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

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2015-2016 Regular Sessions

I N  S E N A T E

April 22, 2015

Introduced by Sens. PANEPINTO, ADDABBO, AVELLA, COMRIE, LATIMER, PARKER -- read twice and ordered printed, and when printed to be committed to the Committee on Energy and Telecommunications -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- 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 creating standards by which the public service commission reviews and approves a merger or acquisition between telephone corporations, cable corporations, and combination telephone and cable corporations

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, AND COMBINATION TELEPHONE AND CABLE CORPORATIONS

SECTION 250. DEFINITIONS.
251. MERGERS OR ACQUISITIONS.

S 250. 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 SYSTEM" SHALL HAVE THE SAME MEANING AS SET FORTH IN SECTION TWO HUNDRED TWELVE OF THIS CHAPTER.

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

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

S 251. MERGERS OR ACQUISITIONS. 1. (A) NO TELEPHONE CORPORATION, CABLE CORPORATION, OR COMBINATION TELEPHONE AND CABLE CORPORATION THAT HAS GROSS ANNUAL REVENUES EXCEEDING ONE HUNDRED MILLION DOLLARS SHALL ASSIGN, TRANSFER CONTROL OF OR MERGE ITS STOCK, FRANCHISE OR SYSTEM OR ANY PART OF SUCH SYSTEM TO ANY OTHER PERSON OR CORPORATION WITHOUT THE WRITTEN CONSENT OF THE COMMISSION.

(B) NOTWITHSTANDING ANY OTHER SECTION OF LAW, NO CONSENT, AS REQUIRED BY PARAGRAPH (A) OF THIS SUBDIVISION, SHALL BE GIVEN BY THE COMMISSION TO THE ASSIGNMENT, TRANSFER OF CONTROL OR MERGER OF ANY RIGHT OR FRANCHISE TO OPERATE A TELEPHONE LINE OR ANY CABLE TELEVISION SYSTEM UNLESS IT SHALL HAVE BEEN SHOWN BY THE PARTIES THAT SUCH ASSIGNMENT, TRANSFER OF CONTROL OR MERGER IS IN THE PUBLIC INTEREST.

(C) NO CONSENT, AS REQUIRED BY PARAGRAPH (A) OF THIS SUBDIVISION, SHALL BE GIVEN BY THE COMMISSION TO THE ASSIGNMENT, TRANSFER OF CONTROL OR MERGER OF ANY RIGHT OR FRANCHISE TO OPERATE ANY PART OF A TELEPHONE OR CABLE CORPORATION'S SYSTEM, OR TO A CONTRACT FOR THE OPERATION OF SUCH ENTITY'S SYSTEM, UNLESS IT SHALL HAVE BEEN SHOWN BY THE PARTIES THAT SUCH ASSIGNMENT, TRANSFER OF CONTROL, MERGER OR CONTRACT IS IN THE PUBLIC INTEREST.

2. BEFORE CONSENTING TO THE ASSIGNMENT, TRANSFER OF CONTROL OR MERGER OF ANY TELEPHONE CORPORATION, CABLE CORPORATION, OR COMBINATION TELEPHONE AND CABLE CORPORATION PURSUANT TO SUBDIVISION ONE OF THIS SECTION THE COMMISSION SHALL FIND THAT THE PROPOSAL DOES ALL OF THE FOLLOWING:

(A) PROVIDES PUBLIC INTEREST BENEFITS TO THE EFFECTED SUBSCRIBERS.

(B) MAINTAINS OR IMPROVES THE SERVICE QUALITY STANDARDS THE COMMISSION HAS ESTABLISHED FOR THE EFFECTED TELEPHONE CORPORATION, CABLE CORPORATION, OR COMBINATION TELEPHONE AND CABLE CORPORATION.

(C) MAINTAINS OR IMPROVES THE FINANCIAL CONDITION OF THE RESULTING TELEPHONE CORPORATION, CABLE CORPORATION, OR COMBINATION TELEPHONE AND CABLE CORPORATION DOING BUSINESS IN THE STATE.

(D) MAINTAINS OR IMPROVES THE TELEPHONE CORPORATION, CABLE CORPORATION, OR COMBINATION TELEPHONE AND CABLE CORPORATION SERVICE OFFERINGS TO SUBSCRIBERS IN THE STATE.

(E) MAINTAINS OR IMPROVES THE QUALITY OF MANAGEMENT OF THE RESULTING TELEPHONE CORPORATION, CABLE CORPORATION, OR COMBINATION TELEPHONE AND CABLE CORPORATION DOING BUSINESS IN THE STATE.

(F) IS FAIR AND REASONABLE TO AFFECTED TELEPHONE CORPORATION, CABLE CORPORATION, OR COMBINATION TELEPHONE AND CABLE CORPORATION EMPLOYEES, INCLUDING BOTH UNION AND NONUNION EMPLOYEES.

(G) DOES NOT ADVERSELY AFFECT COMPETITION IN THE MARKETPLACE FOR TELEPHONE OR CABLE SERVICES.

(H) CREATES ENFORCEMENT MEASURES WHEN A TELEPHONE CORPORATION, CABLE CORPORATION, OR COMBINATION TELEPHONE AND CABLE CORPORATION FAILS TO COMPLY WITH ANY CONDITIONS OR COMMITMENTS MADE TO THE COMMISSION IN ORDER TO OBTAIN COMMISSION CONSENT. THE COMMISSION SHALL BE AUTHORIZED TO COMPEL PERFORMANCE, ISSUE PENALTIES OR ORDER IMPLEMENTATION OF SUCH CONDITIONS OR COMMITMENTS.

(I) EQUITABLY ALLOCATES THE FORECASTED POSITIVE BENEFITS OF THE PROPOSAL BETWEEN SHAREHOLDERS AND SUBSCRIBERS, INCLUDING BUT NOT LIMITED TO, THE FORECASTED ECONOMIC BENEFITS. SUBSCRIBERS SHALL RECEIVE NOT LESS THAN FIFTY PERCENT OF SUCH FORECASTED POSITIVE BENEFITS. FOR THE PURPOSE

OF ALLOCATING THE FORECASTED POSITIVE BENEFITS OF THE PROPOSAL BETWEEN SHAREHOLDERS AND SUBSCRIBERS, THE COMMISSION MAY DEEM, INCLUDING BUT NOT LIMITED TO, REINVESTMENT OF THE FORECASTED BENEFITS INTO THE TELEPHONE CORPORATION, CABLE CORPORATION, OR COMBINATION TELEPHONE AND CABLE CORPORATION'S INFRASTRUCTURE AS A BENEFIT RECEIVED BY SUBSCRIBERS.

(J) CREATES A PROGRAM TO PROVIDE SERVICES TO LOW-INCOME SUBSCRIBERS, WHO SHALL INCLUDE BUT NOT BE LIMITED TO FAMILIES PARTICIPATING IN THE NATIONAL SCHOOL LUNCH PROGRAM, CITIZENS RECEIVING BENEFITS FROM THE SUPPLEMENTAL SECURITY INCOME ASSISTANCE PROGRAM, PARTICIPANTS IN THE HOME ENERGY ASSISTANCE PROGRAM, AND PARTICIPANTS RECEIVING THE LIFELINE DISCOUNT ON AN ELIGIBLE TELECOMMUNICATIONS SERVICE, AT REASONABLE RATES.

3. WHEN REVIEWING AN ASSIGNMENT, TRANSFER OF CONTROL OR MERGER PROPOSAL, AS SET FORTH IN SUBDIVISION ONE OF THIS SECTION, THE COMMISSION SHALL CONSIDER REASONABLE ALTERNATIVES OR MODIFICATIONS TO THE PROPOSAL AS RECOMMENDED BY OTHER PARTIES TO DETERMINE WHETHER OR NOT THE PROPOSAL IS IN THE PUBLIC INTEREST.

4. THE PERSON OR CORPORATION SEEKING ACQUISITION OR CONTROL OF A TELEPHONE CORPORATION, CABLE CORPORATION, OR COMBINATION TELEPHONE AND CABLE CORPORATION SHALL HAVE BEFORE THE COMMISSION THE BURDEN OF PROVING BY A PREPONDERANCE OF THE EVIDENCE THAT THE REQUIREMENTS OF SUBDIVISION TWO OF THIS SECTION ARE SATISFIED.

5. IN DETERMINING WHETHER OR NOT AN ACQUISITION OF A TELEPHONE CORPORATION, CABLE CORPORATION, OR COMBINATION TELEPHONE AND CABLE CORPORATION HAS THE GROSS ANNUAL REVENUES EXCEEDING THE AMOUNT SPECIFIED IN SUBDIVISION TWO OF THIS SECTION, THE REVENUES OF THAT TELEPHONE OR CABLE CORPORATION'S AFFILIATES SHALL NOT BE CONSIDERED, UNLESS THE AFFILIATE IS TO BE UTILIZED FOR THE PURPOSE OF EFFECTING SUCH MERGER, ACQUISITION, OR CONTROL.

6. PARAGRAPHS (A), (B), AND (C) OF SUBDIVISION TWO OF THIS SECTION SHALL NOT APPLY TO THE FORMATION OF A HOLDING COMPANY.

7. PARAGRAPHS (A), (B), AND (C) OF SUBDIVISION TWO OF THIS SECTION SHALL NOT APPLY TO ACQUISITIONS OR CHANGES IN CONTROL THAT ARE MANDATED BY EITHER THE COMMISSION OR THE LEGISLATURE.

8. WHEN ISSUING A DECISION ON A PROPOSED ASSIGNMENT, TRANSFER OF CONTROL OR MERGER PROPOSAL, AS REQUIRED BY SUBDIVISION ONE OF THIS SECTION, THE COMMISSION SHALL ISSUE A REPORT DETAILING HOW THAT DECISION WAS REACHED WITHIN THIRTY DAYS OF ISSUING SUCH DECISION. IF THE COMMISSION GRANTS CONDITIONAL APPROVAL IN ITS DECISION, THE DEPARTMENT SHALL ISSUE AN ADDITIONAL REPORT WITHIN ONE YEAR AFTER GRANTING SUCH CONDITIONAL APPROVAL DETAILING THE CORPORATION'S COMPLIANCE WITH SUCH CONDITIONS OR COMMITMENTS. NOTHING IN THIS SECTION SHALL PRECLUDE THE DEPARTMENT FROM ISSUING ADDITIONAL REPORTS ON THE CORPORATION'S COMPLIANCE.

9. (A) ANY CONSENT REQUIRED BY PARAGRAPH (A) OF SUBDIVISION ONE OF THIS SECTION SHALL ONLY BE PROVIDED BY THE COMMISSION AFTER A FULL EVIDENTIARY HEARING.

(B) SUCH FULL EVIDENTIARY HEARING SHALL BE LIVE STREAMED ON THE INTERNET AND ARCHIVED ON THE DEPARTMENT WEBSITE FOR PUBLIC VIEWING.

10. (A) ANY CONSENT REQUIRED BY PARAGRAPH (A) OF SUBDIVISION ONE OF THIS SECTION SHALL ONLY BE ISSUED BY THE COMMISSION AFTER A PUBLIC HEARING WHERE MEMBERS OF THE PUBLIC MAY PROVIDE THE COMMISSION OR ITS DESIGNEE WITH COMMENTS ON THE PROPOSAL.

(B) THE COMMISSION SHALL ANNOUNCE THE PUBLIC HEARING AT LEAST THIRTY DAYS BEFORE THE DATE OF THE PUBLIC HEARING AND SHALL PUBLISH SUCH NOTICE ON ITS WEBSITE AT LEAST THIRTY DAYS BEFORE THE PUBLIC HEARING.

(C) THE PUBLIC HEARING SHALL BE NO LESS THAN FIFTEEN DAYS BEFORE A CONSENT ON THE PROPOSAL IS ISSUED BY THE COMMISSION.

11. THE COMMISSION SHALL ISSUE A WRITTEN "FINDING OF FACT" AS TO ALL OF THE FINDINGS REQUIRED IN SUBDIVISION TWO OF THIS SECTION, AND IT SHALL INCLUDE BUT NOT BE LIMITED TO:

(A) AN EXPLANATION OF HOW THE DEPARTMENT DETERMINED THE "FORECASTED ECONOMIC BENEFITS" IN PARAGRAPH (I) OF SUBDIVISION TWO OF THIS SECTION AND SPECIFICALLY SET FORTH IN AN ITEMIZED MANNER HOW SUBSCRIBERS ARE INTENDED TO RECEIVE NOT LESS THAN FIFTY PERCENT OF SUCH FORECASTED ECONOMIC BENEFITS, AND

(B) A RATIONALE AS TO WHY THE COMMISSION HAS CONSENTED TO THE PARTICULAR DISTRIBUTION OF SUCH FORECASTED ECONOMIC BENEFITS BETWEEN THE SUBSCRIBERS AND SHAREHOLDERS. SUCH FINDING OF FACT SHALL BE ISSUED AT LEAST THIRTY DAYS PRIOR TO THE COMMISSION ISSUING A CONSENT ORDER PURSUANT TO SUBDIVISION ONE OF THIS SECTION AND SHALL BE POSTED ON THE COMMISSION'S WEBSITE.

12. (A) ANY REVIEW OF A MERGER OR ACQUISITION BY THE PUBLIC SERVICE COMMISSION PURSUANT TO THIS SECTION SHALL BE IN ADDITION TO ANY OTHER REVIEW REQUIRED BY THIS CHAPTER UNLESS OTHERWISE DEEMED BY THE COMMISSION.

(B) ANY CONSENT OR APPROVAL OF A MERGER OR ACQUISITION BY THE PUBLIC SERVICE COMMISSION ISSUED PURSUANT TO THIS SECTION SHALL NOT BE CONSIDERED AN APPROVAL OR CONSENT REQUIRED BY ANY OTHER SECTION OF THIS CHAPTER UNLESS OTHERWISE DEEMED BY THE COMMISSION.

13. THE COMMISSION SHALL COMPLY WITH THE REQUIREMENTS ESTABLISHED IN THIS SECTION TO THE FULLEST PRACTICABLE EXTENT. IF ANY OF THE REQUIREMENTS CONFLICT WITH THE REQUIREMENTS OR SCHEDULE SET FORTH BY THE FEDERAL COMMUNICATIONS COMMISSION, THE COMMISSION MAY MODIFY THE REQUIREMENTS TO ACHIEVE COMPLIANCE.

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.