

4888--A

2015-2016 Regular Sessions

I N S E N A T E

April 22, 2015

Introduced by Sens. PANEPINTO, 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

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:

1 Section 1. The public service law is amended by adding a new article
2 12 to read as follows:

3 ARTICLE 12

4 PROVISIONS RELATING TO TELEPHONE CORPORATIONS, CABLE
5 CORPORATIONS, AND COMBINATION TELEPHONE AND CABLE
6 CORPORATIONS

7 SECTION 250. DEFINITIONS.

8 251. MERGERS OR ACQUISITIONS.

9 S 250. DEFINITIONS. THE WORDS AND PHRASES USED IN THIS ARTICLE SHALL
10 HAVE THE FOLLOWING MEANINGS UNLESS A DIFFERENT MEANING CLEARLY APPEARS
11 IN THE CONTEXT:

12 1. "CABLE CORPORATION" SHALL MEAN ANY PERSON OWNING, CONTROLLING,
13 OPERATING, MANAGING OR LEASING ONE OR MORE CABLE TELEVISION SYSTEMS
14 WITHIN THE STATE.

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

17 3. "COMBINATION TELEPHONE AND CABLE CORPORATION" SHALL MEAN ANY TELE-
18 PHONE CORPORATION OPERATING IN NEW YORK UNDER COMMON OWNERSHIP WITH A
19 CABLE CORPORATION OPERATING IN NEW YORK OR ANY CABLE CORPORATION OPERAT-
20 ING IN NEW YORK UNDER COMMON OWNERSHIP WITH A TELEPHONE CORPORATION
21 OPERATING IN NEW YORK, OR ANY SUCCESSOR OF EITHER CORPORATION.

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

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1 S 251. MERGERS OR ACQUISITIONS. 1. (A) NO TELEPHONE CORPORATION, CABLE
2 CORPORATION, OR COMBINATION TELEPHONE AND CABLE CORPORATION THAT HAS
3 GROSS ANNUAL REVENUES EXCEEDING TWO HUNDRED MILLION DOLLARS SHALL TRANS-
4 FER, LEASE OR MERGE ITS STOCK, WORKS, FRANCHISE OR SYSTEM OR ANY PART OF
5 SUCH WORKS OR SYSTEM TO ANY OTHER PERSON OR CORPORATION THAT HAS GROSS
6 ANNUAL REVENUES EXCEEDING TWO HUNDRED MILLION DOLLARS WITHOUT THE WRIT-
7 TEN CONSENT OF THE COMMISSION.

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

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

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

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

27 (B) MAINTAINS OR IMPROVES THE SERVICE QUALITY STANDARDS THE COMMISSION
28 HAS ESTABLISHED FOR THE EFFECTED TELEPHONE CORPORATION, CABLE CORPO-
29 RATION, OR COMBINATION TELEPHONE AND CABLE CORPORATION.

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

33 (D) MAINTAINS OR IMPROVES THE TELEPHONE CORPORATION, CABLE CORPO-
34 RATION, OR COMBINATION TELEPHONE AND CABLE CORPORATION SERVICE OFFERINGS
35 TO SUBSCRIBERS IN THE STATE.

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

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

42 (G) DOES NOT ADVERSELY AFFECT COMPETITION IN THE MARKETPLACE FOR TELE-
43 PHONE OR CABLE SERVICES.

44 (H) CREATES ENFORCEMENT MEASURES SO THAT IF POST-CONSENT A TELEPHONE
45 CORPORATION, CABLE CORPORATION, OR COMBINATION TELEPHONE AND CABLE
46 CORPORATION FAILS TO COMPLY WITH ANY CONDITION OR COMMITMENT MADE TO THE
47 COMMISSION IN ORDER TO OBTAIN COMMISSION CONSENT, THE COMMISSION SHALL
48 BE AUTHORIZED TO COMPEL PERFORMANCE OR ORDER IMPLEMENTATION OF SUCH
49 CONDITIONS OR COMMITMENTS.

50 (I) EQUITABLY ALLOCATES THE FORECASTED POSITIVE BENEFITS OF THE
51 PROPOSAL BETWEEN SHAREHOLDERS AND SUBSCRIBERS, INCLUDING BUT NOT LIMITED
52 TO, THE FORECASTED ECONOMIC BENEFITS. SUBSCRIBERS SHALL RECEIVE NOT LESS
53 THAN FIFTY PERCENT OF SUCH FORECASTED POSITIVE BENEFITS. FOR THE PURPOSE
54 OF ALLOCATING THE FORECASTED POSITIVE BENEFITS OF THE PROPOSAL BETWEEN
55 SHAREHOLDERS AND SUBSCRIBERS, THE COMMISSION MAY DEEM, INCLUDING BUT NOT
56 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.

3. WHEN REVIEWING A MERGER, ACQUISITION, OR TRANSFER OF CONTROL 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 MERGER, ACQUISITION, OR TRANSFER OF CONTROL 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 WHICH SHALL INCLUDE THE STATE ATTORNEY GENERAL AS A PARTY TO THE PROCEEDING.

(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.

(D) THE COMMISSION SHALL PUBLISH A REPORT ON THE PROPOSED PLAN WHICH SHALL BE POSTED AND ACCESSIBLE BY THE PUBLIC ON THE COMMISSION'S WEBSITE THIRTY DAYS PRIOR TO THE PUBLIC HEARING. SUCH A REPORT SHALL DESCRIBE THE POTENTIAL BENEFITS AND DETRIMENTS OF THE PROPOSED PLAN.

(E) THE COMMISSION SHALL SOLICIT AND COLLECT WRITTEN COMMENTS ON THE PROPOSAL FROM THE PUBLIC UPON THE ANNOUNCEMENT OF THE PUBLIC HEARING.

1 11. THE COMMISSION SHALL ISSUE A WRITTEN "FINDING OF FACT" AS TO ALL
2 OF THE ELEMENTS REQUIRED TO BE ANALYZED IN SUBDIVISION TWO OF THIS
3 SECTION, INCLUDING BUT NOT LIMITED TO:

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

9 (B) A RATIONALE AS TO WHY THE COMMISSION HAS CONSENTED TO THE PARTIC-
10 ULAR DISTRIBUTION OF SUCH FORECASTED ECONOMIC BENEFITS BETWEEN THE
11 SUBSCRIBERS AND SHAREHOLDERS. SUCH FINDING OF FACT SHALL BE ISSUED
12 WITHIN THIRTY DAYS OF THE COMMISSION ISSUING A CONSENT ORDER PURSUANT TO
13 SUBDIVISION ONE OF THIS SECTION AND POSTED ON THE COMMISSION'S WEBSITE.

14 12. (A) ANY REVIEW OF A MERGER OR ACQUISITION BY THE PUBLIC SERVICE
15 COMMISSION PURSUANT TO THIS SECTION SHALL BE IN ADDITION TO ANY OTHER
16 REVIEW REQUIRED BY THIS CHAPTER, INCLUDING BUT NOT LIMITED TO ARTICLES
17 FIVE AND ELEVEN OF THIS CHAPTER.

18 (B) ANY CONSENT OR APPROVAL OF A MERGER OR ACQUISITION BY THE PUBLIC
19 SERVICE COMMISSION ISSUED PURSUANT TO THIS SECTION SHALL NOT BE CONSID-
20 ERED AN APPROVAL OR CONSENT REQUIRED BY ANY OTHER SECTION OF THIS CHAP-
21 TER, INCLUDING BUT NOT LIMITED TO ARTICLES FIVE AND ELEVEN OF THIS CHAP-
22 TER, UNLESS OTHERWISE DEEMED BY THE COMMISSION.

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

32 S 3. This act shall take effect immediately.