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

8123--A

2015-2016 Regular Sessions

I N A S S E M B L Y

June 9, 2015

Introduced by M. of A. BRENNAN, ROZIC, GALEF, RUSSELL, SEAWRIGHT, NOLAN, ABINANTI, RICHARDSON, ORTIZ, COLTON, BICHOTTE, BARRON, DAVILA, JAFFEE, GOTTFRIED, RAIA, THIELE -- Multi-Sponsored by -- M. of A. CAHILL, GLICK, KIM, LENTOL, MOSLEY, MOYA, ROSENTHAL, SIMON, SOLAGES -- read once and referred to the Committee on Corporations, Authorities and Commissions -- recommitted to the Committee on Corporations, Authorities and Commissions in accordance with Assembly Rule 3, sec. 2 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the public service law, in relation to service quality standards, credits, reports and penalties

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

Section 1. The public service law is amended by adding a new article 12 to read as follows:

ARTICLE 12

PROVISIONS RELATING TO TELEPHONE CORPORATIONS, CABLE CORPORATIONS, COMBINATION TELEPHONE AND CABLE CORPORATIONS AND VOICE OVER INTERNET PROTOCOL SERVICE PROVIDERS

SECTION 231. DEFINITIONS.
232. SERVICE QUALITY STANDARDS, MINIMUM PERFORMANCE LEVELS, CREDITS, AND REPORTS.
233. ADMINISTRATIVE SANCTIONS; RECOVERY OF PENALTIES.

S 231. DEFINITIONS. THE WORDS AND PHRASES USED IN THIS ARTICLE SHALL HAVE THE FOLLOWING MEANINGS: 1. "CABLE CORPORATION" SHALL MEAN ANY PERSON OWNING, CONTROLLING, OPERATING, MANAGING OR LEASING ONE OR MORE CABLE TELEVISION SYSTEMS WITHIN THE STATE.

2. "CABLE TELEVISION SYSTEM" SHALL HAVE THE SAME MEANING AS SET FORTH IN SECTION TWO HUNDRED TWELVE OF THIS CHAPTER.

3. "COMBINATION TELEPHONE AND CABLE CORPORATION" SHALL MEAN ANY TELEPHONE CORPORATION OPERATING IN NEW YORK UNDER COMMON OWNERSHIP WITH A

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

LBD10591-05-6

CABLE CORPORATION OPERATING IN NEW YORK OR ANY CABLE CORPORATION OPERATING IN NEW YORK UNDER COMMON OWNERSHIP WITH A TELEPHONE CORPORATION OPERATING IN NEW YORK, OR ANY SUCCESSOR OF EITHER CORPORATION.

4. "VOICE OVER INTERNET PROTOCOL SERVICE PROVIDER" SHALL MEAN ANY PROVIDER OF VOICE OVER INTERNET PROTOCOL SERVICE, AS DEFINED BY 47 C.F.R. S 9.3.

5. "CORE CUSTOMERS" SHALL MEAN CUSTOMERS WHO:

(A) DO NOT HAVE ACCESS TO WIRELINE ALTERNATIVES,

(B) SUBSCRIBE TO LIFELINE SERVICE, OR

(C) ARE CHARACTERIZED AS HAVING SPECIAL NEEDS.

S 232. SERVICE QUALITY STANDARDS, MINIMUM PERFORMANCE LEVELS, CREDITS, AND REPORTS. THE COMMISSION SHALL ESTABLISH QUALITY OF SERVICE STANDARDS, MINIMUM PERFORMANCE LEVELS, CUSTOMER-SPECIFIC CREDITS, AND REPORTING REQUIREMENTS THAT SHALL APPLY TO EACH TELEPHONE CORPORATION, CABLE CORPORATION, COMBINATION TELEPHONE AND CABLE CORPORATION OR VOICE OVER INTERNET PROTOCOL SERVICE PROVIDER. 1. SERVICE STANDARDS. SERVICE STANDARDS SHALL INCLUDE, BUT NOT BE LIMITED TO: (A) MEASURES RELATING TO REPAIRS FOR SERVICE OUTAGES WITHIN FORTY-EIGHT HOURS UNLESS A CUSTOMER OPTS OTHERWISE;

(B) A REQUIREMENT THAT NEW INSTALLATION ORDERS BE COMPLETED WITHIN FIVE DAYS UNLESS A CUSTOMER OPTS OTHERWISE;

(C) A REQUIREMENT THAT EACH CORPORATION OR SERVICE PROVIDER DEVELOP PROCEDURES TO PRIORITIZE SERVICE TO CUSTOMERS WHO ARE LIFELINE CUSTOMERS, WHO ARE SPECIAL NEEDS CUSTOMERS, AND FOR CUSTOMERS WHO UTILIZE A MEDICAL ALERT SYSTEM OR COMMUNICATIONS EQUIPMENT, IN CONJUNCTION WITH MEDICAL DEVICES, TO MONITOR AND TRANSMIT MEDICAL DATA TO THEIR TREATING PHYSICIANS' MEDICAL SITES.

2. MINIMUM PERFORMANCE LEVELS. MINIMUM PERFORMANCE LEVELS FOR EACH SERVICE STANDARD SHALL BE DEVELOPED TO ENSURE THAT EACH TELEPHONE CORPORATION, CABLE CORPORATION, COMBINATION TELEPHONE AND CABLE CORPORATION OR VOICE OVER INTERNET PROTOCOL SERVICE PROVIDER IN THE STATE PROVIDE HIGH QUALITY CUSTOMER SERVICE AND HIGH QUALITY TECHNICAL SERVICE TO ALL THEIR CUSTOMERS.

3. CUSTOMER CREDITS OR REBATES. THE COMMISSION SHALL ESTABLISH A SCHEDULE OF CUSTOMER CREDITS OR REBATES, WHICH SHALL BE AWARDED TO CUSTOMERS THAT EXPERIENCE SERVICE OUTAGE CONDITIONS AND FOR MISSED INSTALLATION APPOINTMENTS. A SYSTEM OF GRADUATED CREDITS OR REBATES SHALL BE ESTABLISHED FOR THOSE CUSTOMERS WHOSE SERVICE OUTAGE CONDITION WAS NOT CLEARED WITHIN FORTY-EIGHT HOURS OR INSTALLATION WAS NOT COMPLETED WITHIN FIVE BUSINESS DAYS UNLESS A CUSTOMER OPTS OTHERWISE.

4. SERVICE QUALITY MONITORING AND REPORTING. THE COMMISSION SHALL RE-ESTABLISH THE MONITORING AND MEASUREMENTS OF SERVICE QUALITY IN FORCE ON JANUARY FIRST, TWO THOUSAND TEN FOR TELEPHONE CORPORATIONS AND SHALL APPLY THOSE SERVICE QUALITY STANDARDS TO EACH TELEPHONE CORPORATION, CABLE CORPORATION, COMBINATION TELEPHONE AND CABLE CORPORATION OR VOICE OVER INTERNET PROTOCOL SERVICE PROVIDER OFFERING TELEPHONE SERVICES. THE COMMISSION SHALL APPLY A UNIFORM SET OF STANDARDS WHEN MONITORING AND MEASURING THE SERVICE QUALITY PROVIDED TO ALL CUSTOMERS AND SHALL NOT DISTINGUISH BETWEEN CORE CUSTOMERS AND NON-CORE CUSTOMERS WHEN MONITORING AND MEASURING SERVICE QUALITY.

S 233. ADMINISTRATIVE SANCTIONS; RECOVERY OF PENALTIES. 1. EVERY TELEPHONE CORPORATION, CABLE CORPORATION, COMBINATION TELEPHONE AND CABLE CORPORATION OR VOICE OVER INTERNET PROTOCOL SERVICE PROVIDER SHALL ADHERE TO EVERY PROVISION OF THIS CHAPTER AND EVERY ORDER OR REGULATION ADOPTED UNDER AUTHORITY OF THIS CHAPTER SO LONG AS THE SAME SHALL BE IN FORCE.

2. (A) THE COMMISSION SHALL HAVE THE AUTHORITY TO ASSESS A CIVIL PENALTY AGAINST EACH TELEPHONE CORPORATION, CABLE CORPORATION, COMBINATION TELEPHONE AND CABLE CORPORATION OR VOICE OVER INTERNET PROTOCOL SERVICE PROVIDER AND THE DIRECTORS, OFFICERS, AGENTS AND EMPLOYEES THEREOF SUBJECT TO THE JURISDICTION, SUPERVISION, OR REGULATION PURSUANT TO THIS CHAPTER IN AN AMOUNT AS SET FORTH IN THIS SECTION. IN DETERMINING THE AMOUNT OF ANY PENALTY TO BE ASSESSED PURSUANT TO THIS SECTION, THE COMMISSION SHALL CONSIDER: (I) THE SERIOUSNESS OF THE VIOLATION FOR WHICH A PENALTY IS SOUGHT;

(II) THE NATURE AND EXTENT OF ANY PREVIOUS VIOLATIONS FOR WHICH PENALTIES HAVE BEEN ASSESSED AGAINST THE TELEPHONE CORPORATION, CABLE CORPORATION, COMBINATION TELEPHONE AND CABLE CORPORATION, VOICE OVER INTERNET PROTOCOL SERVICE PROVIDER OR SUCH DIRECTORS, OFFICERS, AGENTS AND EMPLOYEES THEREOF;

(III) THE GROSS REVENUES AND FINANCIAL STATUS OF THE TELEPHONE CORPORATION, CABLE CORPORATION, COMBINATION TELEPHONE AND CABLE CORPORATION OR VOICE OVER INTERNET PROTOCOL SERVICE PROVIDER; AND

(IV) SUCH OTHER FACTORS AS THE COMMISSION MAY DEEM APPROPRIATE AND RELEVANT. THE REMEDIES PROVIDED IN THIS SUBDIVISION ARE IN ADDITION TO ANY OTHER REMEDIES PROVIDED BY LAW.

(B) WHENEVER THE COMMISSION HAS REASON TO BELIEVE THAT A TELEPHONE CORPORATION, CABLE CORPORATION, COMBINATION TELEPHONE AND CABLE CORPORATION OR VOICE OVER INTERNET PROTOCOL SERVICE PROVIDER AND SUCH DIRECTORS, OFFICERS, AGENTS AND EMPLOYEES THEREOF MAY BE SUBJECT TO IMPOSITION OF A CIVIL PENALTY AS SET FORTH IN THIS SUBDIVISION, IT SHALL PROVIDE NOTIFICATION AND PROVIDE AN OPPORTUNITY TO BE HEARD TO SUCH CORPORATION, SERVICE PROVIDER, OR PERSON. SUCH NOTICE SHALL INCLUDE, BUT SHALL NOT BE LIMITED TO: (I) THE DATE AND A BRIEF DESCRIPTION OF THE FACTS AND NATURE OF EACH ACT OR FAILURE TO ACT FOR WHICH SUCH PENALTY IS PROPOSED; (II) A LIST OF EACH STATUTE, REGULATION OR ORDER THAT THE COMMISSION ALLEGES HAS BEEN VIOLATED; (III) THE AMOUNT OF EACH PENALTY THAT THE COMMISSION PROPOSES TO ASSESS; AND (IV) THE OPTION TO REQUEST A HEARING TO DEMONSTRATE WHY THE PROPOSED PENALTY OR PENALTIES SHOULD NOT BE ASSESSED AGAINST SUCH CORPORATION, SERVICE PROVIDER, OR PERSON.

3. ANY TELEPHONE CORPORATION, CABLE CORPORATION, COMBINATION TELEPHONE AND CABLE CORPORATION OR VOICE OVER INTERNET PROTOCOL SERVICE PROVIDER THAT VIOLATES A PROVISION OF THIS CHAPTER, REGULATION OR AN ORDER ADOPTED UNDER AUTHORITY OF THIS CHAPTER SO LONG AS THE SAME SHALL BE IN FORCE, OR WHO FAILS TO PROVIDE SAFE AND ADEQUATE SERVICE SHALL FORFEIT A SUM NOT EXCEEDING THE GREATER OF ONE HUNDRED THOUSAND DOLLARS OR TWO ONE-HUNDREDTHS OF ONE PERCENT OF THE ANNUAL INTRASTATE GROSS OPERATING REVENUE OF THE CORPORATION, CONSTITUTING A CIVIL PENALTY FOR EACH AND EVERY OFFENSE AND, IN THE CASE OF A CONTINUING VIOLATION, EACH DAY SHALL BE DEEMED A SEPARATE AND DISTINCT OFFENSE.

4. NOTWITHSTANDING THE PROVISIONS OF SUBDIVISION THREE OF THIS SECTION, ANY SUCH TELEPHONE CORPORATION, CABLE CORPORATION, COMBINATION TELEPHONE AND CABLE CORPORATION OR VOICE OVER INTERNET PROTOCOL SERVICE PROVIDER THAT VIOLATES A PROVISION OF THIS CHAPTER, OR AN ORDER OR REGULATION ADOPTED UNDER THE AUTHORITY OF THIS CHAPTER SPECIFICALLY FOR THE PROTECTION OF HUMAN SAFETY OR PREVENTION OF SIGNIFICANT DAMAGE TO REAL PROPERTY, INCLUDING, BUT NOT LIMITED TO: (A) A DEATH OR PERSONAL INJURY; OR (B) DAMAGE TO REAL PROPERTY IN EXCESS OF FIFTY THOUSAND DOLLARS, FORFEIT A SUM NOT TO EXCEED THE GREATER OF: (I) TWO HUNDRED FIFTY THOUSAND DOLLARS OR THREE ONE-HUNDREDTHS OF ONE PERCENT OF THE ANNUAL INTRASTATE GROSS OPERATING REVENUE OF THE CORPORATION, WHICHEVER IS GREATER, CONSTITUTING A CIVIL PENALTY FOR EACH SEPARATE AND DISTINCT OFFENSE;

PROVIDED, HOWEVER, THAT FOR PURPOSES OF THIS PARAGRAPH, EACH DAY OF A CONTINUING VIOLATION SHALL NOT BE DEEMED A SEPARATE AND DISTINCT OFFENSE. THE TOTAL PERIOD OF A CONTINUING VIOLATION, AS WELL AS EVERY DISTINCT VIOLATION, SHALL BE SIMILARLY TREATED AS A SEPARATE AND DISTINCT OFFENSE FOR PURPOSES OF THIS PARAGRAPH; OR (II) THE MAXIMUM FORFEITURE DETERMINED IN ACCORDANCE WITH SUBDIVISION THREE OF THIS SECTION.

5. NOTWITHSTANDING THE PROVISIONS OF SUBDIVISION THREE OR FOUR OF THIS SECTION, A TELEPHONE CORPORATION, CABLE CORPORATION, COMBINATION TELEPHONE AND CABLE CORPORATION OR VOICE OVER INTERNET PROTOCOL SERVICE PROVIDER THAT VIOLATES A PROVISION OF THIS CHAPTER, OR AN ORDER OR REGULATION ADOPTED UNDER AUTHORITY OF THIS CHAPTER, DESIGNED TO PROTECT THE OVERALL RELIABILITY AND CONTINUITY OF SERVICE, INCLUDING BUT NOT LIMITED TO THE RESTORATION OF SERVICE FOLLOWING A MAJOR OUTAGE EVENT OR EMERGENCY, SHALL FORFEIT A SUM NOT TO EXCEED THE GREATER OF: (A) FIVE HUNDRED THOUSAND DOLLARS OR FOUR ONE-HUNDREDTHS OF ONE PERCENT OF THE ANNUAL INTRASTATE GROSS OPERATING REVENUE OF THE TELEPHONE CORPORATION, CABLE CORPORATION, COMBINATION TELEPHONE AND CABLE CORPORATION OR VOICE OVER INTERNET PROTOCOL SERVICE PROVIDER, WHICHEVER IS GREATER, CONSTITUTING A CIVIL PENALTY FOR EACH SEPARATE AND DISTINCT OFFENSE; PROVIDED, HOWEVER, THAT FOR PURPOSES OF THIS PARAGRAPH EACH DAY OF A CONTINUING VIOLATION SHALL NOT BE DEEMED A SEPARATE AND DISTINCT OFFENSE. THE TOTAL PERIOD OF A CONTINUING VIOLATION, AS WELL AS EVERY DISTINCT VIOLATION SHALL BE SIMILARLY TREATED AS A SEPARATE AND DISTINCT OFFENSE FOR PURPOSES OF THIS PARAGRAPH; OR

(B) THE MAXIMUM FORFEITURE DETERMINED IN ACCORDANCE WITH SUBDIVISION THREE OF THIS SECTION.

6. ANY DIRECTOR, OFFICER, AGENT, OR EMPLOYEE OF ANY CORPORATION OR SERVICE PROVIDER DETERMINED BY THE COMMISSION TO HAVE VIOLATED THE PROVISIONS OF SUBDIVISION THREE, FOUR, OR FIVE OF THIS SECTION, AND WHO KNOWINGLY VIOLATES A PROVISION OF THIS CHAPTER, REGULATION OR AN ORDER ADOPTED UNDER AUTHORITY OF THIS CHAPTER SO LONG AS THE SAME SHALL BE IN FORCE, INCLUDING A FAILURE TO PROVIDE SAFE AND ADEQUATE SERVICE, SHALL FORFEIT A SUM NOT TO EXCEED ONE HUNDRED THOUSAND DOLLARS CONSTITUTING A CIVIL PENALTY FOR EACH AND EVERY OFFENSE AND, IN THE CASE OF A CONTINUING VIOLATION, EACH DAY SHALL BE DEEMED A SEPARATE AND DISTINCT OFFENSE.

7. ANY SUCH ASSESSMENT MAY BE COMPROMISED OR DISCONTINUED BY THE COMMISSION. ALL MONEYS RECOVERED PURSUANT TO THIS SECTION, TOGETHER WITH THE COSTS THEREOF, SHALL BE REMITTED TO, OR FOR THE BENEFIT OF, THE RATEPAYERS IN A MANNER TO BE DETERMINED BY THE COMMISSION.

8. UPON A FAILURE BY A TELEPHONE CORPORATION, CABLE CORPORATION, COMBINATION TELEPHONE AND CABLE CORPORATION OR VOICE OVER INTERNET PROTOCOL SERVICE PROVIDER TO REMIT ANY PENALTY ASSESSED BY THE COMMISSION PURSUANT TO THIS SECTION, THE COMMISSION, THROUGH ITS COUNSEL OR OTHER APPROPRIATE DESIGNEE, MAY INSTITUTE AN ACTION OR SPECIAL PROCEEDING TO COLLECT THE PENALTY IN A COURT OF COMPETENT JURISDICTION.

9. ANY PAYMENT MADE BY A TELEPHONE CORPORATION, CABLE CORPORATION, COMBINATION TELEPHONE AND CABLE CORPORATION OR VOICE OVER INTERNET PROTOCOL SERVICE PROVIDER AND THE DIRECTORS, OFFICERS, AGENTS AND EMPLOYEES THEREOF AS A RESULT OF AN ASSESSMENT AS PROVIDED IN THIS SECTION, AND THE COST OF LITIGATION AND INVESTIGATION RELATED TO ANY SUCH ASSESSMENT, SHALL NOT BE RECOVERABLE FROM RATEPAYERS, SUBSCRIBERS, OR CUSTOMERS.

10. IN CONSTRUING AND ENFORCING THE PROVISIONS OF THIS CHAPTER RELATING TO PENALTIES, THE ACT OF ANY DIRECTOR, OFFICER, AGENT OR EMPLOYEE OF A TELEPHONE CORPORATION, CABLE CORPORATION, COMBINATION TELEPHONE AND

CABLE CORPORATION OR VOICE OVER INTERNET PROTOCOL SERVICE PROVIDER ACTING WITHIN THE SCOPE OF HIS OR HER OFFICIAL DUTIES OR EMPLOYMENT SHALL BE DEEMED TO BE THE ACT OF SUCH TELEPHONE CORPORATION, CABLE CORPORATION, COMBINATION TELEPHONE AND CABLE CORPORATION OR VOICE OVER INTERNET PROTOCOL SERVICE PROVIDER.

S 2. Severability clause. If any clause, sentence, paragraph, subdivision, section or part of this act shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair, or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, subdivision, section or part thereof directly involved in the controversy in which such judgment shall have been rendered. It is hereby declared to be the intent of the legislature that this act would have been enacted even if such invalid provisions had not been included herein.

S 3. This act shall take effect immediately.