

5641

2015-2016 Regular Sessions

I N S E N A T E

May 21, 2015

Introduced by Sen. GRIFFO -- read twice and ordered printed, and when printed to be committed to the Committee on Energy and Telecommunications

AN ACT to amend the public service law, in relation to allowing for the approval of cable franchises; and to repeal certain provisions of such law relating thereto

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

1 Section 1. Section 221 of the public service law, as added by chapter
2 83 of the laws of 1995, is amended to read as follows:
3 S 221. Certificate of confirmation. 1. Except as provided in this
4 section, no person shall exercise a franchise, and no such franchise
5 shall be effective, [until the commission has confirmed such franchise.
6 A person wishing to exercise a franchise shall file with the commission
7 an application for a certificate of confirmation in such form and
8 containing such information and supportive documentation as the commis-
9 sion may require. The application shall be accompanied by proof of
10 service thereof upon the franchisor and by such fee as the commission
11 may set] UNLESS A COPY OF SUCH FRANCHISE HAS BEEN APPROVED BY THE MUNI-
12 CIPALITY, AND PROPERTY FILED WITH THE COMMISSION WITHIN THIRTY DAYS OF
13 MUNICIPAL APPROVAL. SUCH FRANCHISE SHALL BE SUBJECT, AT A MINIMUM, TO
14 THE FRANCHISING STANDARDS SET FORTH IN THIS ARTICLE AND THE RULES AND
15 REGULATIONS PROMULGATED THEREUNDER BY THE COMMISSION.
16 2. A FRANCHISE SHALL BE DEEMED GRANTED FORTY-FIVE DAYS AFTER THE FRAN-
17 CHISE IS FILED PURSUANT TO SUBDIVISION ONE OF THIS SECTION UNLESS THE
18 COMMISSION, OR ITS DESIGNEE, DETERMINES WITHIN SUCH FORTY-FIVE DAY PERI-
19 OD THAT THE PUBLIC INTEREST REQUIRES THE COMMISSION'S REVIEW AND WRITTEN
20 ORDER.
21 [2.] 3. The commission may hold a public hearing on any application
22 for a certificate of confirmation if it determines that such a hearing
23 is in the public interest. The commission shall fix the time and place

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

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1 for such a hearing and cause notice thereof to be given to the appli-
2 cant, the chief executive officer of the municipality issuing the fran-
3 chise and such other persons as the commission may deem appropriate.
4 Testimony may be taken and evidence received at such a hearing pursuant
5 to such rules and procedures as the commission may establish.

6 [3. The commission shall issue a] 4. A certificate of confirmation of
7 the franchise [unless it finds that (a) the applicant, (b) the proposed
8 cable television system, or (c) the proposed franchise does not conform
9 to the standards established in the regulations promulgated by the
10 commission pursuant to subdivision two of section two hundred fifteen,
11 or that operation of the proposed cable television system by the appli-
12 cant under the proposed cable television system by the applicant under
13 the proposed franchise would be in violation of law, any regulation or
14 standard promulgated by the commission or the public interest.] SHALL BE
15 DEEMED CONFIRMED FORTY-FIVE DAYS AFTER THE FRANCHISE IS FILED PURSUANT
16 TO SUBDIVISION ONE OF THIS SECTION UNLESS THE COMMISSION, OR ITS DESIG-
17 NEE, DETERMINES WITHIN SUCH FORTY-FIVE DAY PERIOD THAT THE PUBLIC INTER-
18 EST REQUIRES THE COMMISSION'S REVIEW AND WRITTEN ORDER.

19 [4.] 5. The commission may issue a certificate of confirmation contin-
20 gent upon compliance with standards, terms or conditions set by the
21 commission which it determines would not have been met by the applicant,
22 system or franchise as proposed.

23 [5.] 6. In the event the commission refuses to issue a certificate of
24 confirmation, it shall set forth in writing the reasons for its deci-
25 sion.

26 [6. Any cable television company which, pursuant to any existing fran-
27 chise, (i) was lawfully engaged in actual operations for (ii) had
28 commenced substantial construction (as such term is defined by the
29 commission) of a cable television system on January first, nineteen
30 hundred seventy-two may continue to exercise said franchise pursuant to
31 the terms thereof, provided such company files with the commission, on
32 or before July first, nineteen hundred seventy-three an application in
33 such form and containing such information and supporting documentation
34 as the commission may require. The commission shall issue a certificate
35 of confirmation to such a cable television company valid for five years
36 without further proceedings, which certificate may be renewed by the
37 commission on application for five year terms pursuant to the provisions
38 of section two hundred twenty-two.

39 7. Notwithstanding any other provisions of this article, any cable
40 television company engaged in actual and lawful nonfranchised cable
41 television operations on April first, nineteen hundred seventy-three,
42 that applied for a certificate of confirmation on or before September
43 first, nineteen hundred seventy-four and received a certificate, valid
44 for a five year period, may continue to operate within the limits of the
45 area in which it was actually rendering service on April first, nineteen
46 hundred seventy-three, as determined by the commission. Such a certif-
47 icate of confirmation may be renewed by the commission on application
48 for five year terms pursuant to the provisions of section two hundred
49 twenty-two of this article. Any such company which failed to file an
50 application pursuant to this section on or before September first, nine-
51 teen hundred seventy-four, shall thereafter be prohibited from continu-
52 ing operation of a nonfranchised cable television system, provided
53 however, that the commission may authorize such continued nonfranchised
54 operation in extraordinary circumstances for such periods as the commis-
55 sion may deem appropriate.

1 8. Nothing in this section shall be deemed to validate a franchise not
2 granted in accordance with law or affect any claims in litigation on
3 January first, nineteen hundred seventy-three. No confirmation under
4 this section shall preclude invalidation of any franchise illegally
5 obtained.

6 9.] 7. Confirmation by the commission and duties performed by the
7 commission with respect to its regulation of cable television providers
8 under this article shall not be deemed to constitute "supervision of the
9 state department of public service" for the purpose of the meaning of
10 such phrase as it is used in describing those utilities which are
11 subject to tax on a gross income basis under section one hundred eight-
12 y-six-a of the tax law or pursuant to section twenty-b of the general
13 city law and subdivision one of section [five hundred thirty] 5-530 of
14 the village law.

15 S 2. Section 222 of the public service law is REPEALED and a new
16 section 222 is added to read as follows:

17 S 222. RENEWAL OR AMENDMENT OF FRANCHISES. 1. EXCEPT AS PROVIDED IN
18 THIS SECTION, NO PERSON SHALL RENEW OR AMEND A FRANCHISE RENEWAL, AND NO
19 SUCH RENEWAL OR AMENDMENT SHALL BE EFFECTIVE, UNLESS A COPY OF SUCH
20 RENEWAL OR AMENDMENT HAS BEEN APPROVED BY THE MUNICIPALITY, AND PROPERLY
21 FILED WITH THE COMMISSION WITHIN THIRTY DAYS OF MUNICIPAL APPROVAL. SUCH
22 RENEWAL OR AMENDMENT SHALL BE SUBJECT, AT A MINIMUM, TO THE FRANCHISING
23 STANDARDS SET FORTH IN THIS ARTICLE AND THE RULES AND REGULATIONS
24 PROMULGATED THEREUNDER BY THE COMMISSION.

25 2. RENEWALS AND AMENDMENTS SHALL BE DEEMED GRANTED FORTY-FIVE DAYS
26 AFTER THE RENEWAL OR AMENDMENT IS FILED PURSUANT TO SUBDIVISION ONE OF
27 THIS SECTION UNLESS THE COMMISSION, OR ITS DESIGNEE, DETERMINES WITHIN
28 SUCH FORTY-FIVE DAY PERIOD THAT THE PUBLIC INTEREST REQUIRES THE COMMIS-
29 SION'S REVIEW AND WRITTEN ORDER.

30 S 3. The public service law is amended by adding a new section 222-a
31 to read as follows:

32 S 222-A. TRANSFER OF FRANCHISES AND TRANSFER OF CONTROL OVER FRAN-
33 CHISES AND SYSTEM PROPERTIES. 1. NO TRANSFER OF ANY FRANCHISE, OR ANY
34 TRANSFER OF CONTROL OF A FRANCHISE OR CERTIFICATE OF CONFIRMATION OR OF
35 FACILITIES CONSTITUTING A SIGNIFICANT PART OF ANY CABLE TELEVISION
36 SYSTEM SHALL BE EFFECTIVE WITHOUT THE PRIOR APPROVAL OF THE COMMISSION.
37 SUCH APPROVAL SHALL BE REQUIRED IN ADDITION TO ANY MUNICIPAL APPROVAL
38 REQUIRED UNDER THE FRANCHISE OR BY LAW. FOR THE PURPOSE OF THIS SECTION,
39 A MERGER OR CONSOLIDATION OF TWO OR MORE CABLE TELEVISION COMPANIES
40 SHALL BE DEEMED TO BE A TRANSFER OF THE FRANCHISES OR CERTIFICATES
41 GRANTED TO SUCH COMPANIES.

42 2. A PERSON WISHING TO TRANSFER A FRANCHISE, OR TO TRANSFER CONTROL OF
43 A FRANCHISE OR OF A SUBSTANTIAL PART OF THE FACILITIES THEREOF SHALL
44 FILE WITH THE COMMISSION AN APPLICATION FOR APPROVAL OF SUCH CHANGE, IN
45 SUCH FORM AND CONTAINING SUCH INFORMATION AND SUPPORTING DOCUMENTS AS
46 THE COMMISSION MAY REQUIRE. THE APPLICATION SHALL BE ACCOMPANIED BY
47 PROOF OF SERVICE THEREOF UPON THE FRANCHISOR, IF ANY, AND BY SUCH FEE AS
48 THE COMMISSIONER MAY SET. THE COMMISSION MAY HOLD A PUBLIC HEARING ON
49 ANY SUCH APPLICATION.

50 3. THE COMMISSION SHALL APPROVE THE APPLICATION UNLESS IT FINDS THAT
51 THE APPLICANT, THE PROPOSED TRANSFEREE OR THE CABLE TELEVISION SYSTEM
52 DOES NOT CONFORM TO THE STANDARDS ESTABLISHED IN THE REGULATIONS PROMUL-
53 GATED BY THE COMMISSION PURSUANT TO THIS ARTICLE OR THAT APPROVAL WOULD
54 BE IN VIOLATION OF ANY LAW, REGULATION OR STANDARD PROMULGATED BY THE
55 COMMISSION OR THE PUBLIC INTEREST, PROVIDED HOWEVER, THAT A FAILURE TO
56 CONFORM TO THE STANDARDS ESTABLISHED IN THE REGULATIONS PROMULGATED BY

1 THE COMMISSION SHALL NOT PRECLUDE APPROVAL OF ANY SUCH APPLICATION IF
2 THE COMMISSION FINDS THAT SUCH APPROVAL WOULD SERVE THE PUBLIC INTEREST.

3 4. THE COMMISSION MAY APPROVE THE APPLICATION CONTINGENT UPON COMPLI-
4 ANCE WITH STANDARDS, TERMS OR CONDITIONS SET BY THE COMMISSION WHICH IT
5 DETERMINES WOULD NOT HAVE BEEN MET BY THE PROPOSED TRANSFER OF A FRAN-
6 CHISE.

7 5. IN THE EVENT THE COMMISSION REFUSES TO APPROVE THE APPLICATION, IT
8 SHALL SET FORTH IN WRITING THE REASONS FOR ITS DECISION.

9 6. APPROVAL OF A TRANSFER OF A FRANCHISE UNDER THIS SECTION SHALL NOT
10 PRECLUDE INVALIDATION OF A FRANCHISE ILLEGALLY OBTAINED.

11 S 4. This act shall take effect immediately; provided, however, that
12 this act shall apply to franchises filed on or after the date this act
13 shall have become a law.