third reading -- passed by Assembly and delivered to the Senate, recalled from the Senate, vote reconsidered, bill amended, ordered reprinted, retaining its place on the special order of third reading -- ordered to a third reading -- committed to the Committee on Corporations, Authorities and Commissions -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the public service law, in relation to the issuance of stocks, bonds and other forms of indebtedness for the purpose of expanding broadband services

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

Section 1. Section 101 of the public service law, as amended by chapter 443 of the laws of 2000, is amended to read as follows:

S 101. Authority to issue stock, bonds and other forms of indebtedness. A telegraph or telephone corporation may, when authorized by the commission, issue stock, bonds, notes or other evidences of indebtedness payable at periods of more than twelve months after the date thereof, or a receiver of such a corporation, if duly authorized by law, may issue receiver's certificates, when necessary for the acquisition of property, the construction, completion, extension or improvement of its facilities or the improvement or maintenance of its service within the

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

LBD08868-11-4

state, or for the discharge or lawful refunding of its obligations, or reimbursement of moneys actually expended from the income from any source, within five years next prior to the filing of the application therefor, or for any of such purposes, provided, however, that no authority shall be granted authorizing such issue for reimbursement of moneys expended from income for betterments or replacements unless the applicant shall have kept its accounts and vouchers of such expenditures in such manner as to enable the commission to ascertain the amount of moneys so expended and the purposes for which such expenditures were made. Stock may be issued to stockholders as a stock dividend provided that there shall have been secured from the commission authority for such issuance and for a transfer of surplus to capital in an amount equal to the par or stated value of the stock so authorized and that the applicant has certified in the application for authority that a sum equal to the amount to be so transferred was expended for the purposes enumerated in this section. Stock may be issued to an employee or director of a telegraph or telephone corporation under a stock option plan pursuant to which such corporation grants options to its employees or directors to purchase shares of stock, such options to be exercisable for a stated period of time to purchase shares of stock at the market value of the stock at the time of issuance of the option, provided that there shall have been secured from the commission authority for such issuance and that the applicant has certified in the application for authority that the proceeds from the exercise of the stock options are needed for one of the purposes enumerated in this section. The issue of stocks, bonds or other evidences of indebtedness, within the meaning of this section, shall include the sale by any such corporation of any such securities previously issued in compliance with the provisions of this section and subsequently reacquired by such corporation, provided, however, for good cause shown the commission may exempt from the restriction hereof stocks, bonds or other evidences of indebtedness. The application for authority shall state the amount of any such issue and the purposes to which it or its proceeds are to be applied and shall certify that the money, property or labor procured or to be procured or paid for by such issue or its proceeds has been or is reasonably required for the purposes specified in the application for authority, and that such purposes are in no part reasonably chargeable to operating expenses or to income except in the case of bonds, notes or other evidences of indebtedness as may be specifically identified in the application for authority. FOR THE PROCEEDS FROM A FEDERAL LOAN, A TELEGRAPH OR TELEPHONE CORPORATION SHALL PROVIDE NOTICE TO THE PUBLIC SERVICE COMMISSION OF RECEIPT OF SUCH ISSUE BUT SHALL NOT BE REQUIRED TO FILE AN APPLICATION FOR AUTHORITY. For the purpose of enabling the commission to determine whether it should authorize such issuance, the commission shall have the power to make such inquiry or investigation, hold such hearings and examine such witnesses, books, papers, documents or contracts as it may determine of importance in enabling it to reach a determination. [No] EXCEPT IN INSTANCES WHERE A TELEGRAPH OR TELEPHONE CORPORATION HAS NOTIFIED THE COMMISSION IT IS ENGAGED IN SECURING A FEDERAL LOAN FOR THE EXPANSION OF BROADBAND SERVICES, NO such corporation shall, without the consent of the commission, apply any such issue or its proceeds to any purpose not specified in the application for authority. Such telegraph corporation or telephone corporation may issue notes for proper corporate purposes and not in violation of any provision of this chapter or of any other act, payable at periods of not more than twelve months without the consent of the commission; but no

such note shall, in whole or in part, directly or indirectly, be refunded by any issue of stock or bonds, or by any evidences of indebtedness running for more than twelve months, without the consent of the commission. No telegraph corporation or telephone corporation shall be required, however, to apply to the commission for authority to issue stocks, bonds, notes or other evidence of indebtedness except for the acquisition of property, the construction, completion, extension or improvement of its facilities, or the improvement or maintenance of its service within the state, or the discharge or refunding of obligations, or reimbursement of moneys actually expended for such purposes. The commission shall have power to require every such corporation to file with the commission after the issuance of stocks, bonds, notes or other evidences of indebtedness issued with or without the approval of the commission as provided in this section, a notice of such transaction in such form as the commission may prescribe. The commission shall have no power to authorize the capitalization of any franchise or right to be a corporation, nor to authorize the capitalization of any franchise or the right to own, operate or enjoy any franchise whatsoever in excess of the amount (exclusive of any tax or annual charge) actually paid to the state or any political subdivision thereof, as the consideration of the grant of such franchise or right, nor to authorize the issuance of any stocks or other securities for any purposes other than those enumerated in this section. Nor shall the corporate stock of the corporation formed by the merger or consolidation of two or more other corporations exceed the sum of the capital stock of the corporations so consolidated, at the par value thereof, or such sum and any additional sum actually paid in cash; nor shall any contract for consolidation or lease be capitalized in the stock of any corporation whatever; nor shall any corporation hereafter issue any bonds against or as a lien upon any contract for consolidation or merger. Notwithstanding the foregoing provisions of this section, any application for approval under this section shall be deemed granted by the commission forty-five days after such application is filed for approval, unless the commission, or its designee, determines and informs the applicant in writing within such forty-five day period that the public interest requires the commission's review and its written order.

S 2. This act shall take effect immediately.