

5641--A

Cal. No. 1336

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

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

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.

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

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1 [2.] 3. The commission may hold a public hearing on any application
2 for a certificate of confirmation if it determines that such a hearing
3 is in the public interest. The commission shall fix the time and place
4 for such a hearing and cause notice thereof to be given to the appli-
5 cant, the chief executive officer of the municipality issuing the fran-
6 chise and such other persons as the commission may deem appropriate.
7 Testimony may be taken and evidence received at such a hearing pursuant
8 to such rules and procedures as the commission may establish.

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

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

26 [5.] 6. In the event the commission refuses to issue a certificate of
27 confirmation, it shall set forth in writing the reasons for its deci-
28 sion.

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

42 7. Notwithstanding any other provisions of this article, any cable
43 television company engaged in actual and lawful nonfranchised cable
44 television operations on April first, nineteen hundred seventy-three,
45 that applied for a certificate of confirmation on or before September
46 first, nineteen hundred seventy-four and received a certificate, valid
47 for a five year period, may continue to operate within the limits of the
48 area in which it was actually rendering service on April first, nineteen
49 hundred seventy-three, as determined by the commission. Such a certif-
50 icate of confirmation may be renewed by the commission on application
51 for five year terms pursuant to the provisions of section two hundred
52 twenty-two of this article. Any such company which failed to file an
53 application pursuant to this section on or before September first, nine-
54 teen hundred seventy-four, shall thereafter be prohibited from continu-
55 ing operation of a nonfranchised cable television system, provided
56 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. The public service law is amended by adding a new section 222-a to read as follows:

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

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

3. (A) THE COMMISSION SHALL APPROVE THE APPLICATION UNLESS IT FINDS THAT THE APPLICANT, THE PROPOSED TRANSFEREE OR THE CABLE TELEVISION SYSTEM DOES NOT CONFORM TO THE STANDARDS ESTABLISHED IN THE REGULATIONS PROMULGATED BY THE COMMISSION PURSUANT TO THIS ARTICLE OR THAT APPROVAL WOULD BE IN VIOLATION OF ANY LAW, REGULATION OR STANDARD PROMULGATED BY

1 THE COMMISSION OR THE PUBLIC INTEREST, PROVIDED HOWEVER, THAT A FAILURE
2 TO CONFORM TO THE STANDARDS ESTABLISHED IN THE REGULATIONS PROMULGATED
3 BY THE COMMISSION SHALL NOT PRECLUDE APPROVAL OF ANY SUCH APPLICATION IF
4 THE COMMISSION FINDS THAT SUCH APPROVAL WOULD SERVE THE PUBLIC INTEREST.

5 (B) THE COMMISSION SHALL NOT APPROVE THE APPLICATION FOR A TRANSFER OF
6 A FRANCHISE, ANY TRANSFER OF CONTROL OF A FRANCHISE OR CERTIFICATE OF
7 CONFIRMATION, OR OF FACILITIES CONSTITUTING A SIGNIFICANT PART OF ANY
8 CABLE TELEVISION SYSTEM UNLESS THE APPLICANT DEMONSTRATES THAT THE
9 PROPOSED TRANSFEREE AND THE CABLE TELEVISION SYSTEM CONFORM TO THE STANDARDS
10 ESTABLISHED IN THE REGULATIONS PROMULGATED BY THE COMMISSION
11 PURSUANT TO SECTION TWO HUNDRED FIFTEEN OF THIS ARTICLE, THAT APPROVAL
12 WOULD NOT BE IN VIOLATION OF LAW, OR ANY REGULATION OR STANDARD PROMULGATED
13 BY THE COMMISSION, AND THAT THE TRANSFER IS OTHERWISE IN THE
14 PUBLIC INTEREST; PROVIDED, HOWEVER, THAT A FAILURE TO CONFORM TO THE
15 STANDARDS ESTABLISHED IN THE REGULATIONS PROMULGATED BY THE COMMISSION
16 SHALL NOT PRECLUDE APPROVAL OF ANY SUCH APPLICATION IF THE COMMISSION
17 FINDS THAT SUCH APPROVAL WOULD SERVE THE PUBLIC INTEREST.

18 4. THE COMMISSION MAY APPROVE THE APPLICATION CONTINGENT UPON COMPLIANCE
19 WITH STANDARDS, TERMS OR CONDITIONS SET BY THE COMMISSION WHICH IT
20 DETERMINES WOULD NOT HAVE BEEN MET BY THE PROPOSED TRANSFER OF A FRANCHISE.
21

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

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

26 S 4. This act shall take effect immediately; provided, however, that
27 this act shall apply to franchises filed on or after the date this act
28 shall have become a law; and provided further that the provisions of
29 section three of this act shall apply to any application pending before
30 the public service commission on such date and shall expire and be
31 deemed repealed April 1, 2017.