

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:

1 Section 1. Section 101 of the public service law, as amended by chap-
2 ter 443 of the laws of 2000, is amended to read as follows:
3 S 101. Authority to issue stock, bonds and other forms of indebt-
4 edness. A telegraph or telephone corporation may, when authorized by
5 the commission, issue stock, bonds, notes or other evidences of indebt-
6 edness payable at periods of more than twelve months after the date
7 thereof, or a receiver of such a corporation, if duly authorized by law,
8 may issue receiver's certificates, when necessary for the acquisition of
9 property, the construction, completion, extension or improvement of its
10 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.

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1 state, or for the discharge or lawful refunding of its obligations, or
2 reimbursement of moneys actually expended from the income from any
3 source, within five years next prior to the filing of the application
4 therefor, or for any of such purposes, provided, however, that no
5 authority shall be granted authorizing such issue for reimbursement of
6 moneys expended from income for betterments or replacements unless the
7 applicant shall have kept its accounts and vouchers of such expenditures
8 in such manner as to enable the commission to ascertain the amount of
9 moneys so expended and the purposes for which such expenditures were
10 made. Stock may be issued to stockholders as a stock dividend provided
11 that there shall have been secured from the commission authority for
12 such issuance and for a transfer of surplus to capital in an amount
13 equal to the par or stated value of the stock so authorized and that the
14 applicant has certified in the application for authority that a sum
15 equal to the amount to be so transferred was expended for the purposes
16 enumerated in this section. Stock may be issued to an employee or direc-
17 tor of a telegraph or telephone corporation under a stock option plan
18 pursuant to which such corporation grants options to its employees or
19 directors to purchase shares of stock, such options to be exercisable
20 for a stated period of time to purchase shares of stock at the market
21 value of the stock at the time of issuance of the option, provided that
22 there shall have been secured from the commission authority for such
23 issuance and that the applicant has certified in the application for
24 authority that the proceeds from the exercise of the stock options are
25 needed for one of the purposes enumerated in this section. The issue of
26 stocks, bonds or other evidences of indebtedness, within the meaning of
27 this section, shall include the sale by any such corporation of any such
28 securities previously issued in compliance with the provisions of this
29 section and subsequently reacquired by such corporation, provided,
30 however, for good cause shown the commission may exempt from the
31 restriction hereof stocks, bonds or other evidences of indebtedness. The
32 application for authority shall state the amount of any such issue and
33 the purposes to which it or its proceeds are to be applied and shall
34 certify that the money, property or labor procured or to be procured or
35 paid for by such issue or its proceeds has been or is reasonably
36 required for the purposes specified in the application for authority,
37 and that such purposes are in no part reasonably chargeable to operating
38 expenses or to income except in the case of bonds, notes or other
39 evidences of indebtedness as may be specifically identified in the
40 application for authority. FOR THE PROCEEDS FROM A FEDERAL LOAN, A TELE-
41 GRAPH OR TELEPHONE CORPORATION SHALL PROVIDE NOTICE TO THE PUBLIC
42 SERVICE COMMISSION OF RECEIPT OF SUCH ISSUE BUT SHALL NOT BE REQUIRED TO
43 FILE AN APPLICATION FOR AUTHORITY. For the purpose of enabling the
44 commission to determine whether it should authorize such issuance, the
45 commission shall have the power to make such inquiry or investigation,
46 hold such hearings and examine such witnesses, books, papers, documents
47 or contracts as it may determine of importance in enabling it to reach a
48 determination. [No] EXCEPT IN INSTANCES WHERE A TELEGRAPH OR TELEPHONE
49 CORPORATION HAS NOTIFIED THE COMMISSION IT IS ENGAGED IN SECURING A
50 FEDERAL LOAN FOR THE EXPANSION OF BROADBAND SERVICES, NO such corpo-
51 ration shall, without the consent of the commission, apply any such
52 issue or its proceeds to any purpose not specified in the application
53 for authority. Such telegraph corporation or telephone corporation may
54 issue notes for proper corporate purposes and not in violation of any
55 provision of this chapter or of any other act, payable at periods of not
56 more than twelve months without the consent of the commission; but no

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

37 S 2. This act shall take effect immediately.