

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

5619--B

2015-2016 Regular Sessions

I N S E N A T E

May 20, 2015

Introduced by Sen. 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

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:

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

ARTICLE 12

3
4 PROVISIONS RELATING TO TELEPHONE CORPORATIONS, CABLE CORPORATIONS, AND
5 COMBINATION TELEPHONE AND CABLE CORPORATIONS

6 SECTION 231. DEFINITIONS.

7 232. SERVICE QUALITY STANDARDS, MINIMUM PERFORMANCE LEVELS,
8 CREDITS, AND REPORTS.

9 233. ADMINISTRATIVE SANCTIONS; RECOVERY OF PENALTIES.

10 S 231. DEFINITIONS. THE WORDS AND PHRASES USED IN THIS ARTICLE SHALL
11 HAVE THE FOLLOWING MEANINGS UNLESS A DIFFERENT MEANING CLEARLY APPEARS
12 IN THE CONTEXT. 1. "CABLE CORPORATION" SHALL MEAN ANY PERSON OWNING,
13 CONTROLLING, OPERATING, MANAGING OR LEASING ONE OR MORE CABLE TELEVISION
14 SYSTEMS WITHIN THE STATE.

15 2. "CABLE TELEVISION SYSTEM" SHALL HAVE THE SAME MEANING AS SET FORTH
16 IN SECTION 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 232. SERVICE QUALITY STANDARDS, MINIMUM PERFORMANCE LEVELS, CREDITS,
2 AND REPORTS. THE COMMISSION SHALL, BY REGULATIONS ADOPTED OR AMENDED
3 PURSUANT TO THIS SECTION, ESTABLISH QUALITY OF SERVICE STANDARDS, MINI-
4 MUM PERFORMANCE LEVELS, CUSTOMER-SPECIFIC CREDITS, AND REPORTING
5 REQUIREMENTS THAT SHALL APPLY TO EACH TELEPHONE CORPORATION, CABLE
6 CORPORATION, OR COMBINATION TELEPHONE AND CABLE CORPORATION. 1. SERVICE
7 STANDARDS. SERVICE STANDARDS SHALL INCLUDE, BUT NOT BE LIMITED TO: (A)
8 MEASURES RELATING TO REPAIRS FOR SERVICE OUTAGES WITHIN FORTY-EIGHT
9 HOURS UNLESS A CUSTOMER OPTS OTHERWISE;

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

12 (C) A REQUIREMENT THAT EACH CORPORATION DEVELOP PROCEDURES TO PRIOR-
13 ITIZE SERVICE TO CUSTOMERS WHO ARE LIFELINE CUSTOMERS, WHO ARE SPECIAL
14 NEEDS CUSTOMERS, AND FOR CUSTOMERS WHO UTILIZE A MEDICAL ALERT SYSTEM OR
15 COMMUNICATIONS EQUIPMENT, IN CONJUNCTION WITH MEDICAL DEVICES, TO MONI-
16 TOR AND TRANSMIT MEDICAL DATA TO THEIR TREATING PHYSICIANS' MEDICAL
17 SITES.

18 2. MINIMUM PERFORMANCE LEVELS. MINIMUM PERFORMANCE LEVELS FOR EACH
19 SERVICE STANDARD SHALL BE DEVELOPED TO ENSURE THAT EACH TELEPHONE CORPO-
20 RATION, CABLE CORPORATION, OR COMBINATION TELEPHONE AND CABLE CORPO-
21 RATION IN THE STATE PROVIDE HIGH QUALITY CUSTOMER SERVICE AND HIGH QUAL-
22 ITY TECHNICAL SERVICE TO ALL THEIR CUSTOMERS.

23 3. CUSTOMER CREDITS OR REBATES. THE COMMISSION SHALL ESTABLISH A SCHE-
24 DULE OF CUSTOMER CREDITS OR REBATES, WHICH SHALL BE AWARDED TO CUSTOMERS
25 THAT EXPERIENCE SERVICE OUTAGE CONDITIONS AND FOR MISSED INSTALLATION
26 APPOINTMENTS. A SYSTEM OF GRADUATED CREDITS OR REBATES SHALL BE ESTAB-
27 LISHED FOR THOSE CUSTOMERS WHOSE SERVICE OUTAGE CONDITION WAS NOT
28 CLEARED WITHIN FORTY-EIGHT HOURS OR INSTALLATION WAS NOT COMPLETED WITH-
29 IN FIVE BUSINESS DAYS UNLESS A CUSTOMER OPTS OTHERWISE.

30 4. SERVICE QUALITY MONITORING AND REPORTING. THE COMMISSION SHALL
31 RE-ESTABLISH THE MONITORING AND MEASUREMENTS OF SERVICE QUALITY IN FORCE
32 ON JANUARY FIRST, TWO THOUSAND TEN FOR TELEPHONE CORPORATIONS AND SHALL
33 APPLY THOSE SERVICE QUALITY STANDARDS TO EACH TELEPHONE CORPORATION,
34 CABLE CORPORATION, OR COMBINATION TELEPHONE AND CABLE CORPORATION OFFER-
35 ING TELEPHONE SERVICES.

36 S 233. ADMINISTRATIVE SANCTIONS; RECOVERY OF PENALTIES. 1. EVERY TELE-
37 PHONE CORPORATION, CABLE CORPORATION, OR COMBINATION TELEPHONE AND CABLE
38 CORPORATION SHALL ADHERE TO EVERY PROVISION OF THIS CHAPTER AND EVERY
39 ORDER OR REGULATION ADOPTED UNDER AUTHORITY OF THIS CHAPTER SO LONG AS
40 THE SAME SHALL BE IN FORCE.

41 2. (A) THE COMMISSION SHALL HAVE THE AUTHORITY TO ASSESS A CIVIL
42 PENALTY AGAINST EACH TELEPHONE CORPORATION, CABLE CORPORATION, OR COMBI-
43 NATION TELEPHONE AND CABLE CORPORATION OR PERSON AND THE OFFICERS,
44 AGENTS AND EMPLOYEES THEREOF SUBJECT TO THE JURISDICTION, SUPERVISION,
45 OR REGULATION PURSUANT TO THIS CHAPTER IN AN AMOUNT AS SET FORTH IN THIS
46 SECTION. IN DETERMINING THE AMOUNT OF ANY PENALTY TO BE ASSESSED PURSU-
47 ANT TO THIS SECTION, THE COMMISSION SHALL CONSIDER: (I) THE SERIOUSNESS
48 OF THE VIOLATION FOR WHICH A PENALTY IS SOUGHT;

49 (II) THE NATURE AND EXTENT OF ANY PREVIOUS VIOLATIONS FOR WHICH PENAL-
50 TIES HAVE BEEN ASSESSED AGAINST THE TELEPHONE CORPORATION, CABLE CORPO-
51 RATION, OR COMBINATION TELEPHONE AND CABLE CORPORATION OR PERSON;

52 (III) THE GROSS REVENUES AND FINANCIAL STATUS OF THE TELEPHONE CORPO-
53 RATION, CABLE CORPORATION, OR COMBINATION TELEPHONE AND CABLE CORPO-
54 RATION OR PERSON; 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, OR COMBINATION TELEPHONE AND CABLE CORPORATION OR PERSON AND SUCH OFFICERS, AGENTS AND EMPLOYEES THEREOF MAY BE SUBJECT TO IMPOSITION OF A CIVIL PENALTY AS SET FORTH IN THIS SUBDIVISION, IT SHALL NOTIFY SUCH CORPORATION 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, OR SUCH PERSON.

3. ANY TELEPHONE CORPORATION, CABLE CORPORATION, OR COMBINATION TELEPHONE AND CABLE CORPORATION 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, OR COMBINATION TELEPHONE AND CABLE CORPORATION 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, OR COMBINATION TELEPHONE AND CABLE CORPORATION 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, OR COMBINATION TELEPHONE AND CABLE 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

1 BE DEEMED A SEPARATE AND DISTINCT OFFENSE. THE TOTAL PERIOD OF A
2 CONTINUING VIOLATION, AS WELL AS EVERY DISTINCT VIOLATION SHALL BE SIMI-
3 LARLY TREATED AS A SEPARATE AND DISTINCT OFFENSE FOR PURPOSES OF THIS
4 PARAGRAPH; OR

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

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

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

20 8. UPON A FAILURE BY A TELEPHONE CORPORATION, CABLE CORPORATION, OR
21 COMBINATION TELEPHONE AND CABLE CORPORATION OR PERSON TO REMIT ANY
22 PENALTY ASSESSED BY THE COMMISSION PURSUANT TO THIS SECTION, THE COMMIS-
23 SION, THROUGH ITS COUNSEL, MAY INSTITUTE AN ACTION OR SPECIAL PROCEEDING
24 TO COLLECT THE PENALTY IN A COURT OF COMPETENT JURISDICTION.

25 9. ANY PAYMENT MADE BY A TELEPHONE CORPORATION, CABLE CORPORATION, OR
26 COMBINATION TELEPHONE AND CABLE CORPORATION OR PERSON AND THE OFFICERS,
27 AGENTS AND EMPLOYEES THEREOF AS A RESULT OF AN ASSESSMENT AS PROVIDED IN
28 THIS SECTION, AND THE COST OF LITIGATION AND INVESTIGATION RELATED TO
29 ANY SUCH ASSESSMENT, SHALL NOT BE RECOVERABLE FROM RATEPAYERS, SUBSCRIB-
30 ERS, OR CUSTOMERS.

31 10. IN CONSTRUING AND ENFORCING THE PROVISIONS OF THIS CHAPTER RELAT-
32 ING TO PENALTIES, THE ACT OF ANY DIRECTOR, OFFICER, AGENT OR EMPLOYEE OF
33 A TELEPHONE CORPORATION, CABLE CORPORATION, OR COMBINATION TELEPHONE AND
34 CABLE CORPORATION OR PERSON ACTING WITHIN THE SCOPE OF HIS OR HER OFFI-
35 CIAL DUTIES OR EMPLOYMENT SHALL BE DEEMED TO BE THE ACT OF SUCH TELE-
36 PHONE CORPORATION, CABLE CORPORATION, OR COMBINATION TELEPHONE AND CABLE
37 CORPORATION.

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

47 S 3. This act shall take effect immediately.