

5863--A

2013-2014 Regular Sessions

I N S E N A T E

June 18, 2013

Introduced by Sen. YOUNG -- (at request of the Legislative Commission on Rural Resources) -- read twice and ordered printed, and when printed to be committed to the Committee on Rules -- recommitted to the Committee on Energy and Telecommunications in accordance with Senate Rule 6, sec. 8 -- 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
11 state, or for the discharge or lawful refunding of its obligations, or
12 reimbursement of moneys actually expended from the income from any
13 source, within five years next prior to the filing of the application
14 therefor, or for any of such purposes, provided, however, that no
15 authority shall be granted authorizing such issue for reimbursement of
16 moneys expended from income for betterments or replacements unless the
17 applicant shall have kept its accounts and vouchers of such expenditures
18 in such manner as to enable the commission to ascertain the amount of
19 moneys so expended and the purposes for which such expenditures were
20 made. Stock may be issued to stockholders as a stock dividend provided

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

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

1 commission shall have power to require every such corporation to file
2 with the commission after the issuance of stocks, bonds, notes or other
3 evidences of indebtedness issued with or without the approval of the
4 commission as provided in this section, a notice of such transaction in
5 such form as the commission may prescribe. The commission shall have no
6 power to authorize the capitalization of any franchise or right to be a
7 corporation, nor to authorize the capitalization of any franchise or the
8 right to own, operate or enjoy any franchise whatsoever in excess of the
9 amount (exclusive of any tax or annual charge) actually paid to the
10 state or any political subdivision thereof, as the consideration of the
11 grant of such franchise or right, nor to authorize the issuance of any
12 stocks or other securities for any purposes other than those enumerated
13 in this section. Nor shall the corporate stock of the corporation formed
14 by the merger or consolidation of two or more other corporations exceed
15 the sum of the capital stock of the corporations so consolidated, at the
16 par value thereof, or such sum and any additional sum actually paid in
17 cash; nor shall any contract for consolidation or lease be capitalized
18 in the stock of any corporation whatever; nor shall any corporation
19 hereafter issue any bonds against or as a lien upon any contract for
20 consolidation or merger. Notwithstanding the foregoing provisions of
21 this section, any application for approval under this section shall be
22 deemed granted by the commission forty-five days after such application
23 is filed for approval, unless the commission, or its designee, deter-
24 mines and informs the applicant in writing within such forty-five day
25 period that the public interest requires the commission's review and its
26 written order.

27 S 2. This act shall take effect immediately.