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

5641--C

Cal. No. 780

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 -- reported favorably from said committee, ordered to first report, amended on first report, ordered to a second report and ordered reprinted, retaining its place in the order of second report -- 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 -- reported favorably from said committee, ordered to first and second report, ordered to a third reading, amended and ordered reprinted, retaining its place in the order of third reading

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:

Section 1. Section 221 of the public service law, as added by chapter 83 of the laws of 1995, is amended to read as follows:

S 221. Certificate of confirmation. 1. Except as provided in this section, no person shall exercise a franchise, and no such franchise shall be effective, [until the commission has confirmed such franchise. A person wishing to exercise a franchise shall file with the commission an application for a certificate of confirmation in such form and containing such information and supportive documentation as the commission may require. The application shall be accompanied by proof of service thereof upon the franchisor and by such fee as the commission may set] UNLESS A COPY OF SUCH FRANCHISE HAS BEEN APPROVED BY THE MUNICIPALITY, AND PROPERLY FILED WITH THE COMMISSION WITHIN THIRTY DAYS OF MUNICIPAL APPROVAL. SUCH FRANCHISE SHALL BE SUBJECT, AT A MINIMUM, TO THE FRANCHISING STANDARDS SET FORTH IN THIS ARTICLE AND THE RULES AND REGULATIONS PROMULGATED THEREUNDER BY THE COMMISSION.

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

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2. A FRANCHISE SHALL BE DEEMED GRANTED FORTY-FIVE DAYS AFTER THE FRANCHISE IS FILED PURSUANT TO SUBDIVISION ONE OF THIS SECTION UNLESS THE COMMISSION, OR ITS DESIGNEE, DETERMINES WITHIN SUCH FORTY-FIVE DAY PERIOD THAT THE PUBLIC INTEREST REQUIRES THE COMMISSION'S REVIEW AND WRITTEN ORDER.

[2.] 3. The commission may hold a public hearing on any application for a certificate of confirmation if it determines that such a hearing is in the public interest. The commission shall fix the time and place for such a hearing and cause notice thereof to be given to the applicant, the chief executive officer of the municipality issuing the franchise and such other persons as the commission may deem appropriate. Testimony may be taken and evidence received at such a hearing pursuant to such rules and procedures as the commission may establish.

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

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

[5.] 6. In the event the commission refuses to issue a certificate of confirmation, it shall set forth in writing the reasons for its decision.

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

7. Notwithstanding any other provisions of this article, any cable television company engaged in actual and lawful nonfranchised cable television operations on April first, nineteen hundred seventy-three, that applied for a certificate of confirmation on or before September first, nineteen hundred seventy-four and received a certificate, valid for a five year period, may continue to operate within the limits of the area in which it was actually rendering service on April first, nineteen hundred seventy-three, as determined by the commission. Such a certificate of confirmation may be renewed by the commission on application for five year terms pursuant to the provisions of section two hundred

twenty-two of this article. Any such company which failed to file an application pursuant to this section on or before September first, nineteen hundred seventy-four, shall thereafter be prohibited from continuing operation of a nonfranchised cable television system, provided however, that the commission may authorize such continued nonfranchised operation in extraordinary circumstances for such periods as the commission may deem appropriate.

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

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

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

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

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

S 3. This act shall take effect immediately; provided, however, that this act shall apply to franchises filed on or after the date this act shall have become a law.